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Working for America's Retirement

April 27, 2026

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210
Attn: Requirement to Provide Paper Statements in Certain Cases - Amendments to Electronic Disclosure Safe Harbors (RIN 1210-AC27)

RE: Requirement to Provide Paper Statements in Certain Cases - Amendments to Electronic Disclosure Safe Harbors (RIN 1210-AC27)

The American Retirement Association (ARA) is writing in response to the proposed amendments regarding electronic disclosure safe harbors published in the Federal Register on February 25, 2026 (the "Proposed Rule"). ARA thanks the Department of Labor (the "Department") for the opportunity to provide input on these matters.

The ARA is a national organization of nearly 39,000 members who provide consulting and administrative services to American workers, savers, and sponsors of retirement plans and IRAs. ARA members are a diverse group of retirement plan professionals of all disciplines including financial advisers, consultants, administrators, actuaries, accountants, and attorneys. ARA is the coordinating entity for its five underlying affiliate organizations representing the full spectrum of America's private retirement system, the American Society of Pension Professionals and Actuaries ("ASPPA"), the National Association of Plan Advisors ("NAPA"), the National Tax-Deferred Savings Association ("NTSA"), the American Society of Enrolled Actuaries ("ASEA"), and the Plan Sponsor Council of America ("PSCA"). ARA's membership is diverse but united in a common dedication to America's employer-based retirement plan system.

Summary

ARA thanks the Department for preserving the core structure of both the 2002 and 2020 electronic disclosure safe harbors by narrowly tailoring the Proposed Rule to implement the statutory mandate. ***ARA recommends*** the Department clarify or confirm the following items related to the Proposed Rule:

- Clarify that the costs of mailing paper statements continue to be an expense payable by the plan.
- Provide that the 2002 safe harbor is satisfied so long as the paper notice about electronic disclosure is sent prior to the last benefit statement for the 2026 plan year.
- Confirm that paper statements delivered in 2027 for the last quarter of the plan year ending on or before December 31, 2026, will comply with the statutory mandate of one paper statement per year.
- Clarify that a decedent participant's elections may be used until the first quarter that begins after the plan receives beneficiary contact information.
- Clarify that the plan may establish a reasonable nondiscriminatory procedure for applying rehired employees' prior elections.
- Clarify that plans using paper statements as the default election do not need to send the one-time initial paper notice for employees who request electronic delivery of benefit statements.

Discussion

ARA thanks the Department for preserving the core structure of both the 2002 and 2020 electronic disclosure safe harbors—these safe harbors have worked well for the industry, have been heavily invested in by plan recordkeepers and administrators, and are widely used and understood.

The workability of these safe harbors has been, in large part, thanks to the flexibility the Department built into these rules, which allowed plan sponsors and plan service providers to develop myriad arrangements to meet the disclosure requirements. This flexibility ensures that plan sponsors and their service providers can divide the notice responsibilities efficiently and according to their operational capabilities.

ARA applauds the Department's retention of this flexibility in the Proposed Rule and encourages the Department to ensure the final rule continues to accommodate reasonable methods of coordination that will allow the new paper notice to be integrated into existing disclosure processes and allow plans and recordkeepers to adapt existing systems and workflows with minimal disruption.[1]

ARA also recommends the Department revise or clarify the Proposed Rule as discussed below.

I. Costs Associated With Paper Statements

Historically, reasonable expenses associated with required plan communications—such as summary plan descriptions, required notices, and benefit statements—have been treated as general administrative expenses of the plan. However, Section 338(b)(2)(C) of SECURE 2.0 provides, in relevant part, that the Department must update the 2020 safe harbor to the extent necessary to ensure that a plan using the 2020 safe harbor "may not charge any fee to a participant or beneficiary for the delivery of any paper statements." This raises a question regarding how the expense of these paper statements may be satisfied, with some practitioners suggesting the expense of providing these paper statements cannot be charged to the plan at all.

We believe the better interpretation of the statute is that the plan cannot charge the participant who is provided a paper statement a higher amount in plan expenses than a similarly situated participant who is receiving electronic disclosures. While this would result in the expense being borne by all participants, including the participant who receives the paper statement, that interpretation is consistent with existing rules (e.g., participants who request paper copies of plan documents).

Therefore, ***ARA recommends*** the Department clarify that the reasonable costs associated with printing and mailing paper participant statements and related notices continue to be permissible plan administrative expenses chargeable to the plan, provided those costs are not allocated solely to participants who receive a paper statement under the 2020 safe harbor.

