



DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2520 and 2560

RIN 1210-AC27

Requirement to Provide Paper Statements in Certain Cases - Amendments to Electronic Disclosure Safe Harbors

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Proposed rule.

SUMMARY: The Department of Labor (Department) is proposing narrow amendments to two separate electronic disclosure safe harbors for purposes of implementing section 338 of the SECURE 2.0 Act of 2022 (SECURE 2.0). Taken together, the two existing safe harbors permit the broad use of electronic disclosure under prescribed conditions for the furnishing of required disclosures under Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Section 338 of SECURE 2.0 amended section 105(a)(2) of ERISA to require retirement plans to provide paper benefit statements in certain cases. Section 338 also instructed the Department to update its electronic disclosure safe harbors in connection with the statutory changes. The proposed amendments would implement these Congressional mandates.

DATES: Comments on the proposal must be submitted on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: You may submit written comments, identified by RIN 1210-AC27 to either of the following addresses:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.

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

Instructions: All submissions received must include the agency name and Regulatory Identifier Number (RIN) for this rulemaking. Persons submitting comments electronically are encouraged not to submit paper copies. Comments will be available to the public, without charge, online at <https://www.regulations.gov> and <https://www.dol.gov/agencies/ebsa> and at the Public Disclosure Room, Employee Benefits Security Administration, Suite N-1513, 200 Constitution Avenue, NW, Washington, DC 20210. We encourage commenters to include supporting facts, research, and evidence in their comments. When doing so, commenters are encouraged to provide citations to the published materials referenced, including active hyperlinks. Likewise, commenters who reference materials which have not been published are encouraged to upload relevant data collection instruments, data sets, and detailed findings as a part of their comment. Providing such citations and documentation will assist us in analyzing the comments.

Warning: Do not include any personally identifiable or confidential business information that you do not want publicly disclosed. Comments are public records posted on the internet as received and can be retrieved by most internet search engines.

FOR FURTHER INFORMATION CONTACT: Saliha Z. Moore or Rebecca Davis, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693-8500.

This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

A. ERISA Disclosures.

Title I of ERISA requires that pension and welfare plans furnish numerous written notices and disclosures to participants and beneficiaries. Plans must furnish some disclosures by

operation of law, including disclosures required annually or upon a specific triggering event. Plans must furnish other disclosures upon request. ERISA's general standard for delivery is that plan administrators must use "measures reasonably calculated to ensure actual receipt of the material by plan participants [and] beneficiaries."¹ Historically, delivery of disclosures was in person or in paper through the mail to the person's home address.

B. Periodic Pension Benefits Statements.

One of ERISA's disclosures required by the operation of law is the periodic pension benefit statement. Section 105(a)(1) of ERISA requires administrators of pension benefit plans that are not one-participant retirement plans to provide periodic "pension benefit statements" (as described in section 105(a)(2) of ERISA) to participants and certain beneficiaries. Defined contribution plans that permit participants and beneficiaries to direct their own investments (participant-directed) must furnish pension benefit statements at least once each quarter. Defined contribution plans that do not permit participants and beneficiaries to direct their own investments (non-participant directed) must furnish pension benefit statements at least once each year. In the case of defined benefit plans, pension benefit statements generally must be provided to participants who have a nonforfeitable accrued benefit and who are employed by the plan sponsor at least once every three years. Section 105(a)(2) of ERISA requires a pension benefit statement to indicate the participant's or beneficiary's total benefits accrued, among other information.

C. The 2002 Electronic Disclosure Safe Harbor Regulation.

¹ 29 CFR § 2520.104b-1(b)(1).

The Department has codified two safe harbor regulations that permit plan administrators to furnish required documents through electronic media.² Together, these safe harbors allow a wide range of disclosures to be furnished electronically to participants and beneficiaries; the Department currently assumes 96.1% of participants and beneficiaries receive some of their required ERISA disclosures electronically.³ The first electronic safe harbor was published in 2002 (the 2002 safe harbor).⁴ The 2002 safe harbor establishes tailored safeguards for electronic disclosure for two categories of participants and beneficiaries. The first category is for participants whose employment duties enable them to effectively access electronically furnished disclosures as an integral part of their jobs – so called “wired-at-work” individuals. The other category established by the 2002 safe harbor consists of individuals who give (and do not withdraw) affirmative consent to the receipt of electronically furnished disclosures. The latter category of individuals has a right under the 2002 safe harbor to fully opt out of electronic delivery by withdrawing their consent. Although wired-at-work individuals have the right to receive a paper version of a disclosure on request, they do not have the right to opt out of electronic delivery altogether under the 2002 safe harbor.

² The Department of the Treasury and the Internal Revenue Service have also issued rules permitting the use of electronic media to provide applicable notices and make participant elections required under the Internal Revenue Code. See generally Treas. Reg. § 1.401(a)-21.

