



DWC News Update:

# eDisclosures: Initial Notice & Notice of Internet Availability

Welcome to the exciting conclusion of our foray into the brave new world of eDisclosures. Today, in our final look at the [DOL's new eDisclosure ruling](#), we will breakdown the Initial Notice and the Notice of Internet Availability (NOIA – because we need a new acronym).

## Quick Overview

The initial notice, as the name suggests, is the first notification that must be provided to covered individuals before they can begin receiving any electronic disclosures. It must be provided on paper and is designed to provide an alert to covered individuals that all future disclosures will be furnished electronically.

The entire purpose of the NOIA is to inform covered individuals each time a new covered document is available for their review on an “[internet website](#).” The document must be provided on its own and should be delivered electronically. There is some nuance to the timing and specific content that must be included with each NOIA, so let us dive in and see if we can break it down.

## Initial Notice

The function of the initial notice is to provide covered individuals with a paper copy of a formal notification, outlining that things are changing. The paper copy must be provided, regardless of whether the covered individuals are currently receiving electronic disclosures under the old rules.

The initial notice must include the following information:

- The specific electronic address to be used for each participant. So, this sucker will have to be customized for each covered individual and cannot be a generic template.
- A statement of the participant's right to request hard copies or opt out of the electronic delivery altogether. The sponsor must also provide specific instructions for doing so.
- Any additional instructions for accessing covered information. For example, creating an account or downloading an app.
- Caution regarding the one-year availability of covered documents on the internet website.

Plan sponsors are free to further personalize the initial notice as long as any additional content is “relevant and not inaccurate or misleading.” They are also permitted to include the initial notice with other plan enrollment materials or even with onboarding paperwork provided to new hires.

## Notice of Internet Availability (NOIA)

Generally, the NOIA must be furnished each time a new covered document is made available on the website, which must follow the same deadlines that would apply if those documents were being provided the old-fashioned way. In other words, if the regular deadline to provide a certain disclosure is October 15<sup>th</sup> of a given year, that document must be posted to the website and a NOIA provided by that same date.



## Combined Annual NOIA

Fortunately, the DOL recognizes that “notice fatigue” can be a concern. To address that, the final ruling allows plan sponsors to provide a single, annual NOIA to combine the following items:

- Summary plan description,
- Any covered document required to be provided annually and that does not require participant action (e.g. QDIA notice, summary annual report, participant fee disclosure, etc.),
- Additional covered documents as may be authorized by the Secretary of Labor, and
- Additional covered documents as may be authorized by the Secretary of the Treasury (hopefully automatic enrollment and safe harbor notices).

After the first combined NOIA, subsequent ones must be provided no more than 14 months later. The extra two-month grace period is to allow sponsors to provide the combined NOIA on or around the same date each year rather than having to “back up” the deadline to meet a strict once-per-year requirement. This does not change the timing requirements for the disclosures to be sourced on the website. Each covered document must still be made available on the website no later than the deadline that would otherwise apply, e.g. October 15<sup>th</sup> in our above example.

## Exclusions from Combined NOIA

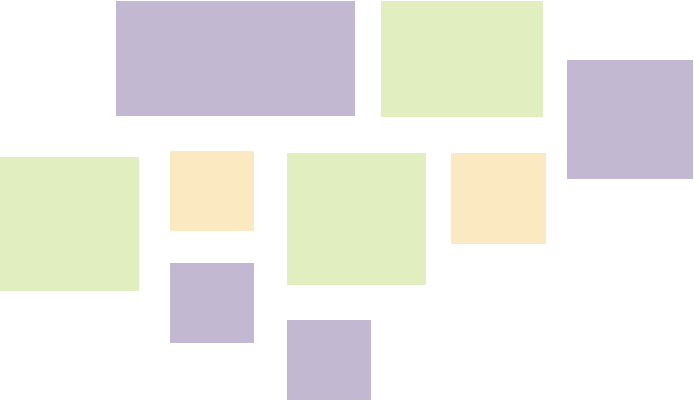
The intent of the combined NOIA is to provide covered documents that are the most common and recurring disclosures, which are triggered merely by the passage of time. As a result, several required disclosures cannot be combined and must be accompanied by their own NOIA. These include the following:

- Items that invite specific and timely action from the participant (e.g. blackout notices),
- Irregular or transaction-based disclosures,
- Qualified domestic relations order determinations, and
- Quarterly benefit statements.

## NOIA Content

Although the new eDisclosure rules are generally quite broad in their definitions and application, the content of the NOIA is an area in which DOL gets a little more specific. Here is a quick rundown of what **must** be included:

- A subject line that reads specifically “Disclosure About your Retirement Plan.”
- An additional statement that reads specifically “Important information about your retirement plan is now available. Please review this information.”

- 
- Identification of the covered document(s) by name and, if not obvious based on the name, a brief description of the content.
  - The URL of or hyperlink to the information. This link must lead the covered individual either directly to the covered document or to a login page that, once logged in, will provide the covered document.
  - A statement that explains the participant's right to request a paper version of the covered document free of charge, and an explanation of how to make the request.
  - A statement outlining the participant's right to opt-out of the electronic delivery, and an explanation of how to make the request.
  - Caution that the covered document is not required to be available for more than a year, or if later, the date document is superseded by another version.
  - A phone number to contact the administrator or representative of the plan.

Note that a participant is only entitled to a single hard copy of a given notice at no charge. If the same participant requests a second copy of the same item, the plan must provide it but is permitted to charge a reasonable fee to cover the associated cost.

The NOIA can, but is not required to, identify whether or not participant action is required (or invited); however, DOL is clear to point out that any such language must be clear, accurate, and not misleading – which is a common theme throughout the ruling's language on NOIAs.

Because the notice is specifically intended to alert participants that certain disclosures are available online, DOL wants to make sure the information is not convoluted or littered with distracting images or marketing materials. They did state that plan sponsors can use logos, graphics, or other design elements; however, it cannot distract participants from the purpose of the notice. DOL's goal with this notice is that it be clear and concise.

Though not part of the regulation itself, the DOL mentions in the preamble, examples of language that could be confusing and should, therefore, be avoided. These included things like highly technical, legal jargon, lengthy sentences, or double negatives.

## Conclusion

The DOL took a very common-sense approach in writing a broad ruling that now allows plan sponsors to more easily provide notices electronically. This will certainly save millions of dollars (and quite a few trees) that are otherwise spent on delivering paper notices.

Please reach out to our [DWC Team](#) if you have questions about how this new rule might impact you.



**Want to get articles just like this one delivered to your inbox weekly?**

[Subscribe](#) to receive regular updates from the [DWC 401\(k\) Q&A blog](#).

Helpful insights without the junk, delivered on your schedule.