



Letter from the Investment Company Institute

April 27, 2026

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
US Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Requirement to Provide Paper Statements in Certain Cases—Amendments to Electronic Disclosure Safe Harbors; RIN 1210–AC27

To Whom It May Concern:

On behalf of the Investment Company Institute,¹ we appreciate the opportunity to provide input to the Department of Labor in response to its proposed regulation, *Requirement To Provide Paper Statements in Certain Cases—Amendments to Electronic Disclosure Safe Harbor* (the “Proposal”).²

The Proposal would make narrow amendments to the Department’s two existing safe harbors for using electronic delivery to provide required notices and disclosures to participants in ERISA plans to implement Congressional mandates included in Section 338 of the SECURE 2.0 Act.³ Section 338 requires that certain retirement plan participants receiving plan materials electronically must receive one quarterly benefit statement per year on paper (the “One Paper

¹ The [Investment Company Institute](https://www.ici.org) (ICI) is the leading association representing the asset management industry in service of individual investors. ICI’s members include mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in other jurisdictions. Its members manage \$45.3 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 125 million investors. Members manage an additional \$10.4 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to collective investment trusts (CITs) and retail separately managed accounts (SMAs). ICI Associate Members include service providers to member firms and CIT trust companies. ICI has offices in Washington DC, Brussels, and London.

² See *Requirement To Provide Paper Statements in Certain Cases—Amendments to Electronic Disclosure Safe Harbors*, published at 91 Fed. Reg. 9213 (February 25, 2026), available at <https://www.govinfo.gov/content/pkg/FR-2026-02-25/pdf/2026-03723.pdf>.

³ The SECURE 2.0 Act of 2022 made several changes to ERISA and was enacted under the Consolidated Appropriations Act, 2023.

Statement Rule”) and directs the Department to amend its electronic disclosure safe harbors in connection with the statutory changes.⁴ ICI strongly supports the Department’s safe harbors, including the significant participant protections they provide, and we applaud the Department for its efforts to leave the two safe harbors undisturbed beyond the narrow changes mandated by Congress.

ICI has long touted the benefits of electronic delivery for participant notices and disclosures and advocated for its expanded use.⁵ It is important to note that while ICI strongly supports electronic delivery, including allowing retirement plans to make electronic delivery the default method for communicating with participants, we agree that participants should be able to easily opt to receive their required disclosures on paper at no charge at any time.

ICI Continues to Strongly Support the 2002 and 2020 Safe Harbors

The Department previously established two regulatory safe harbors that permit plan administrators to furnish ERISA-required documents through electronic delivery—the “2002 Safe Harbor” and the “2020 Safe Harbor.”

Provided that certain conditions are met, the 2020 Safe Harbor allows retirement plans to shift the default method of delivering participant plan disclosures to electronic delivery, using a “notice and access” structure, for the delivery of “covered documents” to “covered individuals.”⁶ In issuing the 2020 Safe Harbor, the Department left in place the 2002 Safe Harbor. Plans can use the 2002 Safe Harbor with respect to two categories of individuals:

- 1) participants for whom access to the employer’s or plan sponsor’s electronic information system is an integral part of their duties as employees (i.e., “wired at work”), and
- 2) individuals who have affirmatively consented to receive documents electronically.

⁴ Effective for plan years beginning after December 31, 2025, for defined contribution plans, Section 338(a) requires that each year, one participant benefit statement must be provided in paper form (one every three years, for defined benefit plans). There are two exceptions to this requirement, described below. In addition to the One Paper Statement Rule, Section 338(b) directs the Department to ensure that the 2020 Safe Harbor meets several specific conditions.

⁵ See letter from David M. Abbey, Deputy General Counsel—Retirement Security, ICI and Doug Fisher, Director of Retirement Policy, American Retirement Association, to Preston Rutledge, Assistant Secretary of EBSA, Department of Labor (April 30, 2018), available at <https://www.ici.org/pdf/31186a.pdf>, transmitting Peter Swire and DeBrae Kennedy-Mayo, *2018 Update to Delivering ERISA Disclosure for Defined Contribution Plans: Why the Time Has Come to Prefer Electronic Delivery*, available at <https://peterswire.net/wp-content/uploads/2018-Update-to-Delivering-ERISA-Disclosure-for-DC-Plans-002.pdf>.

