

The Top 10 Worst Things about the Department of Labor's New "Notice-and-Access" Rule for Retirement Plans



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The US Department of Labor has adopted [a new rule](#) that will allow retirement plans to use an automatic "notice-and-access" disclosure system that will result in millions of workers and retirees no longer receiving critical information about their retirement plan and benefits.

The new rule will effectively upend the commonsense rule now in place.^[1] Currently, employees and retirees must receive information about their retirement plans on paper through the mail unless they regularly use a computer at work or have asked to go "paperless." The new rule allows retirement plans to simply send you an email or text message telling you that the information can be found on a website. Then you will have to hunt it down – effectively making it a "no-access" rule.

This "notice-and-access" system, which goes into effect on July 27, will be like a game of Hide and Seek. You will be "it." With eyes closed, you will be left in the dark about your retirement plan and benefits, and will have to run around, search for, find and "tag" (download and keep) the hidden information.

Here are the Top 10 Worst Things about the rule:

1. Say farewell to your 401(k) statement and other important documents. Under this new disclosure system, you will no longer automatically get the statements you've been receiving in the mail every quarter telling you how much money you have in your 401(k) and where your money is invested. If you are in a pension plan, you will no longer routinely get a statement telling you the benefits you have earned and whether your plan is adequately funded. You will also not automatically receive a summary of your plan's rules. You will simply be sent an email or text telling you to go to a website to look for these and other documents.^[1]

2. While everyone will retain a "right to paper," the rule throws up roadblocks to act on that right. Plans will be required to provide you with one initial paper notice letting you know you have the right to choose to keep getting your statements and documents by mail, and how to make your choice known, but then you're on your own. They need not give you a paper election form or otherwise help you exercise that right. The notice isn't required to include a phone number for contacting the plan with questions. Instead, you will have to take the initiative to contact the plan, obtain any paperwork, and find out how to make the election. New employees can be given this

one-time paper notice in a packet of other information they get when they start on the job, making it less likely that they'll see it. If you do not respond to this one-time paper notice, in the future you will only receive emails or texts telling you that information is available on a website. And future notices telling you that you can ask for your information to be on paper will also be sent electronically.

3. You may never even see that the information is available. Under this new disclosure regime, once plans send you a text or email to let you know that documents are available on a website, they are off the hook – as long as the email or text doesn't bounce back. Even though most plans have the technology to detect whether you opened the email or text, the rule doesn't require plans to make sure you actually received it. If the email went into your spam folder, got buried unread in your inbox, or you simply never got around to reading it, you will not know to look for the information.

4. The rule contradicts long-standing Labor Department guidance and a Supreme Court decision. Since plans will not be required to check to see if you have logged into the website, found, opened, and read the retirement plan information, the rule undercuts the Labor Department's long-standing interpretation of federal pension law that requires plans to use information delivery methods that are "reasonably calculated to ensure *actual receipt* of the information by plan participants."^[iii] It also sidesteps a recent unanimous Supreme Court decision which said that a notice-and-access method of disclosure does not ensure that employees and retirees have *actual knowledge* of retirement plan information on a website.^[iv]

5. The "notice" in notice-and-access is woefully inadequate. Under this new rule, once you get a text or email telling you there are documents available, you will likely have to copy and paste a web address into the browser (no is hyperlink required), come up with your password to log in, and then navigate the plan's website to find the documents. There will be no explanation of the document's significance. Possibly worst of all, the notice need not tell you whether any action is required by you, or by when. So, you may not realize that you have a right to appeal a denial of benefits, or the deadline for doing so. In addition, plans will be permitted to combine all annual disclosures into one long, single notice.

6. The rule uses "inertia" against you. If you are like most people, you are busy, have a lot going on, and likely won't find the time – and may not even know how – to track down documents on the website, and download and then print them out for when you may need them, possibly years later. The reality is that inertia will stop many people from making the effort to contact the plan to say that they would prefer receiving information on paper. And then, if people don't opt out of the new notice-and-access system, the same forces of inertia will ensure that people won't find, read, and save the information they need to get benefits and watchdog their plan. The rule shifts all of the effort, cost, and responsibility for making sure people get and preserve the retirement plan information they are legally entitled to receive away from plans and onto employees and retirees. For many people this will mean that they will never get the information.

