

# Department of Labor – Electronic Disclosure Rules

The new safe harbor permits the following two optional methods for electronic 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.

Retirement plan administrators who comply with the safe harbor will satisfy their statutory duty under ERISA to furnish covered documents to covered individuals.

## SCOPE

- The safe harbor is limited to retirement plan disclosures.
- A plan administrator may use this safe harbor only for “covered individuals.” To be a covered person, the individual must be entitled under ERISA to receive covered documents and must have a valid electronic address (e.g., email address or smart phone number).
- The safe harbor adopted today does not supersede the 2002 safe harbor; the 2002 safe harbor remains in place as another option for plan administrators.

## PROTECTIONS FOR PLAN PARTICIPANTS

The new safe harbor includes a variety of protections for covered individuals, including:

- **Right to Paper.** Covered individuals can request paper copies of specific documents, or globally opt out of electronic delivery entirely, at any time, free of charge.
- **Initial Notification.** Covered individuals must be furnished an initial notification, on paper, that the way they currently receive retirement plan disclosures (e.g., paper delivery in the US mail) is changing. The notice must inform them of the new electronic delivery method, the electronic address that will be used, and the right to opt out if they prefer paper disclosures, among other things. The notice must be given to them before the plan may use the new safe harbor.
- **Notifications of Internet Availability.** Covered individuals generally must be furnished a notice of internet availability (NOIA) each time a new covered document is made available for review on the internet website.



- To avoid “notice overload,” the final rule permits an annual NOIA to include information about many (but not all) covered documents, instead of multiple NOIAs throughout the year.
- The NOIA must briefly describe or identify the covered document that is being posted online, include an address or hyperlink to the website, and inform the covered individual of the right to request paper copies or to opt out of electronic delivery altogether.
- The NOIA must be concise, understandable, and contain only specified information.
- **Website Retention.** Covered documents must remain on an internet website until superseded by a subsequent version, but in no event for less than one year.
- **System Check for Invalid Electronic Addresses.** Plan administrators must ensure that the electronic delivery system is designed to alert them if a participant’s electronic address is invalid or inoperable. In that case, the administrator must attempt to promptly cure the problem, or treat the participant as opting out of electronic delivery.
- **System Check at Termination of Employment.** When someone leaves their job, the plan administrator must take steps to ensure the continued accuracy and operability of the person’s electronic address.

It is anticipated that many recordkeepers and third-party administrators will assist with the provision of a website or technology necessary to implement this safe harbor. In the event a plan sponsor desires to do so on their own it is strongly recommended that they have a legal professional review their intended processes.

**For more information, visit [www.mariewealth.com](http://www.mariewealth.com).**

This newsletter is distributed for general informational purposes only. No part of this newsletter nor the links contained therein is a solicitation or offer to sell investment advisory services. Information throughout this newsletter is obtained from sources which we believe reliable, but we do not warrant or guarantee the timeliness, accuracy or completeness of this information and the information presented should not be relied upon as such. All investments involve risk of loss, including the possible loss of all amounts invested, and nothing within this newsletter should be construed as a guarantee of any specific outcome or profit. This newsletter is confidential and is intended solely for the information of the person to whom it was delivered and may not be reproduced or redistributed in whole or in part, nor may its contents be disclosed to any other person under any circumstances.