³ The Department estimates approximately 96.1% of participants receive disclosures electronically under the combined effects of the 2002 electronic disclosures safe harbor and the 2020 electronic safe harbor. The Department estimates that 58.3% of participants will receive electronic disclosures under the 2002 safe harbor. According to the National Telecommunications and Information Agency (NTIA), 37.4% of individuals age 25 and over have access to the Internet at work. According to a Greenwald & Associates survey, 84.0% of plan participants find it acceptable to make electronic delivery the default option, which is used as the proxy for the number of participants who will not opt-out of electronic disclosure that are automatically enrolled (for a total of 31.4% receiving electronic disclosure at work). Additionally, the NTIA reports that 44.1% of individuals age 25 and over have access to the internet outside of work. According to a Pew Research Center survey, 61.0% of internet users use online banking, which is used as the proxy for the number of internet users who will affirmatively consent to receiving electronic disclosures (for a total of 26.9% receiving electronic disclosure outside of work). Combining the 31.4% who receive electronic disclosure at work with the 26.9% who receive electronic disclosure outside of work produces a total of 58.3%. The remaining 41.7% of participants are subject to the 2020 safe harbor. According to the 2022 American Community Survey, 91.2% of the population has an internet subscription. The Department estimates that 0.5% of electronic disclosures will bounce back and will need to be sent as a paper disclosure. Accordingly, for the 41.7% of participants not affected by the 2002 safe harbor, 90.7%, or an additional 37.8% (41.7% x 90.7%), are estimated to receive electronic disclosures under the 2020 safe harbor. In total, the Department estimates that 96.1% (58.3% + 37.8%) would receive electronic disclosures.

⁴ 29 CFR § 2520.104b-1(c).

D. The 2020 Electronic Disclosure Safe Harbor Regulation Alternative.

The Department established a second regulatory safe harbor as an alternative to the 2002 safe harbor in 2020 (the 2020 safe harbor).⁵ The 2020 safe harbor allows plans to adopt default electronic disclosure of covered documents for individuals who have provided a valid electronic address (e.g., an email address or a smartphone number) to the plan sponsor, including individuals who are employed by the plan sponsor and have been given an employer-assigned electronic address. This safe harbor depends on the existence of a valid electronic address and does not operate based on whether individuals are wired-at-work or have given their affirmative consent. This safe harbor is designed to facilitate two specific methods of modern electronic disclosure. The first method is the “notice-and-access” model, an example of which is an email that notifies the recipient that information is available on continuous access website, with a hyperlink to the site. The second method is a simple email that contains the required disclosure content in the body of the email itself or as an attachment. Prior to using either method under this safe harbor, plans must send an initial paper notice to individuals informing them that they will begin to receive electronic disclosures in the future and of their right to opt out without cost. This safe harbor was developed, in part, in response to criticism that certain aspects of the 2002 safe harbor are ambiguous, cumbersome, and outdated. Unlike the 2002 safe harbor, the 2020 safe harbor is expressly limited to pension benefit plans.

E. Section 338 of SECURE 2.0

Section 338(a) of SECURE 2.0 amended section 105(a)(2) of ERISA by adding subparagraph (E), which requires, subject to two exceptions discussed below, disclosure of certain pension benefit statements on paper. Under new subparagraph (E) of section 105(a)(2) of ERISA, defined contribution plans must furnish at least one pension benefit statement on paper in any calendar year, and defined benefit plans generally must furnish at least one paper pension

⁵ 29 CFR §2520.104b-31.

benefit statement every three calendar years.⁶ The terms “defined contribution plans” and “defined benefit plans” refer to plans that are not one-participant retirement plans. Accordingly, participant-directed defined contribution plans that satisfy one of the Department’s two safe harbors may provide three (of the required four) pension benefit statements electronically during the year. Additionally, the first exception in new subparagraph (E) of section 105(a)(2) of ERISA exempts plans from the paper requirement if the plan uses the 2002 safe harbor. The second exception exempts plans from the paper requirement if individuals request electronic delivery and statements are so delivered. The paper benefit statement requirement added by SECURE 2.0 is effective for plan years beginning after December 31, 2025.

In conjunction with this amendment of section 105(a)(2) of ERISA, an uncodified portion of section 338 of SECURE 2.0 directed the Department to make certain changes to both the 2002 and 2020 electronic disclosure safe harbor regulations. The statutory directive leaves much of the Department’s safe harbor framework in place, and the changes that are being proposed are discussed below in detail.

F. 2023 Request for Information - SECURE 2.0 Reporting and Disclosure

On August 11, 2023, the Department published a Request for Information (RFI) to begin developing a public record for several provisions of SECURE 2.0, including section 338.⁷ The RFI asked three questions (19-21) to gather input on options for implementing section 338 of SECURE 2.0. Several ideas and suggestions submitted were well beyond the scope of the directive in section 338. Other ideas and suggestions, however, are addressed by the framework

⁶ Subparagraph (E) of section 105(a)(2) of ERISA as amended by SECURE 2.0 Act of 2022, §338(a), Pub. L. 117-328, 136 Stat. 5373 (Dec. 29, 2022), provides in the relevant part: “With respect to at least 1 pension benefit statement furnished for a calendar year with respect to an individual account plan under paragraph (1)(A), and with respect to at least 1 pension benefit statement furnished every 3 calendar years with respect to a defined benefit plan under paragraph (1)(B), such statement shall be furnished on paper in written form[.]” ERISA §105(a)(2)(E) will be applicable with respect to plan years beginning after December 31, 2025.

⁷ 88 FR 54511 (Aug. 11, 2023).

set forth in this notice of proposed rulemaking. The responses to the RFI are available on the Department's website.⁸

II. Explanation of Proposed Amendments to 2002 Electronic Disclosure Safe Harbor Regulation – 29 CFR 2520.104b-1(c).

A. Section 338(b)(1) of SECURE 2.0.

Section 338(b)(1) of SECURE 2.0 directs the Department to update the 2002 safe harbor with respect to plans that will use the 2002 safe harbor to furnish a pension benefit statement electronically that is otherwise required by new subparagraph (E) of section 105(a)(2) of ERISA to be furnished on paper. Specifically, the safe harbor must be updated to require that, with respect to participants who first become eligible to participate and beneficiaries who first become eligible for benefits after December 31, 2025, plans must send, prior to the electronic delivery of any pension benefit statement, a one-time initial notice on paper informing recipients “of their right to request that all documents required to be disclosed under title I of [ERISA] be furnished on paper in written form.”

