

Electronic Disclosure Rules for Pension & Welfare Plans

	IRS Rules	DOL Welfare Rules	DOL Pension Rules	
<i>Effective in what year?</i>	2006	2002	2002	2020
<i>Who can receive documents via an electronic medium?</i>	<u>Affirmative Consent.</u> Individuals who consent, if consent (or confirmation of consent) demonstrates an ability to access the applicable electronic medium.			
	<u>Effective Access:</u> Individuals able to effectively access the applicable electronic medium.	<u>Wired at work:</u> Active employees only. Must be able to effectively access the applicable electronic medium at their work location <u>and</u> access must be an integral part of their job duties.	<u>New Rule: Notice and Electronic Address:</u> Individuals who provide an electronic address (<i>e.g.</i> , e-mail or internet enabled smart phone number that can receive written messages). Electronic addresses that are assigned to employees suffice, as long as not assigned solely for receiving pension disclosures (<i>i.e.</i> , must have a separate work-related purpose). Upon severance of employment, administrator must take measures reasonably calculated to ensure continued accuracy/availability, or to obtain a new address.	
<i>What is required of the electronic delivery system and electronic documents?</i>	Must be reasonably designed so that the electronic document is at least as understandable as the paper document Must alert the individual to the significance of the document and provide any instructions need to access the document	Must be reasonably calculated to result in actual receipt of the information (<i>e.g.</i> return-receipt or notice of undelivered mail) Must protect confidentiality of personal information Must alert the individual to the significance of the document, unless reasonably evident	The document must be in a widely available format that is readable both online and when printed. Should be searchable and able to be saved/printed electronically. Two options for distribution: 1. <u>Notice and Posting Option.</u> Documents posted on electronic media (<i>e.g.</i> , website or mobile app). Must remain posted for at least 1 year (and for some types of documents, like SPDs, until they are superseded). A separate Notice of Internet Availability (“NOIA”) must be sent to the electronic address at the time of posting (or in advance as part of consolidated NOIA, addressed below). The NOIA must be sent separately from any other documents or disclosures.	

			<p><u>NOIA content requirements:</u></p> <ul style="list-style-type: none"> • Prominent statement (e.g., heading): “Disclosure About Your Retirement Plan” • Statement: “Important information about your retirement plan is now available. Please review this information” • Identification of the covered document (by name and, if needed, by a brief description) • How to get the document(s) (website address or hyperlink) • That the document(s) may not be available after a specific period of time (i.e., more than a year, or, if later after it is superseded by a subsequent version) • Right to request and receive a paper copy, free of charge • Right to opt out of receiving electronic disclosures entirely and receive paper copies, free of charge, and explanation of how to do so • Phone number to contact plan administrator • Optional: whether action is invited or required, how to take such action or that no action is required <p>Very little customization or additional information is permitted. NOIAs must be written in a manner calculated to be understood by the average participant.</p> <p>System for delivering NOIAs must be able to alert administrator of bounce backs, and administrator must promptly take reasonable steps to cure by sending to a secondary electronic address, obtaining a new operable electronic address, or treating the individual as having globally opted out. The mechanism for posting should reasonably protect the individual’s privacy, and prompt action should be taken to remedy temporary outages.</p>
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<p><i>Is advanced notice required?</i></p>	<p><u>If eligibility for electronic receipt is based on consent</u>: A notice must be provided prior to consent, including:</p> <ul style="list-style-type: none"> • The electronic medium to be used • Description of the scope of consent/types of documents to which it is applicable • Right to a paper copy and whether a fee will be charged • Right to withdraw consent without charge at any time • Procedures for withdrawing consent and updating address for electronic receipt • Any hardware or software requirements <p>Updated notice and consent required if there are subsequent material changes to the hardware or software requirements.</p> <p><u>If eligibility is based on access (i.e., Effective Access or Wired at Work)</u>: Advanced notice is not required.</p>	<p><u>Initial Paper Notice</u></p> <p>An initial paper notice must be provided in advance (calculated to be understood by the average participant), including:</p> <ul style="list-style-type: none"> • Notice that disclosures will be provided electronically unless the individual affirmatively opts out • Identification of the individual’s electronic address that will be used • Any instructions necessary to access covered documents • That the document(s) may not be available after a specific period of time (<i>i.e.</i>, more than a year, or, if later after it is superseded by a subsequent version) • Right to request an receive a paper copy, free of charge • Right to opt out of receiving electronic disclosures entirely and receive paper copies, free of charge, and explanation of how to do so <p>If using this new method, the initial paper notice must be provided, even if the individual previously consented or met the Wired at Work standards.</p> <p><u>Consolidated NOIA</u></p> <p>A NOIA generally is required only at the time the document is made available. However, an advanced</p>	

				<p>consolidated NOIA is available for <u>certain</u> documents. In addition to the other NOIA requirements, the consolidated NOIA must identify the documents to which it applies. If relying on a consolidated NOIA, it must be furnished at least every 14 months.</p> <p>Generally, consolidated NOIAs are available for (i) the SPD and (ii) documents required to be provided annually, rather than following a specific event, and that do not require action by a certain deadline (SAR, QDIA notice, annual funding notice). A consolidated NOIA is <u>not</u> available for quarterly benefit statements.</p>
<p><i>What is required or permitted with respect to paper copies?</i></p>	<p>Individuals may request a paper copy of specified document</p>			
	<p>Notice of right to receive paper copy will be in consent form (<i>Consent</i>) or the electronic document itself (<i>Effective Access</i>).</p>	<p>Notice of right to receive paper copy will be in consent form (<i>Consent</i>) or the electronic document itself (<i>Wired at Work</i>).</p>	<p>Notice of right to receive paper copy will be in initial paper notice and the NOIA or e-mail including the document.</p>	
	<p>For individual requests, a fee may be charged only if electronic disclosure is based on consent and the fee was disclosed at the time of consent.</p>	<p>For individual requests, a fee may be charged (unless statute requires provision without charge) and if electronic disclosure is based on consent the fee must have been disclosed at the time of consent.</p>	<p>For individual requests, must be provided free of charge (if requesting additional copies, a fee may be imposed if permitted under ERISA).</p> <p>Individuals must be permitted to globally opt out of electronic delivery and receive paper copies. Opt out procedures must be reasonable.</p>	
<p><i>What are examples of the types of documents to which the rules apply?</i></p>	<p><i>E.g.</i>, rollover rights notices, 204(h) notices, QJSA notices, 401(k) safe harbor notices, automatic enrollment notices for 401(k) plans</p>	<p><i>E.g.</i>, SPDs, SMMs, SARs, COBRA notices</p>	<p><i>E.g.</i>, SPDs, SMMs, SARs, Annual funding notices, benefit statements</p>	<p><i>E.g.</i>, SPDs, SMMs, SARs, Annual Funding Notice, benefit statements (though not as part of a consolidated NOIA)</p>