

Electronic Disclosure Safe Harbors

	2002 Safe Harbor Disclosure through Electronic Media	2020 Safe Harbor Alternative Method – Notice and Access
Applies to	Documents and disclosures required by Title I of ERISA for both retirement and welfare plans. 29 CFR §2520.104b-1(c)(1).	Documents and disclosures required by Title I of ERISA for retirement plans. 29 CFR §2520.104b-31(c). It does not apply to welfare plans (e.g., group health plans, LTD plans and group term life insurance).
Permissible recipients	<ol style="list-style-type: none"> 1. Group 1: Employees with work related access to the employer’s computer system if (and only if) access to the computer system is an integral part of the employees’ work duties. 29 CFR §2520.104b-1(c)(2)(i). 2. Group 2: Participants, beneficiaries and other individuals who are entitled to plan disclosures and who provide an email address and affirmatively consent to receive those disclosures electronically. 29 CFR §2520.104b-1(c)(2)(ii). 	<ol style="list-style-type: none"> 1. Employees to whom an email address is assigned by the employer for employment-related purposes that include <i>but are not limited to</i> the delivery of covered documents. 29 CFR §2520.104b-31(b). Upon termination of employment, the plan administrator must take “measures reasonably calculated to ensure the continued accuracy and availability of such electronic address or to obtain a new electronic address.” 29 CFR §2520.104b-31(h). 2. Participants, beneficiaries and other individuals who are entitled to plan disclosures and who provide the employer or plan administrator with an email address or smartphone number. 29 CFR §2520.104b-31(b).
Opt Out	<p>Employees in Group 1 have the right to request paper copies of specific documents that are furnished electronically. However, an employer need not allow employees in Group 1 to globally opt out of electronic delivery. 29 CFR §2520.104b-1(c)(1).</p> <p>Employees in Group 2 have the right to withdraw consent at any time. 29 CFR §2520.104b-1(c)(2)(ii).</p>	Employees, participants, beneficiaries and other individuals have the right to globally opt out of electronic delivery. If an individual opts out, all future documents must be sent in paper unless the individual chooses to opt-back in. 29 CFR §2520.104b-31(f)(2). In addition, all individuals have the right to request free paper copies of any document that is furnished electronically. 29 CFR §2520.104b-31(f)(1).

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Initial notice	<p>Group 1: Not applicable. Notice is only provided when a document is furnished electronically.</p> <p>Group 2: A participant, beneficiary or other individual must affirmatively consent to electronic delivery after receiving a statement that explains:</p> <ol style="list-style-type: none"> 1. The types of documents that will be provided electronically; 2. That consent can be withdrawn without charge; 3. The procedures for withdrawing consent and updating information; 4. The right to receive a paper version and if a charge applies; and 5. “Any hardware and software requirements for accessing and retaining the documents.” 29 CFR §2520.104b-1(c)(2)(ii). 	<p>Individuals must receive a one-time paper Initial Notice of Default Electronic Delivery stating:</p> <ol style="list-style-type: none"> 1. Some or all of the disclosures will be made electronically on a website; 2. The email address on file for the participant; 3. Instructions for accessing documents. 4. That documents may become unavailable after one year or, if later, when superseded by a new document; 5. The participant’s right to request free paper copies and an explanation of how to exercise this right; and 6. The participant’s right to opt out of electronic delivery and receive, free of charge, only paper versions of covered documents, and an explanation of how to exercise this right. 29 CFR §2520.104b-31(g).
Periodic notices	<p>A notice must be sent each time a document is furnished electronically. The notice may be provided electronically or in paper. One notice can apply to multiple documents only if the documents are furnished at the same time. 29 CFR §2520.104b-1(c)(1)(iii). A general notice on a periodic basis is not permitted.</p>	<p>A notice of internet availability (NOIA) must be sent each time a document is made available on the internet or intranet. 29 CFR §2520.104b-31(d)(1).</p> <p>Alternatively, a NOIA may be sent annually (or at least once every 14 months) for:</p> <ol style="list-style-type: none"> 1. Summary plan descriptions (SPDs) and summaries of material modifications; 2. Documents that are furnished annually (and not upon the occurrence of a specific event) that do not require action by a deadline (e.g., a summary annual report or an annual funding notice; and 3. Other documents if and as authorized by the DOL or Treasury. 29 CFR §2520.104b-31(d)(2) and (i). <p>If the plan administrator chooses to furnish a document directly via email, a NOIA is not required but the email transmitting the document must meet specified requirements. 29 CFR §2520.104b-31(k).</p>
Trigger for periodic notices	<p>Separate notices are required for documents furnished at different times. 29 CFR §2520.104b-1(c)(1)(iii).</p>	<p>A separate NOIA is required for each document related to a specific, non-annual, time related event (e.g., notice of a blackout period, qualified domestic relations order determination, a notice of adverse benefit determination, or a notice of failure to meet minimum funding standards). 85 Fed. Reg. 31884, 31903 (5/27/2020).</p>

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Content of periodic notices	<p>Each notice must explain:</p> <ol style="list-style-type: none"> 1. The significance of the document (if it is not otherwise reasonably evident); and 2. The right to request a paper copy of the document. 29 CFR §2520.104b-1(c)(1)(iii). 	<p>The NOIA must include:</p> <ol style="list-style-type: none"> 1. A prominent statement in the subject line that reads: “Disclosure about your Retirement Plan”; 2. A statement that “Important information about your retirement plan is now available. Please review this information”; 3. A brief description and the name of the covered document (no description is required if the name conveys the contents of the document); 4. The internet website address where the covered document is available or a hyperlink; 5. A statement of the individual’s right to request and obtain the paper version of the document, free of charge, and how to obtain that paper version; 6. A statement of the right, free of charge, to opt out of receiving covered documents electronically (and receive only paper versions of covered documents), and an explanation how to exercise that right; 7. A cautionary statement that the covered documents are 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; and 8. A telephone number to contact the plan administrator or other designated representative. <p>The NOIA may tell participants whether an action is required or invited in response to the document. The NOIA is not permitted to contain any other information (other than a logo or other graphic). 29 CFR §2520.104b-31(d).</p>
Form of periodic notices	<p>The notice may be sent electronically or in paper. 29 CFR §2520.104b-1(c)(1)(iii).</p>	<p>A NOIA must be furnished separately from other disclosures. 29 CFR §2520.104b-31(d)(4)(iii).</p> <p>The NOIA must be sent electronically to the individual’s email address or smartphone number. 29 CFR §2520.104b-31(d)(4)(i).</p> <p>If the plan administrator chooses to furnish a document directly via email, a NOIA is not required but the email transmitting the document must meet specified requirements. 29 CFR §2520.104b-31(k).</p>

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Requirements for Posted Electronic Documents	Electronic documents must meet the same requirements as the paper versions but need not be identical. 29 CFR §2520.104b-1(c)(1)(ii).	The posted documents must be electronically searchable, and in a form that is easy to print or save, such as a PDF. 29 CFR §2520.104b-31(e)(2). The documents must remain posted for at least one year or, if later, until superseded by a new document. 29 CFR §2520.104b-31(e)(2).

This chart is for general information purposes and should not be regarded as legal advice. As always, please let us know if you want more information or have questions about how these developments apply to your situation.