7. Documents can disappear from the website. One of the possible benefits of having documents on a website is that they can be easily stored in the "cloud" so if you

want to check on past benefit statements, or rules in effect when you left a plan, or your plan's investments, fees, or finances, you could find them easily. But the rule doesn't require plans to store documents. Instead, they will be able to erase documents from the website after one year or if they are superseded by a newer version, whichever is later. It's like having plan information on an etch-a-sketch. Here today – wiped out tomorrow.

8. Without paper copies of benefit statements and summaries of plan rules, you may not be able to claim your earned benefits at retirement. Few people read their homeowner's insurance policy until disaster strikes. In the same way, people often stuff their retirement disclosures in a shoebox until they need them, maybe decades later at retirement, or years after that when a widow seeks survivor benefits. Those records are critically important to retirees' ability to prove their rights to benefits. When documents disappear, retirees' rights to their benefits can also disappear.

9. This system will be hard enough to navigate for those who have computers and technological know-how but will be a nightmare for millions of people without broadband internet, computers, and printers. Access to the internet has increased over time, but several segments of the population still face a significant digital divide, based on geography, education, income, race/ethnicity, and age.^[vi] An estimated 15 million retirement plan participants age 55 and older do not regularly use the internet for email, shopping or other purposes.^[vii] About one-fifth of the population, including one-fourth of Black and Latino adults, depend on a smartphone for their only internet access,^[viii] yet smartphones are totally unsuitable for the purpose of reading complex financial documents or printing out and saving them. Rather than addressing the digital divide in a meaningful way, those without access are told they can go to a public library to use an insecure public computer to read, download, and print personal financial information and lengthy plan documents.

10. The rule ignores consumers' strong preferences for paper and does not provide any benefit to them. Study after study shows that consumers and investors of all ages prefer to receive financial and legal documents, including retirement-related documents, on paper.^[viii] The current system is working well; there's nothing that now prevents anyone who prefers to go to paperless from doing so. Also, although the rule claims that plans will save \$3.2 billion over 10 years^[ix] from not having to print and mail information, they are under no obligation to share these savings with plan participants. In fact, there is not a bit of evidence that requiring workers and retirees to play hide and seek with their retirement information will benefit them in the least.

See also:

For more detailed information about the Labor Department notice-and-access rule for delivery of retirement plan information, see the Pension Rights Center Fact Sheets:

- [**“Labor Department Notice-and Access Disclosure Rule: The Basics.”**](#)
- [**“The Labor Department’s New Disclosure Rule: What could it mean for you?”**](#)

[i] Although plans are not required to use notice-and-access – the new rule permits plans to directly deliver disclosures electronically as a PDF attachment to an email or to continue using the existing rule – as a practical matter, most plans will use notice-and-access.

[ii] The rule does not apply to documents that are only required to be provided in response to a request by a participant or beneficiary. It also does not apply to documents that are required by Treasury Department and Internal Revenue Service rules, such as notifications relating to survivor benefits, tax requirements, statements that must be provided when an employee leaves a plan with a future right to a benefit, and statements related to cutbacks in multiemployer pension plans, among others.

[iii] 29 C.F.R. § 2520.104b-1(b)(1).

[iv] *Intel Corp. Inv. Policy Cmte. v. Sulyma*, 140 S. Ct. 768 (2020).

[v] See Pew Research Center, *Internet/Broadband Fact Sheet*, [Chart: Who Has Home Broadband.](#)

[vi] See A. Munnell, [“This one change could undermine the retirement security of millions of Americans,”](#) *MarketWatch*, (July 14, 2020).

[vii] See Pew Research Center, *Mobile Fact Sheet*, [Chart: Who Is Smartphone Dependent.](#)

[viii] A recent study by FINRA Investor Education Foundation cited on page 31916 of the preamble to the rule shows that more *investors* age 55 and over prefer to receive paper communications than prefer to receive documents by email (39% to 36%). Only 9% prefer a notice-and access type of system. The study did not survey retirement plan participants. FINRA Investor Education Foundation, *Investors in the United States, A Report of the National Financial Capability Study*, December 2019, page 17.

[ix] Default Electronic Disclosure by Employee Pension Benefit Plans Under ERISA, RIN 1210–AB90, 85 Fed. Reg. 31884, 31914 (Final Rule, May 27, 2020).