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## DOL Issues Guidance on Electronic Distribution of New Fee Disclosures

On September 13, 2011, the Department of Labor (“DOL”) issued guidance regarding how plan administrators may use electronic media to meet the new fee disclosure requirements for 401(k) plans and other participant-directed retirement plans. For more information on the new fee disclosure requirements, please see the November 3, 2010 and July 22, 2011 issues of the HRBenefits Authority.

**Background.** The DOL’s electronic disclosure regulations establish a “safe harbor” that allows plan administrators to distribute plan materials electronically – but only to participants who have work-related computer access or recipients who consent to electronic delivery.

Additional guidance from the DOL provides that, as an alternative to meeting the stricter safe harbor requirements, plan administrators may furnish quarterly benefit statements through a secure continuous access website. If this more lenient standard is used, the plan administrator must provide participants and beneficiaries with a notice that explains (i) the availability of the statements, (ii) how the statements can be accessed and (iii) that participants and beneficiaries may receive a paper version of the statements free of charge upon request.

**Electronic Distribution of New Fee Disclosures.** The new fee disclosure requirements for 401(k) plans and other participant-directed retirement plans cover two categories of information: plan-related information and investment-related information. Under the DOL’s interim guidance, different electronic disclosure rules apply to each category of information.

- **Plan-Related Information.** Plan-related information (*e.g.*, general investment information and information about administrative and individual expenses) may be included in the quarterly benefit statements and distributed electronically under the new more lenient standard (*i.e.*, through a secure continuous access website).
- **Investment-Related Information.** Investment-related information that is not included in the quarterly benefit statements (*e.g.*, performance data and benchmark information) may not be provided using the new more lenient standard. However, this information may be provided electronically using either (i) the current DOL safe harbor or (ii) a new alternative method described in the DOL’s interim guidance, which generally requires participants and beneficiaries to voluntarily provide an e-mail address for receiving disclosures to the plan administrator.

**Contact Information.** If you have any questions about the new disclosure rules or electronic delivery options, please contact David Putnal (404.888.8836), Toby Walls (404.888.8870), Teri King (404.888.8847), Angela Marino (404.888.8822) or Jared Beckerman (404.888.8857).

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999 Peachtree Street • Suite 1500 • Atlanta, GA 30309

[www.MCBenefitsLaw.com](http://www.MCBenefitsLaw.com) • 404.888.8820

[www.VCGConsultants.com](http://www.VCGConsultants.com) • 770.863.3600