B. Initial Paper Notice Explaining Global Opt-out Right.

The proposal would implement the statutory directive in section 338(b)(1) of SECURE 2.0 by modifying paragraph (c)(1)(iv) of the 2002 safe harbor to provide that, for pension benefit plans that elect to furnish the pension benefit statement described in subparagraph (E) of section 105(a)(2) of ERISA by electronic delivery rather than on paper, the administrators of such plans must furnish to participants who first become eligible to participate, and beneficiaries who first become eligible for benefits, after December 31, 2025, a one-time initial notice on paper in written form, prior to the electronic delivery of any pension benefit statement. This one-time

⁸ <https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AC23>.

notice must notify applicable participants and beneficiaries of their right to request that all documents required to be disclosed by the plan under Title I of ERISA be furnished on paper in written form. This one-time notice may help emphasize to new participants and beneficiaries that the plan (subject to the conditions in the safe harbors) will furnish many disclosures electronically.

Paragraph (c)(1)(iv) of the proposal narrowly implements the directive contained in section 338(b)(1) of SECURE 2.0. For instance, the initial notice requirement and related global opt-out right in paragraph (c)(1)(iv) of the proposal covers only those individuals who first become eligible to participate and beneficiaries who first become eligible for benefits after December 31, 2025, and not those with such eligibility status before that date. In addition, the initial notice requirement is required only if a retirement plan administrator furnishes the pension benefit statement required under subparagraph (E) of section 105(a)(2) of ERISA by electronic delivery, rather than on paper, using the 2002 safe harbor as permitted by subparagraph (E)(i) of section 105(a)(2) of ERISA. Thus, if a retirement plan furnishes, on paper, the pension benefit statement described in subparagraph (E) of section 105(a)(2), the administrator of that plan would not be subject to the initial notice requirement in paragraph (c)(1)(iv) of the proposal, even if all other documents required to be disclosed under Title I of ERISA are furnished electronically using the 2002 safe harbor. The Department requests comments on the scope of paragraph (c)(1)(iv) of the proposal.

Paragraph (c)(3)(ii) of the proposal contains a modification to coordinate the safe harbor's existing advance statement requirement, which is applicable only with respect to those individuals covered under the safe harbor based on their affirmative consent to receive disclosures electronically, with the new initial notice requirement in paragraph (c)(1)(iv) of the proposal. Coordination is needed because the content of the former overlaps with the latter and absent coordination between the two provisions, the safe harbor would require two advance disclosures with duplicative information. Specifically, the new initial notice must inform

individuals of their right to request that all documents required to be disclosed under Title I be furnished on paper. Similarly, the existing advance statement must include a statement that the individual can withdraw their consent to receive electronic disclosures at any time, as well as the procedures for doing so. For these individuals, withdrawing their consent to receive electronic disclosures would mean that all documents required to be disclosed under Title I would be furnished on paper, and is thus effectively the same as a request for paper disclosures. Because of this overlap, the proposal adds new paragraph (c)(3) that would permit the existing advance statement to satisfy the initial notice requirement (but only if the advance statement is furnished on paper). The Department believes that, in effect, the new initial notice will thus almost exclusively be provided to wired-at-work participants, as participants and beneficiaries who have given their affirmative consent will likely receive the advance statement on paper instead. The Department requests comments on the coordination of the new initial notice and existing advance statement in proposed paragraph (c)(3).

The proposal would make a minor conforming adjustment to the 2002 safe harbor to accommodate the addition of the new initial notice requirement in paragraph (c)(1)(iv) of the proposal. Specifically, the proposal would move the requirement currently in paragraph (c)(1)(iv) of the safe harbor into the end of paragraph (c)(1)(iii) of the proposal. The Department does not intend to effect any substantive change with this conforming adjustment.

III. Explanation of Proposed Amendments to 2020 Electronic Disclosure Safe Harbor Regulation – 29 CFR 2520.104b-31.

A. Section 338(b)(2)(A) – (E) of SECURE 2.0.

Section 338(b)(2) of SECURE 2.0 contains several directives with respect to the Department’s “applicable guidance governing electronic disclosure” other than the 2002 electronic disclosure safe harbor. For purposes of implementing these directives in this proposed

rulemaking, the Department considers “applicable guidance governing electronic disclosure” as referring to the electronic disclosure safe harbor codified at 29 CFR 2520.104b-31, entitled “Alternative method for disclosure through electronic media—Notice-and-access,” published in May 2020.⁹ Each of the directives are discussed below, and the Department’s proposed implementation of each directives are laid out in the five sections below.

Section 338(b)(2)(A) of SECURE 2.0 contains the first of the directives. The provision, in relevant part, directs the Department to update the 2020 safe harbor to the extent necessary to ensure that retirement plans using the safe harbor permit a participant or beneficiary “the opportunity to request that any disclosure required to be delivered on paper under applicable guidance by the Department of Labor shall be furnished by electronic delivery.”

Section 338(b)(2)(B) of SECURE 2.0 contains the second of the directives. The provision, in relevant part, directs the Department to update the 2020 safe harbor to the extent necessary to ensure that each paper statement furnished by the plan pursuant to subparagraph (E) of section 105(a)(2) of ERISA “include an explanation of how to request that all such statements, and any other document required to be disclosed under title I of the Employee Retirement Income Security Act of 1974, be furnished by electronic delivery.” The directive also provides that each paper statement shall include contact information for the plan sponsor, including a telephone number.

