



Department of Labor Issues Final Regulations for Electronic Disclosure Safe Harbor for Retirement Plans

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On May 21, 2020, the Department of Labor (the DOL) issued [final regulations](#) allowing plan sponsors of retirement plans covered by the Employee Retirement Income Security Act of 1974 (ERISA) to post plan disclosures online or deliver them to participants, spouses, and beneficiaries by email, as a default. The final regulation creates a voluntary safe harbor for plan sponsors to satisfy certain duties under ERISA by permitting the following two optional methods for electronic delivery:

- *Website Posting.* Plan sponsors may post covered documents on a website if appropriate notification of Internet availability is furnished to the electronic addresses of covered individuals. A covered document must remain posted on the website for at least one year or, if less, it is superseded by a subsequent version of the covered document.
- *Email Delivery.* Alternatively, plan sponsors may send covered documents directly to the electronic addresses of covered individuals, with the covered documents either in the body of the email or as an attachment to the email.

Covered individuals under the final regulations include participants, spouses, or beneficiaries that are entitled to receive covered documents and provide the plan sponsor with a valid electronic address, such as an email address or smartphone number. Participants assigned an electronic address by their employer for employment-related purposes, such as document delivery, are considered to have provided the electronic address. However, covered individuals may opt out of electronic delivery and elect to receive paper versions of all covered documents.

Generally, covered documents are documents under the DOL's jurisdiction—for example, summary plan descriptions, summary annual reports, qualified default investment-alternative notices, participant fee disclosures, pension benefit statements, and blackout notices. The final regulation's safe harbor does not extend to documents under the Internal Revenue Service's (the "IRS") jurisdiction or to documents relating to employee welfare benefit plans. The IRS intends to issue its own electronic disclosure rules at a later date.

Prior to instituting electronic delivery as a default, the plan sponsor must provide covered individuals with a notice in writing addressing the use of electronic delivery. When a new covered document is posted online, the plan sponsor must provide a notice of Internet availability. If a plan sponsor learns that an electronic address is invalid, the sponsor must take reasonable steps to cure the problem. Such reasonable steps include using a secondary

electronic address provided by the covered individual, obtaining new electronic address information, or providing a paper version of the covered document as soon as reasonably practicable.

Although the final regulation is technically not effective until 60 days after its publication in the *Federal Register*, the DOL, as an enforcement policy, will not take any enforcement action against a plan sponsor that relies on the safe harbor before that date.

Winston Takeaway

The final regulation is welcome news to plan sponsors—allowing plan sponsors to electronically furnish required documents will reduce administrative expenses and make such disclosures more readily accessible and useful for plan participants, spouses, and beneficiaries. Plan sponsors and retirement committees should review the guidance and their current approach to providing required notices and documents. The guidance should simplify such disclosure requirements once the plan sponsor has obtained valid electronic addresses and has issued its initial notification. Winston & Strawn has a team of professionals ready to assist plan sponsors to craft a list of required documents that can be electronically furnished and to use the safe harbor to efficiently coordinate the timing and delivery of such notices.

2 Min Read

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