

# DOL Provides Interim Relief on SECURE 2.0 Paper Statement Rules While Final Regulations Remain Pending



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The recent Department of Labor (“DOL”) guidance on the SECURE 2.0 Act of 2022 (“SECURE 2.0”) paper statement requirement provides welcome short-term relief for retirement plan administrators. At the same time, it underscores that plan sponsors should begin evaluating their electronic disclosure practices now.

On May 12, 2026, the DOL issued Field Assistance Bulletin 2026-02 (“FAB 2026-02”), announcing a temporary nonenforcement policy for plans that comply in good faith with a reasonable interpretation of the DOL’s February 2026 proposed regulations titled *Requirement to Provide Paper Statements in Certain Cases- Amendments to Electronic Disclosure Safe Harbors* (<https://www.federalregister.gov/documents/2026/02/25/2026-03723/requirement-to-provide-paper-statements-in-certain-cases-amendments-to-electronic-disclosure-safe>) (the “Proposed Rule”). The FAB follows the DOL’s proposed amendments to its 2002 and 2020 electronic disclosure safe harbors, which were issued earlier this year to implement Section 338 of SECURE 2.0.

## Background

*ERISA Required Disclosures.* Title I of the Employee Retirement Income Security Act of 1974 (“ERISA”) requires plan administrators to furnish numerous disclosures to participants and beneficiaries. Historically, these disclosures were delivered in person or by mail, consistent with ERISA’s general standard that disclosure methods must be “reasonably calculated to ensure actual receipt of the material.” Over time, however, electronic delivery has become increasingly common.

Among these required disclosures are periodic pension benefit statements under Section 105(a) of ERISA. The required delivery frequency of these statements depends on the type of retirement plan. Participant-directed defined contribution plans must furnish benefit statements quarterly, while non-participant-directed defined contribution plans must furnish them at least once each year. Defined benefit plans generally must provide benefit statements at least once every three years to certain participants with vested accrued benefits. These statements must include, among other information, the participant’s or beneficiary’s accrued benefit.

*The 2002 and 2020 Safe Harbors.* To facilitate electronic disclosure, the DOL issued two electronic delivery safe harbor regulations: the 2002 Safe Harbor[1] and the 2020 Safe Harbor[2]. Both regulations describe circumstances under which electronic delivery will be deemed compliant with ERISA’s actual receipt standard.

The 2002 Safe Harbor established safeguards for electronic disclosure for two categories of participants and beneficiaries. The first category covers “wired-at-work” individuals whose employment duties enable them to effectively access electronically furnished disclosures as an integral part of their jobs. The second category consists of individuals who affirmatively consent to electronic delivery and do not withdraw that consent. Individuals in the second category have the right to fully opt out of electronic delivery by withdrawing consent. Although wired-at-work individuals may request paper copies of disclosures, the 2002 Safe Harbor does not require that they be given the right to opt out of electronic delivery entirely.

As an alternative to the 2002 Safe Harbor, the DOL established the 2020 Safe Harbor. The 2020 Safe Harbor allows retirement plans to furnish covered disclosures electronically by default to individuals who provide a valid electronic address, such as an email address or smartphone number. For employees, an employer-assigned email address may satisfy this requirement. Unlike the 2002 Safe Harbor, eligibility under the 2020 Safe Harbor does not depend on whether an individual is wired-at-work or has affirmatively consented to electronic delivery.

The 2020 Safe Harbor permits two primary methods of electronic disclosure. First, plans may use a “notice-and-access” approach, under which participants receive an electronic notice informing them that a disclosure is available on a continuously accessible website, along with a hyperlink to the document. Second, plans may deliver disclosures directly by email, either in the body of the message or as an attachment. Before relying on either method, plan administrators must furnish an initial paper notice explaining that disclosures will be provided electronically going forward and informing participants of their right to opt out of electronic delivery free of charge.

*SECURE 2.0’s Paper Statement Requirement.* Section 338 of SECURE 2.0 amended Section 105(a)(2) of ERISA by adding new Section 105(a)(2)(E) to require, with two exceptions, at least one paper benefit statement each calendar year for defined contribution plans and at least one paper benefit statement every three calendar years for defined benefit plans. These statements do not need to be furnished on paper if they are delivered electronically under the 2002 Safe Harbor or because the participant or beneficiary has requested electronic delivery. The statute also directed the DOL to update the 2002 Safe Harbor and the 2020 Safe Harbor to reflect these new paper delivery requirements.

*Proposed Changes to the 2002 Safe Harbor.* Under the Proposed Rule, retirement plans using the 2002 safe harbor to electronically furnish pension benefit statements that otherwise would be required to be provided on paper would need to provide a one-time initial paper notice to participants and beneficiaries who first become eligible on or after January 1, 2026. The notice would need to be furnished before any electronic delivery of a covered pension benefit statement and would need to inform recipients of their right to request that all ERISA Title I required disclosures be furnished in paper form.

