

	2002 Safe Harbor	2019 Proposed Notice and Access Safe Harbor	Vorys Comments
Applicable Plans	Retirement and welfare plans.	The safe harbor applies only to retirement plans. It does not apply to welfare plans, such as a group health plan or a disability plan.	The DOL explained that while it considered including welfare plan disclosures in the proposed rule, it decided to reserve doing so until the DOL can study further the application of the proposed safe harbor to documents that must be furnished to employee welfare plan participants. The DOL also stated that group health plan disclosures raise different considerations and in considering any possible new electronic delivery safe harbor for group health plan disclosures would require coordination with the Treasury and HHS.
Covered Individuals	<p>Individuals who have the ability to access disclosures at a location the individual performs employment duties <u>and</u> whose access to the plan's sponsor's electronic information system is an integral part of their employment duties (Group 1).</p> <p>Individuals who have affirmatively consented to receive electronic disclosures in a manner that shows they have the capacity to access such disclosures (Group 2).</p>	<p>Group 1 was expanded to eliminate the requirement that use of the electronic system be an integral part of employment duties. Applies to individuals whose employer provides an email address or an electronic device (if the employer also provides a data package).</p> <p>Group 2 was expanded to apply to individuals who provide an email address or mobile phone number. There is no obligation to confirm that the individual can access disclosures.</p>	<p>Manufacturing and retail employers may want to consider issuing e-mail addresses to employees who would not ordinarily need access to e-mail as part of their job to fit within the expanded Group 1.</p> <p>There is no requirement for the employee to have or to be provided with a specific type of electronic device or means of accessing the internet to be considered a covered individual.</p>
Opt Out	Individuals may opt out if in Group 1 or chose not to opt in if in Group 2.	An individual may opt out with respect to a particular document or globally.	Globally opted-out individuals must receive all communications going forward in hard copy, unless the individual chooses to opt-back in.
Standard for Notice	The plan administrator must take appropriate and necessary means to ensure that the system for furnishing documents results in actual receipt for the transmitted information.	If a plan administrator receives a notification that the communication was not delivered, the plan administrator must treat that individual as having globally opted-out until a new contact information is received.	Employers will want to work with their third party administrators to evaluate current processes for compliance with this new requirement.
Initial Notice of Internet Availability Requirements	Only required notice for each document distribution.	Before using the notice and access safe harbor, individuals must receive a one-time paper notice that advises the individual that some or all of the disclosures will be made electronically on the website. The notice must also state that paper copies of the document can be provided at no charge.	We would recommend employers add the new notice to new hire packages or the new participant welcome kits.

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Document Distribution Notice Requirements	<p>The notice must state:</p> <ul style="list-style-type: none"> a. The types of documents that will be provided electronically; b. That consent may be withdrawn without charge; c. The procedures for withdrawing consent and updating information; d. The right to receive a paper version and if a charge applies; and e. The electronic delivery system and what hardware and software will be needed to use it. 	<p>The “notice of internet availability” must include:</p> <ul style="list-style-type: none"> a. A prominent statement in the subject line that reads: “Disclosure about your Retirement Plan”; b. A statement that “Important information about your retirement plan is available at the website below. Please review this information”; c. A brief description of the covered document; d. The internet website address where the covered document is available; e. A statement of the individual’s right to request and obtain the paper version of the document, free of charge, and how to obtain that paper version; f. A statement of the right to opt out of receiving covered documents electronically, and an explanation how to exercise that right; and g. A telephone number to contact the plan administrator or other designated representative. <p>The notice may not contain any other information, other than a logo or other graphic if considered not misleading. The DOL has requested samples of proposed notices for their review.</p>	<p>Note employers will still need to distribute paper notices to people who opt-out. The proposed regulations do not address the common current practice of mailing a post-card notifying individuals that documents have been posted on-line.</p>
Frequency of Notice	<p>A notice must be given each time a disclosure is made. A general notice on a periodic basis is not permitted.</p>	<p>Each time a document is made available a “notice of internet availability” must be given, but a general notice may be provided once every 14 months.</p>	<p>An employer may send one general notice every plan year reflecting all of the documents that are provided electronically, but there cannot be more than 14 months between these combined, general notices.</p>
- Notices that may be combined	<p>Notices may be combined if they apply to disclosures being made at the same time.</p>	<p>Any notice not given because of the occurrence of a specific event may be consolidated (e.g., SPDs, SMMs, annual funding notices, investment related disclosures, qualified default investment alternative notices, and pension benefits statements).</p>	

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- Notices that may not be combined	Notices made at different times may not be combined.	Any notice given upon the happening of a specific, non-time related event may not be consolidated (e.g., notice of a blackout period, qualified domestic relations order determination, a notice of adverse benefit determination, a notice of failure to meet minimum funding standards, or a notice of a significant reduction in future benefits).	
Available Means of Providing Notice	Email, attachment to email, or posting to a company's website	Posting to a company's website	The new safe harbor is focused on how individuals are notified about on-line postings of plan information. It should not be read as limiting other methods of distribution.
Requirements for Posted-Provided Electronic Documents	Does not need to be identical to the hard copy version. Must meet the same requirements as the underlying document.	The posted documents must be electronically searchable, and in a form that is easy to print, such as a PDF. The documents must remain posted until either a new version of the document is posted or the document is no longer relevant.	