

# DOL Issues New Proposed Rule for Electronic Disclosures of Retirement Plan Notices

Article By:

Jacob Mattinson

Alan D. Nesburg, PC

---

The Department of Labor (DOL) issued a proposed rule that, if finalized, would expand its existing guidance and liberalize rules for electronic disclosure of retirement plan notices under ERISA. The proposed rule, which sets forth a notice and access safe harbor, would permit electronic disclosure as the default method of delivery while permitting participants to opt out and continue to receive paper disclosures.

## IN DEPTH

---

On October 22, 2019, the Department of Labor (DOL) issued a [proposed rule](#) that would expand its prior safe harbor guidance for electronic disclosures to allow posting of retirement plan disclosures on a designated website. The proposed rule, which the DOL refers to as the “notice and access” safe harbor, is intended to reflect modern internet technology while easing the administrative burden on plan sponsors. The proposed rule would not apply to notices for health and welfare benefit plans.

Under ERISA, plan administrators must use delivery methods for required disclosures that are reasonably calculated to ensure actual receipt of information by participants, beneficiaries, and other individuals. The DOL has previously issued rules and guidance regarding electronic delivery of disclosures required under Title I of ERISA, including, for example, summary plan descriptions (SPDs), summaries of material modifications (SMMs) and summary annual reports (SARs), as well as Section 404(c) disclosures for participant-directed individual accounts, qualified default investment alternative (QDIA) notices, disclosures regarding investment advice and blackout notices. Under current DOL rules, acceptable delivery methods include hand delivery, first-class mail or electronic delivery under a 2002 safe harbor for participants who have access to electronic media at work, or participants who affirmatively consent to receive electronic documentation.

The proposed rule leaves in place the existing 2002 safe harbor and would introduce an additional safe harbor for retirement plan notices. Those notices could be posted on a website rather than sent by paper or electronic mail. The new safe harbor would be optional for plan sponsors and could be used to communicate to plan participants who either provide an electronic address (which could include a phone number for a smartphone) to the plan sponsor or have an electronic address

assigned by an employer. Under the proposed rule, plan participants would need to receive both:

1. a one-time paper disclosure stating that some or all disclosure documents will be furnished electronically, and
2. for each required disclosure, an electronic notice of internet availability with a brief description of the document(s) and instructions on how to access information on the website.

Participants must also be notified of their right to receive paper copies of some or all plan notices. The website hosting the disclosures must also meet certain requirements.

In light of the proposed rule, plan sponsors should evaluate the new safe harbor proposal, as it may be an efficient way to deliver retirement plan disclosures while reducing the cost of mailing notices to individual participants and beneficiaries. Plan sponsors should pay special attention to obtaining updated contact information for former employees who continue to participate in the retirement plans.

Both ERISA and the Internal Revenue Code (IRS) require a number of participant notices, disclosures, elections, and consents. The IRS and the DOL have each promulgated regulations that permit the documents over which they have authority to be disseminated electronically under certain conditions. The electronic disclosure rules of the IRS do not govern communications regulated by the DOL, and vice versa. In addition, although the DOL stated in its [Fact Sheet](#) that the new safe harbor is meant to align with IRS rules about delivering retirement plan disclosures electronically, the DOL rules do *not* govern disclosures regulated by the IRS.

Plan sponsors are not entitled to rely on the proposed rule before it is finalized. Under the proposed rule, the applicability date for retirement plans would be the first day of the first calendar year after the final rule is published. Any comments on the proposed rule and on the specific questions posed by the DOL must be submitted on or before November 22, 2019.

© 2025 McDermott Will & Emery

---

National Law Review, Volume IX, Number 303

Source URL: <https://natlawreview.com/article/dol-issues-new-proposed-rule-electronic-disclosures-retirement-plan-notices>