Importantly, the proposed initial notice requirement and related opt-out right are narrow in scope. They would apply only to newly eligible participants and beneficiaries and only where the plan elects to furnish the otherwise paper-required pension benefit statement electronically under the 2002 Safe Harbor. Accordingly, if a plan furnishes the required pension benefit statement on paper, the proposal would not require the one-time initial notice, even if other ERISA disclosures continue to be provided electronically.

The Proposed Rule also coordinates the new initial paper notice requirement with the 2002 Safe Harbor’s existing affirmative consent rules to avoid duplicative disclosures. Under the Proposed Rule, an existing advance consent statement provided to participants who affirmatively consent to electronic delivery could

satisfy the new initial notice requirement, but only if the advance statement is furnished on paper. As a practical matter, the DOL noted that the new paper notice requirement would therefore primarily affect wired-at-work participants who receive electronic disclosures without affirmative consent.

The DOL requested comments on the scope of the proposed amendments, including the interaction between the new initial notice requirement and the existing safe harbor provisions.

### **Proposed Changes to the 2020 Safe Harbor**

Section 338 of SECURE 2.0 contains five directives to the DOL to update its “applicable guidance governing electronic disclosure” other than the 2002 Safe Harbor, which the DOL has interpreted as referring to the 2020 Safe Harbor. These directives address, among other things, participants’ ability to elect electronic delivery in lieu of required paper statements, required disclosures accompanying paper and electronic statements, prohibitions on fees for paper statements, and the permissibility of furnishing duplicate electronic copies of paper statements.

Under the Proposed Rule, retirement plans generally could no longer rely on the 2020 Safe Harbor to electronically furnish the annual paper pension benefit statements required under ERISA Section 105(a)(2)(E), unless a participant affirmatively elects electronic delivery. Other required benefit statements, such as the remaining quarterly statements for participant-directed defined contribution plans, could still be delivered electronically under the 2020 Safe Harbor.

The Proposed Rule would also require plans using the 2020 Safe Harbor to give participants and beneficiaries the opportunity to opt into electronic delivery of otherwise-required paper benefit statements. To facilitate that election, each required paper statement would need to include an explanation of how to request electronic delivery, along with contact information for the plan sponsor, plan administrator, or another designated plan representative, including a telephone number.

In addition, the Proposed Rule would prohibit plans from charging fees for paper pension benefit statements requested by participants or beneficiaries. The DOL explained that this change is intended to align the safe harbor with SECURE 2.0’s prohibition on fees for paper statements.

Finally, the DOL declined to propose amendments implementing certain other SECURE 2.0 directives because, in its view, the current 2020 Safe Harbor already satisfies those requirements. Specifically, the DOL concluded that the existing 2020 Safe Harbor already adequately explains participants’ rights to opt out of electronic delivery and receive paper copies, and permits plans to furnish duplicate electronic copies of paper statements.

### **DOL’s Temporary Nonenforcement Relief**

Although the Proposed Rule provides that the DOL will not take enforcement action against plan administrators that comply in good faith with a reasonable interpretation of its provisions, the DOL issued FAB 2026-02 in response to concerns from plan sponsors and service providers regarding compliance before final regulations are issued. Under FAB, the DOL states that it will not take enforcement action against plan administrators that comply in good faith with a reasonable interpretation of either the Proposed Rule or Section 105(a)(2)(E) of ERISA.

The timing of the FAB was particularly significant because many calendar-year defined contribution plans were preparing to distribute first-quarter 2026 benefit statements by mid-May.

### **Practical Considerations for Plan Sponsors**

FAB 2026-02 provides helpful interim relief, but it does not eliminate the need for plan sponsors to prepare for eventual final regulations. Until the DOL finalizes the rules, retirement plan administrators should continue monitoring developments and ensure that their disclosure practices are supported by a reasonable, well-documented good-faith interpretation of SECURE 2.0 and the Proposed Rule.

Although the Proposed Rule is framed as a relatively narrow set of amendments implementing SECURE 2.0, it could require meaningful operational adjustments for plan sponsors and service providers, and plan sponsors may wish to:

- identify whether their disclosure procedures rely primarily on the 2002 Safe Harbor or 2020 Safe Harbor;
- determine whether recordkeepers can distinguish between newly eligible participants and existing participants;
- evaluate whether systems can track participant elections regarding paper versus electronic delivery;
- review vendor agreements addressing printing and mailing responsibilities; and
- document their interim compliance approach while final regulations remain pending.

The Proposed Rule also may create incentives for some employers to reconsider which safe harbor they use. In particular, the DOL requested comments on whether plans may shift from the 2020 notice-and-access framework back to the 2002 wired-at-work Safe Harbor for active employees in light of the new paper statement requirements.

We will continue to monitor the Proposed Rule and related DOL guidance rulemaking process, and keep you advised of any significant developments.

[1] 29 CFR 2520.104b-1(c).

[2] 29 CFR 2520.104b-31.

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