

**Employee Benefits Work Group  
Notice to Clients and Friends**

**U.S. Department of Labor Proposes New Default Electronic Disclosure by Employee Pension Benefit Plans**

On October 22, 2019, the U.S. Department of Labor made public its **proposal** of a new voluntary safe harbor rule that would allow plan administrators of employee benefit plans subject to the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), to make accessible retirement plan disclosures through a website, subject to satisfying certain safe harbor conditions, rather than sending volumes of paper documents through the mail. This newly proposed method is an additional method and would not change the 2002 safe harbor for electronic delivery under Labor Reg. 2520.104b-1(c). Nevertheless, plan administrators who wish to furnish paper documents by hand-delivery or by mail, can continue to do so, or plan participants and beneficiaries who prefer to receive these disclosures on paper will be able to request paper copies and opt out of electronic delivery entirely. The most significant features of this proposal are described below.

***Proposed “Notice and Access” Structure***

- Retirement plan administrators would satisfy their obligation to provide disclosures required by ERISA by making the information available online and by providing to participants and beneficiaries a notice of internet availability of these disclosures.
- A notice of internet availability would be sent to the electronic address of the participants and beneficiaries and must include, among other things, a brief description of the document being posted online, a website address where the document is posted, and instructions for requesting a free paper copy or electing paper delivery in the future.
- A notice of internet availability generally must be sent each time a retirement plan disclosure is posted to the internet website. To prevent “email overload”, the proposal allows a notice of internet availability to incorporate or combine other notices of internet availability in limited circumstances.

***Protections to Participants Who Prefer Paper or Lack Access to the Internet***

- A plan administrator may not default a participant into electronic delivery unless the participant has an electronic address and without first notifying the participant, by paper, that some or all retirement documents will be provided electronically to the electronic address, and of their right to request and receive paper copies or to opt out of electronic delivery altogether, and of the procedures for exercising such rights. The plan administrator must ensure that the system providing the notice of internet availability is designed to alert the administrator of an invalid or inoperable electronic address. If an administrator is alerted of an invalid address, the administrator must consider the individual as withdrawing of electronic delivery if the problem is not promptly resolved.
- Each notice of internet availability must remind the participant of his right to request and receive paper copies, of the right to withdraw of electronic delivery altogether, and the procedures to exercise such rights.
- If an employee leaves their job, the plan administrator must take steps to ensure the continued accuracy of the electronic address on file.

***Possible Benefits to Plan Administrators***

- The Department of Labor projects that the proposed rule would result in cost savings of approximately \$2.4 billion dollars in the next ten years for retirement plans covered by ERISA, by reducing printing and mailing costs and as a result, millions of beneficiaries and participants would be favored if cost savings are passed on to them.
- The proposed rule gives plan fiduciaries a great deal of discretion on presentation style, and the “notice and access” framework could encourage interactivity, just-in-time notifications, layered or nested information, word and number searching, engagement monitoring, anytime or anywhere access, and potentially improved visuals, tutorials, assistive technology for those with disabilities, and translation software.
- A “notice and access” framework permits a protected point of access, such as requiring a secure password for logging into a plan account.

***Next Steps***

Plan sponsors and administrators must be aware of whether this rule is approved or not, as it can help them simplify their disclosure processes to participants or beneficiaries.

*This document has been prepared for information purposes only and is not intended, and should not be relied upon, as legal advice. If you have any questions or wish to obtain more information related thereto, or about its possible effect(s) on policy or operational matter, please contact us at your convenience.*

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