


# PENTEGRA TECH TIPS



## DOL Default Electronic Disclosure - New Voluntary Safe Harbor – Final Rule

The Department of Labor (DOL) has issued new, voluntary safe harbor rules for using electronic media as a default to furnish retirement plan disclosure documents to covered individuals.

The new rule permits two methods for electronic delivery:

- Website Posting – Web posting is allowed as long as appropriate notification of internet availability is furnished to the electronic addresses of covered individuals.
- Email Delivery – Email may be used to send covered documents directly to the electronic addresses of covered individuals. Documents must be in the body of the email or as an attachment to the email.

Compliance with the new Safe Harbor rule satisfies statutory duty under ERISA to provide documents to participants.

### Scope

- The safe harbor is limited to retirement plan disclosures.
- May use this safe harbor only for “covered individuals.” To be a covered person, the individual must be entitled under ERISA to receive covered documents and must have a valid electronic address (e.g., email address or smart phone number).
- This new safe harbor does not supersede the 2002 safe harbor; the 2002 safe harbor remains in place as another option for plan administrators.

## Protections for Plan Participants

The new safe harbor includes a variety of protections for covered individuals, including:

- **Right to Paper.** Covered individuals can request paper copies of specific documents, or globally opt out of electronic delivery entirely, at any time, free of charge.
- **Initial Notification.** Must be furnished an initial notification, on paper, that the way they currently receive retirement plan disclosures (e.g., paper delivery in the US mail) is changing. The notice must inform them of the new electronic delivery method, the electronic address that will be used, and the right to opt out if they prefer paper disclosures. The notice must be given to them before the plan may use the new safe harbor.

**Notifications of Internet Availability.** Covered individuals generally must be furnished a notice of internet availability (NOIA) each time a new covered document is made available for review on the internet website.

To avoid “notice overload,” the final rule permits an annual NOIA to include information about multiple covered documents, instead of multiple NOIAs throughout the year.

The NOIA must briefly describe or identify the covered document that is being posted online, include an address or hyperlink to the website, and inform the covered individual of the right to request paper copies or to opt out of electronic delivery altogether.

The NOIA must be concise, understandable, and contain only specified information.

- **Website Retention.** Covered documents must remain on an internet website until superseded by a subsequent version, but in no event for less than one year.
- **System Check for Invalid Electronic Addresses.** Plan administrators must ensure that the electronic delivery system is designed to alert them if a participant’s electronic address is invalid or inoperable. In that case, the administrator must attempt to promptly cure the problem, or treat the participant as opting out of electronic delivery.
- **System Check at Termination of Employment.** When someone leaves their job, the plan administrator must take steps to ensure the continued accuracy and operability of the person’s employer-provided electronic address.

## Effective Date & Immediate Availability

The new safe harbor is effective on July 27, 2020. However, the Department, as an enforcement policy, will not take any enforcement action against a plan administrator that relies on this safe harbor before that date. The Department’s decision to provide this non-enforcement policy supports the Federal government’s broader effort to respond to COVID-19. The Department understands the far-reaching effects of COVID-19, and the non-enforcement policy provides flexibility and may reduce administrative burden on employers and pension plan service providers during this unprecedented time.

Contact the Pentegra Solutions Center at [solutions@pentegra.com](mailto:solutions@pentegra.com)  
or 855-549-6689 for expert guidance on how to make the most of the new rules.

Follow our conversation

