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## Department of Labor proposes new rule to expand electronic distribution of retirement plan disclosures

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The Department of Labor (“DOL”) generally requires that plan administrators furnish disclosures mandated by the Employee Retirement Income Security Act of 1974 (“ERISA”) via measures reasonably calculated to ensure actual receipt. For nearly 20 years, the DOL has granted a safe harbor for electronic notices, so long as certain standards were met (e.g., the plan administrator takes reasonable measures to ensure the electronic delivery system results in actual receipt of transmitted information while protecting the confidentiality of personal information, etc.). However, the safe harbor only applies to two categories of recipients: those who are “wired at work” and those who affirmatively consent to receive electronic distribution. The “default”, in effect, is paper notices. Its usefulness has been quite limited.

The DOL has now proposed a rule that would expand the opportunity for electronic distribution of retirement plan disclosures. (The new rules would not apply to welfare plans.) Given sufficient electronic addresses for participants, the “default” method of providing pension plan notices would be by electronic means.

The safe harbor proposed would expand the list of individuals who may receive disclosure through electronic media to those who either provide an electronic address (such as an email or smartphone number) or who an employer assigns an electronic address for this purpose. The administrator could then post the document on the internet, provided the administrator furnishes a notice of internet availability directing the recipient to the internet website where the document is available. The internet website address would need to meet certain standards, which would include criteria designed to ensure the document is available until superseded and is searchable electronically. Critically, the plan administrator must promptly furnish a paper

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document free of charge to any participant who requests paper. Also, participants have the right to opt-out of electronic receipts.

If finalized, the regulation will apply to any retirement plan disclosure a plan administrator is required to furnish, except for any document that must be furnished upon request. As a result, a plan administrator would be able to distribute summary plan descriptions, summary annual reports, summary of material modifications, pension benefit statements, fee disclosures, and blackout notices pursuant to the safe harbor. The DOL proposed an applicability date of the first day of the first calendar year following the finalization of the rule. Stay tuned for further developments on the impending effectiveness of the disclosure safe harbor, as the DOL appears to be moving quickly to finalize the rules soon.

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