

June 6, 2011

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue, NW.  
Washington, DC 20210,

Attention: E-Disclosure RFI

RE: RIN 1210-AB50  
29 CFR Part 2520

Request for Information Regarding Electronic Disclosure by Employee Benefit Plans

To Whom It May Concern,

WorldatWork respectfully submits these comments in response to the Request for Information Regarding Electronic Disclosure by Employee Benefit Plans [Federal Register Vol. 76, No. 67, 04/07/2011]. We appreciate the opportunity to comment.

**Background on WorldatWork**

WorldatWork ([www.worldatwork.org](http://www.worldatwork.org)) is a not-for-profit global human resources association focused on compensation, benefits, work-life and integrated total rewards to attract, motivate and retain a talented workforce. Founded in 1955, WorldatWork provides a network of more than 30,000 members and professionals in more than 100 countries with training, certification, research, conferences and community.

WorldatWork members are human resources professionals who design and administer programs — including all employee benefit programs — to attract, motivate and retain employees. These members believe there is a powerful exchange relationship between employer and employee, as demonstrated through the WorldatWork Total Rewards Model. Total rewards involve the deliberate integration of five key elements that effectively attract, motivate and retain the talent required to achieve desired organizational results. The five key elements are: compensation, benefits, work-life, performance and recognition, and development and career opportunities.

The model recognizes that total rewards operate in the context of overall business strategy, organizational culture and HR strategy as well as a complex external environment that influences the organization. Within this context, an organization leverages the five elements to offer and align a value proposition that creates value for both the organization and the employee. An effective total rewards strategy results in satisfied, engaged and productive employees, who in turn deliver desired performance and results.

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## Current Employer Practices Regarding Electronic Disclosure by Employee Benefit Plans

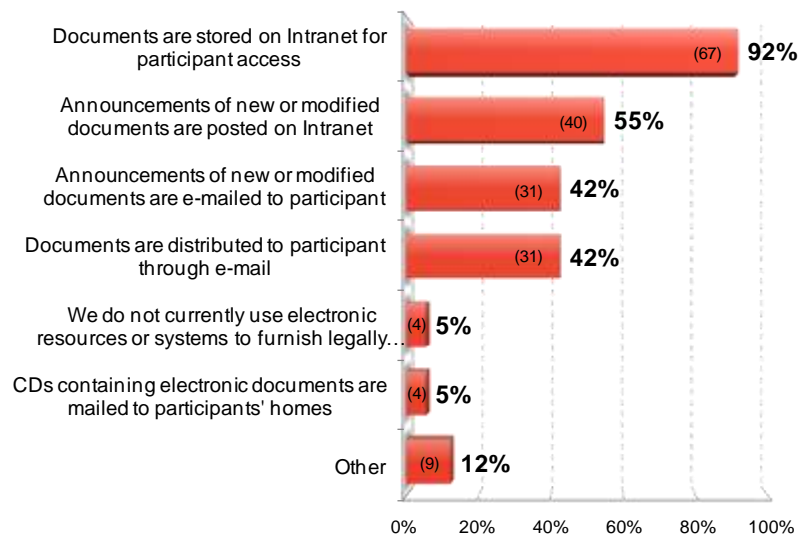
In order to quickly gauge current practices and opinions of employers in regards to the current electronic disclosure safe-harbor standard, WorldatWork conducted a snapshot survey of human resources professionals and solicited targeted information from a focus group made up of senior human resources leaders currently working in the benefits field.

The survey, entitled *Quick Survey on Electronic Benefits Communication (U.S.)*, was in the field from May 9 to May 23, 2011. A total of 73 members participated; 95% of whom report currently using some form of electronic disclosure to communicate benefit plan information to their employees.

In responding to this Request for Information, we chose to address the following questions based on the cumulative feedback from our various outreach efforts:

### RFI Question 5: What are the most common methods of furnishing information electronically (e.g., e-mail with attachments, continuous access Web site, etc.)?