⁶ Retirement plans may use electronic delivery as the default for notices sent to participants who have provided a valid electronic address but must provide an initial notice and annual notices with information including an explanation of how to receive paper notices.

The 2002 Safe Harbor has been in use for over 20 years and has proven to work well for participants.⁷

We acknowledge that the Department issued the Proposal to implement the Congressional mandates in Section 338 of the SECURE 2.0 Act. The decision to adopt the One Paper Statement Rule did not originate from the Department and therefore the action did not require the Department's justification. Nonetheless, in the regulatory impact analysis, the Department cites to a 2022 survey from AARP (the "AARP Survey") as support, suggesting that the changes are needed and will benefit certain populations.⁸ The Department does not include countervailing opinions nor support for the protections included in its 2020 Safe Harbor.

ICI strongly supported the 2020 Safe Harbor⁹ and continues to believe that, in crafting it, the Department struck the right balance between facilitating electronic delivery while ensuring that sufficient participant protections are in place. Among those safeguards, the rule was drafted to ensure that plan participants and beneficiaries will understand their rights with respect to electronic delivery, that they can easily opt out of all electronic delivery, and that they can receive free paper copies of notices at their request. Further, the safeguards result in a delivery method that is reasonably calculated to ensure actual receipt of the ERISA-required documents. In issuing the 2020 Safe Harbor, the Department agreed that the protections it included were substantial.¹⁰

Not only are the participant protections sufficient, but making electronic delivery the default method for communicating with participants and beneficiaries (while still allowing participants to opt for paper): facilitates positive participant plan engagement and savings behavior; enhances the effectiveness of ERISA communications, particularly for individuals with disabilities or for whom English is not the primary language; produces significant cost savings

⁷ There seemed to be consensus on this point in the discussion of comments received on the proposed version of the 2020 Safe Harbor, even among those stakeholders who do not support expansion of electronic delivery. In recognition of this general consensus, the Department made only non-substantive conforming amendments to the 2002 Safe Harbor to facilitate the 2020 Safe Harbor. See footnote 32 of the preamble to the final rule. 85 Fed. Reg. 31884, at 31887 (May 27, 2020).

⁸ See footnote 19 at 91 Fed. Reg. at 9218, citing S. Kathi Brown, *Retirement Account Statements: Paper or Electronic?*, AARP Research, May 2022, available at <https://doi.org/10.26419/res.00529.001>.

⁹ For ICI's comments in response to the Department's proposed safe harbor, see letter from David M. Abbey, Deputy General Counsel—Retirement Security and Shannon Salinas, to Office of Regulations and Interpretations, EBSA (November 22, 2019), available at <https://www.ici.org/system/files/attachments/32062a.pdf> ("ICI 2019 Comment Letter"). See ICI's News Release following issuance of the final rule, dated May 21, 2020, available at https://www.ici.org/news-release/20_news_edelivery.

¹⁰ The Department concluded that, taken together, the rule's protections "provide a method of furnishing documents that is more than reasonably calculated to ensure actual receipt of covered documents." 85 Fed. Reg. 31884, at 31900 (May 27, 2020), available at <https://www.govinfo.gov/content/pkg/FR-2020-05-27/pdf/2020-10951.pdf>.

for more than 80 million retirement savers; and reduces the environmental impact of tons of discarded paper every year.¹¹

Electronic Delivery Improves Participant Engagement

The AARP Survey suggests that those who receive paper statements are more likely to say that they always review their statements compared with those who receive them electronically.¹² We acknowledge that, generally, ensuring that participants actually read plan disclosures is difficult, regardless of how they are delivered. In 2017, the ERISA Advisory Council examined the topic of enhancing mandated disclosures and noted, “[n]otwithstanding witnesses who advocate paper disclosures, the majority of witnesses concluded that participants do not read the paper that is sent to them, and many have difficulty navigating and understanding the paper disclosures.”¹³ Although getting participants to actively engage with their plans is challenging, electronic delivery is an effective tool. We previously noted that participants are more likely to take action in response to materials provided electronically and that online interaction improves outcomes.¹⁴

