

Department of Labor Final Rule on Disclosure through Electronic Media

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On May 21, 2020, the Department of Labor (DOL) issued a final rule allowing employers to deliver certain disclosures electronically. The rule takes effect on July 26, 2020, but may be relied on immediately.

The final regulations establishes a voluntary safe harbor for plan administrators who want to deliver “Covered Documents” to “Covered Individuals” by posting the documents on a website or emailing them (in the body of the email or as an attachment), provided certain requirements are satisfied.

Covered Individuals include participants, beneficiaries and other persons who are entitled to receive covered documents and who have provided an email address or smart phone number or who have been assigned an electronic address by the employer for employment-related purposes.

Covered Documents are retirement plan disclosures that are required under Title I of ERISA to be furnished automatically (e.g., Summary Plan Descriptions, Summary Annual Reports, participant benefit statements, Qualified Default Investment Alternative notices and participant fee disclosures); they do not include documents that are only required to be furnished upon request (e.g., the Plan document).

There are two options for electronic delivery.

Posting documents on a website. In order to deliver documents by posting them on a website, plan administrators must provide a Notice of Internet Availability (NOIA) to Covered Individuals (via the electronic address provided/assigned) each time a Covered Document is made available on the website. Alternatively, a combined NOIA may be provided once each plan year for certain Covered Documents (including SPDs and disclosures that are required to be provided annually such as participant fee disclosure notices), but not more than 14 months after the prior combined NOIA was provided. The NOIA must include (and be limited to) specific information described in the final regulations, such as the names of the Covered Documents being provided, the website where the document was posted (or a hyperlink to that website), and the right of the Covered Individual to request a free paper copy of the documents or opt out of electronic delivery.

Delivery of documents by email. In order to deliver documents electronically via email, an initial paper notice must also be provided and the email must include certain information similar to that required in the NOIA and be provided in a widely-available format that can be read online, printed, retained, and searched. Instructions on how request paper copies and email opt-out rights must also be provided.

Participant Protections:

The final regulations are designed to provide protection to plan participants. In order to delivery documents electronically, Plan administrators must do the following:

- Provide an initial paper notice to each Covered Individual that documents will be delivered electronically that includes similar content to the NOIA and identifies the electronic address that will be used.

- Ensure posted documents are available for at least one year or, if longer, until an updated version is posted, are presented in a widely-available format that is suitable for reading online or printing, retention, and searching, and that the website protects personal information.
- Provide at least one paper copy of a Covered Document free upon request.
- Allow Covered Individuals to globally opt-out of electronic delivery free of charge, and establish procedures for providing copies and complying with opt-outs.
- Respond to invalid addresses by using an alternate address, obtaining a new address, or treating the Covered Individual as opting out of electronic delivery (i.e., provide a paper copy of all covered documents).
- Employer provided email addresses must continue to function after termination of employment or the plan administrator will need to obtain a new electronic address to maintain electronic delivery to the covered individual.

See additional information: <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/electronic-disclosure-safe-harbor-for-retirement-plans>