

Department Of Labor (DOL) Electronic Delivery Requirements Summary Chart



The DOL has created two safe harbors through regulation. Plans may rely upon either (or both) regulations to deliver ERISA disclosures electronically.

- 29 CFR 2520.104b-1(c), known as the “2002 safe harbor”
- 29 CFR 2520.104b-31, known as the “2020 safe harbor”

2002 Safe Harbor	2020 Safe Harbor
Which participant communications are subject to these rules?	
<p>Notices sent to participants required under Title I of ERISA for employee pension benefit plans, including:</p> <ul style="list-style-type: none"> • SPD (Summary Plan Description) • SAR (Summary Annual Report) • SMM (Summary of Material Modifications) • QDIA (Qualified Default Investment Alternative) notice • Sarbanes Oxley blackout notice • Participant benefit statements • Participant fee disclosures • Form 8955-SSA annual registration statement • Diversification notice • ERISA 404(c) notice • DOL welfare benefit plan disclosures 	<p>Notices sent to participants required under Title I of ERISA for employee pension benefit plans, including:</p> <ul style="list-style-type: none"> • SPD • SAR • SMM • QDIA notice • Sarbanes Oxley blackout notice • Participant benefit statements • Participant fee disclosures • Form 8955-SSA annual registration statement • Diversification notice • ERISA 404(c) notice <p>Does not apply to:</p> <ul style="list-style-type: none"> • Documents that must be provided only upon request • DOL welfare benefit plan disclosures
What are the rules for using electronic delivery to send participant communications?	
<p>General Requirements:</p> <ol style="list-style-type: none"> 1. Use measures reasonably designed to ensure that the system used results in actual receipt of transmitted information 2. Use measures reasonably designed to ensure that the system protects the confidentiality of personal information relating to the individual's accounts and benefits 3. Ensure the electronically delivered documents are prepared and furnished in a manner that is consistent with the style, format and content requirements applicable to the particular document 4. Ensure that a notice is provided (in electronic or non-electronic form), at the time the document is furnished electronically, that: <ul style="list-style-type: none"> • explains the significance of the document, and • the right to request and obtain a paper version. 5. Ensure that upon request a paper copy of the notice is furnished 	<p>General Requirements:</p> <ol style="list-style-type: none"> 1. Defaults to electronic delivery through notice and access system 2. Applies to “covered individuals” and “covered documents” <ul style="list-style-type: none"> • Covered individuals are participants, beneficiaries, or other individuals entitled to “covered documents” who provide the employer/sponsor/administrator with an electronic address (such as an email address or smart phone number), or the employer may assign an electronic address to an employee for employment-related purposes other than delivery of covered documents under this rule; must be able to receive written communication • Covered documents are DOL disclosures for pension benefit plans, except for documents that must be provided only upon request (e.g., the plan's trust agreement) 3. Provide initial notice 4. Provide covered documents via website posting or directly by email 5. Must give covered individuals the right to opt out of electronic delivery

2002 Safe Harbor**2020 Safe Harbor****Initial Notice Requirements:**

1. Must provide "initial notice"
 - In paper form to each covered individual before using the safe harbor to deliver disclosures to that person
 - After initial roll out for current employees, may include notice with plan enrollment or other new employee materials
 - Must explain that covered documents will be provided to electronic address
 - Must identify the electronic address that will be used for the individual
 - Instructions necessary to access the covered documents
 - Cautionary statement that the document is not required to be available on the website for more than one year, or, if later, after it is superseded by a subsequent version (*not required if using email delivery method*)
 - Must explain right to request and obtain paper version of covered document, free of charge
 - Must explain right to opt out of electronic delivery free of charge
 - Must explain how to exercise these rights
 - Written in a manner calculated to be understood by the average participant

System and Operation Requirements:

1. Must make reasonable efforts to ensure personally identifiable information (PII) is protected
2. Must give covered individuals right to opt out of electronic delivery, free of charge (global opt out) and upon request, must provide free paper copy of covered document (only 1 free copy of any specific covered document must be provided free of charge)
 - Administrator must establish and maintain reasonable procedures for honoring both requests or elections
3. System must be designed to alert to invalid/inoperable electronic addresses
 - If there is an invalid inoperable electronic address, and it cannot be cured, treat covered individual as electing global opt out
4. Following severance from employment, for any covered individual who is an employee, and for whom an electronic address was assigned by the employer, the administrator must take reasonable measures to ensure continued accuracy and availability of the electronic address on file or obtain a new electronic address

