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DOL Proposed Regulations Would Extend Notice-and-Access Electronic Delivery Safe Harbor to Group Health Plans

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KEY POINTS

- The DOL issued a proposed rule that would create a new, optional notice-and-access electronic disclosure safe harbor for ERISA-covered group health plans.
- The proposed safe harbor would allow plan administrators to post covered documents online and send a notice of internet availability (NOIA), rather than mailing paper copies — without requiring prior participant consent.
- Comments on the proposed rule are due September 21, 2026; if finalized, the earliest the new safe harbor could take effect is January 1, 2027.

The Department of Labor (DOL) recently issued proposed regulations that would make it easier for group health plans to furnish required Employee Retirement Income Security Act (ERISA) documents electronically by using a new, optional safe harbor similar to the "notice-and-access" safe harbor that has been available to qualified retirement plans since 2020.

Currently, group health plan sponsors who wish to deliver required ERISA documents and information electronically in a manner deemed acceptable by the DOL must comply with the DOL's 2002 electronic delivery safe harbor, which generally requires that employees either be "wired at work" — meaning they have regular access to a computer as an integral part of their job duties — or affirmatively consent to electronic delivery. For many plan sponsors, particularly those with workforces that are not predominantly computer-based, obtaining and maintaining that consent has proven difficult and has limited the practical utility of electronic delivery, resulting in plan sponsors having to provide paper copies to many participants and beneficiaries. If finalized, the rule would offer group health plan sponsors another option to deliver ERISA documents electronically, thereby reducing the cost and administrative burden of paper notice delivery while preserving the participant's right to request paper copies and opt out of electronic delivery**.** This rule does not replace the existing 2002 safe harbor but would instead be an additional available safe harbor.

THE SAFE HARBOR

The proposed DOL safe harbor applies to group health plans and does not extend to other welfare benefit plans (such as disability, life insurance, or other plans that are not group health plans). The proposed rule is modeled closely on the DOL's 2020 pension benefit plan safe harbor applicable to pension and 401(k) plans. If finalized, the new rule would allow plan sponsors of group health plans to post a "covered document" to a website or other electronic repository (such as a mobile application) and send a “notice of internet availability” (NOIA) directing “covered individuals” to the posted document. Unlike the 2020 pension benefit plan safe harbor, the proposed rule would not permit direct email delivery of covered documents. Instead, under the proposed rule, group health plan administrators must establish an internet website at which covered individuals would be able to access covered documents.

Most legally required group health plan notices are “covered documents” under the proposed rule, including summary plan descriptions, summaries of material modifications, summary annual reports, National Medical Support Notices, COBRA notices, and more. Interestingly, a covered document also includes a document that is required to be furnished only upon request, which is different from the 2020 pension benefit plan safe harbor. The NOIA must meet certain content requirements, and “covered individuals” include individuals who provide the plan administrator with an email address or smartphone number or who have been assigned an electronic address by the employer for employment-related purposes, including for the delivery of the covered documents. As many plan sponsors have found with the 2020 pension benefit plan safe harbor, collecting and maintaining current electronic contact information for all participants (and, under the proposed rule, adult dependent children age 18 and older) can present a practical challenge. In addition, the website or other electronic repository must meet certain technical and accessibility requirements. Therefore, as with the 2020 pension benefit plan safe harbor, there are meaningful implementation steps a plan administrator will need to address before relying on this safe harbor.

WHAT PLAN SPONSORS SHOULD DO NOW

The proposed rule is not yet final, and the comment period closes September 21, 2026. Plan sponsors cannot rely on the new safe harbor until a final rule is published. In the meantime, the existing 2002 DOL safe harbor and other permissible delivery methods remain available.

That said, this is a good opportunity for plan sponsors to begin evaluating their current electronic delivery practices, assess whether they have valid electronic addresses on file for participants and dependents, and consider whether their plan administration systems would support the new framework if finalized. Plan sponsors who are already complying with the 2002 DOL safe harbor and are able to provide most or all group health plan notices electronically may find limited additional utility in the new safe harbor. For those plan sponsors who have had difficulty satisfying the 2002 DOL safe harbor (*e.g.*, because their workforce is not largely “wired at work” and obtaining affirmative consent has proven difficult), the new safe harbor may provide a meaningful opportunity to transition to electronic distribution without the consent requirement.

If you have questions about how the proposed rule may affect your group health plans, please contact a member of the Troutman Pepper Locke’s Employee Benefits + Executive Compensation Practice Group.

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