

Insights

PROPOSED UPDATES TO ERISA ELECTRONIC DISCLOSURE REQUIREMENTS

Apr 17, 2026

The Employee Benefits Security Administration (EBSA) under the Department of Labor (DOL) recently published proposed regulations requiring significant changes to how retirement plans deliver benefit statements to participants and beneficiaries. The proposed regulation implements Section 338 of the SECURE 2.0 Act of 2022, which amended Section 105(a)(2) of ERISA to require retirement plans to provide paper benefit statements in certain cases and instructed the DOL to update its electronic disclosure safe harbors accordingly. Plan sponsors should act now to understand what is changing and what steps they will need to take to comply.

In putting forward its proposal, the EBSA cites a 2022 survey by the American Association for Retired Persons that showed 55% of respondents always reviewed their paper statements, compared to 36% of respondents who always reviewed their electronic-only statements.

The survey reported that 57% of adults would prefer to receive paper statements at least once per year, with even higher rates amongst low-to-moderate income adults, adults age 50 and older, and adults with no access to a computer through their employment. The DOL believes requiring plans to change default settings to provide paper statements will increase the likelihood that participants will actually review them.

BACKGROUND: CURRENT DISCLOSURE REQUIREMENTS UNDER ERISA

ERISA requires employee benefit plans to furnish various notices and disclosures to participants and beneficiaries. For retirement plans, the disclosures required depend on the type of plan. Defined benefit plans (e.g., pension plans) must provide all participants who are employed by the plan sponsor and have a non-forfeitable accrued benefit with a benefit statement once every three years.

For defined contribution plans (e.g., 401(k) plans), the requirement depends on whether participants may direct their own investments. Plans allowing participant-directed investments must provide benefits statements once per calendar year quarter. Plans that do not allow participant-directed investments must provide benefits statements once per calendar year.

The DOL has provided two safe harbors permitting plan administrators to provide these statements electronically. The first, published in 2002 (the “2002 Electronic Disclosure Safe Harbor”), provides two instances in which benefit statements may be provided electronically:

- Participants who are “wired-at-work” individuals, or those whose job duties allow them to easily access electronically furnished disclosures as a core part of the job, and
- Individuals who consent to receipt of electronically provided disclosures

“Wired-at-work” individuals have a right to receive paper statements upon request, but they may not completely opt out of electronic delivery. Consenting individuals may fully opt out of electronic delivery under this safe harbor.

The second safe harbor, published in 2020 (the “2020 Electronic Disclosure Safe Harbor”), allows plans to default to electronic disclosure for individuals that are employed by the plan sponsor and who have an employer-assigned email address or who provide the employer with their own email address. This option is only available to retirement plans and may not be used for welfare plans. The 2020 Electronic Disclosure Safe Harbor details two methods of electronic disclosure:

The “notice-and-access” method, which allows for an email notification that information is readily available on a website the individual may continually access.

The second method allows for the required disclosure to be provided in the body of an email or as an email attachment.

Prior to use of either method, plans must provide an initial paper notice indicating the individual will receive electronic disclosures in the future and notifying the individual of his or her right to opt out.

SECURE 2.0 UPDATES

SECURE 2.0 updates these requirements by requiring defined contribution plans provide paper benefits statements at least once per year and requiring defined benefit plans provide paper benefits statements every three years. These new requirements are effective for plan years beginning after December 31, 2025.

There are two important exceptions to this paper statement requirement:

- Plans using the 2002 Electronic Disclosure Safe Harbor are presumptively exempt from the paper requirement.
- Plans are also exempt if individuals affirmatively request electronic delivery and statements are so delivered.

While plans using the 2002 Electronic Disclosure Safe Harbor are presumptively exempt from the paper statement requirement, the proposed rule adds a new obligation. These plans must furnish

newly eligible participants with an initial notice of their right to request to receive all documents in paper form prior to any electronic delivery.

The proposed regulations impact the 2020 Electronic Disclosure Safe Harbor in multiple ways.

First, the proposed regulations would exclude the mandatory paper benefit statements from the list of documents that may be furnished electronically. The 2020 Electronic Disclosure Safe Harbor will still allow electronic delivery of all other benefit statements not required by paper (e.g., the remaining three quarterly benefit statements required of participant-directed defined contribution plans).

The proposed regulations also require plans using the 2020 Electronic Disclosure Safe Harbor to give participants the opportunity to request receipt of paper benefit statements electronically. In the case of those participants who affirmatively opt for electronic disclosure, the plan may forego providing their statements on paper.

The proposed regulations mandate that plans using the 2020 Electronic Disclosure Safe Harbor include in paper benefit statements an explanation of how a participant may request that all such statements be furnished electronically. Additionally, these paper benefit statements must include contact information, including a telephone number, for the plan sponsor, administrator, or other designated representative of the plan.

Finally, plans may not charge any fee to participants for paper benefit statements, including fees on additional copies.

For the period from publication of the proposed rule until after the EBSA issues a final regulation, the EBSA will not take enforcement action against plan administrators that comply in good faith with a reasonable interpretation of the provisions set forth in the proposal. This provides a meaningful window for plan sponsors to begin implementation planning.

CONCLUSION

While these changes are designed to protect participants who are thought to be underserved by the current electronic disclosure defaults, they impose real operational and cost burdens on plan sponsors. Now is the time to assess your plan's current electronic disclosure practices and begin working with your advisors, recordkeepers, and administrators to develop a compliant implementation strategy.

If you have questions about how these proposed regulations may affect your retirement plan, or if you need assistance developing a compliance strategy, contact BCLP's Employee Benefits practice group today.

RELATED CAPABILITIES

- Employment & Labor
- Employee Benefits & Executive Compensation

MEET THE TEAM



Richard L. Arenburg

Partner, Atlanta

richard.arenburg@bclplaw.com

[+1 404 572 6765](tel:+14045726765)



Christopher L. Young

Associate, Chicago

christopher.young@bclplaw.com

[+1 312 602 5148](tel:+13126025148)

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be "Attorney Advertising" under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP's principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.