Section 338(b)(2)(C) of SECURE 2.0 contains the third of the directives. The provision, in relevant part, directs the Department to 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.”

Section 338(b)(2)(D) of SECURE 2.0 contains the fourth of the directives. The provision, in relevant part, directs the Department to update the 2020 safe harbor to the extent necessary to ensure that “each document required to be disclosed that is furnished by electronic delivery

⁹ 85 FR 31884 (May 27, 2020).

under such a plan shall include an explanation of how to request that all such documents be furnished on paper in written form.”

Section 338(b)(2)(E) of SECURE 2.0 contains the fifth of the directives. The provision, in relevant part, directs the Department to update the 2020 safe harbor to the extent necessary to ensure that “a plan is permitted to furnish a duplicate electronic statement in any case in which the plan furnishes a paper pension benefit statement.”

B. Exclusion of Paper Benefit Statements from Scope of Safe Harbor.

Paragraph (c) of the current 2020 safe harbor defines the full list of documents covered by that safe harbor. All these documents may be furnished by the electronic methods described in the safe harbor if all other conditions of the safe harbor are satisfied. Coverage under paragraph (c) of the current safe harbor includes all pension benefit statements required under section 105 of ERISA that must be furnished automatically by operation of law.

The proposal would amend paragraph (c)(1) of the current 2020 safe harbor to exclude, from the list of documents that may be furnished electronically, the mandatory paper pension benefit statements described in subparagraph (E) of section 105(a)(2) of ERISA. As a general rule, these statements always must be furnished on paper. But the proposal would continue to cover pension benefit statements not required to be furnished on paper under the new mandate, *i.e.*, benefits statements other than those described in subparagraph (E) of section 105(a)(2) of ERISA. For example, the safe harbor would continue to cover the other three benefit statements per year that must be furnished by a participant-directed individual account plan. In addition, retirement plans would also be able to use the notice-and-access model or email delivery method described in the 2020 safe harbor to furnish electronically the benefit statements described in subparagraph (E) of section 105(a)(2) of ERISA that would have otherwise been required on paper except that participants and beneficiaries elected to exercise the option described in

subparagraph (E)(ii) of section 105(a)(2) of ERISA to request electronic delivery instead of paper.

C. Opportunity to Request Electronic Delivery of Benefit Statement in Lieu of Paper Benefit Statement.

The proposed rulemaking would relocate the existing provisions of paragraph (l) of the current 2020 safe harbor to paragraph (m) and replace such provisions with a new paragraph (l), implementing section 338(b)(2) of SECURE 2.0. Specifically, paragraph (l)(1) of the proposal implements paragraph 338(b)(2)(A) by providing that, with respect to a plan that discloses covered documents electronically under the 2020 safe harbor, covered individuals are permitted the opportunity to request that pension benefit statements required to be furnished on paper under subparagraph (E) of section 105(a)(2) of ERISA instead be furnished by electronic delivery.

Paragraph (l)(1) of the proposal is limited to pension benefit statements required under subparagraph (E) of section 105(a)(2) of ERISA despite section 338(b)(2)(A)'s broader reference to "any disclosure required to be delivered on paper under applicable guidance by the Department of Labor." The Department considers this limitation to be reasonable and appropriate because, other than the initial notification described in paragraph (g) of the 2020 safe harbor, the benefit statement required by subparagraph (E) of section 105(a)(2) of ERISA is the only other retirement plan document under Title I of ERISA that is required to be delivered on paper under applicable guidance governing electronic disclosure by the Department. The Department requests comments on the scope of paragraph (l)(1) of the proposal.

D. Paper Pension Benefit Statement Must Explain Opportunity to Request Electronic Delivery in Lieu of Paper Benefit Statement.

Paragraph (l)(2) of the proposal implements section 338(b)(2)(B) of SECURE 2.0 by adding to the 2020 safe harbor a special rule that conditions the use of the 2020 safe harbor on

specific content being added to the paper pension benefit statement described in subparagraph (E) of section 105(a)(2) of ERISA. Specifically, paragraph (l)(2)(i) provides that, with respect to a plan that discloses covered documents electronically under the safe harbor, each pension benefit statement furnished on paper as required under subparagraph (E) of section 105(a)(2) of ERISA shall include an explanation of how to request that all such statements be furnished by electronic delivery.

Paragraph (l)(2)(i) of the proposal generally carries forward the language directly from section 338(b)(2)(B) of SECURE 2.0 without modification. The proposal limits the scope of paragraph (l)(2)(i) to pension benefit statements. The Department believes this scope is appropriate because this paragraph only applies to plans already furnishing nearly all disclosures electronically using the 2020 safe harbor. Thus, the only disclosures these plans are likely providing on paper to individuals who have not opted out of electronic disclosure, outside of the initial notification described in paragraph (g) of the 2020 safe harbor, are the benefit statements described in subparagraph (E) of section 105(a)(2) of ERISA. Therefore, to receive all disclosures electronically, an individual only needs to request that these benefit statements be furnished electronically rather than on paper. Additionally, this limitation thus would align the scope of paragraph (l)(2) with the scope of paragraph (l)(1) of the proposed regulation which is also limited to the benefit statements described in subparagraph (E) of section 105(a)(2) of ERISA. The Department believes alignment of the two interrelated provisions, in terms of scope, would avoid confusion and is beneficial for administration and ease of compliance. As with paragraph (l)(1) of the proposal, the Department requests comments on the scope of proposed paragraph (l)(2) and the interrelationship between the two provisions.