Engagement is important for making good use of employer plan resources to support better finances in retirement. Recent Empower research finds that engaged plan participants are 53% more likely to contribute at rates at or above the match (72% of engaged participants compared with 47% of participants who were not engaged).¹⁵

In the ICI 2019 Comment Letter to the Department, we noted that 2017 T. Rowe Price data showed average balances of \$119,000 compared with the \$49,000 among participants who were not engaged online.¹⁶ Data at that time also showed that 8.8% of participants who were engaged online had a discretionary deferral increase compared with 0.8% of other participants.¹⁷ These differences persist today. In T. Rowe Price’s most recent analyses

¹¹ ICI 2019 Comment Letter, *supra* note 9.

¹² Even according to AARP survey results, only 55% of respondents who receive paper statements say that they always review their statements. 91 Fed. Reg. at 9218.

¹³ See page 34 of the Council’s report, “Mandated Disclosure for Retirement Plans –Enhancing Effectiveness for Participants and Sponsors,” dated November 2017, available at https://www.dol.gov/sites/dolgov/files/ebsa/pdf_files/2017-mandated-disclosure-for-retirement-plans.pdf.

¹⁴ See page 5 of the ICI 2019 Comment Letter, *supra* note 9.

¹⁵ See “Empowering America’s Financial Journey™” (2025), available at <https://docs.empower.com/EE/Empower/DOCS/EAFJ-Corporate.pdf>.

¹⁶ See ICI 2019 Comment Letter, *supra* note 9.

¹⁷ *Ibid.*

(2026), these figures were \$256,000 for those who are engaged online, and \$122,000 among the non-engaged.

These findings are not unique to T. Rowe Price investors. At the time of the ICI 2019 Comment Letter, Vanguard found that average balances were three times higher for digitally engaged participants and that digitally engaged participants have a higher average payroll deferral rate compared to those who are not digitally engaged (an average deferral of 11% compared to 6.34%).

Investors Prefer to Receive Electronic Documents and Support Default Electronic Delivery

The AARP Survey specifically expressed concern regarding certain populations (low-to-moderate income adults, adults aged 50 and older, and adults without access to a computer at work) and suggested that they would be more likely to prefer to receive paper statements. As described below, ICI data find that investors in all demographics show widespread support for an electronic delivery default.¹⁸ Further, ICI agrees that investors who *do* prefer paper delivery should be allowed to easily elect it at any time and receive paper for as long as they continue to prefer that delivery method. The Department's 2020 Safe Harbor includes this protection.

In 2025, ICI conducted a nationally representative survey of Americans aged 18 or older that found strong investor preferences for electronic delivery.¹⁹ The 2025 ICI Survey data show that a substantial majority of fund shareholders prefer to receive their documents electronically and, importantly, that this preference is present across all age ranges.²⁰

The 2025 ICI Survey data also clearly show that there is widespread support for an electronic delivery default among the US population and fund investors, including among older demographic groups and investors who currently receive paper delivery. Key survey findings include that:

- 88% of fund investors agree that “[a]s long as people can still request paper at no cost, it’s a good idea to make e-delivery the default;”

¹⁸ Additionally, Fidelity Investments finds that 86% of their new retail brokerage customers adopt electronic delivery of disclosures. In terms of efficacy reaching investors, Fidelity finds 99.75% success delivering emails. See Fidelity Investments, “Investors have spoken: It’s time for electronic delivery” (2025), available at https://www.fidelity.com/bin-public/060_www_fidelity_com/documents/about-fidelity/2025-eDelivery-Infographic.pdf.

