

# The Labor Department's new disclosure rule: What could it mean for you?



## **Date Published:**

Friday, July 24, 2020

The Labor Department issued [a new rule](#), effective July 27, 2020, that describes a new form of electronic disclosure for retirement plan information called “notice-and-access.” This new scheme of disclosure will put the burden of finding retirement plan information on to the participants in the plan. Rather than receiving your retirement plan information on paper through the mail, you could be required to search websites to find that same information. If your employer has chosen to use this “notice-and-access” disclosure scheme you will need to be proactive in seeking out the information you want that, in the past, would have been sent to you by mail.

It is important to know that employers are not required to use this notice-and-access delivery method. It is an optional delivery method. However, it is expected that most employers will decide to use it.

## **How does “Notice-and-Access” work?**

### **Electronic communication**

- All communications from the plan to you will be electronic, either email or text. Only written communication is permitted by the rule, no voice messages. You will have rights to request paper copies and to opt-out of electronic disclosure as discussed below.
- You must have an electronic address, either an email address or smartphone number that can receive text messages. This is how the plan will communicate with you. If you do not have an electronic address and you are an employee, your employer can assign an address to you.

### **Initial paper notice**

- You will receive an initial notice on paper that you have the right to opt-out of electronic delivery completely. The paper notice must tell you how to request an opt-out. The initial paper notice can be part of a package of information given to you and does not have to be delivered separately. The notice must include the electronic address that the plan will use for you, instructions on how to access documents including passwords, whether you must download a mobile application, or open an online account. The notice must include a statement that documents will only be on the website for a year or until replaced by a newer version of the same document, whichever is later.

### **Notice of internet availability (NOIA)**

- After the initial paper notice, all notices of website postings of documents will be delivered electronically to your electronic address. When disclosures are posted on the website a “notice of availability” (NOIA) must be sent to your electronic address. This is either an email or text message. The notice could include a link to the website, but that is not required. The notice must tell you that you have important information about your pension plan on the website and give the name or a brief description of the document posted on the website. One notice can include several different documents when they are posted at the same time on the website, such as annual notices. However, each document posted should be described separately in the notice. *Quarterly benefit statements for 401(k) plans cannot be combined with other disclosed documents.* **IMPORTANT:** *The notice of internet availability must include your right to free paper copies of each document and how to exercise that right. The notice must also include your right to totally opt-out of electronic delivery and how to do it. The notice must include a contact phone number.* Be aware that only one paper copy of a document must be provided for free. There could be a charge for additional copies. When a notice includes more than one document, you may choose which of the documents you would like on paper, or all of them.

### **Website**

- It will be up to you to find and search the named website for the retirement plan information in the notice. The website must provide “ready access” to the document. The retirement plan information presented on the website must be in a form that can both be saved to an electronic folder and printed. As mentioned earlier, *retirement documents must remain on the website at least for a year or until replaced by a newer version of the same document, whichever is later.* The plan administrator or employer is responsible for maintaining the website and ensuring compliance by service providers, such as financial firms.

### **Leaving employment**

- If you leave employment or retire your employer can continue to use this notice-and-access system to send retirement information to you. This could be problematic if you change email addresses. It will be up to you to stay in touch with your employer since there is no requirement for the plan to regularly monitor whether you are receiving or viewing the emails or texts. If the plan receives a “bounce-back” from an email then the plan must seek to correct the email address. Without a correct email address, the plan must send paper copies by mail.

### **Permitted variations**

- The new rule does permit some variations to a strict notice-and-access system of delivery.

Employers may choose to send you an email with documents attached. The documents must be printable, and the email notice must include the right to paper copies and the right to opt-out of electronic delivery. This “direct delivery” electronic disclosure method can be combined with notice-and-access. Alternatively, employers may choose, but are not required, to send some documents to you on paper by mail.

## Know your rights and obligations

**Your right to paper copies and the right to opt-out could be the most important rights in this “notice-and-access” scheme.** You will be responsible for obtaining the documents you will need to understand your plan and to later prove your right to benefits when you leave employment. Some brief documents can perhaps be read and understood on a website, but others may require study, such as the comparative chart of investment choices, while others should be held for future reference, such as summary plan descriptions and benefit statements. You will need to be pro-active in requesting paper copies. Be aware that the rule requires only one FREE paper copy per document. Once you get a paper copy, you need to keep it.

Remember that documents may only be posted on the website for a year, or if later, until the document is replaced by a newer version of the same document. For example, a quarterly pension benefit statement could be replaced every year. An SPD could be on the website until it is replaced by a newer version. **However, you should request paper copies of important documents as soon as possible so that you will have them for your records.** Be sure when requesting paper copies that you follow the instructions and if you do not receive a copy “promptly” you should follow-up.

You can opt out of electronic disclosure at any time.

## Other Items to know

Spouses and beneficiaries are only included in this “notice-and-access” disclosure system if they have voluntarily provided an electronic address.

If you choose to opt-out of electronic disclosure, you will of course receive all disclosures by mail. Employers may, however, give you a choice of which disclosures you want on paper and which you would like to receive electronically on the website, but this is not required.

## Problem solving

If you encounter difficulties in opting-out or receiving paper copies from a service provider when you have requested them, you can inform your employer of the problems you have had. Employers have an obligation to monitor service providers. Similarly, if the procedures to request paper or to opt-out are particularly cumbersome, you should inform your employer.

You also can submit a complaint to the Employee Benefits Security Administration of the Department of Labor by calling 1-866-444-3272 or by sending an e mail to them at [webmaster.ebsa@dol.gov](mailto:webmaster.ebsa@dol.gov).

If you continue to have problems receiving requested documents, you may contact one of the U.S. Administration on Aging’s [Pension and Information Counseling Projects](#).

## Resources

For more detailed information about the Labor Department notice-and-access rule for delivery of retirement plan information, see the Pension Rights Center Fact Sheet, [\*\*“Labor Department Notice-and Access Disclosure Rule: BASICS.”\*\*](#)

The Pension Rights Center has [\*\*a list and brief description\*\*](#) of many of the required documents that could be disclosed to you. Of course, you will not receive all of the documents listed, only those that pertain to your plan. You could find the list helpful.

See also:

Pension Rights Center, [\*\*“The Top 10 Worst Things About the Department of Labor’s New “Notice-and-Access” Rule for Retirement Plans.”\*\*](#)

*AARP.org*: [\*\*New rule for retirement plans hinders access to paper statements\*\*](#)

*MarketWatch*: [\*\*This one change could undermine the retirement security of millions of Americans\*\*](#)