

## QUESTIONS: Electronic Notices 11/19/2019

1. I have a client who installs transatlantic fiber optic infrastructure. They will have a small subset of employees at sea during the time annual notices are required. Paper mail is not an option. Online access would not meet the DOL standards. What do we do?

Under the proposed rules, you would email the notice and they can access the website once they have the ability. Alternatively, you can mail the notice in a timely fashion, recognizing that they would not read it until later.

2. What about plan sponsors who use e-delivery even if they don't meet the DOL safe harbor... What are the consequences?

The sponsor can argue that they met the general standard, that it was reasonably calculated to ensure receipt. If that argument fails, then the sponsor has failed to give the notice. The consequences of that failure differ depending on the type of notice.

3. Can you explain the difference between the consumer E-Sign rules that cover participant disclosures and the business-to-business E-Sign rules that cover electronic signature of plan documents?

The IRS and DOL both deal with notices to participants, and therefore focus on the consumer rules, which we described in the program. They do not focus on the business rules.

4. Are there any expected changes to the required contents of the notices, such as a shortened and more understandable version of the participant fee disclosures?

None that I anticipate.

5. Any delivery and timing rules if email (electronic delivery) gets bounced back as undeliverable? I'm assuming all undeliverable must be researched even if the participant provided a bad email address or changed address.

Under the proposed rules, you have three options: (1) use a backup address; (2) contact the participant and obtain a corrected address; (3) treat the participant as having opted out and elected to receive notices by paper.

6. Clients want to use their payroll provider's website to deliver notices, because employees have to log in to enter their time, so they would see that notices are there. I know that won't work for former employees, but would it work for current employees who are out working in the oil field?

Why not? Nothing says the website must be the employer's website. Remember, you can use the proposed rules for some recipients and not others.

7. If you have an employee email address must it be given with explicit permission to use it to deliver plan information?

No. The proposed rules are for an opt-out system.

8. Can the notice be attached to the Notice of Internet Availability without posting it on a website (or in addition to posting on a website)?

No. The proposed regulations are quite clear on this point.

9. Could you provide any thoughts on the DOL 5 year SPD rule where an updated SPD has to be provided to participants if an amendment was done since the last full SPD was given out? My understanding is some providers abide by this rule and others ignore it until the next restatement cycle. Is there a civil penalty for not giving out a full updated SPD to meet the 5 year rule? These new e-delivery rules will make it easier to comply with this rule, but that doesn't help us now.

My thoughts are you should follow the law. (Does this come as a surprise?) DOL investigators are not known for their understanding and willingness to bend the rules. Yes, there is a potential civil penalty.

10. Can an employer include required notices and SPD as part of their Open Enrollment? They will have a sign off proving receipt that can be printed and dated. Same system is used for new hires. EE is required to click through and read all attachments and confirm receipt. How does this track with the Regulations?

It would not necessarily comply with the new safe harbor, but if you have proof that the employee received it, it should comply with the general standard.

11. In the proposed rules, is there the ability for sponsors to provide personal emails for active and terminated employees if there is no corporate email?

I see no reason that wouldn't work, although the employee would have the ability to opt out or to provide a different address.

12. If a terminated participant specifically asks for a notice, or say the SAR, to be emailed to them, would the client be out of compliance by emailing the information?

No.

13. Regarding the notice of availability- if it is not possible to link directly to the document on the website can you indicate in the notice how to get to the notice. For instance the notice would say click here to go to the website then click on notices from the drop down menu.

Quoting from the proposal, the notice must provide: "The internet website address where the covered document is available. The website address must be sufficiently specific to provide ready access to the covered document. A website address satisfies the standard in the preceding sentence if the address leads the covered individual directly to the covered document. A website address also satisfies the 'sufficiently specific' standard if the address leads the covered individual to a login page that provides, or immediately after a covered individual logs on provides, a prominent link to the covered document."

14. Does Spanish language materials have to meet these same requirements?

Yes

15. Can you combine the safe harbor, auto contribution, QDIA, investment charts, and fee disclosures in one combined notice?

See slide 39 for notices you can combine.

16. Is the PPA Quarterly Benefit Statement still required and if so can it be provided electronically?

Yes to both questions.

17. Is it likely these notices will be on the TPA website - or Plan Sponsor's company website or either?

Either would be feasible. I could also see the notices on the website of the recordkeeper or the investment vendor.

18. I noticed there was no mention of the Safe-Harbor or EACA/ACA notices with the breakdown illustrations on what can be included/excluded in one notice, please advise.

These are IRS notices and therefore the DOL does not discuss them.

19. The no more than 14 months apart annually requirement is a sliding requirement - right? I can send notices out in October this year and then November next year? Then go back to October the year after that? Thank you.

You've got the picture. Yes.