

# Electronic delivery of participant disclosure materials

## A guide for plan sponsors



The Employee Retirement Income Security Act of 1974 (ERISA) requires that participants in 401(k) and similar retirement plans receive information about the plan on a regular basis. But delivering all of the required information can be time-consuming—and expensive.

Email and other electronic methods can help. Delivering required plan information electronically can:



**Help to simplify the disclosure process**



**Provide more reliable delivery of information**



**Possibly reduce plan administration costs over time.**

You must follow certain rules from the U.S. Department of Labor (DOL) and the Internal Revenue Service (IRS) when using email and other electronic methods for these disclosures.

### This guide is intended to:

- Provide highlights of electronic delivery rules
- Describe the conditions under which electronic methods for delivering information meet current standards<sup>1</sup>
- Help you and other fiduciaries who are considering electronic disclosure methods for their plans
- Explain how Principal® supports electronic disclosures

<sup>1</sup> Information in this paper is accurate as of the date this paper was published. Changes in rules and interpretations issued by the DOL and/or the IRS may affect the information in this paper. As always, Principal® works to keep you up to date on important changes in the regulations that affect your plan.

# Your role in providing plan disclosure information to participants

**Under ERISA**, any person responsible for retirement plan management or administrative matters may act as a “fiduciary,” including a plan’s sponsoring employer, plan trustees, or members of a plan committee. Generally, all retirement plans must name at least one fiduciary to have overall responsibility for plan administrative activities, called the “plan administrator.” The responsibilities of the plan administrator include providing required plan information to plan participants, such as benefit statements and information about plan fees and investment information. (See page 7 for a list of disclosure requirements.)

The DOL established a general standard for delivering plan information to participants. A plan administrator must use measures “reasonably calculated to ensure actual receipt of the material.”<sup>2</sup>

## Examples of such methods include:

- First-class mail
- Other classes of mail if return and forwarding postage is guaranteed and address correction is requested
- In-hand delivery at an employee’s worksite

Merely making a disclosure document available or posting it on a bulletin board does not satisfy this general standard.

The DOL and IRS issued a series of rules that explain when email or other electronic disclosure methods satisfy the “reasonably calculated to ensure receipt” standard.<sup>3</sup>

## These include:

- DOL Electronic Disclosure Safe Harbor that allows electronic disclosure by the “wired at work” and “affirmative consent” methods
- DOL Electronic Disclosure Safe Harbor that allows electronic disclosure by the “notice and access” and “direct email” methods
- IRS Media Disclosure Guidance allowing electronic disclosure under a “general method” and an “alternative method”



**“Wired at work,” “affirmative consent,” “notice and access,” and the “direct mail”** methods apply to most notices and disclosure documents required by ERISA or DOL regulations.

The **“general method”** and **“alternative method”** apply to most notices and disclosure documents required by IRS and Treasury.

We anticipate the IRS releasing guidance in support of delivering IRS and Treasury notices and disclosure documents using the DOL electronic disclosure safe harbor methods.

<sup>2</sup> 29 CFR 2520.104b-1. This paper only provides a general summary of ERISA’s rules for delivering required information to plan participants. Please refer to the regulations for specific information on how to deliver ERISA disclosures as paper documents.

<sup>3</sup> 29 CFR 2520.104b-1(c) (April 9, 2002) and 26 CFR 1.410(a)-21 (Oct. 20, 2006).

# DOL electronic disclosure guidance

## Safe harbor

A safe harbor provides guidelines for complying with a legal requirement—such as the requirement to deliver information by a method “reasonably calculated to ensure receipt.”<sup>4</sup>

Under the Electronic Disclosure Safe Harbors, the DOL states that as long as a plan administrator takes the steps required in the Safe Harbors, a notice or other disclosure document sent by email or other electronic means will be considered to have been delivered as if the information was sent by first-class mail. Plan administrators may rely on the Electronic Disclosure Safe Harbors for delivering plan information that is required to be delivered to participants. (See page 7 for a list of disclosure requirements.)