Paragraph (l)(2)(ii) of the proposal implements the requirement in section 338(b)(2)(B)(ii) of SECURE 2.0 that the paper pension benefit statement described in subparagraph (E) of section 105(a)(2) of ERISA contain contact information for the plan sponsor. Specifically, paragraph (l)(2)(ii) provides that, with respect to a plan that discloses

covered documents electronically under the safe harbor, each pension benefit statement furnished on paper as required under subparagraph (E) of section 105(a)(2) of ERISA shall include, in addition to the explanation of how to request that all such statements be furnished by electronic delivery, contact information for the plan sponsor, plan administrator, or other designated representative of the plan, including a telephone number.

Paragraph (l)(2)(ii) of the proposal provides flexibility by permitting the inclusion of contact information for the plan sponsor, plan administrator, or other designated representative of the plan. While section 338(b)(2)(B)(ii) of SECURE 2.0 refers to only the plan sponsor, the Department considers this flexibility to be in line with ordinary administrative practices of retirement plans and thus within the intent of the statute. Plan administrators and designated representative of plans, such as third-party administrators and recordkeepers, often play a more direct and central role in the administrative process of furnishing disclosures to participants and beneficiaries than the plan sponsor. The Department understands that it may make more sense to include the contact information of the entity that has a more hands-on role in furnishing disclosures than the plan sponsor who may be the employer but who has no direct or indirect role in the day-to-day administration of the plan. The Department requests comments on the scope of paragraph (l)(2)(ii) of the proposal.

E. Prohibition on Fees.

The proposed rulemaking makes two changes to implement section 338(b)(2)(C) of SECURE 2.0, which in relevant part, directs the Department to 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.

Paragraph (f)(1) of the 2020 safe harbor grants covered individuals the right, free of charge, to paper copies on request of pension benefit statements previously furnished electronically under the safe harbor. However, only one paper copy of the same statement must

be provided free of charge on request under that paragraph. Additional paper copies of the same benefit statement (e.g., a second, third, and so on), if requested by covered individuals, may be subject to fees under the 2020 safe harbor. The Department understands section 338(b)(2)(C) of SECURE 2.0 prohibits such fees.

Accordingly, the proposal would add a new paragraph (l)(3) clarifying that plans that use the 2020 safe harbor to furnish covered documents to covered individuals may not charge any fees to such individuals for the delivery of any paper pension benefit statements made on their requests pursuant to paragraph (f)(1) of the proposal. The proposed rulemaking would also make an amendment to paragraph (f)(1) of the 2020 safe harbor to conform to the new prohibition on fees in paragraph (l)(3) of the proposal. Specifically, the second sentence in paragraph (f)(1) of the proposal contains a new clause “except for pension benefit statements as provided in paragraph (l)(3) of this section.”

F. Explanation of How to Request Paper Documents.

Section 338(b)(2)(D) of SECURE 2.0, in relevant part, directs the Department to update the 2020 safe harbor to the extent necessary to ensure that “each document required to be disclosed that is furnished by electronic delivery under such a plan shall include an explanation of how to request that all such documents be furnished on paper in written form.” However, the proposal does not suggest amendments to the safe harbor in response to this directive because the 2020 safe harbor already satisfies this directive. Specifically, paragraph (f)(2) of the 2020 safe harbor gives covered individuals the right to globally opt out of electronic delivery and receive all covered documents in paper form. Additionally, paragraph (g) requires plans to provide an initial notice to covered individuals of their global opt out right and an explanation of how to exercise this right, and paragraphs (d)(3)(i)(F) and (k)(2)(iii) require plans to provide a similar statement alongside each electronic disclosure. Therefore, an additional statement within each document delivered electronically would be unnecessary and duplicative.

G. Duplicate Electronic Statements.

Section 338(b)(2)(E) of SECURE 2.0, in relevant part, directs the Department to update the 2020 safe harbor to the extent necessary to ensure that “a plan is permitted to furnish a duplicate electronic statement in any case in which the plan furnishes a paper pension benefit statement.” However, the proposal does not contain amendments to the safe harbor in response to this directive because nothing in the safe harbor regulation restricts a plan’s ability to furnish a duplicate electronic statement. The preamble to the 2020 safe harbor explicitly makes this point.¹⁰ The Department requests comments on whether, and in what circumstances, plans might deny duplicate electronic statements to individuals on account of their preference for the paper statement required under subparagraph (E) of section 105(a)(2) of ERISA.

IV. Minor conforming technical change to claims procedure regulation 29 CFR 2560.503-1

The claims procedure regulation requires a minor amendment to align with the proposed amendments to the 2002 safe harbor. The claims procedure regulation at 29 CFR 2560.503-1(g)(1) and (j) states that an electronic notification of an adverse benefit determination or denial of an appeal must comply with either the 2002 or 2020 safe harbors. The cross reference to the 2002 safe harbor specifically cites to paragraph 29 CFR 2520.104b-1(c)(1)(iv). As explained above, the Department is proposing to move the current content from paragraph (c)(1)(iv) into paragraph (c)(1)(iii) and insert new language specific to pension benefit statements in paragraph (c)(1)(iv). Accordingly, the Department proposes amending the claims procedure regulation by removing the cross references to paragraph (c)(1)(iv) of the 2002 safe harbor.

