

# Lift Retirement

NEWS AND INFORMATION FOR **EMPLOYERS**

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2021

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# ERISA Update: 5 Big Changes Plan Sponsors Need to Know



What's on the ERISA agenda for 2021? Here are 5 important changes that plan sponsors should be paying attention to.

#ERISA #CARESAct #cybersecurity  
#edisclosures #lifetimeincome



**If navigating a worldwide pandemic weren't enough, the world of employee benefits continues to throw curve balls at employers and plan sponsors who must constantly keep up. Below are 5 big changes that retirement plan decision-makers should know about.**

## 1. How far will retirement savings go

**All defined contribution (DC) plan benefits to be expressed as lifetime income.** The SECURE Act requires that participant account balances in DC plans be expressed as both a life annuity and a qualified joint and survivor annuity ("QJSA"). A new DOL regulation applies the rule to defined contribution plans, whether or not they in fact provide annuities as a form of distribution.

Each benefit statement issued after September of 2021 must contain the required disclosures. The new disclosures must be made once every 12 months. So long as they are fully in accordance with the new regulation, plan sponsors, fiduciaries and others are shielded from any liability arising from such disclosures.

## 2. Pooled Employer Plans are coming

**Is their strength in numbers or is it better to stay independent?** One mission of the SECURE Act is to expand retirement savings. One of the ways in which that statutory purpose is achieved is through conditionally permitting groups of unrelated employers to form a new shared retirement plan called pooled employer plans (PEPs).

Among other requirements, PEPs must designate a pooled plan provider (PPP) to serve as a named fiduciary and plan administrator. Additionally, the PPP must register with the Department of Labor and the Treasury Department before beginning operations. It is anticipated that those participating in a PEP will save on administrative costs as only one Form 5500 will be filed. This will be a developing topic for 2021, and we will keep you informed.



### 3. CARES Act follow up

**What is one more long-haul impact of the pandemic?** The CARES Act, passed in response to the COVID-19 crisis, created many new features for retirement plans including special COVID-related loans and distributions. These and other changes are allowed without formal amendments to plan documents. Plan sponsors must ensure that plans are properly amended per CARES Act rules.

Additionally, a unique feature of COVID-related distributions presents a challenge to plan sponsors. Special attention may be required. Given the three-year window available to pay back COVID distributions to a qualified plan, it is possible that plan sponsors may be asked that COVID distributions from another plan be allowed into their plan, because the participant has a new employer (you) since taking the COVID related distribution. Plan sponsors should have a process in place to address this unique situation.

### 4. 401(k) Cyber theft causes ongoing litigation

**How should you digitally protect your retirement plan?** In a recent court case, *Bartnett v. Abbott Laboratories, et al.*, a plan participant who had assets stolen from their retirement account by a sophisticated cybercriminal, sued both the plan sponsor and the third-party administrator. The lawsuit raises important and unique questions about whether ERISA's fiduciary duties can be breached under such circumstances and how applicable state laws interact with ERISA's regime.

Plan sponsors should pay close attention to such lawsuits to understand how the law develops and any new best practices. Plan sponsors should also be asking questions to their insurance brokers to find out whether insurance coverage is available to cover cybercrime, as it appears not to be slowing down. For more best practices on cybersecurity, contact us for a helpful checklist: *Hacked, how protected is your company's 401(k) plan?*

### 5. Should the paper company be worried?

**E-disclosure regulation permits web posting and email delivery of retirement plan documents.**

Retirement plan administrators who want to use electronic media as a default to furnish covered documents to covered individuals now have a safe harbor via new DOL regulations.

There are two options for electronic delivery: website posting and email delivery. Previous safe harbor guidance on electronic disclosures remain available to plan sponsors who want to keep relying on it. For more information on e-disclosure, read our article, *Think Green: Have you considered 401(k) e-disclosures?*

Plan sponsors are constantly bombarded with legislative and regulatory changes, as well as court opinions that affect how they run their benefit plans. To make sense of it all, plan sponsors should seek out qualified advisors to assist with their compliance needs. Contact us today to discuss how these changes may impact your plan.



## Think Green: Have You Considered 401(k) e-Disclosures?



Mail or email? Learn about the new Department of Labor's e-disclosure safe harbor rule and how employers might "think green" by transitioning to fully electronic delivery of 401(k) plan disclosure materials.