2002 Safe Harbor

Option 1 – No Consent Method:

1. Participants who can effectively access documents provided electronically at their job site, and Participants who regularly access the employer’s electronic information system as part of their job duties

Option 2 – Consent Method:

1. Individual has affirmatively consented in an electronic or non-electronic form and has not withdrawn consent
2. If documents are provided through the Internet (or other electronic means) the individual must have affirmatively consented or confirmed consent electronically, in a manner which demonstrates the individual’s ability to access the information in the electronic form that will be used to provide the information
3. Individual must have provided an address for the receipt of the electronically provided documents
4. A notice (in electronic or non-electronic form) must be provided before the individual consents, indicating:
 - the types of documents to which the consent applies;
 - that the consent may be withdrawn at any time without charge;
 - the procedures for withdrawing consent and for updating the address for receipt of the documents;
 - the right to request and obtain a paper version, including whether the paper version will be provided free of charge; and
 - any hardware and software requirements for accessing and retaining the documents.
5. If there is a change in the hardware or software requirements needed to access or retain the electronically delivered documents, the individual must:
 - be provided the revised hardware or software requirements;
 - be given the right to withdraw consent without charge and without any condition or consequence that was not disclosed at the time of initial consent; and
 - consent again according to the requirements above.

2020 Safe Harbor

**Option 1 – Website Posting Method
Notice of Internet Availability:**

1. Provide notice of internet availability (NOIA) for each posting
2. Content – must contain the following information:
 - Must state “Disclosure About Your Retirement Plan” as a title, legend, or subject line
 - Must state “Important information about your retirement plan is now available. Please review this information.”
 - Identify the covered document by name and give a brief description of covered document if identification by name would not convey the nature of the document
 - Sufficiently specific website address or hyperlink of the address where covered document is available
 - Must explain right to request and obtain one paper version of the covered document, free of charge, and how to exercise right
 - Must explain right to opt out of receiving covered documents electronically, free of charge, and how to exercise right
 - Cautionary statement about document availability (as described below)
 - Telephone number to contact plan administrator or other designated representative,
 - Option to include a statement as to whether action is invited or required in response to the covered document and how to take action or that no action is required
3. Manner of Providing
 - Sent to covered individual’s electronic address on file at the time the covered document is posted to the website
 - Sent separately from other documents or disclosures

**Option 2 – Email Delivery Method
Email Content:**

1. Covered document in the body of the email or as an attachment
 2. Must state in subject line “Disclosure About Your Retirement Plan.”
 3. Must explain right to request and obtain one paper version of the covered document, free of charge, and how to exercise right
 4. Must explain right to opt out of receiving covered documents electronically, free of charge, and how to exercise right
 5. If the covered document is an attachment, identify the covered document by name and give a brief description of covered document if identification by name would not convey the nature of the document
 6. Telephone number to contact plan administrator or other designated representative
 7. Email must be written in a manner calculated to be understood by the average participant
- Covered Documents**
1. Must be sent to the covered individual’s email no later than when required to be provided
 2. Must be included as attachment or in body of email
 3. Must be written in a manner calculated to be understood by average plan participant
 4. Must be able to read online, print, search, and save covered documents (e.g., searchable PDFs)

2002 Safe Harbor	2020 Safe Harbor
	<ul style="list-style-type: none"> • Contain only the content specified and pictures/logos/design elements that are not inaccurate or misleading • Written in a manner calculated to be understood by the average participant <p>Annual Combined Notice of Internet Availability</p> <ol style="list-style-type: none"> 1. Can be sent for four categories of disclosures no more than 14 months after prior plan year's combined notice was provided: <ul style="list-style-type: none"> • SPD, • Any document or information that must be provided annually, rather than upon the occurrence of a particular event, and does not require action by a covered individual by a particular deadline, • Any other covered document authorized in writing by the DOL • Any notice required by the IRC and authorized in writing by the IRS <p>Covered Documents</p> <ol style="list-style-type: none"> 1. Must be posted on internet website or other electronic-based information repository (e.g., mobile application) 2. Must be posted no later than the date the document is otherwise required to be provided 3. Must remain on the website at least 1 year after the date it is made available on the website, or, if later, until superseded by a subsequent version 4. Must be presented on website in a manner calculated to be understood by average plan participant 5. Must be able to read online, print, search, and save covered documents (e.g., searchable PDFs)

