# Department of Labor: Electronic Disclosure Safe Harbor for Retirement Plans

Legal and regulatory summary | Published: June 11, 2020

**Rule effective date:** July 27, 2020

On May 27, 2020, the Department of Labor (DOL) issued a final regulation creating two new, optional alternative safe harbors for satisfying ERISA's disclosure delivery requirements for retirement plans. The new safe harbor permits two methods for electronic delivery (eDelivery):

**Notice and access on a website**
After sending an initial notice in paper, covered documents can be posted on a website or other electronic repository, such as a mobile application, if notification of internet availability is furnished to the covered individuals at the identified electronic address.

**Direct delivery by email**
After sending an initial notice in paper, covered documents can be sent directly by email to covered individuals either via an attachment or in the content. Other electronic addresses, such as smart phones, are excluded.

Review the rule for complete details.

## Regulation overview

**Covered Individuals**: Participants, beneficiaries and alternative payees (collectively, "individuals") who are entitled to receive documents, and for whom an electronic address has been provided by the employer or the individual. Employers can utilize employer-provided email addresses or personal email addresses received from individuals during the employment process. However, employers may not assign email addresses solely for delivering required information. Additionally, individuals can provide an electronic address to service providers.

**Covered Documents:** Required documents or information under ERISA for retirement plans (e.g. SPDs, fund action notices, participant disclosure notices). ERISA health and welfare disclosures are excluded at this time.

**Electronic Address**: Generally, this may include email, smart phone and other electronic means.

**Initial Notice:** Before using the new safe harbors, individuals must receive an initial paper notice that contains:

1. Notification that covered documents will be furnished electronically to an electronic address;
2. Identification of the electronic address that will be used (e.g. specific email or mobile number);
3. Instructions necessary to access the covered documents;
4. A cautionary statement that the covered document is not required to be available on the website for more than one year or, if later, after it is superseded by a subsequent version of the covered document;
5. A statement of the right to request and obtain a paper version of a covered document, free of charge, and an explanation of how to exercise this right; and
6. A statement of the right, free of charge, to opt out of electronic delivery and receive only paper versions of covered documents, and an explanation of how to exercise this right.

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## Regulation overview: website posting

**Notice of Internet Availability:** In order to post required disclosures to a website, a Notice of Internet Availability (NOIA) must be: furnished for each covered document and must be sent to the electronic address identified in the initial notice; separate from other documents or disclosures; provided at the time the covered document is made available on the website. The NOIA must be written so that it is easily understood by the average participant and include:

1. A prominent statement, such as a title, legend or subject line, that reads: "Disclosure About Your Retirement Plan."
2. A statement that reads: "Important information about your retirement plan is now available. Please review this information."
3. An identification of the covered document by name (e.g., a statement that reads: "Your Quarterly Benefit Statement is now available") and a brief description of the covered document if identification only by name would not reasonably convey the nature of the covered document.
4. The internet website address or a hyperlink to such address where the covered document is available. The website address or hyperlink must specifically provide ready access to the covered document. To satisfy this standard, it should lead the covered individual either: a) directly to the covered document; or b) provides a prominent link to the covered document via a login page or immediately after a covered individual logs in.
5. A statement of the right to request and obtain a paper version of the covered document at no cost and an explanation of how to exercise this right.
6. A statement of the right to opt out of electronic delivery at no cost and to receive only paper versions of covered documents, including an explanation of how to exercise this right.
7. A cautionary statement that the covered document is not required to be available on the website for more than one year or, if later, after it is superseded by a subsequent version of the covered document.
8. A telephone number to contact the administrator or other designated representative of the plan.

A NOIA may contain a statement as to whether action by the covered individual is invited or required in response to the covered document and how to take such action, or that no action is required, provided that such statement is not inaccurate or misleading.

**Combined NOIA:** The following may be combined into a single notice delivered annually, or no more than 14 months following any previously delivered combined NOIA:

- The SPD;
- Any covered document or information that must be furnished annually, rather than upon the occurrence of a particular event, and that does not require action by a covered individual by a particular deadline;
- Any other covered document if authorized in writing by DOL; and
- Any applicable notice required by the Internal Revenue Code, if authorized in writing by the Secretary of the Treasury.

NOTE: Quarterly benefit statements are not eligible to be covered by combined NOIA.

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## Regulation overview: direct email

**Direct Delivery by Email:** Covered documents may be furnished directly to covered individuals using email (but not other electronic addresses) no later than the date on which the covered document must be furnished under ERISA. The email must include:

1. The covered document in the body of the email or as an attachment and have a subject line that reads: “Disclosure About Your Retirement Plan”.
2. If the covered document is an attachment, the email must identify or briefly describe the covered document.
3. The attachment must be in a widely available format suitable to be read online, printed on paper, and permanently retained in an electronic format, as well as be capable of being searched by words, letters or numbers.
4. The email must also contain a statement of the right to a paper copy of covered document, the right to opt out of electronic delivery, and a telephone number to contact the administrator or its designated representative.
5. The email must be written in a manner calculated to be understood by the average plan participant.

## 2002 Safe harbor/FAB 2006-03

Currently, on behalf of plan sponsors, Fidelity utilizes the DOL’s 2002 eDelivery regulation to provide most ERISA disclosures to participants in defined contribution retirement plans. Typically, this involves an emailed link to documents on NetBenefits®. Under the 2002 safe harbor, ERISA disclosures may be provided electronically to:

- Participants who are “wired at work” (e.g., use email as an integral part of employment)
- Individuals who have consented and have provided an email address

For benefit statements, Fidelity follows the approach outlined in DOL Field Assistance Bulletin 2006-03 (FAB) which permits providing continuous access to statements on a secure website to satisfy the quarterly statement delivery requirements. Participants are furnished with a notice that explains the availability of the benefit statement on the website, how to access it, and the right to request and obtain a free paper version of the statement.

Under the new rule, the FAB is being phased out and will be available until January 27, 2022 (18 months after the new rule’s effective date). Either the 2002 safe harbor and/or new 2020 safe harbors may be used to deliver benefit statements thereafter.

## Next steps

Fidelity is currently evaluating how to leverage the new rule to increase eDelivery for plans. If you have questions, please contact your Fidelity representative.



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