Compliance Alert

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PROVANT

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DOL Proposes New Electronic Disclosure Safe Harbor for Group Health Plans

On July 23, 2026, the DOL's Employee Benefits Security Administration (EBSA) published a proposed rule that would create a new, optional electronic disclosure safe harbor for group health plans, modeled closely on the "notice and access" safe harbor already available to retirement plans since 2020. **Note, this is a proposed rule, so the safe harbor will not be available for use until the rule is final.**

If finalized, this gives group health plan administrators a third option for satisfying ERISA's disclosure requirements, in addition to (not instead of) the current options of:

- The 2002 electronic disclosure safe harbor (available to participants who are "wired at work" or who affirmatively consent to electronic delivery), or
- Traditional paper delivery.

Applies To: Employer of any size sponsoring ERISA group health plans, whether fully-insured, self-insured, or level-funded (note the proposal may not impact non-group health plans such as life or disability insurance)

Go Deeper:

Group health plans have largely been left out of the more flexible approach of defaulting to electronic delivery that retirement plans have used since 2020. The DOL points to high rates of internet and smartphone use among the general population as justification for extending that same approach to group health plan disclosures. The DOL further advised, it has consulted with HHS and the Treasury Department in developing the proposal.

How the New Safe Harbor Would Work, if Finalized

- **Default Electronic Delivery:** Any participant, beneficiary, or eligible adult dependent (age 18 or older) providing an electronic address (email or mobile number) would be a "covered individual" who could receive disclosures electronically by default, without needing to be "wired at work" or providing the formal affirmative consent required under the 2002 safe harbor. If the employer provides an employee an email address for work, that can be used for this default electronic delivery method.

WHAT'S NEW

- On July 23, 2026, the DOL proposed a new optional electronic disclosure safe harbor for group health plans, modeled on the retirement plan rule used since 2020. Still just a proposal, not yet in effect.
- If finalized, anyone 18+ who provides an email or mobile number becomes a "covered individual" eligible for default electronic delivery, no formal consent needed. Plans would post documents online and send a notice rather than emailing them directly.
- Paper copies and opt-outs remain available on request; COBRA notices may see limited benefit given existing delivery requirements.

TAKEAWAY

No action needed now. Continue current disclosure practices while the comment period runs and a final rule is pending.

- **Broad Scope of Documents:** The safe harbor would apply to essentially any document a group health plan is required to furnish under Title I of ERISA, including SPDs, SMMs, SARs, COBRA notices, HIPAA Notice of Special Enrollment Rights, and other Part 7 disclosures, including documents that must be furnished only upon request.

  Note, the COBRA notice requirements often cannot be met electronically due to the requirements to provide certain notices to spouses, dependents, and terminated employees. So the inclusion of COBRA here may be of limited utility.

- **Notice of Internet Availability (NOIA):** Plans would post covered documents on a website or online portal and send a separate electronic notice alerting individuals that a document is available, with specific required content.
- **No Delivery Through the Body of an Email:** Unlike the retirement plan safe harbor, this proposal would not allow documents to be sent directly within an email message, due to concerns about the sensitivity of health information.
- **Paper Rights Preserved:** Individuals would retain the right to request a free paper copy of any document at any time, and the right to opt out of electronic delivery entirely, free of charge.
- **Transition Protections:** Plans would still be required to send an initial notice describing the shift to electronic delivery and the individual's rights, and take reasonable steps to keep electronic addresses accurate, including after an employee's severance from employment.

Practical Impact to Employers:

Because this is only a proposed rule:

- No action is required at this time, and plans should continue following their current disclosure practices under the existing 2002 safe harbor or paper delivery.
- The comment period is open for 60 days following publication in the Federal Register. We will continue to monitor this rulemaking and update you when a final rule is issued, including the confirmed applicability date.

Once (and if) finalized, this will be an optional safe harbor. Plans that prefer to continue using the 2002 safe harbor or paper delivery will be able to do so.

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