



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

Subject: E-Disclosure RFI – 29 CFR Part 2520 – RIN 1210-AB50

Ladies and Gentlemen:

The U.S. Department of Labor (“DOL”) published a Request for Information (“RFI”) on April 7, 2011, to explore whether, and possibly how, to expand or modify the standards for the electronic distribution of plan disclosures required under ERISA.

This response to the RFI is submitted on behalf of Publix Super Markets, Inc. (“Publix”). Founded in 1930, Publix is the largest and fastest-growing employee-owned supermarket chain in the United States. Publix currently operates 1,036 stores, eight distribution centers and 10 manufacturing facilities in five states. Publix has been recognized as one of the top companies in FORTUNE’s list of “100 Best Companies to Work For in America” for 14 years straight and one of FORTUNE’s “Most Admired Companies” since 1994.

We appreciate the DOL’s desire to solicit the views, suggestions and comments from plan sponsors and employers such as Publix on this very important issue. Our comments below refer to the questions raised in the RFI.

Sincerely,

Linda S. Kane  
Vice President Benefits Administration and Assistant Secretary

1. Internetworldstats.com reports that Internet user growth in North America increased 146 percent from 2000 – 2010 to 77 percent of the population.

With the explosion of Android phones, iPhones, iPads and other smart phones and net books. More people than ever are accessing the Internet through mobile devices. According to a January 27, 2011, article in MercoPress, the number of mobile phone subscriptions has reached five billion globally, and the number of Internet subscribers has reached two billion. This is compared to 2000 when there were only 500 million mobile phone subscriptions and 250 million Internet subscribers. With the world's population at almost seven billion, one person in three surfs online.

Infographic projects that in 2014, mobile Internet usage will overtake desktop Internet usage. Already in 2011, more than 50 percent of all "local" searches are done from a mobile device.

This is all a testament to the fact that the Internet is exploding at an exponential rate worldwide. Advances in electronic communications are increasing at lightning speed. Everyday more and more people carry Internet access with them through mobile devices.

2. Publix Super Markets, Inc. ("Publix") employs over 146,000 employees who work at retail, warehouse, distribution and office facilities located in five states. While many employees in our retail, warehouse and distribution locations do not need access to desktop computers to perform their daily jobs, these employees use personal computers and mobile devices in their daily lives and would like to have access to online benefits information. We do not have information on online banking; however, 80 percent of our employees have elected direct deposit for their paychecks.
3. Required disclosures for Publix's defined contribution pension plans are currently provided in paper and sent to active employees at their work locations and mailed to the last known address for employees on a leave of absence, QDRO alternate payees, beneficiaries and deferred vested participants. In addition to paper, we also provide certain benefits information on our company website for those employees who prefer to view the electronic version.
4. Required disclosures for Publix's welfare benefit plans are currently provided in paper and sent to active employees at their work locations and mailed to the last known address for employees on a leave of absence, former employees and COBRA qualified beneficiaries. In addition to paper, we also provide certain benefits information on our company website for those employees who prefer to view the electronic version.
5. Publix does not currently furnish required disclosures electronically due to difficulties in complying with the current electronic disclosure safe harbor (refer to our response to Question #7).
6. Publix employs over 146,000 employees who work at retail, warehouse, distribution and office facilities located in five states. Many employees in our retail, warehouse and distribution locations do not have access to desktop computers to perform their daily jobs. This makes obtaining affirmative consents to meet the current electronic disclosure safe harbor extremely difficult.
7. In 2008, Publix distributed restated Summary Plan Descriptions ("SPDs") for its defined contribution pension plans and welfare benefit plans electronically on DVDs. To comply with the electronic disclosure safe harbor, this massive undertaking required Publix to monitor execution and receipt of employees' acknowledgements ("opt in"). At that time, 78 percent of our employees affirmatively consented to receive the electronic SPDs instead of traditional paper documents. Unfortunately, the burden to obtain the employees' acknowledgements from all work locations was so great that Publix will not consider this same distribution method again.

8. More and more people prefer and elect to receive their “mail” via e-mail. The U.S. Postal Service (the “USPS”) is at a tipping point. According to a May 26, 2011, article in BusinessWeek, with the rise of e-mail and the decline of letters, first-class mail volume for the USPS is falling at a staggering rate.

Other countries have already closed their brick-and-mortar post offices. Sweden’s Posten runs only 12 percent of its post offices, and the rest are in the hands of third parties. Deutsche Post is now a private company and runs just two percent of the post offices in Germany. In contrast, the USPS operates all of its post offices.

Many of these countries now offer digital mail products that allow customers to send and receive letters from their computers. Itella, the Finnish postal service, keeps a digital archive of its users’ mail for seven years and helps them pay bills online securely. Swiss Post lets customers choose if they want their mail delivered at home in hard copy or scanned and sent to their preferred Internet-connected device. Customers can also tell Swiss Post if they would rather not receive items such as junk mail. Sweden’s Posten offers an app that lets customers turn digital photos on their mobile phones into postcards. It is also unveiling a service that will allow cell phone users to send letters without stamps. Posten will text them a numerical code that they can jot down on envelopes in place of a stamp for a yet-to-be-determined charge.