V. Dates, Request for Comments, and Good Faith Compliance

¹⁰ 85 FR 31884, 31899 (May 27, 2020) (“Once a plan respects the individual’s election and satisfies its obligation to furnish paper documents, the plan may continue to provide online access to covered documents that are available as well. The safe harbor has no effect on optional action in this context by plan administrators.”).

The Department invites comments no later than 60 days after **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Commenters are encouraged to express their views on all aspects of the proposed rule.

Section 338(b) of SECURE 2.0 directed the Secretary of Labor to update its regulations by December 31, 2024. Section 338(c) of SECURE 2.0, in turn, provides that the new paper benefit statement requirement shall apply with respect to plan years beginning after December 31, 2025. 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.

VI. Regulatory Impact Analysis

Section 338 of SECURE 2.0 amends section 105(a)(2) of ERISA to require that defined contribution plans furnish at least one pension benefit statement per year on paper, while defined benefit plans must furnish at least one pension benefit statement on paper every three years. SECURE 2.0 included an exclusion for participants and beneficiaries covered under the 2002 safe harbor, as well as an exclusion for participants and beneficiaries who affirmatively opt out of receiving these statements on paper.

In addition, SECURE 2.0 directed the Department to amend the 2002 and 2020 safe harbors. As amended, the 2002 safe harbor would require participants who first become eligible to participate and beneficiaries who first become eligible for benefits after December 31, 2025 to be provided a one-time paper notification of their right to request that all documents required under Title I of ERISA be furnished on paper. The 2020 safe harbor must be modified such that:

1. Participants and beneficiaries be provided with the opportunity to request electronic disclosure for any pension benefit statement which would otherwise be required to be delivered on paper;

2. Pension benefit statements which are required to be delivered on paper include an explanation of how to request the documents in electronic form, and include contact information, including a telephone number, for the plan sponsor, plan administrator, or other designated representative of the plan, and
3. Plans may not charge fees for paper delivery of pension benefit statements.

SECURE 2.0 directs that plans be allowed to furnish electronic duplicates of paper statements. SECURE 2.0 also requires that all ERISA-required disclosures furnished electronically include an explanation of how to request the disclosures in paper form. No modifications of the 2020 safe harbor are required to implement these requirements, as the 2020 safe harbor already requires a statement of the right to request and obtain a paper copy of a covered document and does not preclude the provision of duplicate statements.

The Department has examined the effect of the proposal as required by Executive Order 13563,¹¹ Executive Order 12866,¹² the Regulatory Flexibility Act,¹³ section 202 of the Unfunded Mandates Reform Act,¹⁴ Executive Order 13132,¹⁵ and Executive Order 14192.¹⁶

A. Relevant Executive Orders for Regulatory Impact Analyses.

Executive Orders 12866¹⁷ and 13563¹⁸ direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

¹¹ 76 FR 3821 (Jan. 21, 2011).

¹² 58 FR 51735 (Oct. 4, 1993).

¹³ Pub. L. 96-354, 94 Stat. 1164 (Sept. 19, 1980).

¹⁴ Pub. L. 104-4, 109 Stat. 48 (Mar. 22, 1995).

¹⁵ 64 FR 43255 (Aug. 9, 1999).

¹⁶ 90 FR 9065 (Feb. 6, 2025).

¹⁷ 58 FR 51735 (Oct. 4, 1993).

¹⁸ 76 FR 3821 (Jan. 21, 2011).

Under Executive Order 12866, “significant regulatory actions,” as defined by that Executive Order, are subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order defines a “significant regulatory action” as any regulatory action that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as “economically significant”);
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Since this proposal seeks to narrowly implement the provisions of SECURE 2.0 the Department does not anticipate that the proposal alone would have economic impacts of \$100 million or more in any one year. However, the effects of SECURE 2.0, in combination with this proposal, are likely to have economic impacts above \$100 million or more in any one year. Therefore, OMB has determined that this proposal meets the definition of an “economically significant rule” within the meaning of section 3(f)(1) of the Executive Order 12866. The Department has provided an assessment of the potential benefits, costs, and transfers associated with this proposal and SECURE 2.0 requirements under a pre-statutory baseline for its EO 12866 analysis.

Executive Order 14192, titled “Unleashing Prosperity Through Deregulation,” was issued on January 31, 2025. Section 3(a) of Executive Order 14192 requires an agency, unless

prohibited by law, to identify at least ten existing regulations to be repealed when the agency issues a new regulation. In furtherance of this requirement, section 3(c) of Executive Order 14192 requires that the new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with prior regulations. A significant regulatory action (as defined in section 3(f) of Executive Order 12866) that would impose total costs greater than zero is considered an Executive Order 14192 regulatory action. This proposed rule, if finalized as proposed, is, therefore, expected to be an Executive Order 14192 regulatory action.

B. Need for Regulatory Action

As discussed in sections II and III above, section 338 of SECURE 2.0 amended section 105(a)(2) of ERISA to require retirement plans to provide paper benefit statements in certain cases. Section 338 also instructed the Department to update its electronic disclosure safe harbors in concert with the changes to section 105 of ERISA. This proposal, if adopted as a final rule, would implement these Congressional mandates.

The proposal may help some Americans consume the important financial information on their benefit statements. According to a 2022 Survey by the American Association for Retired Persons (AARP), 55 percent of respondents who receive paper statements always review their statements, compared to 36 percent of respondents who receive only electronic statements.¹⁹ However, existing plan default settings can discourage participants from receiving paper delivery. The same AARP survey reported that 58 percent of respondents receiving paper statements did so under the default disclosure options of their plan, versus 31 percent who actively chose paper delivery.²⁰ Requiring plans to change default disclosure settings to include at least one statement on paper, therefore, may increase the likelihood that some participants will review their statements and be better informed regarding their retirement savings.