**#401k #DOL #Retirement #SafeHarbor  
#Compliance #ERISA #Environment #Green**

Anyone who has received stacks of mailed booklets, leaflets or other paper 401(k) disclosure materials might be cheering about the Department of Labor's (DOL) recent rule that expands employer options for delivering retirement plan documents online.<sup>1</sup>

The *Electronic Disclosure Safe Harbor for Retirement Plans* went into effect July 27, 2020 as a "voluntary safe harbor for retirement plan administrators who want to use electronic media, as a default, to furnish covered documents to covered individuals, rather than sending potentially large volumes of paper documents through the mail."<sup>1</sup>

This has many employers "thinking green" and considering a transition to a fully electronic delivery of 401(k) plan disclosure materials, which is also welcome news for many plan participants who are often overwhelmed by the extensive tiny-print disclosures they currently receive as required by ERISA each year.<sup>2</sup>

### Going green could save some green

Companies making this transition could see a cost savings. According to the DOL, the move will save approximately \$3.2 billion in net costs over the next decade for ERISA-covered retirement plans by eliminating significant materials, printing and mailing costs associated with furnishing printed disclosures.<sup>1</sup>

The DOL also shows that electronic delivery can create "cost savings (that could) ultimately be passed back to participants, translating to lower expenses – and higher net investment returns."<sup>1</sup>

Additionally, another research study notes that participants may be able to respond quicker to plan information when received electronically because by providing real-time information, it is more accessible, digestible and customizable.<sup>3</sup>

<sup>1</sup> [Department of Labor. "Electronic Disclosure Safe Harbor for Retirement Plans." May 21, 2020.](#)

<sup>2</sup> [Department of Labor. "Employee Retirement Income Security Act \(ERISA\)." March, 29 2016.](#)

<sup>3</sup> [Spark Institute. "Improving Outcomes with Electronic Delivery of Retirement Plan Documents." June 2015.](#)

## Considerations and helpful information

Here's what you need to know if you are considering a switch to fully online disclosures.

- **Covered individuals.** Covered individuals are participants, beneficiaries and others who are entitled to receive covered documents.
- **Covered documents.** Covered documents are any documents or information that the administrator is required to provide to plan participants and beneficiaries under Title I of ERISA, other than a document or information that needs to be furnished only upon request.
- **Eligible materials.** Documents and disclosures covered under the new e-delivery rule include, but are not limited to:
  - Summary plan description
  - Summary of material modification
  - Summary annual reports
  - Participant-level fee disclosures
  - Blackout notices
- **Initial notification.** Plan administrators must send an initial paper notification that they are changing to the new electronic delivery method, provide the website address and offer the right to opt out if the participant prefers.
- **Right to paper.** Workers can choose paper copies of specific documents or globally opt out of electronic delivery entirely at any time, free of charge. However, the expectation is that most will likely stay enrolled in the e-disclosure option, especially since an estimated 99% of retirement plan participants have internet access.<sup>4</sup>
- **Notifications of Internet Availability (NOIA).** Plan administrators must inform participants each time covered documents are posted on the website. Each NOIA must also provide an option for the participant to receive paper copies of notices.

- **Website retention.** Documents must be accessible online until a newer version is added, but in no event for less than one year.
- **System check for invalid electronic addresses.** Plan administrators must keep track of the recipient's email address; and if the address becomes invalid, they must correct the issue or treat the participant as opting out of electronic delivery.
- **Employment termination.** If an employee leaves the company, the plan administrator must ensure the "continued accuracy and operability of the person's employer-provided electronic address."<sup>1</sup>

Under the new rule, the two options for electronic delivery are website posting and email delivery. Plan participants can receive the required notices and disclosures as long as they have access to the information electronically and they are properly notified of any changes.

The move towards an environmentally friendly, more efficient and cost-effective 401(k) disclosure process could be an opportunity for employers to enhance their retirement plan communication with plan participants.

<sup>4</sup> Spark Institute. "Default Electronic Delivery Works." November 2019.





## The Importance of a Retirement Plan Committee & Annual Reviews



Retirement plan committees wear many hats, including reviewing plan performance, investments and fees annually to ensure the plan is on track toward achieving key goals. Here is key information your committee should review every year.

