

**Delivering ERISA Disclosure for Defined Contribution Plans:  
Why the Time Has Come to Prefer Electronic Delivery**

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**EXECUTIVE SUMMARY**

In 2002 the U.S. Department of Labor (DOL) issued regulations governing the choice between paper and electronic delivery of required information and notices to participants under ERISA, including in connection with defined contribution plans, such as 401(k) plans. These regulations created a “safe harbor” that permits electronic delivery, but in practice creates important obstacles to using electronic notice.

This spring, DOL issued a Request for Information (RFI) about whether and how to change the 2002 regulations. This White Paper systematically examines the choice between paper and electronic delivery. **Due to technological changes and widespread current access to the Internet, this paper argues that the time has come for a major shift toward greater reliance on electronic delivery of required information. Defined contribution plans should have the flexibility to choose electronic delivery as the default, while retaining the right of individual participants to receive information or notices in paper if they prefer.**

**Background**

For a wide range of financial services involving ordinary Americans, federal regulations set forth rules for how individuals should receive required information or notices. For example, DOL administers rules about disclosure to individual participants in employee benefit plans under the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). For convenience and ease of reading, this White Paper generally uses the terms “disclosure”, “required information”, and “notices” to refer collectively to the various types of disclosures that plans are required to furnish to participants under ERISA and DOL rules. These disclosures are extensive, including information about the investment options offered by plans, quarterly account statements, and other episodic information and notices. DOL is currently implementing a significant new required disclosure that is designed to help participants compare fees and other key features of investment options.

Required disclosures should present and deliver this information in ways that work for the individual. The overall system of delivery should be highly accessible, highlight key content, and make it easy for the recipient to understand the information and act on it. The system should provide secure storage and, where possible, fit well with other relevant goals, such as enhancing

the rate of retirement savings, reducing overall costs, and reducing the effect of disposed paper on the environment.

In designing and delivering required information, a central decision is whether notices should by default be in paper form, or else in electronic form such as through emails. The 2002 DOL regulation defaults to paper delivery, and has somewhat complex rules that allow electronic delivery with affirmative consent (“opt-in”) by the participant. As Internet access spreads, electronic delivery is becoming the norm in many settings and will increasingly be the norm in years to come. For instance, the Internal Revenue Service no longer mails annual tax forms, but instead makes them available online. The question is whether most required information for defined contribution plans should continue in paper, which was the norm in the 1970s, or else in the electronic format of today or tomorrow.

### **Electronic Notices Have Major Factual Advantages Over Paper Notices**

This White Paper systematically compares the effectiveness today of electronic and paper delivery. Factually, there are large and growing advantages of electronic over paper delivery.

- **Access** to electronic delivery is widespread and better quality than for paper delivery.
  - Electronic disclosure enables access anywhere, any time, with the device of the user’s choosing, and with a better filing system than paper notices.
  - Electronic disclosure improves access for the visually impaired, others with disabilities, and those who prefer to read a notice in a language other than English.
  - Internet access has become widespread for working American families -- close to the number that have a telephone -- with even higher rates for households with defined contribution accounts. Smartphones are speeding the convergence of different demographic groups toward this widespread access.
- Once access exists, electronic delivery provides better notice than paper delivery. Electronic notice can easily be “layered,” with a short and simple notice on top, and click-through to more detailed disclosures where the participant wishes to dig deep. This layering means that the top layer of information is simpler and easier-to-read than for a paper document. Electronic notice can also be “just-in-time,” giving information at the moment and in a manner that helps the participant make decisions.
- Along with these access and notice advantages, electronic delivery provides a **range of improved functions** compared with paper notice.
  - Instead of receiving a stack of paper, the online participant works with what is essentially an already organized set of information, which is easy to integrate with the rest of a family’s financial records.

- Participants online have access to tools such as calculators that show how saving more now will lead to higher benefits upon retirement, meeting the program goal of higher savings rates and participant control.
- Online services adapt to changing technology and provide quicker and better feedback about what works best for participants.
- There are **important other advantages** of electronic over paper delivery.
  - Electronic delivery provides substantial direct savings – it costs less than paper delivery. Electronic delivery of a single new four-page notice could produce savings of \$36.7 to \$60.5 million per year in printing and mailing costs, depending on printing type.
  - Electronic delivery helps the environment, including for the millions of mailings each year that participants place in the trash. A conservative estimate is that switching to electronic delivery for some annual disclosures to participants in participant-directed defined contribution plans will annually save over 11,600 trees and 39 acres of forest.
  - The widespread adoption of electronic delivery in other settings is important evidence of the overall advantages of electronic over paper delivery.
  - There are important cybersecurity advantages compared to risks from paper notices. For instance, bouncebacks on email are more effective than paper change-of-address forms and authentication is more sophisticated online.

### **The Relevant Law and Administration Policy Support a Major Shift Toward Electronic Delivery**

- **ERISA** does not prescribe how information must be furnished but shows a recent general intent of “reasonably accessible” notice whether in paper, electronic or other form. Going forward, the best implementation of this approach is flexibility for plans to default to electronic delivery of information where they choose, while retaining the individual’s right to select paper notice.
- The **E-SIGN** Act of 2000 has sometimes been used as a basis for caution in using electronic delivery. The primary and clear intent of that law, however, was to encourage online activity, such as the proposal here for defined contribution plans.
- **President Obama’s Executive Order 13563** creates the Administration’s framework for choosing between electronic and paper disclosure. That Order decisively supports a major shift toward electronic disclosure.
  - The Order calls for a retrospective review of regulations, to ensure that the federal government brings old practices (such as paper notice) up to date.
  - The Order requires agencies to maximize the net benefits of a regulation, and the factual discussion here overwhelmingly favors the shift to electronic delivery.

- The Order specifically asks agencies to recognize the effects of changing technology. For this regulation, which may last a decade such as the existing 2002 rule, changing technology for 2020 and beyond clearly calls for electronic delivery.
- The Order tells agencies to provide flexibility in compliance, such as the flexibility for plans to use electronic delivery where that is best.
- The Order fits with the broad Administration goal of competitiveness.
- The Order specifically calls for improved disclosures, which is provided by electronic delivery.
- The Order favors choosing a default carefully in order to meet program goals. An electronic default, where plans choose it, could lead to increased savings and other program goals.

**In sum, the arc of change is overwhelmingly in the direction of electronic rather than paper delivery. Now that access to electronic disclosure is widespread, and access is actually better electronically in major respects, there is a compelling case for the next regulation to permit plans to choose a default rule of electronic delivery.**

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