Traditional mail through the USPS of benefits paper disclosures may likely become obsolete in the near future as the USPS turns to technology for mail delivery products.

9. The current electronic disclosure safe harbor should be eliminated. Electronic delivery of required benefits information should become the accepted norm for employers with employees being provided clear instructions on the steps to “opt out” and receive paper communications if they choose.

The current electronic disclosure safe harbor was established in 2002, which was almost 10 years ago when many employees were not as exposed to the Internet. As stated in our response to Question #1, the number of North American Internet users has grown at a staggering rate in recent years. As explained in Question #8, there will likely come a time when traditional mail is replaced with e-mail and other digital mail products.

10. If the safe harbor is revised rather than eliminated, it should be flexible enough to allow employers to communicate important benefits information to their employees using those methods that work best for them, such as a company website or other electronic medium that has been communicated to employees.

We suggest the following safe harbor for required disclosure requirements:

- Post benefits information for pension and welfare benefit plans on a company website or other electronic medium that has been communicated to employees as offering benefits information.
- Provide active employees with an identification number and password to access the company website along with instructions on the steps an employee can take to “opt out” of electronic disclosures at any time and receive paper disclosures if they choose.
- Distribute paper disclosures to participants who opt out of electronic disclosures.

11. No. Different rules would only cause confusion for employers and employees.
12. With technology being the accepted norm, the rule should be as broad as possible and should not be so rigid as to require different safe harbors for different disclosures.
13. No. The safe harbor rules should be as broad as possible. If communicating to employees via e-mail is the accepted norm for an employer, the rules should allow for this.

14. Many employees are becoming accustomed to accessing their company website for basic information such as work schedules, pay advice statements, leave balances, benefits and other information. At many employers, an employee self-service system lets employees adjust their federal and state tax withholdings, add beneficiaries, update their personal information and review their employee handbooks online. Many employees access this information at home or at work on a routine basis.

We feel the Department should allow and encourage employers to fully leverage their company websites to share and provide benefits information with their employees. We feel notice of the company website should be given to employees upon being hired by the company. The notice should be furnished in a manner that is consistent with other important communications provided by the employer, and it should clearly explain how an employee can opt out for paper instead of electronic benefits disclosures.
15. The default should be set by each employer. If electronic communications are the standard form in which a company communicates with its employees, employees should be allowed to opt out.
16. If an individual faces a challenge accessing electronic disclosures, such individual should be directed to contact their plan sponsor to request paper disclosures.
17. A participant or beneficiary should always have a right to opt out and request paper disclosures.
18. In light of changes in technology, employers should communicate the types of software needed to view their electronic disclosures. In 2008 when Publix sent restated SPDs on DVDs (refer to our response to Question #7), we explained the hardware and software requirements for accessing the electronic disclosures. No concerns were raised by our employees to us.
19. Yes, the affirmative consent requirement is an impediment and should be eliminated (refer to our response to Question #7). We believe eliminating this requirement would significantly improve electronic commerce. We do not believe eliminating this requirement would pose a material risk of harm to the participants and beneficiaries.
20. Publix does not currently furnish required disclosures electronically.
21. The rule should be flexible enough so that employers can provide the disclosures in the manner in which they normally communicate benefits information to employees (for example, a company website that can be accessed by both active and former employees or via e-mail).
22. This would not be an issue when the disclosures are accessed via a continuous website.
23. Publix is complying with the requirements of the current rules.
24. At Publix, we are currently in the process of obtaining e-mail addresses from our employees. We believe e-mail addresses are often more stable than postal addresses. With over 146,000 employees, we continually remind our employees to provide us with new postal addresses whenever they move. However, each time we mail information to our employees' postal addresses, we always have a significant amount of mail returned by the USPS as undeliverable. In contrast, many people keep their same e-mail address despite having moved their physical address multiple times.
25. Publix does not pass along printing costs to our plan participants and beneficiaries.
26. We estimate that less than 20 percent of employees would "opt out" of electronic disclosures. As an employee-owned company, we believe participants should be informed of the cost to the company of furnishing paper disclosures at the time they are afforded the option to "opt out" of the electronic disclosure.

27. We believe that more than 80 percent of our employees want to receive their benefits information electronically. We often are asked by our employees why we do not provide easy-to-access benefits information in an electronic format, rather than paper, to save time and money.
28. The costs of building an electronic data infrastructure may prohibit some employers from using electronic disclosure methods; however, many employers are currently communicating electronically so the cost has already been incurred.
29. We feel sending an email with a PDF file attached containing the disclosure would be the more secure method and result in the recipient being more likely to open the attachment and read it.
30. The benefit would be significant. There would be less confusion for both employers and employees. Required participant notifications have increased dramatically in recent years, which has resulted in a burden on employers and employees who often feel overwhelmed and confused with so many notices.