II. Transition Relief for 2002 Safe Harbor

The Proposed Rule requires the provision of a paper statement prior to the electronic delivery of any pension benefit statement to a covered participant. This requirement, when combined with the timing of the Proposed Rule, presents practical administrative hurdles that warrant transition relief for plans using the 2002 safe harbor.

The rule reflecting changes to the 2002 safe harbor was meant to be updated before 2025 (per the directive in SECURE 2.0)—nearly 16 months ago. This timing is important because recordkeeping and notice-delivery systems are generally programmed and scheduled well in advance, particularly for participant statements that are produced on a recurring quarterly cycle and often must satisfy multiple regulatory requirements—and the cost

[1] For example, for participants who are "wired at work," the new paper notice could reasonably be included in an enrollment or onboarding packet distributed at eligibility, alongside other required plan notices. In contrast, for participants who satisfy the advance consent requirements under the 2002 safe harbor, it may be more operationally appropriate to provide a paper confirmation following the participant's consent to electronic disclosure, rather than requiring a separate, duplicative mailing.

of these changes generally means that companies wait for final guidance from regulators before programming. Retrofitting those systems now, mid-cycle, on very short notice to insert a new paper notice requirement for newly eligible participants creates substantial operational risk and increases the likelihood of inadvertent noncompliance. For example, a calendar year plan with participant-directed investments must issue the first quarterly statement for 2026 by May 15, 2026. This only leaves 79 days between the issuance of the Proposed Rule and the deadline to provide advance notice prior to the electronic delivery of the first quarterly statement.

ARA recommends the Department provide that a plan relying on the 2002 electronic disclosure safe harbor will be treated as satisfying the initial paper notice regarding subsequent electronic disclosure so long as the required paper notice is furnished to a participant prior to the delivery of the last participant statement for the 2026 plan year.

Providing this good-faith transition relief would be consistent with how similar timing challenges have been addressed in prior regulatory initiatives and would acknowledge the practical distinction between (a) a plan that is actively working to comply with a new statutory requirement and (ii) a plan that is unwilling or unable to comply. Treating plans as compliant where the paper notice is provided before the final benefit statement for the 2026 plan year (the last notice for which the paper statement requirement would apply) would ensure that participants receive the required information within the a relevant timeframe, while also allowing plan sponsors and service providers sufficient time to implement durable, compliant processes in light of the timing of the Proposed Rule and the operational realities faced by plans and service providers.

III. Paper Statement for Fourth Quarter 2026

The Proposed Rule is not clear regarding when the initial paper statement for 2026 must be furnished to a participant. This confusion arises, in part, because the preamble to the Proposed Rule, when describing Section 338 of the SECURE 2.0 Act, states the plan "must provide at least one pension benefit statement on paper *in any* calendar year" (emphasis added). The footnote at the end of that sentence cites the statute, which provides paper statements are required "with respect to at least 1 pension benefit statement *for a* calendar year" (emphasis added).

Many plans use the calendar year as the plan year and deliver fourth-quarter participant statements in the following year as part of their regular, established disclosure cycles. This timing reflects long-standing administrative practices and is often driven by the need to incorporate year-end data, finalize valuations, and coordinate compliance with multiple legal and regulatory requirements. The Department recognizes this in Field Assistance Bulletin 2006-03 by providing that furnishing a statement within 45 days after the end of the applicable period is good-faith compliance with the requirement to furnish the statement.

Nothing in SECURE 2.0 suggests Congress intended to disrupt these well-established practices or require plans to accelerate fourth-quarter statement production solely for compliance with the paper statement mandate. However, absent clarification, plan sponsors and service providers may question whether they must re-engineer statement production schedules to ensure that a paper statement is physically delivered before December 31, 2026, even where the plan's customary practice is to issue the fourth-quarter statement in the following year. Such a requirement would introduce unnecessary administrative complexity and increase compliance risk without adding benefit to the participant.

Therefore, ***ARA recommends*** the Department confirm that participant statements delivered within 45 days after the end of the last quarter of the plan year ending on or before December 31, 2026, will satisfy the statutory requirement to provide at least one paper statement for 2026.

IV. Notice Elections for Beneficiaries

In many cases, a plan sponsor or service provider does not receive beneficiary contact information immediately upon a participant's death. There may be a delay while the plan is notified of the death, beneficiary documentation is gathered, or contact information is confirmed. During this interim period, plans must continue to administer required disclosures in a manner that is both operationally feasible and consistent with ERISA's disclosure framework. Absent clarification, plans may be uncertain how to apply the new paper statement requirements during this transitional phase.

