

Electronic Disclosure for Retirement Plans

The U.S. Department of Labor (DOL) and the Employee Benefits Security Administration (EBSA) unveiled on May 21, 2020 a final rule that will allow private sector employers to post retirement plan disclosures online or deliver them to workers by email, as a default.

This is a timely announcement given the current COVID-19 crisis with so many employees working remotely. Traditional disclosure methods are challenging while American society practices social distancing. Now, plan sponsors will be allowed to use modern technology to more efficiently distribute required disclosures to the benefit of plan participants.

NEW VOLUNTARY SAFE HARBOR RULE

The final rule establishes a new, voluntary safe harbor for retirement plan administrators who want to use electronic media, as a default, to furnish required disclosures. Retirement plan administrators who comply with the safe harbor will satisfy their statutory duty under ERISA to furnish covered documents to covered individuals. The rule will be effective 60 days following the May 21 publication in the Federal Register.

NOTICE-AND-ACCESS MODEL

Plan administrators will need to possess an electronic address that enables electronic communication with a covered individual. Administrators must notify plan participants about the online disclosures, provide information on how to access the disclosures and inform participants of their rights to request paper or opt out completely. The decision by a participant to opt out is not permanent and can be revisited at any time.

The final rule allows plan administrators to furnish a combined Notice of Internet Availability (NOIA) each plan year for more than one covered document. If a combined NOIA was furnished in the prior plan year, the next plan year's combined NOIA must be furnished no more than 14 months later. In addition, the system for furnishing a NOIA must be designed to alert the administrator of a covered individual's invalid or inoperable electronic address. If alerted that a covered individual's electronic address has become invalid or inoperable, such as if a NOIA sent to that address is returned as undeliverable, the administrator must promptly take the following reasonable steps to cure the problem:

- i) if available, furnish a NOIA to a valid and operable secondary electronic address that had been provided by the covered individual, or
- ii) obtain a new valid and operable electronic address for the covered individual, or
- iii) treat the covered individual as if he or she had opted out of electronic delivery and furnish to the covered individual, as soon as is reasonably practicable, a paper version of the covered document identified in the undelivered NOIA.



Two methods of delivery:

- Website Posting: Plan administrators may post covered documents on a website if appropriate notification of internet availability is furnished to the electronic addresses of covered individuals.
- Email Delivery: Alternatively, plan administrators 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.



ELECTRONIC CONTACT INFORMATION FOR COVERED INDIVIDUALS

The rule outlines a variety of ways to comply with the condition to obtain an electronic address for each covered individual.

- The plan sponsor can provide participants an electronic address as a result of their employment, or
- An employee can provide a personal electronic address to the plan administrator or plan sponsor.

If you have questions on this rule and its implications, please reach out to hfg@hayscompanies.com.