2002 Safe Harbor	2020 Safe Harbor	
Can I use email to deliver the communications?		
<p>Yes, provided all the requirements for electronic delivery are met. NOTE: <i>This method may be more difficult to implement for certain plan participants (e.g., terminated employees, beneficiaries)</i></p>	<p>The covered document cannot be delivered via email. The NOIA must be sent to the electronic address on file at the time the covered document is posted to the website (e.g., NOIA sent via email).</p>	<p>Yes, provided all the requirements for the “email delivery” method are met.</p>
Can I post communications on the company website?		
<p>Yes, provided all the requirements for electronic delivery are met and the employer ensures the plan communications are available for a reasonable period of time after the notification is delivered. For example, the employer may send a paper or email notification letting employees know a document is available and then direct the employees to the location on the company website. NOTE: <i>This method may be more difficult to implement for certain plan participants (e.g., terminated employees, beneficiaries)</i></p>	<p>Yes, must post covered documents no later than the date the disclosure is otherwise required to be furnished.</p>	<p>No.</p>
Can I use an Interactive Voice Response (IVR) system to provide the communications?		
<p>The DOL rules do not address IVR.</p>		
What are the rules for a participant making an election electronically? To what types of elections do these rules apply?		
<p>The DOL rules do not extend to communications from participants or beneficiaries to the plan.</p>		
If the employer is providing a paper copy upon a participant’s request, can the employer charge for this?		
<p>Yes.</p>	<p>No. It is not permissible to charge for paper copy of the covered document when it is requested by a covered individual. However, only one paper copy of any specific covered document must be provided free of charge. Documents provided only upon request are not considered covered documents and the 2002 safe harbor remains available as a means of delivery. The global opt-out right is also required to be free of charge.</p>	
Are there any additional details about electronic delivery that I need to know?		
<p>The DOL regulations are safe harbor standards only. Although the regulations are not required to be relied on, an employer who satisfies the requirements will have assurance that the general DOL delivery requirements have been satisfied.</p>		

The DOL has issued guidance allowing the use of electronic delivery methods other than the 2002 safe harbor. This guidance is superseded by the 2020 safe harbor and cannot be relied upon after January 27, 2022 (i.e., 18 months following the effective date of the DOL's 2020 safe harbor rule)

- FAB 2006-03 – If plan administrators meet certain requirements, pension benefit statements may be provided electronically through a secure website
- FAB 2008-03 (Q&A 7) – Allows plan administrators to provide QDIA notices electronically through the DOL's 2002 safe harbor or the Treasury Departments rule at 26 CFR 1.401(a)-21(c)
- Technical Release 2011-03R – Sets forth a policy regarding the use of electronic media to satisfy the disclosure requirements under ERISA regulation 2550.404a-5, participant-level disclosure

FAB 2006-03	Technical Release 2011-03R
Which participant communications are subject to these rules?	
<ul style="list-style-type: none"> • Participant benefit statements 	<ul style="list-style-type: none"> • Participant fee disclosures
What are the rules for using electronic delivery to send participant communications?	
<ol style="list-style-type: none"> 1. Participants and beneficiaries are given continuous access to their statement information through one or more secure websites 2. A notice is provided which: <ul style="list-style-type: none"> • explains the availability of the statement information and how it can be accessed; • explains that participants and beneficiaries have a right to request and obtain, free of charge, a paper version of the pension benefit statement information; • is written in a manner calculated to be understood by the average plan participant; and • is provided in advance of the date on which a plan is required to provide the first pension benefit statement required under section 105 of ERISA and annually thereafter. 3. The notice may be provided in any manner that a pension benefit statement could be furnished under FAB 2006-03 (that is, delivered in written, electronic, or other appropriate form to the extent such form is reasonably accessible to the participant or beneficiary). <p>FAB 2006-03 also permits electronic delivery of pension benefits statements under the DOL safe harbor or IRS (Treas. Reg. 1.401(a)-21) rules.</p>	<p>Method 1:</p> <ol style="list-style-type: none"> 1. For information included in a pension benefit statement (for example, actual administrative and individual expenses charged to participant accounts) 2. Follow the requirements under FAB 2006-03 or the DOL safe harbor requirements
	<p>Method 2:</p> <p>For information that is not included in a pension benefit statement (such as, investment information)</p> <ol style="list-style-type: none"> 1. Ensure that the electronic delivery system results in actual receipt of the transmitted information 2. Ensure that the electronic delivery system protects the confidentiality of personal information. 3. Notices provided to participants and beneficiaries must be written in a manner calculated to be understood by the average plan participant. 4. Participants and beneficiaries must voluntarily provide the employer with an email address <ul style="list-style-type: none"> • The email address must be provided in response to a request accompanied by an initial notice

