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BENEFITS & COMPENSATION UPDATE

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DOL Modernizes Rules for Electronic Distribution of Retirement Plan Communications

In May 2020, the Department of Labor finalized regulations making it easier for retirement plan administrators to use electronic disclosure as the permitted default method for distributing legally-required documents and notices to participants (e.g., SPDs, SMMs, summary annual reports, benefit statements, blackout period notices and participant fee disclosures). This change has the benefit of reducing plan costs and adapting ERISA's disclosure rules to an ever-increasing participant population who utilize the internet and smartphones as the primary means of communicating and receiving information. The new rules apply only to retirement plan (e.g., 401(k) and pension plans) and do not apply to welfare plans.

2002 Regulations: The DOL has permitted electronic distribution of participant communications to plan participants since 2002, but only to individuals who have the ability to effectively access the electronic documents from work (generally, those with desk jobs) or to individuals who *affirmatively consent* to electronic distribution in advance.

New Regulations: The new DOL final regulations provide administrators two ways to

use electronic delivery as the default method for distributing required communications to participants:

- the administrator may *post* the document or notice on a website, or
- the administrator may *email or text* the document or notice to the participant's email address or smartphone.

Advance Written Notice: In order to utilize either of these methods, administrators must notify participants on paper in advance that plan documents and notices will be furnished electronically rather than by mail, provide the email address or smartphone number that will be used and explain that the participant has the right to request a paper copy free of charge or opt out of electronic delivery.

Notice of Current Availability: If the administrator posts the communications on a website, it must furnish a notice of internet availability when the communication is posted, which must be titled "Disclosure About Your Retirement Plan" and contain:

- a statement that important information about the retirement plan is now available to review;
- a description of the document;
- the website address where the document is available; and
- a statement of the right to receive a paper copy of the document and the right to opt out of electronic notification.

The administrator must furnish the notice of internet availability each time a new document is posted. However, for those documents that are

provided once a year, the administrator may furnish an annual notice covering multiple document postings.

If the administrator emails or texts the document to the participant, it must provide the same content as the notice of internet availability (other than the reference to the website) in the email or text message.

Effective Date: The regulations are effective July 26, 2020, but can be relied upon before that date.

This update is not intended to provide legal advice with respect to any particular situation, and no legal or business decision should be based solely on its content.

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