¹⁹ See Sarah Holden, Daniel Schrass, Jason Seligman, and Michael Bogdan, *Americans’ Views on E-Delivery of Financial Documents*, Washington, DC: Investment Company Institute (2025), available at <https://www.ici.org/system/files/2025-09/25-ici-paper-edelivery.pdf> (“2025 ICI Survey”). While much of the survey was focused on fund investors in particular, we believe that the results would apply equally to retirement investors (as funds are often offered and held through retirement accounts).

²⁰ See 2025 ICI Survey at 13–14.

- 87% of fund investors aged 65 or older support an electronic delivery default;
- 79% of fund investors who reported that they only received paper copies of financial documents also supported an electronic delivery default; and
- about 70% of fund investors prefer electronic delivery regardless of document type.

We recognize that these points will not change the amendments that the Department is obligated to make under Section 338.²¹ However, ICI would like to ensure that the record for this action reflects the reality, which is that this represents a step in the wrong direction and a step back from the modernization that the Department took in 2020.

ICI Recommends Clarifications to the Proposal

While we generally support the Proposal as written and agree with the Department's effort to narrowly implement the changes mandated by Congress, we request two clarifications, described below.

Acknowledge Statutory Exemption For Those Who Affirmatively Consent

The new One Paper Statement Rule includes two exceptions: (1) where the plan is providing electronic delivery in accordance with the 2002 Safe Harbor (the "2002 Safe Harbor Carveout"); and (2) where a plan permits a participant or beneficiary to request the statement to be delivered electronically and the participant or beneficiary has made the request (the "Participant Request Carveout").

In order to use the 2002 Safe Harbor Carveout, and avoid providing one paper statement per year, plans must, with respect to participants who first become eligible to participate after December 31, 2025, "[furnish] each participant or beneficiary a one-time initial notice on paper in written form, prior to the electronic delivery of any pension benefit statement, of their right to request that all documents required to be disclosed under [ERISA] be furnished on paper in written form."

As described above, the 2002 Safe Harbor can be used for sending documents to employees who are "wired at work" or to those who have opted into electronic delivery. The Proposal would modify the 2002 Safe Harbor to incorporate the 2002 Safe Harbor Carveout with respect to "wired-at-work" participants by adding section 2520.104b-1(c)(1)(iv), which implements the new one-time paper notice. With respect to those who affirmatively consent to receive documents electronically, the Department incorporates the 2002 Safe Harbor Carveout by coordinating the new one-time paper notice with the 2002 Safe Harbor's existing requirement

²¹ We note that ICI strongly supported passage of the SECURE 2.0 Act, despite the inclusion of Section 338. See ICI News Release, dated December 23, 2022, available at <https://www.ici.org/news-release/22-secure20act-passage>.

to provide an advance statement before the participant provides the consent.²² Rather than require the new one-time paper notice in addition to the existing advance statement requirement, the Proposal would permit the advance statement to satisfy the one-time paper notice requirement—*but only if the advance statement is furnished on paper.*²³

We believe that a better interpretation of the statute is that the one-time paper notice does not need to be provided *at all* to those who, under the 2002 Safe Harbor, have affirmatively consented to electronic delivery. This is because, as noted above, in addition to the 2002 Safe Harbor Carveout, Section 338(a) includes a second exception—the Participant Request Carveout. Specifically, it excludes the following scenario from the one-time paper notice requirement:

in the case of a plan that permits a participant or beneficiary to request that the statements referred to in the matter preceding clause (i) be furnished by electronic delivery, if the participant or beneficiary requests that such statements be delivered electronically and the statements are so delivered.

