



DWC News Update:

eDisclosures: Covered Documents

The Department of Labor's new rules that expand the electronic distribution of plan-related notices is a long-overdue and welcome change. We have provided a [summary](#) of the new eDisclosure rules and taken a closer look at the details on [electronic addresses and internet websites](#). In this episode of eDisclosure, we explore which documents are now allowed to be distributed electronically.

Identifying Covered Documents

This is one area where things are actually relatively simple...a rarity for retirement plan rules. When a rule is meant to be broad in its coverage, it is not uncommon to start with a blanket rule and then carve out the exceptions rather than attempting to list each individual item and risk missing something. Since the DOL's intent with this new eDisclosure rule was to make it as broad as possible, that is the approach they have taken here.

Blanket Rule

DOL defines a "covered document" as any document or information required to be distributed under ERISA. It doesn't get much broader than that. As a quick illustration that DOL really does want this to apply to as many situations as possible, let's take a quick look at the word "information." That word did not appear in the proposed version of these new rules. However, since some items, such as certain aspects of the participant-level fee disclosures, might not take the form of an actual "document," DOL specifically added the word "information" to make it clear that those types of items are still covered.

With that blanket rule in place, let's look at the exceptions.

That's Not Covered!

Let's start with the more straight-forward items that are carved out of this new rule:

- **Welfare Plan Disclosures:** The preamble to the regulations makes it clear that they apply only to retirement plans and not to welfare benefit plans such as those providing disability benefits or group health plans. However, DOL did leave this door open by reserving a section of the ruling to potentially cover welfare benefit plans in the future.
- **IRS Disclosures:** This is a DOL ruling, so it only applies to items under its purview. That means IRS notices are not covered. Examples include the annual [safe harbor notice](#), [automatic enrollment](#) notice, and special tax notice for participant distributions, just to name a few. With that said, the preamble notes that items authorized by the Treasury Secretary would be covered and that the Treasury Department/IRS are considering their own regulatory actions on electronic disclosure.

Finally, the other explicitly excluded items are those that **must** be furnished **only** upon participant request. This one can be a bit tricky to explain. There are certain items, such as the summary plan description, that sponsors are required to automatically provide to all participants but that must also be provided again if a participant asks. Don't panic; those types of disclosures are covered. The carve out here is for items that are only provided on request. Examples would include things like a copy of the plan document or trust agreement, among others.



Conclusion

There you have it. As you can see, it's far easier to spell out the items that are not covered, which is a relatively short list. Beyond those items, any document or information that ERISA requires plan sponsors to distribute to participants is covered by these new eDisclosure rules. Pretty short and to the point, at least by regulatory standards.

Join us for our next episode when we discuss the initial paper notice sponsors must provide before availing themselves of the new rules as well as the newly created Notice of Internet Availability (NOIA). We know you are on the edge of your seat.



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