¹⁹ Brown, S. Kathi. Retirement Account Statements: Paper or Electronic?, AARP Research, May 2022, <https://doi.org/10.26419/res.00529.00>. Accessed March 27, 2025.

²⁰ The remaining 11 percent reported, “Don’t know.”

Older Americans and communities who are underserved by digital communication²¹ may benefit more than others. The AARP survey reports that 57 percent of adults would prefer to receive paper statements at least once per year. These preferences are even higher amongst low-to-moderate income adults, adults age 50 and older, and adults without access to a computer at work. However, as noted above, the majority of participants receiving paper statements do so under the default settings, rather than actively electing to receive paper statements. Thus, default disclosure settings with at least one statement on paper will accommodate these preferences.

C. Baseline

This proposal narrowly seeks to conform the Department's existing rules to SECURE 2.0. As such, the additional regulatory burden imposed by the Department is estimated to be *de minimis* or slightly negative. However, for the purposes of this RIA, the Department will consider the effects of both SECURE 2.0 and the ensuing proposal. As such, the baseline that will be used in this analysis will be from before SECURE 2.0 was passed.

D. Summary of Impacts

In accordance with OMB Circular A-4, Table 1 depicts an accounting statement summarizing the Department's assessment of the benefits, costs, and transfers associated with this regulatory action. The Department is unable to quantify all benefits, costs, and transfers of the proposal but has sought, where possible, to describe these non-quantified impacts.

²¹ According to the National Telecommunications and Information Administration, 16.7 percent of Americans report not using the internet in any location. National Telecommunications and Information Administration. "Internet Use (Any Location)." <https://www.ntia.gov/data/explorer#sel=internetUser&demo=&pc=prop&disp=chart>.

Table 1.—*Accounting Statement*¹

Benefits:

Non-Quantified:

- Increased regulatory uniformity between the 2002 and 2020 safe harbors regarding the universal right to opt out of electronic communications.
- Increased clarity among participants about the right to receive paper or electronic statements.
- Increased participant knowledge on the state of their retirement benefits due to receiving statements in the form of the participant’s choosing.

Costs:

Quantified:

- Review and prepare for the implementation of SECURE 2.0 and rule.
- Prepare initial notice under the 2002 safe harbor for new participants.
- Prepare explanation of how to receive required paper benefit statements electronically under the 2020 safe harbor.
- Update notice/explanation to add contact information and plan specific information

	Estimate (Primary)	Year Dollar	Discount Rate	Period Covered
Annualized Monetized (\$ Millions / Year)	\$49.40	2024	7 percent	2025-2034
	\$47.38	2024	3 percent	2025-2034

Transfers:

Quantified:

- Transfer the costs associated with paper delivery of duplicate pension benefit statements from participants to plans.

	Estimate (Primary)	Year Dollar	Discount Rate	Period Covered
Annualized Monetized (\$ Millions / Year)	\$0.46	2024	7 percent	2025-2034
	\$0.46	2024	3 percent	2025-2034

¹ All Costs, Benefits, and Transfers displayed in this accounting table represent the effects of SECURE 2.0. The proposal updates Departmental safe harbors to comply with existing law. The Perpetual Time Horizon annualized costs (in 2024 dollars) for the purposes of E.O. 14192, is \$40.87 million.

E. Request for Comment

The Department invites comments addressing its estimates of the benefits, costs, and transfers associated with the proposed rulemaking, as well as any quantifiable data that would support or contradict any aspect of its analysis. Specifically, the Department requests comments on:

1. How prevalent electronic disclosure was prior to the passage of SECURE 2.0 (specifically whether the Department’s estimate that 96.1 percent of participants received electronic disclosure prior to SECURE 2.0 is reasonable);
2. How prevalent is the use of the 2002 safe harbor vs. the 2020 safe harbor for electronic disclosure;

3. Would the newly required paper benefit statement encourage plans to switch from the 2020 safe harbor to the 2002 safe harbor for wired-at-work participants;
4. How prevalent is the use of service providers for the purposes of rule review, compliance, and preparation of legal notices and explanations (specifically whether the Department’s assumption that 90% of plans will use service providers for these services is reasonable);
5. How prevalent is the use of service providers for mailing pension benefit statements and other required disclosures (specifically whether the Department’s assumption of a \$1 per piece cost to mass-mail disclosures is reasonable);

F. Assumptions and Affected Entities

The Department used several datapoints and assumptions in conducting this analysis. General datapoints and assumptions are displayed in Table 2 below:

Table 2.—*General Assumptions*

Description	Assumption	Source
Number of Defined Contribution (DC) Plans	754,862	2022 Form 5500 Data ¹
Number of Defined Benefit (DB) Plans	46,508	2022 Form 5500 Data
Number of Participants and Beneficiaries Receiving Regular Statements	152,365,031 ²	2022 Form 5500 Data
Number of Service Providers	3,552	2022 Form 5500 Schedule C Data
New Hire Rate	3.6%	BLS Job Openings and Labor Turnover ²
Share of Plans Using a Service Provider for Rule Review and Notice Preparation	90.0%	Departmental Assumption
Hourly Cost for a Legal Professional	\$181.06	Departmental Calculation ³
Hourly Cost for a Clerical Professional	\$70.29	Departmental Calculation
Per-unit Average Cost to Prepare and Send Mailed Statements	\$1.00	Departmental Assumption ⁴
Printing Cost Per Page	\$0.05	Departmental Assumption

¹ This data can be found in the 2022 Private Pension Plan Bulletin.