[#ERISA](#) [#CARESAct](#) [#cybersecurity](#)  
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Retirement plans are complex and have many moving parts; as such, many plan sponsors create retirement plan committees to help keep them running smoothly. They may be called “investment” or “administrative” committees and can range in size. Regardless of the name or number of people involved, the committee’s organization, process and documentation are key to success.

One important function of a retirement plan committee is regular, ongoing reviews of the plan’s performance with regard to investments, fees and company goals. Here is an overview of what a retirement plan committee does and the type of information it should review at least once a year.

### What does a retirement plan committee do?

A retirement plan committee is responsible for making operational and investment decisions for the company’s retirement plan in the best interest of the plan, its participants and beneficiaries. Specifically, the committee’s duties typically include:

- Evaluating the plan’s design and effectiveness

- Selecting outside consultants and vendors, such as third party administrators, recordkeepers and plan advisors
- Reviewing, monitoring and, when necessary, approving changes to the plan’s investment menu
- Reviewing and approving plan expenses

As such, committee members’ fiduciary responsibility is significant.

### Charter

The retirement plan committee should review the charter each year to ensure it remains relevant to the committee’s membership and how it functions. A retirement committee charter generally details:

- How members are selected and defines their roles and responsibilities
- The committee’s purpose
- Membership requirements (such as term limits)
- How often the committee meets

Committee members don't have to be financial or investing experts. Keep in mind, however, that they are plan fiduciaries, with rare exception.

## Investment Policy Statement (IPS)

A primary duty of the committee includes selecting, managing and monitoring of the plan's investments. The committee should carry out this process according to a specific investment philosophy and strategy outlined in the plan's Investment Policy Statement (IPS), which typically includes:

- Guidelines and procedures for those assisting in the investment process, such as retirement plan advisors
- Criteria for fund and investment manager selection and procedures for replacements
- Benchmarks for measuring investment performance, such as changes in management, investment style, fees or expenses and assets under management

However, retirement plan committees must be cautious not to use the IPS as a "catch-all" for plan-related policies. This document is called an IPS because it should focus *solely* on the management and monitoring of the plan's **investments**. Anything else potentially exposes the committee to unnecessary fiduciary risks and liabilities, because once included, fiduciaries must fulfill all the duties set forth in an IPS. Having to uphold those additional, unrelated promises could put the committee in worse shape than having no IPS at all.<sup>1</sup> The committee should review the IPS on an ongoing basis, at least once a year, and revise it as necessary.

## Service providers

The committee should also follow specific criteria for hiring plan service providers, and evaluate their fees and value each year. In short, the committee should determine if the fees are reasonable for the quality of service provided. In addition, the committee should carefully document its decision-making process

regarding fee evaluations and the hiring and firing of service providers.

## Fee benchmarking

Similarly, the retirement plan committee is responsible for regularly evaluating the plan's investment fees. A retirement plan advisor can provide the committee with detailed documentation regarding the plan's fees and expenses. Given the potential fiduciary risks, the committee should ensure that the advisor provides comprehensive information related to investment fees, as well as relevant disclosures concerning revenue sharing and other fees.

## Retirement plan goals

Annually, retirement plan committee reviews may reveal whether or not a plan is performing in line with its goals. Retirement plan goals should align with corporate objectives. As such, the committee should seek to determine if the plan meets expectations regarding:

- Providing employees a benefit to help them plan to retire confidently and with dignity
- Helping employers meet plan objectives
- Recruiting and retaining top talent
- Ease of administration
- Fostering employee engagement and participation
- Encouraging healthy savings rates

If the plan falls short in any area, the committee may elect to change the plan or its design to work towards achieving these goals.

By reviewing the plan regularly, a retirement plan committee can keep tabs on plan and investment performance and relevant fees, while making adjustments as necessary. A well-informed retirement plan advisor can help the committee stay apprised of the latest and greatest offerings available and assist in making critical decisions about which features and services may benefit the plan and its participants at a reasonable cost.

<sup>1</sup> Chalk, Steff. "Investment Policy Statement Must Stop Short of Promises." 401kTV.com. September 23, 2020.



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