## Electronic disclosure safe harbor requirements for affirmative consent and wired at work:

Plan information may be delivered electronically under this Electronic Disclosure Safe Harbor only if all of the following general requirements will be met:

- 1 The electronic system used must be designed to reasonably assure actual receipt of the information. This may require periodic reviews or surveys to confirm receipt of the electronically delivered information. Also, the plan administrator should be aware of, and follow up on, undelivered emails.
- 2 The system must be designed to protect the confidentiality of the personal information of the participant who receives the information.
- 3 A participant receiving an electronically delivered document must, at the time the document is delivered, be provided with a notice explaining the importance of the document and the right to receive a paper copy of the disclosure.
- 4 Electronically delivered documents must be prepared in the style and format applicable to the particular disclosure.
- 5 Electronically delivered documents must contain all of the information required to be included in the particular disclosure.
- 6 Upon request, the participant must be provided a paper version of the document.

So long as these requirements are met, plan administrators have flexibility when providing information by electronic delivery methods. For example, a plan administrator may send, via electronic or paper mail, a link to the required information on a website.

<sup>4</sup> 29 CFR 2520.104b-1(c), 67 FR 17264 (April 9, 2002).

The **electronic disclosure safe harbor** from 2002 recognizes two categories of individuals who may receive documents electronically: participants who affirmatively consent and employees who are wired at work.

## ELECTRONIC DISCLOSURE SAFE HARBOR

### Affirmative consent

Before affirmatively consenting, a participant or beneficiary must receive a clear statement describing:

- The types of documents to which the consent would apply
- That consent can be withdrawn at any time without charge
- The procedures for withdrawing consent and for updating their address for receiving electronically delivered documents
- The right to request and obtain a paper version of an electronically delivered document, including applicable charges
- Any hardware and software requirements for accessing and retaining the documents

Additionally, if the disclosure documents are delivered over the internet, the participant or beneficiary must demonstrate the ability to access information by either consenting or confirming the consent electronically.

### Wired at work

This method is limited to current employees participating in a 401(k) or other retirement plan. To be wired at work:

- An employee must have the ability to effectively access electronic documents at any location where the employee performs duties as an employee
- Using the employer's electronic information system must be an integral part of the employee's duties

Because they use their employer's electronic system as a regular part of their employment, the DOL hasn't required the notice and system access safeguards that apply where participants and beneficiaries give affirmative consent to receive plan information electronically. In fact, it is an open question whether an employee who is wired at work may opt out of receiving plan information electronically.

**Note:** A common question asked about the wired at work method is if an employer may set up computer kiosks for employees who don't have computers at their desks. The DOL has consistently taken the position that mere "access" to a computer during working hours doesn't make employees wired at work.

**The electronic disclosure safe harbor effective in July of 2020** allows two additional methods for delivering retirement plan notices and documents electronically:

### Notice and access

Plan administrators may post covered documents on a website if appropriate notification of internet availability is furnished to the electronic addresses of covered individuals.

### Direct email delivery

Plan administrators may also send covered documents to the email addresses of covered individuals, with the covered documents either in the body of the email or as an attachment to the email. We won't support direct email delivery due to it potentially being a less secure option.

### Notice and access

Notice and access is a safe harbor for plan administrators to furnish "covered documents" to "covered individuals." Covered individual generally refers to a participant, beneficiary, or other individual who provides the plan administrator with an electronic address, at which covered documents can be delivered electronically. Covered document refers to those documents required to be furnished by ERISA and DOL regulations.

- Covered individuals must have a valid electronic address which includes an email or smart phone number.
- Covered individuals may request paper documents or may opt out of electronic delivery at any time, free of charge.
- Before using one of the electronic delivery methods, covered individuals must be provided with an initial notice on paper informing them of the electronic delivery method, the electronic address that will be used, and the right to opt out if they prefer.
- A Notice of Internet Availability (NOIA) must be provided each time a new covered document is made available via website posting. A plan administrator may furnish one annual NOIA that includes information about multiple covered documents, instead of sending multiple NOIAs throughout the year.
- Plan administrators must take reasonable steps to ensure the continued accuracy of the electronic address following termination of employment, or to obtain a new electronic address.

### Continuous access website

As of January 2022, plan administrators can no longer rely on making quarterly benefit statements available through one or more secure continuous access websites.

