



Comparison of IRS and DOL Electronic Media Rules

	IRS Rules	DOL Rules
Types of Plans Subject to the Rules	<ul style="list-style-type: none"> • Qualified defined contribution and defined benefit plans, including governmental and non-electing church plans • Section 403(b) arrangements (ERISA and non-ERISA) • Governmental section 457(b) plans 	<ul style="list-style-type: none"> • Qualified defined contribution and defined benefit plans covered by ERISA (i.e., not governmental or non-electing church plans) • Section 403(b) plans covered by ERISA
Notices, Elections or Consents Covered by these Rules	<p>Any notice or communication required under the Internal Revenue Code, except those over which DOL or PBGC has regulatory and interpretive authority and tax-reporting records.</p> <ul style="list-style-type: none"> • Section 402(f) rollover distribution notices • ERISA section 204(h) notices • QJSA and QPSA notices, elections and consents • ADP/ACP Safe Harbor Plan notices • Annual pension withholding notices • Loan notes • Notices of available distribution options • Notices to interested parties • Individual benefit statements (on an interim basis) 	<p>Generally, any document required under Title I of ERISA, except for disclosures required under ERISA Parts 2 and 3, over which the Department of the Treasury has interpretive and regulatory authority.</p> <ul style="list-style-type: none"> • SPDs • SMMs • SARs • Individual benefit statements • ERISA section 404(c) information • Suspension of benefit notices • QDRO notices



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	<ul style="list-style-type: none"> Beneficiary Designations 	
Required vs. Safe Harbor	<p>Required: Compliance with the regulations is required with respect to any communications that are required to be in writing. <i>For example: section 402(f) rollover distribution notices</i></p> <p>Safe Harbor: The regulations are simply a safe harbor with respect to any communications that are not required to be in writing. <i>For example: beneficiary designations</i></p>	<p>These regulations provide a Safe Harbor with respect to the general ERISA requirement to use "measures reasonably calculated to ensure actual receipt."</p>
General Requirements	<ul style="list-style-type: none"> The timing and content rules that otherwise apply to the notice, election, or consent must be met. The electronic system must be designed to provide information in a manner that is no less understandable that if provided on a written paper document. The electronic system must be designed to alert the participant, at the time the notice is provided, to the significance of the information and provide any instructions needed to access the notice. The electronic notice/election must be maintained in a form capable of being retained and accurately reproduced for later reference. 	<ul style="list-style-type: none"> The documents in electronic form comply with the requirements of style, format and content as the paper document. The electronic system must be designed to alert the participant to the significance of the information, if it is not reasonably evident from the transmittal. The electronic system must be reasonably calculated to ensure the actual receipt of the document occurs. This could be accomplished by use of return-receipt notice or undeliverable e-mail features, or conducting periodic surveys regarding the receipt. The electronic system protects the confidentiality of personal information.



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		<ul style="list-style-type: none"> Upon request, the participant must be furnished a paper version of the electronic document.
Providing Notices	<p>Consumer Consent Method</p> <p>Participant must affirmatively consent to receive electronic notice before the notice is sent, unless participant has ability to access medium under "alternative" rule below.</p> <p>The participant must consent in a manner that demonstrates the participant's ability to access the notice in the electronic form, or the participant may consent by paper if the participant confirms the consent electronically in manner that demonstrates ability to access the notice in the electronic form.</p> <p>Before a participant may consent to electronic delivery, the plan must provide him with a disclosure statement that describes:</p> <ul style="list-style-type: none"> the scope of the consent; the right to withdraw consent to receive the notice electronically; the right to receive a paper copy upon request; any hardware/software requirements; and the procedures for updating information to contact the participant electronically. 	<p>Affirmative Consent</p> <p>Participant must affirmatively consent to receive electronic notice, unless participant has ability to access medium under "no consent" rule below.</p> <p>The participant must consent in a manner that reasonably demonstrates the participant's ability to access the information in the electronic form.</p> <p>Before a participant may consent to electronic delivery, the plan must provide him with a statement that contains the following information:</p> <ul style="list-style-type: none"> identification of the documents to which the consent applies; explanation that the consent may be withdrawn at any time without charge; the procedures for withdrawing or updating address information; explanation of the participant's right to request and obtain a paper copy of the electronically furnished document(s); indication whether the paper copy of the document(s) will be provided free of charge;



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	<p>Alternative Method</p> <p>Consent by the participant is not required if:</p> <ul style="list-style-type: none"> • the plan advises the participant that he may request and receive the applicable notice in writing on paper at no charge; and • the participant is effectively able to access the electronic medium used to provide the notice. 	<p>and</p> <ul style="list-style-type: none"> • identification of hardware or software requirements required to access and retain the documents provided electronically. <p>No Consent</p> <p>Consent by the participant is not required if –</p> <ul style="list-style-type: none"> • the participant has the ability to access electronic documents at any location where the participant is "reasonably expected to perform his or her duties as an employee;" and • the participant's access to the employer's information system is an "integral part" of her duties as an employee. <p>Providing an electronic document through a common area computer, such as a kiosk, would not satisfy the safe harbor, even with affirmative consent.</p>



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Participant Elections	<ul style="list-style-type: none"> • The participant must be effectively able to access the electronic medium in order to make the participant election. • The electronic system used must be reasonably designed to preclude any person other than the appropriate individual from making the election. • The electronic system must provide the participant making the election with a reasonable opportunity to review, confirm, modify or rescind the terms of the election before the election becomes effective. <p>The participant making the election must receive, within a reasonable time, a confirmation of the election through either the consumer consent delivery method, or the alternative delivery method of the notice requirements.</p>	The DOL rules generally do not apply to participant elections.
QJSA Notices and Elections	In the case of a participant election that must be witnessed by a plan representative or a notary public (e.g., QJSA consents, certain loans, etc.), an electronic notarization acknowledging a signature is permitted if the signature of the individual making the election is witnessed in the "physical presence" of the plan representative or notary public.	DOL rules do not address these notices.



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Effective Date	These rules apply to notices provided and elections made on or after January 1, 2007. However, a plan sponsor may comply with these rules for notices provided, and participant elections made on or after October 1, 2000, and before January 1, 2007.	These rules were effective October 9, 2002.

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