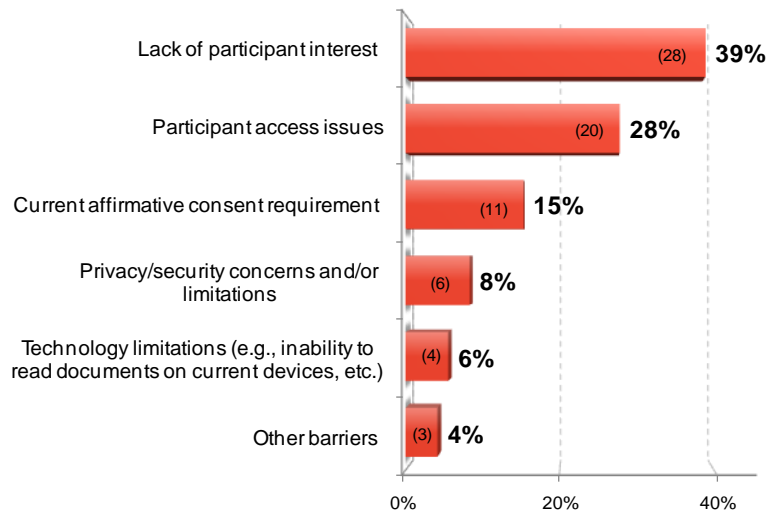
Survey participants were asked to identify all the ways in which they disclose employee benefit plan information electronically. As shown below, by far, the most common method of electronic disclosure is to store documents on a company's Intranet for participant access. Only 5% of respondents reported not currently using electronic resources or systems to furnish legally required benefits plan information.



Of the 12% that indicated they use other means of disclosure, respondents listed outlets such as third-party benefits administrator's websites and distributing via the U.S. mail system.

### RFI Question 6: What are the most significant impediments to increasing the use of electronic media (e.g., regulatory impediments, lack of interest by participants, lack of interest by plan sponsors, access issues, technological illiteracy, privacy concerns, etc.)?

The most significant impediment that survey respondents identified to increasing the use of electronic disclosure of employee benefit plan information was a lack of interest among plan participants (39%). Following the lack of interest among plan participants, the next two impediments that were identified as the "most significant impediments" by respondents were participant access issues (28%) and the current affirmative consent requirement (15%).



Only a small percentage of employers reported that privacy/security concerns or limitations (8%) or technology limitations (6%) were the most significant impediment to increasing the use of electronic disclosure methods for distributing employee benefit plan information.

**RFI Question 9: Should the Department’s current electronic disclosure safe harbor be revised? If so, why? If not, why not?**

While only 15% of respondents identified the current affirmative consent as the most significant impediment to increasing the use of electronic disclosure, 51% of respondents were of the opinion the current safe harbor rules should be revised.

When asked why the safe harbor should be revised, one member wrote about the requirement to provide notice every time an electronic document is furnished.

- “The requirement to send out a notice to every participant each time an electronic document is furnished regarding its significance should be eliminated. Plan sponsors should be allowed to include in other mailings, such as Annual Enrollment, a reminder of the required notices for the plan year and where electronic copies of information can be located. For those employees who do not have computer access, they may have the option to request notices, SPD’s, etc., through their local HR department, but employers should not be required to automatically provide hard copies.”

Members of the focus group spoke to the need to change the affirmative consent requirement.

- “Plans should not be required to obtain affirmative consent from participants in order to distribute materials electronically. Rather, participants could be given the option of opting out of electronic disclosure if they prefer hard-copy materials.”
- “The disapproval to use employer-provided kiosks or workstations needs to be removed and permitted as a method of delivery. Affirmative consent needs to be lessened to be more along

the lines of positive consent or simply general consent to receive. The lack of a fee for requesting printed materials needs to be removed and a cap on a fee provided.”

- “The affirmative consent is a substantial burden. In the case of an employer such as ours where we have a significant number of retirees, vested terminated employees and employees without email, the ability to send documents electronically without obtaining a participant's consent would substantially reduce the cost the company currently faces (i.e., that of producing and sending hardcopy documents to all of these individuals). Eliminating the affirmative consent requirement may, also, permit companies such as ours to communicate plan provisions to participants and beneficiaries on a more frequent basis.”

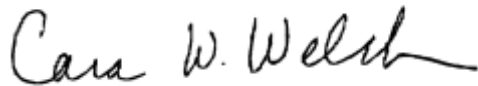
In addition, in responding to an open-ended question about how the rules could be revised, 16 survey respondents independently identified the affirmative consent requirement as a reason why the safe harbor rules should be revised.

Other write-in answers included allowing for language changes for non-English speaking employees, including more measures for electronic receipt of benefit plan information, and allowing the distribution of plan information to e-mail addresses other than a work e-mail address.

### **Conclusion**

In conclusion, we appreciate this opportunity to comment on the Request for Information and are ready to provide any assistance or information needed to facilitate the process of gathering information on employer practices regarding electronic disclosure of employer plan information. Please do not hesitate to call on us to provide resources or unbiased expertise on electronic disclosure in employee benefit plans.

Sincerely,



Cara Woodson Welch, Esq.  
Director, Public Policy