# IRS electronic media guidance

**Electronic media guidance** is the IRS's equivalent to the DOL's 2002 electronic disclosure safe harbor. These methods may be used to deliver most plan information required under the Internal Revenue Code, such as the 401(k) Safe Harbor and Auto Enrollment Notices.

IRS electronic media guidance provides two methods of electronic delivery of plan information. First, there is the general method, which has system, consent, and notice requirements that are substantially similar to the requirements under the DOL's electronic disclosure safe harbor on affirmative consent.

Second, the alternative method allows information to be delivered through any medium so long as the recipient has the effective ability to access. This includes electronic information delivery mediums such as email and websites. To rely on the alternative method, a plan administrator must, at the time information is delivered, notify participants that they may request, free of charge, a paper copy of the information. Plan administrators who are considering the IRS alternative method must determine that a proposed electronic delivery method will meet the effective ability to access test, but there is only limited guidance available for making this determination.

## **Here are some considerations:**

- In general, a plan administrator must have some evidence that the proposed information delivery medium will permit the participant to access the information. For example, the IRS has stated

that it will not be sufficient to send email to a participant's last known email address. It is also not clear whether a recipient will have the ability to effectively access an electronic medium if the recipient does not have a computer in their home.

- Employees may have the effective ability to access information through a worksite computer kiosk, even if not at their desk.
- Neither the IRS or DOL has commented on a scenario where an employer establishes an email account for every employee solely for the purpose of providing ERISA information electronically. With that said, the DOL's 2020 electronic disclosure safe harbor does say that in order to satisfy the rule's definition of a covered individual, an electronic address assigned to an employee by an employer must be for some employment-related purpose other than the delivery of covered documents.

Finally, the IRS electronic media guidance is, generally, considered less restrictive than the DOL's 2002 electronic disclosure safe harbor. This means that electronic delivery meeting the conditions of the DOL's safe harbor (the wired at work or affirmative consent methods) will generally satisfy the IRS electronic media guidance.

# Disclosure requirements and electronic delivery options

Below are some important disclosure requirements along with available electronic delivery options.