As an illustration, we understand that some plans currently obtain affirmative consent by sending participants a postcard and inviting them to log into the plan's website and create login credentials. As part of this process, participants are given an opportunity to elect to receive ERISA-required documents electronically. To satisfy the 2002 Safe Harbor, this process would incorporate the advance statement and indicate (1) which documents the consent would apply to and (2) the fact that consent may be withdrawn at any time without charge. In this scenario, a plan should not need to mail a one-time paper notice to the participant, because the participant would have requested that quarterly benefit statements be provided electronically (i.e., the Participant Request Carveout should apply). The Department suggests that modifying the existing advance statement to require it to be sent on paper would be a minor adjustment, but for many plans and their service providers, systems have been built around providing this

²² § 2520.104b-1(c)(2)(ii) requires that, prior to the participant's consent the plan must provide the participant, in electronic or non-electronic form, a clear and conspicuous statement indicating:

- 1) The types of documents to which the consent would apply;
- 2) That consent can be withdrawn at any time without charge;
- 3) The procedures for withdrawing consent and for updating the participant's, beneficiary's or other individual's address for receipt of electronically furnished documents or other information;
- 4) The right to request and obtain a paper version of an electronically furnished document, including whether the paper version will be provided free of charge; and
- 5) Any hardware and software requirements for accessing and retaining the documents.

²³ See preamble discussion at 91 Fed. Reg. 9215.

advance statement electronically.²⁴ Sending a paper notice would add cost without providing any additional benefit to participants who have affirmatively elected to receive the benefit statements electronically. It would disrupt the modernized, automated flow of signing up participants electronically.

Further, we believe the statute does not require this interpretation. While the 2002 Safe Harbor covers two different populations, we believe the Participant Request Carveout (which does not require a one-time paper notice) should apply in any case in which a participant elects to receive documents electronically, when the election clearly covers all quarterly benefit statements. In other words, the Participant Request Carveout should not be interpreted in a way to require a second opt out of the One Paper Statement Rule when the participant has already elected to receive all four quarterly benefit statements electronically.

Clarify Good Faith Compliance

We appreciate that the Department has announced a non-enforcement policy for plan administrators that comply in good faith with a reasonable interpretation of the provisions set forth in the proposal.²⁵ We would appreciate clarification that the non-enforcement policy applies in the case of a good faith interpretation *of the statutory requirement in Section 338(a)* (the One Paper Statement Rule).

Section 338(c) provides that the One Paper Statement Rule (in Section 338(a)) applies to plan years beginning after December 31, 2025. Therefore, between January 1, 2026 and the effective date of the final rule, plans should use a good faith interpretation of the One Paper Statement Rule, including the two carveouts.

Section 338(b) directs the Department to update its regulations by no later than December 31, 2024. However, unlike in Section 338(a), Section 338(b) does not include a statutory effective date that would require the changes described in Section 338(b) to be applicable prior to the date the Department finalizes its amendments to the regulations. As a practical matter, however, we expect that plans would likely be in compliance with specific directives that would modify the 2020 Safe Harbor.²⁶

²⁴ We also note that obtaining the consent in the manner satisfies the requirement that the manner of obtaining consent must reasonably demonstrates the individual's ability to access information in the electronic form that will be used to provide the information that is the subject of the consent. § 2520.104b-1(c)(2)(ii)(B).

²⁵ "For the period from publication of this proposal until after the Department issues a final regulation or other applicable administrative guidance, the Department, as an enforcement policy, will not take enforcement action against plan administrators that comply in good faith with a reasonable interpretation of the provisions set forth in the proposal." 91 Fed. Reg. at page 9217.

²⁶ As we previously stated, the directives to modify the 2020 Safe Harbor either: (1) describe existing practices, such as the provision clarifying that plans may furnish participants with electronic duplicates of paper statements;

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ICI appreciates the opportunity to comment on the Proposal. If we can provide you with any additional information regarding these issues, please do not hesitate to contact Elena Chism at 202/326-5821 (elena.chism@ici.org) or Shannon Salinas at 202/326-5809 (shannon.salinas@ici.org).

Sincerely,
/s/ Shannon Salinas
Shannon Salinas
Associate General Counsel—Retirement Policy

cc: The Honorable Keith E. Sonderling, Acting Secretary of Labor
The Honorable Daniel Aronowitz, Assistant Secretary of Labor

or (2) duplicate requirements that are already included in the 2020 Safe Harbor, such as the rule prohibiting fees for the delivery of paper statements.