On Oct. 22, 2019, the U.S. Department of Labor (DOL) announced a proposed rule to allow plan sponsors to post retirement plan disclosures online, reducing the financial and physical cost to plan participants while making disclosures more readily accessible and useful. Under the proposed rule, a plan could furnish documents electronically to plan participants and beneficiaries with valid electronic addresses unless they affirmatively opt out of electronic delivery.

The old e-disclosure rule

Current DOL rules allow e-disclosure of certain retirement plan information but significantly restrict this delivery method to employees who are wired at work and participants who affirmatively opt in to electronic communications. These rules date back to 2002, a time before smartphones, apps and high-speed internet existed, and when more than 50% of rural America had no internet access. Plan sponsors have long pushed for updated rules, and in 2018, President Trump issued an executive order directing the DOL to consider ways to expand use of electronic delivery and streamline communications to participants. That executive order gave the DOL a one-year deadline for coming up with a solution.
The new e-disclosure rule

Under the new DOL rule, retirement plans would satisfy their obligation to furnish ERISA-required disclosures by making the information accessible online and by furnishing to participants and beneficiaries a notice of internet availability of these disclosures. The plan sponsor would send the notice of internet availability to the participant’s email address and must include a brief description of the document being posted online, a website address where the document is posted, and instructions for requesting a free paper copy or electing paper delivery in the future. In addition, the notice of internet availability must be sent each time a retirement plan disclosure is posted to the internet website.

Limitations of the new rule

The DOL did not issue a carte blanche rule. It has several limitations. Most notable, the rule is limited to retirement plans and does not provide helpful guidance to health and welfare plan disclosures. In addition, a plan may not default a participant into electronic delivery unless the participant has an electronic address. The rule also prevents a plan from defaulting a participant into electronic delivery without first notifying the participant by paper:

- That some or all retirement documents will be furnished electronically to the electronic address, and
- Of the right to request and receive paper copies or to opt out of electronic delivery altogether, and of the procedures for exercising such rights.

There are approximately 700,000 retirement plans covered by ERISA.

A survey of DC plan recordkeepers finds that the average cost for printing and mailing a single notice of four pages to one person is roughly $0.80, which if mailed just once to all 80.3 million 401(k) plan participants would add up to more than $64 million. With an average of a minimum of six mailings per year, total printing and mailing costs could exceed $385 million.

The DOL expects that the proposed rule would result in cost savings of approximately $2.4 billion in the next ten years for ERISA-covered retirement plans by reducing printing and mailing costs.
Even for participants for whom a plan can default to e-disclosure, every notice of internet availability must remind the participant of the right to request and receive paper, of the right to opt out of electronic delivery altogether, and the procedures to exercise such rights. The rule also creates obligations on the plan to recognize system failures; for example, if the notice goes to an invalid or inoperable email address, the plan must treat the individual as opting out of electronic delivery if the problem is not promptly cured. Finally, when a participant terminates employment, the plan must take steps to ensure the continued accuracy of the electronic address on file, which in light of a void of any missing participant guidance from the DOL, could present challenges.

Next steps

The DOL’s proposed rule is open to a 30-day public comment period. After reviewing the comments received, the DOL will determine what, if any, changes it will make to the proposed rule. In an optimistic timeline, plans may be able to implement the new rule for their 2020 plan years beginning in January. We suggest opening discussions with your plan recordkeeper now to determine how their systems will implement these changes and when that may be able to occur. Lockton Retirement Services will continue to monitor the progress and keep you informed. Should you have any questions, please contact your Lockton Retirement Services team.
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