- If providing an email address is a condition of employment or participation in the plan, the email address is not treated as being provided voluntarily
 - Providing an email address will be considered voluntary if it is required to be provided by a participant electronically in order to access a secure website which houses the required disclosure, and an initial notice is provided to the participant.
5. Initial Notice. The notice must be clear and obvious, provided contemporaneously and in the same medium as the request for an email address and must contain:
- A statement that providing an email address for the receipt of the disclosures is entirely voluntary, and that as a result of providing the email address, the required disclosures will be provided electronically;
 - Identification (or brief description) of the information that will be furnished electronically and how it can be accessed;
 - A statement that the participant or beneficiary has the right to request and obtain, free of charge, a paper copy of the information provided electronically and an explanation of how to exercise that right;
 - A statement that the participant or beneficiary has the right, at any time, to opt out of receiving the information electronically and an explanation of how to exercise that right; and
 - An explanation of the procedure for updating the participant's or beneficiary's email address.
6. Annual Notice. In the year following the year that the participant or beneficiary voluntarily provided the email address, and annually thereafter, the plan administrator must furnish an Annual Notice to each participant or beneficiary.
- The notice must contain the information that is required in the Initial Notice, bullets 2 through 5, above.
 - The notice must be provided on paper, or alternatively,
 - The plan may furnish the notice electronically by sending it to an email address on file for a participant or beneficiary if there is evidence that the participant has interacted electronically with the plan after the date the Annual Notice for the preceding year was furnished (or in the case of the first Annual Notice, after the date the Initial Notice was furnished).
 - Examples of electronic interaction with the plan include: the participant or beneficiary updating, resubmitting, or confirming his email address to the plan; sending an electronic message to the plan; or logging onto a secure website housing plan information.

Can I use email to deliver the communications?

Yes, using one of the DOL safe harbor or IRS (Treas. Reg. 1.401(a)-21) methods.

Yes, provided all the applicable requirements, under either FAB 2006-03 or the DOL Technical Release 2011-03R, are met.

NOTE: *This method may be more difficult to implement for certain plan participants (e.g., terminated employees, beneficiaries)*

FAB 2006-03	Technical Release 2011-03R
Can I post communications on the company website?	
Yes, by using a secure continuous access website and providing the required notice.	Yes, provided all the applicable requirements, under either FAB 2006-03 or the DOL Technical Release 2011-03R, are met. NOTE: <i>This method may be more difficult to implement for certain plan participants (e.g., terminated employees, beneficiaries)</i>
Can I use an Interactive Voice Response (IVR) system to provide the communication?	
Yes, if following an IRS approved method (Treas. Reg. 1.401(a)-21).	The DOL Technical Release 2011-03R does not address IVR.
What are the rules for a participant making an election electronically? To what types of elections do these rules apply?	
Follow the IRS guidance (Treas. Reg. 1.401(a)-21).	The DOL Technical Release 2011-03R does not address elections.
If the employer is providing a paper copy upon a participant's request, can the employer charge for this?	
No.	No.
Are there any additional details about electronic delivery that I need to know?	
<p>FAB 2006-03 cannot be relied upon beyond January 27, 2022.</p> <p>The bulletin presents the DOL's view as to what constitutes good faith compliance with certain requirements of ERISA Section 105, applicable to providing pension benefit statements to plan participants and beneficiaries.</p>	<p>Technical Release 2011-03R cannot be relied upon beyond January 27, 2022.</p> <p>The technical release creates an interim policy regarding electronic delivery of disclosures required under the final participant-level fee disclosure regulations.</p>

This document is provided for informational purposes only. It is not intended to provide authoritative guidance or tax or legal advice. You should consult with your attorney or advisor for guidance on your specific situation.