



COMPLIANCE BULLETIN

DOL Proposes New Method for Electronic Delivery of Retirement Plan Disclosures

HIGHLIGHTS

- The DOL proposal provides an additional, optional method for electronic delivery.
- The DOL is not proposing to change the current safe harbor for electronic delivery.
- The proposal does not apply to employee welfare benefit plans, such as group health plans.

IMPORTANT DATES

November 22, 2019

Comments on the proposed rule and request for information must be submitted

Applicability Date

The rule would apply to employee benefit plans on the first day of the first calendar year after a final rule is published

Provided By:

Coordinated Benefits Group

OVERVIEW

On Oct. 23, 2019, the U.S. Department of Labor (DOL) published a [proposed rule](#) that would allow plan administrators to make retirement plan disclosures available on a website.

The safe harbor would be permitted for employee pension benefit plan disclosures, such as summary annual reports or pension benefit statements, but not for any document that must be furnished upon request. The proposal would not apply to employee welfare benefit plans, such as group health plans or plans providing disability benefits.

ACTION STEPS

If the proposal is adopted, plan administrators may continue to use the existing safe harbor for electronic delivery, or to furnish paper documents by hand-delivery or mail.

The proposal would provide a new, optional method where plan administrators who satisfy specified conditions may furnish documents electronically, unless participants affirmatively opt out.

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Current Method for Electronic Delivery

The existing DOL safe harbor applies to only two categories of recipients: (1) employees with **work-related computer access**; and (2) other plan participants and beneficiaries who **consent** to receive disclosures electronically. The manner in which an individual confirms consent must reasonably demonstrate the individual's ability to access information in the electronic form, and the individual must have provided an address for the receipt of electronically furnished documents.

In addition, before consenting, the individual must be provided a clear and conspicuous statement indicating, among other things, that consent can be withdrawn at any time and the procedures for doing so. Following consent, additional requirements apply if a change in hardware or software requirements creates a material risk that the individual will be unable to access or retain electronically furnished documents.

New Alternative Method for Electronic Delivery

Under the proposed "notice and access" style of electronic delivery, a website posting, in conjunction with a properly-timed **notice of internet availability to covered individuals**, would constitute furnishing for purposes of ERISA pension plan disclosures. Other requirements, such as standards for the website where disclosures would be posted and system checks for invalid electronic addresses, would also need to be satisfied.

For purposes of the proposal, a "**covered individual**" is defined as a participant, beneficiary, or other individual who provides the employer with an electronic address, such as an email address or smartphone number. Alternatively, an electronic address can be assigned by an employer to an employee for this purpose.

Before disclosures can be received in accordance with the proposed safe harbor, individuals must be given an initial notice that they:

- ✓ Will receive future retirement plan information electronically;
- ✓ Have a legal right to receive paper copies or to opt out of electronic delivery (and an explanation of how to exercise these rights).

The proposal also includes a request for information that explores whether and how any additional changes to ERISA's general disclosure framework may be made.

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