Allowing continued reliance on a decedent's existing delivery elections until beneficiary contact information is received reflects practical administrative realities and avoids imposing an unworkable obligation on plans to identify, locate, and immediately furnish paper disclosures to beneficiaries for whom no reliable contact information is yet available. Requiring immediate paper delivery in such circumstances could lead to undeliverable mail, risk of misdelivering sensitive personal information, increased administrative cost, and confusion, without providing meaningful benefit to beneficiaries.

This approach is consistent with long-standing ERISA disclosure principles, which generally recognize that plans may rely on existing records and elections until updated information is reasonably obtained. Once beneficiary contact information is received and established through reasonable procedures, plans can then transition disclosures—including paper participant statements—to the appropriate beneficiary beginning with the first quarter that follows. This approach also promotes consistent administration, reduces unnecessary compliance risk, and ensures that disclosure obligations are applied in a manner that is both participant-protective and operationally sound.

Therefore, ***ARA recommends*** the Department clarify that a plan may continue to rely on the participant's existing electronic delivery elections following the participant's death until the first quarter that begins after the plan receives sufficient beneficiary contact information, provided the plan follows reasonable procedures.

V. Treatment of Rehired Employees

Rehire scenarios are common across many plan sponsor populations and are administered under a wide range of plan designs and recordkeeping systems. There are legal and regulatory requirements in determining whether rehired employees are treated as newly eligible participants or continuing participants for certain administrative purposes, such as benefit rights, prior elections, and service history. For other administrative purposes, such as disclosure preferences, there do not appear to be specific requirements.

Absent specific requirements, plans may be uncertain whether rehired employees must always be treated as newly eligible participants for purposes of the paper statement rules, even where the plan's existing administrative framework treats the individual as a continuing participant. Requiring a single, mandatory treatment of rehires could conflict with existing plan terms, disrupt long-standing administrative practices, and require costly system changes that do not meaningfully enhance participant protections.

Allowing plans to apply reasonable, nondiscriminatory procedures to determine whether a rehire is treated as a newly eligible participant or a continuing participant appropriately balances administrative feasibility with participant disclosure objectives. For example, a plan may reasonably determine that a short-term rehire should retain prior delivery elections, while a rehire following a longer separation period is treated as newly eligible. So long as such procedures are applied consistently and are not designed to evade disclosure requirements, this flexibility promotes clarity and operational efficiency.

Therefore, ***ARA recommends*** the Department clarify that a plan may establish and apply reasonable, nondiscriminatory procedures for treating rehired employees as either newly eligible participants or as continuing participants for purposes of the paper participant statement and related notice requirements.

VI. Initial Paper Notice Not Required If Paper Is Default Method

Some plans make paper benefit statements the default delivery method for participants but allow the participant to affirmatively elect electronic delivery. Because Regulation §2520.104b-1 discusses the ability of a participant to affirmatively elect electronic delivery, questions have arisen regarding whether these plans must give an initial paper notice before complying with the participant's request for electronic delivery.

ARA believes the intent behind Section 338 of SECURE 2.0 was to provide a paper statement when the plan is defaulting participants into electronic delivery under the 2002 or 2020 safe harbors, and not where the default method for delivering the benefit statements is already paper. Therefore, where electronic delivery is not the default and a participant affirmatively consents to electronic delivery, there should be no requirement to provide an initial paper notice. In other words, the initial paper notice is only required where a participant is defaulted into electronic delivery, and not where the participant affirmatively elects electronic disclosure.

Requiring a paper notice or statement in such cases may run counter to participant expectations, violate the legitimate reasons a participant desires to avoid paper statements (such as to protect his or her savings from abusive domestic situations), introduce administrative complexity, and reduce the efficiency gains associated with electronic enrollment systems. Conversely, without clear regulatory confirmation that the paper notice requirement does not apply in these circumstances, plan sponsors and service providers may be reluctant to rely on electronic enrollment and affirmative consent alone.

Therefore, ***ARA recommends*** the Department clarify that the one-time initial paper notice requirement applies only to participants who are defaulted into electronic delivery and does not apply when the default delivery method is paper.

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ARA appreciates the opportunity to provide comments to the Department on this Proposed Rule and welcomes the opportunity to discuss them further with you. Please contact Kelsey N.H. Mayo, Chief of Retirement Policy and Regulatory Affairs, at kmayo@usaretirement.org or (703) 516-9300 regarding any questions on this matter. Thank you for your time and consideration.

Sincerely,

/s/	/s/
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