

# Electronic Disclosure Safe Harbor for Retirement Plans

Effective July 27, 2020

After nearly 2 decades, the Department of Labor (DOL) has issued new regulations regarding electronic disclosure, or e-delivery. The optional new methods may be used in place of, or in conjunction with the 2002 regulations. The new rules are expected to save retirement plans \$3.2 billion in printing and mailing costs over the next decade.

**Covered documents** include safe harbor notices, participant fee disclosures, qualified default investment alternatives (QDIA) notices, summary annual reports (SARs), summary plan descriptions (SPDs), summaries of material modifications (SMMs), blackout notices, and annual participant benefit statements. Documents not covered under the e-delivery regulations consist of quarterly benefit statements, and documents required to be furnished “upon request” such as the plan document and form 5500.

**Covered individuals** are employees who are entitled to receive a covered document and have a valid electronic address (e.g. email address (work or personal) or smart phone number.) Employers may not assign email addresses specifically for this purpose of delivering notifications.

## 2002 Regulations

- Employers must ensure actual receipt of the documents, and employees must understand that they may request a (free) paper copy.
- Employees must understand the significance of the document, which must be formatted similar to the paper document.
- Employers may not use a computer “kiosk” meant for general employee use to disclose documents, and employees who do not use a computer as an integral part of their duties must consent electronically in the form that will be used to deliver the documents and provide their email addresses for the receipt of the electronic documents.
- Established administrative practices and procedures must be in place demonstrating compliance with these requirements.



## 2020 Regulations

- Delivery method must be reasonably calculated to ensure that employees actually receive the disclosures. Two methods are available:
  - **Website Posting** – may post documents on a website provided notification is provided to employees. Documents must be made available for at least one year, or until superseded, if later.
  - **Email Delivery** – may send documents to electronic addresses either in the email body or as an attachment. Note: any returned email must be addressed by resending to a secondary email or smartphone number, and if none is available, the individual must be considered to have opted out of e-delivery and receive paper notices.
- **Initial Notice** must be written so that an average participant can understand it and it is required to be furnished on paper to covered individuals and include the following information:
  - Statement that the current method (which must be listed, e.g. paper delivery via US mail or email delivery to email address previously consented to) is changing to Website Posting or Email Delivery.
  - The electronic address or cell phone number intended to be used for e-delivery.
  - Any instructions required to access the covered documents.
  - A warning that documents are only required to be made available for one year, or until superseded, if later.
  - The right to opt out of e-delivery and receive paper copies of any or all documents at any time, free of charge, along with an explanation of how to exercise that right.
- **Notification of Internet Availability (NOIA)** must be furnished each time a covered document is made available on the website. The content in the NOIA must also be listed in the email when email delivery is the preferred method. The DOL does allow an annual NOIA to include information about multiple covered documents instead of multiple NOIAs. The NOIA must include:
  - A subject line stating “Disclosure about your retirement plan.”
  - A statement stating “Important information about your retirement plan is now available. Please review this information.”
  - A list of all the covered documents, including a brief description as well as a web address or hyperlink to the website (for Website Posting.)
  - A statement stating that the individual may request paper copies or opt out of e-delivery completely, along with an explanation of how to exercise that right.
  - A warning that documents are only required to be made available for one year, or until superseded, if later.
  - A telephone number to contact the plan representative.

