

Electronic Disclosure Relief Is On Its Way!

10.30.2019

On October 23, 2019, in response to Executive Order 13847, the Department of Labor proposed new regulations for the electronic disclosure of pension plan documents. The proposal creates a new safe harbor for electronic disclosures that can be made in addition to, or in lieu of, the 2002 safe harbor.

The new safe harbor has a "notice and access" structure where "covered individuals" must be provided notice that pension plan documents are on the web. Under the proposed regulation, a "covered individual" is any participant or beneficiary who provides the employer with an email address (even if it is an employer provided email address) or a smartphone number. Any pension plan document or notice required to be provided under ERISA (i.e. summary plan descriptions, summary annual reports, statements of material modifications) are eligible for electronic disclosure. It should be noted that this regulation does not apply to welfare plan documents (yet).

Prior to taking advantage of this safe harbor, plan administrators must provide (in paper) an initial notice to participants and beneficiaries that it intends on providing future plan documents and notices in electronic format, and provide the individuals the opportunity to choose to still receive paper documents. Once this initial notice has been sent, the plan administrator can satisfy the disclosure requirements by issuing an electronic notice (by email or to a smartphone) to each participant and beneficiary that the plan document is available on the employer's website (or website of the third party administrator). The document must be available on the website the same day as the notice is provided. The electronic notice must also inform the individuals that they are

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Margaret C. Hershiser

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entitled to receive a paper copy of the document, without charge, and who to contract to request the document.

The proposed regulation is open for comment until November 22, 2019 and will be effective sixty (60) days after the final regulation is published. We'll keep you posted as this develops.