

## **DOL Issues New Retirement Plan Electronic Distribution Rules**

The [Department of Labor](#) ("DOL") published a final rule in the Federal Register on May 27, 2020 that establishes a new electronic disclosure safe harbor for retirement plans. The rule, known as the "[Default Electronic Disclosure by Employee Pension Benefit Plans under ERISA](#)" or "Rule", provides an additional safe harbor for the furnishing of pension plan information and disclosures to participants, beneficiaries and alternate payees.

"The passing of this final rule will play a huge cost saving role for retirement plans. In fact, the DOL estimates that over the next decade, the Rule will save approximately \$3.2 billion in net costs for retirement plans by eliminating significant materials, printing, and mailing costs associated with furnishing printed disclosures." said [Emily Langdon](#), Fraser Stryker's [Employee Benefits and ERISA](#) partner.

The Rule takes effect on July 27, 2020, 60 days after it was published in the Federal Register.

The new safe harbor relies on a "notice and access" approach. Along these lines, the Rule provides a groundwork for plan fiduciaries to satisfy document and notice delivery obligations by posting required disclosures on a website, while also delivering an electronic notice of availability. *In a departure from the prior DOL safe harbor, the Rule imposes no requirements on plan fiduciaries to analyze whether individual participants interact with an electronic system as a function of their job; nor does it impose any specific requirements that participants affirmatively consent to electronic delivery.*

The Rule contains very detailed provisions outlining the guidelines that must be followed for a retirement plan to transition to a completely electronic distribution, delivery and signature process in a legally-compliant manner.

In order for an employer to successfully transition to a fully electronic process for all documents and forms related to its retirement plan(s), the employer should work closely with legal counsel to review and analyze the Rule and to determine the best way to comply with the same from an administrative standpoint. This may require working with third party vendors to streamline the electronic distribution process and related mechanisms.

Note that the Rule provides an *additional* safe harbor for the furnishing of retirement plan information and disclosures to participants, beneficiaries and alternate payees. While the new safe harbor permits the use of electronic delivery for a wider range of employees and through a broader range of methods than the DOL's existing safe harbor, the Rule also comes with ongoing administrative requirements. However, as long as an employer works with legal counsel to develop detailed electronic policies and procedures related to its retirement plan(s), this will significantly benefit the employer in the long-term, greatly help to streamline procedures, and eliminate substantial materials, printing, and mailing costs associated with furnishing printed disclosures.

Finally, employers moving to the electronic process should provide additional fiduciary training for their retirement plan fiduciaries to ensure that such fiduciaries are aware of the plan changes being made and the related fiduciary duties owed to the plan and plan participants.

## **Contact Us**

If you are considering transitioning to an electronic retirement plan process and would like legal assistance related to complying with the Rule, contact Emily Langdon at [elangdon@fraserstryker.com](mailto:elangdon@fraserstryker.com) or 402-978-5386.

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