

DOL Lets Retirement Plans Make Disclosures Via Email

By Emily Brill

Law360 (May 21, 2020, 11:18 AM EDT) -- The U.S. Department of Labor on Thursday unveiled the final version of a long-awaited electronic disclosure rule allowing companies to make email their default delivery mechanism for benefit plan documents, a move the agency says will save employers \$3.2 billion over the next 10 years.

The proposal, introduced in October, faced pushback by workers' advocates who feared it would limit access to benefit information for non-tech-savvy workers or workers without access to technology.

But employers roundly praised the rule, which they considered among last year's most promising DOL developments, and called it a welcome modernization of the DOL's disclosure policies.

The DOL will publish the final rule in the Federal Register on May 27, it said.

The rule allows plan administrators to "use electronic media, as a default, to furnish information to participants and beneficiaries of plans subject to the Employee Retirement Income Security Act of 1974," according to an unpublished version of the rule the DOL made available Thursday.

The DOL noted that the rule, which is scheduled to go into effect this summer, should be particularly helpful to employers facing logistical roadblocks to sending mass mailings during the COVID-19 pandemic.

Morgan Lewis & Bockius LLP benefits associate Elizabeth S. Goldberg mentioned those challenges when praising recent DOL guidance that assured plan administrators they wouldn't be penalized for sending information to plan participants electronically during the pandemic.

"Shops that clients go to for mass mailings are not open," Goldberg said.

The electronic disclosure rule makes permanent the relief that the guidance made available during the pandemic, changing the default plan document format from physical to digital.

The rule specifies that employers can "furnish disclosures via email" or make disclosures available on a website.

The rule doesn't change the type of information that employers must provide, but it allows plan administrators to "develop new formats and content for electronic disclosures" if they wish.

"Such formats could include more interactive content, with hotlinks and multimedia presentations, which might improve the quality and accessibility of information," the rule states. "DC account information often is available continuously and updated in real-time, which may help participants to effectively manage their accounts."

The DOL is giving employers whose e-delivery procedures rely on prior agency guidance 18 months to transition to complying with the rule, according to the unpublished Federal Register document.

--Editing by Alyssa Miller.

Update: This story has been updated with more details about the rule.