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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

New DOL Benefit Plan Guidance Embraces E-Disclosure

By **Emily Brill**

Law360 (April 29, 2020, 9:04 PM EDT) -- The U.S. Department of Labor's new guidance on employee benefit plans and the novel coronavirus pandemic hints that the agency is accelerating its embrace of electronic disclosures for retirement savers, attorneys say.

Issued Tuesday, the guidance assures benefit plan administrators they won't be penalized for sending information to plan participants electronically. The guidance arrives less than two weeks after the DOL sent a long-anticipated regulation on electronic disclosures of pension plan information to the White House for approval.

That regulation would allow pension plan administrators to send disclosures required under the Employee Retirement Income Security Act to participants by email rather than through the mail. Such a move could save employers millions, the DOL has said.

Tuesday's guidance — released by the DOL's benefits division and meant to ease restrictions related to ERISA plans during the pandemic — suggests the DOL is forging ahead with allowing electronic disclosures, said Elizabeth S. Goldberg, a benefits associate at Morgan Lewis & Bockius LLP.

"We know that the electronic disclosure rule is at [the White House's] Office of Management and Budget. We hope that this moves the ball in the right direction on electronic communications," Goldberg said.

Kevin Walsh, a principal at Groom Law Group, said the language on electronic delivery jumped out at him right away as he read the DOL's new guidance. In particular, he homed in on the section where the agency named "email, text messages and continuous-access websites" as potential methods of delivering plan information to participants electronically.

"To me, it makes me think we could see those types of communications in the new rule," Walsh said.

Goldberg said the e-delivery guidance is a welcome development, because it relieves benefit plan administrators of the duty to send mass mailings during a pandemic.

"It's very helpful to see this relief is there, because that's a question I've gotten a lot from clients — the logistics right now of performing mailing functions can be challenging," Goldberg said. "Shops that clients go to for mass mailings are not open."

In addition to authorizing e-delivery, Tuesday's guidance gives laid-off and furloughed workers more time to sign up for health care coverage and plan officials more time to file paperwork. The DOL intends for the deadline extensions to provide "flexibility" during this "challenging time" for workers and companies, Preston Rutledge, the head of DOL's Employee Benefits Security Administration, said in a statement Tuesday.

Jonathan Zimmerman, a benefits partner at Morgan Lewis, said the deadline extensions are helpful but that people should keep in mind that the DOL isn't the only agency that enforces deadlines related to employee benefit plans.

Some types of plans — such as cafeteria plans, which let participants fund benefits on a pretax basis — are overseen by the Internal Revenue Service.

"The DOL is extending deadlines for participants to take certain actions, but these don't extend to flexibility from the IRS' standpoint," Zimmerman said.

Because of this, benefit plan sponsors should keep an eye on Congress and the IRS to see if further relief is issued, Zimmerman said.

Also on Tuesday, the DOL issued a set of frequently asked questions directed at workers with questions about their health insurance coverage. The questions are intended to help workers impacted by the coronavirus outbreak "understand their rights and responsibilities" under Title I of ERISA, the EBSA said.

The FAQs delve into questions such as, "If my place of employment temporarily closes because of the COVID-19 outbreak, am I still covered by my employer's group health plan?"

"To me, these FAQs show a continuation of DOL's reach-out efforts to the participant community," Walsh said. "We talk a lot about fiduciaries and plan sponsors, but these FAQs go at the concerns that an individual participant might have."

--Editing by Aaron Pelc and Orlando Lorenzo.