DISCLOSURE REQUIREMENT	DESCRIPTION OF REQUIRED INFORMATION	ELECTRONIC DELIVERY OPTIONS	JURISDICTION
Summary Plan Description (SPD) and Summary of Material Modifications (SMM) <i>29 CFR 2520.102 and 29 CFR 2520.104b-3</i>	The SPD provides a summary of the plan document and other key plan information. The SMM describes material changes to information furnished by the SPD.	<ul style="list-style-type: none"> <li>• Wired at work</li> <li>• Affirmative consent</li> <li>• Notice and access</li> <li>• Direct email delivery</li> </ul>	DOL
Summary Annual Report (SAR) <i>29 CFR §2520.104b-10</i>	The SAR is a summary of the annual financial report that most plans must file with DOL.	<ul style="list-style-type: none"> <li>• Wired at work</li> <li>• Affirmative consent</li> <li>• Notice and access</li> <li>• Direct email delivery</li> </ul>	DOL
401(k) Traditional Safe Harbor Notice <i>26 CFR §1.401(k)-3(d)</i>	The 401(k) Safe Harbor Notice provides information about a participant's rights and obligations under a Safe Harbor 401(k) plan.	<ul style="list-style-type: none"> <li>• IRS general method</li> <li>• Alternative method</li> </ul>	IRS
Quarterly Benefit Statement (QBS) <i>ERISA §105</i>	Quarterly statements providing information about the participant's account balance.	<ul style="list-style-type: none"> <li>• Wired at work</li> <li>• Affirmative consent</li> <li>• Notice and access</li> <li>• Direct email delivery</li> </ul>	DOL
Plan and Expense Information for Participant-Directed Plans <i>29 CFR 2550.404a-5(c)</i>	For participants in participant-directed plans, plan information, including information about plan fees and expenses. This information generally must be provided before enrollment and annually; some fee information is required quarterly and may be included in QBS.	<ul style="list-style-type: none"> <li>• Wired at work</li> <li>• Affirmative consent</li> <li>• Notice and access</li> <li>• Direct email delivery</li> </ul>	DOL
Investment Information for Participant-Directed Plans, provided in a table or other format that allows comparisons of plan investment options <i>29 CFR 2550.404a-5(d)</i>	Information about plan investment options, including performance and fees, must be provided before the participant's initial investment and at least annually, as set forth in the 404a-5 Regulation.	<ul style="list-style-type: none"> <li>• Wired at work</li> <li>• Affirmative consent</li> <li>• Notice and access</li> <li>• Direct email delivery</li> </ul>	DOL
Automatic Enrollment <i>Internal Revenue Code §§401(k)(13)(E) and 414(w)(4)</i>	For plans with automatic enrollment, a description of the plan and automatic enrollment process, including percentage of salary to be automatically deferred and the plan's default investment and how to opt out of or change the default elections.	<ul style="list-style-type: none"> <li>• IRS general method</li> <li>• Alternative method</li> </ul>	IRS
Qualified Default Investment Alternative (QDIA) Notices <i>29 CFR 2550.404c-5</i>	Notice to participants of the investment of their account in a default investment if the participant does not provide investment directions.	<ul style="list-style-type: none"> <li>• Wired at work</li> <li>• Affirmative consent</li> <li>• Notice and access</li> <li>• Direct email delivery</li> </ul>	DOL
Blackout Notice <i>29 CFR 2520.101-3</i>	A notice that a temporary suspension, limitation, or restriction on directing retirement funds, obtaining loans, or obtaining distributions, for more than three consecutive business days is going to be imposed.	<ul style="list-style-type: none"> <li>• Wired at work</li> <li>• Affirmative consent</li> <li>• Notice and access</li> <li>• Direct email delivery</li> </ul>	DOL
Unenrolled Participant Notice <i>SECURE 2.0, Sec. 320</i>	Annual reminder notice to unenrolled participants as defined in the Act of their eligibility to participate and the key benefits and rights under the plan, with a focus on employer contributions and vesting provisions.	<ul style="list-style-type: none"> <li>• Wired at work</li> <li>• Affirmative consent</li> <li>• Notice and access</li> <li>• Direct email delivery</li> <li>• IRS general method</li> <li>• Alternative method</li> </ul>	IRS / DOL (delivery options available pending further guidance)
Flexible Discretionary Match Communication <i>Program Requirement for Preapproved DC Retirement Plans</i>	Plan sponsors using a flexible discretionary matching formula must document the matching contribution(s) made for the plan year and inform eligible plan participants of the match through this participant communication.	Communication options may include distribution to eligible employees (i.e., those who receive a match allocation) by mail, as a payroll stuffer, hand delivered, or electronically*. The communication should not be posted in a break room, on a central bulletin board, or given to participants as part of the Summary Plan Description.	IRS
Other IRS Notices, e.g., Rollover Notice and Qualified Domestic Relations Order (QDRO)	Notices and disclosures required under IRS regulations in connection with certain events, e.g., reaching a certain age, leaving the plan or filing a QDRO with the plan.	<ul style="list-style-type: none"> <li>• IRS general method</li> <li>• Alternative method</li> </ul>	IRS

\* If the communication is delivered electronically, the system used must be accessible by the participants and designed to provide the communication in a way that is just as understandable as if it were in a paper document format.

At the time the communication is provided, the participant may be told that they can request and receive the communication in a paper document format at no charge.

# How Principal supports electronic delivery

Our standard package of plan administration services lets your participants access general plan information, as well as individual account balance information and benefit statements, on our secure website. Annual plan notices are provided to you and your participants securely on our website and you can easily decide within the notice delivery task to send notices electronically to participants.

Our electronic delivery systems allow you to reach as many participants electronically as possible by complying with any one of three DOL safe harbor methods and IRS rules. In cases where we don't have a participant's affirmative consent, or a work email address that complies with wired at work, notice and access will be followed.

Initially, participants will be sent a paper notice if we have an email address on file for them. We'll share the email address we have on file and notify them of the plan administrator's intent to use it to deliver their documents electronically. This will happen automatically.

- If we don't have an email address for a participant or the email address we have on file is undeliverable, we'll send the participant a paper copy of their retirement benefit statement until we receive an email address that is valid.
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- For plan notices, you'll continue to notify participants as you do today unless you have chosen Principal to do so within the notice delivery task.

## We're here to help

We hope this information has helped explain the options for delivering information electronically to participants and beneficiaries. If you have questions, please contact your local Principal representative.

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