

DOL Notice Requirements: Electronic Disclosure

By: John Kirk on May 22, 2020 on graydon.law

Among the many pages of DOL issued guidance and relief for plan sponsors one provision has avoided a lot of attention. In Notice 2020-21, discussed in some of our other [blog posts](#), in addition to the extension of certain time frames, the DOL provided an extension of deadlines for providing retirement and welfare plan notices to participants.

The Notice provides “**good faith**” relief for furnishing certain required notices or disclosures to plan participants and beneficiaries between March 1, 2020, and 60 days following the announcement of the end of the COVID-19 national emergency (“Outbreak Period”). Specifically, it permits a broader use of electronic methods of distribution by stating that “**good faith**” includes a plan fiduciary attempting to communicate with participants and beneficiaries who it believes has access to e-mail, text, and continuous access to websites.

This is a significant (though temporary) expansion of the DOL’s electronic distribution rules. However, just yesterday the DOL also issued a final permanent rule providing new electronic disclosure rules for retirement plans (blog post will follow on those rules). This post focuses on the temporary relief that you can rely upon right now.

In order to qualify for this relief, the plan must act in “good faith” to furnish the notice or disclosure as soon as administratively practicable under the circumstances. Because the relief allows the use of text, email, and website posting, “as soon as administratively possible” is likely very close to or on the actual required disclosure date. The relief includes, but is not limited to, the following ERISA disclosures if they must be provided during the Outbreak Period:

- Annual Funding Notices
- Summary Annual Reports (“SARs”)
- Summary Plan Descriptions (“SPDs”)
- Summaries of Material Modifications (“SMMs”)
- QDRO notices
- Summary of Benefits and Coverage (“SBCs”)
- Periodic pension benefit statements

- Participant Disclosures in Connection with a Participant-Directed Retirement Plan including General Plan Information, Plan Fee Information and Comparative Designated Investment Alternative Information
- Qualified Default Investment Alternative (“QDIA”) Notices
- Mapping Notices
- Notices of Adverse Benefit Determinations and Appeals

This temporary relief will be very welcome to plan sponsors. If you should have any questions regarding this “good faith” relief or any of the recent DOL/IRS COVID-19 related relief, please contact any of Graydon’s employee benefits team.