



# A Robinson+Cole Legal Update

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## Department of Labor Finalizes ERISA Requirements for Providing Electronic Retirement Plan Disclosures

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On May 27, 2020, the U.S. Department of Labor (DOL) issued a [final rule](#) providing a new “notice and access” safe harbor for retirement plan fiduciaries to distribute ERISA required disclosures electronically (Final Rule). The Final Rule becomes effective July 27, 2020; however, the DOL will not take any enforcement action against a plan fiduciary that relies on the Final Rule sooner.

In a departure from the DOL’s 2002 safe harbor for electronic disclosures, plan fiduciaries no longer must (i) determine whether a participant interacts with the electronic system as a job function or (ii) satisfy any requirement that the participant consented to the electronic delivery. Instead, the Final Rule allows retirement plan disclosures to be posted on a website or provided to plan participants by electronic delivery if certain conditions are met. The Final Rule applies to participants, beneficiaries or other individuals entitled to plan documents who are assigned an electronic address for employment-related purposes or who furnish an electronic address to the employer, plan administrator or plan sponsor (referred to collectively as Covered Individuals).

To satisfy the Final Rule’s “notice and access” safe harbor, Covered Individuals must receive both of the following:

- An initial paper notice stating that some or all disclosure documents will be furnished electronically to an electronic address, describing the right to opt out of electronic disclosure and meeting several content requirements; and
- For each disclosure posted on an internet website, an electronic notice of internet availability (NOIA) with a brief description of the document(s), instructions on how to access information on the website and other prescribed contents.

Generally, a NOIA must be provided at the time a document is posted on the website. However, certain disclosures can be listed in a combined annual NOIA that must generally be furnished once each plan year.

According to the Final Rule, Plan fiduciaries should continue to provide paper copies of plan documents upon request by covered individuals and abide by any “opt-out” requests in favor of receiving paper copies. While the Final Rule does not govern disclosures regulated by the Internal Revenue Service (IRS), supplementary information accompanying the Final Rule indicates that the U.S. Department of the Treasury and the IRS intend to issue additional guidance on electronic delivery of participant notices.

### FOR MORE INFORMATION

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