² Beneficiaries in a DB plan can only receive statements on request. Meanwhile, beneficiaries in DC plans are able to receive regular statements, which is the focus of this rule. As a result, DB Beneficiaries will not be included in calculations discussing “beneficiaries”. See 29 USC 1025 for more information

³ Bureau of Labor Statistics, Job Opening and Labor Turnover. Table A, Total Private. February 2025. Most recent release can be found here: <https://www.bls.gov/news.release/pdf/jolts.pdf>.

⁴ For information on how the Department estimates labor cost see:

<https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/technical-appendices/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-june-2019.pdf>.

⁵ For more information, see the discussion in section VI.H(3)

In addition to the data and assumptions displayed in Table 2 above, the Department also made a number of assumptions regarding the reliance on electronic disclosure and use of the 2002 and 2020 safe harbors. These assumptions, displayed in Table 3, are key to the analysis below and thus warrant separate discussion.

Table 3.—*E-Disclosure and Safe Harbor Assumptions*

Description	Assumption	Source
Share of Workers Aged 25 and Over Who Have Access to Internet at Work	37.4%	National Telecommunications and Information Agency ¹
E-Disclosure Share, All Participants: Pre-Statute	96.1%	Departmental Calculation
E-Disclosure Share, 2002 Safe Harbor: Post-Statute	96.1%	Departmental Assumption
E-Disclosure Share, 2020 Safe Harbor: Post-Statute	63.0%	Departmental Assumption
Share of Plans Using 2002 Safe Harbor	37.4%	Departmental Assumption
Share of Participants Covered Under the 2002 Safe Harbor	37.4%	Departmental Assumption
Share of Plans Using 2020 Safe Harbor	96.1%	Departmental Assumption
Share of Participants Covered Under the 2020 Safe Harbor	62.6%	Departmental Assumption
E-Disclosure Opt-In Rate, 2020 Safe Harbor	51.3%	Departmental Calculation ²

¹ National Telecommunications and Information Administration. *NTIA Data Explorer*, 2023,

<https://www.ntia.gov/data/explorer#sel=workInternetUser&demo=age&pc=prop&disp=chart>.

²According to the NTIA survey, 81.5% of households use the internet in 2023. This figure is multiplied by the post-statute e-disclosure rate for the 2020 safe harbor, which is 63 percent. In total, the Department estimates that 51.3% = (63% x 81.5%) would receive electronic disclosures."

The Department considered how SECURE 2.0 and the proposal would affect electronic disclosure and safe harbor use. The safe harbor categorizations refer to which safe harbor the plan will furnish electronic disclosure under, while the electronic disclosure rate describes the share of participants actually receiving electronic disclosure. For example, consider a plan with 1,000 participants using the 2020 safe harbor for electronic disclosure, where 961 receive electronic disclosure and 39 participants request paper disclosure. Under this hypothetical, all participants in this plan are covered under the 2020 safe harbor, but the electronic disclosure rate is 96.1 percent. When considering the pre-statutory baseline for electronic disclosure, the Department assumes that plans covered substantially all participants under the 2020 safe harbor,

and that 96.1²² percent of participants received electronic disclosure prior to SECURE 2.0. The Department assumes that the share of plans that provided electronic disclosure prior to SECURE 2.0 mirrored this estimate.

When considering wired-at-work participants under SECURE 2.0, there are two paths to avoid the extra costs from paper delivery of the benefit statement. Either participants opt out of this additional paper delivery under the 2020 safe harbor, or plans choose to furnish pension benefit statements to these participants electronically under the 2002 safe harbor. In the face of this requirement, the Department believes that plans will use the 2002 safe harbor to furnish pension benefit statements to all “wired-at-work” participants. According to the National Telecommunications and Information Agency, 37.4 percent of workers age 25 and over have access to the internet at work. Thus, the Department assumes that approximately 37.4 percent of participants²³ are “wired-at-work” and will be covered under the 2002 safe harbor.

²² The Department estimates approximately 96.1% of participants receive disclosures electronically under the combined effects of the 2002 electronic disclosures safe harbor and the 2020 electronic safe harbor. The Department estimates that 58.3% of participants will receive electronic disclosures under the 2002 safe harbor. According to the National Telecommunications and Information Agency (NTIA), 37.4% of individuals age 25 and over have access to the Internet at work. According to a Greenwald & Associates survey, 84.0% of plan participants find it acceptable to make electronic delivery the default option, which is used as the proxy for the number of participants who will not opt-out of electronic disclosure that are automatically enrolled (for a total of 31.4% receiving electronic disclosure at work). Additionally, the NTIA reports that 44.1% of individuals age 25 and over have access to the internet outside of work. According to a Pew Research Center survey, 61.0% of internet users use online banking, which is used as the proxy for the number of internet users who will affirmatively consent to receiving electronic disclosures (for a total of 26.9% receiving electronic disclosure outside of work). Combining the 31.4% who receive electronic disclosure at work with the 26.9% who receive electronic disclosure outside of work produces a total of 58.3%. The remaining 41.7% of participants are subject to the 2020 safe harbor. According to the 2022 American Community Survey, 91.2% of the population has an internet subscription. The Department estimates that 0.5% of electronic disclosures will bounce back and will need to be sent a paper disclosure. Accordingly, for the 41.7% of participants not affected by the 2002 safe harbor, 90.7%, or an additional 37.8% (41.7% x 90.7%), are estimated to receive electronic disclosures under the 2020 safe harbor. In total, the Department estimates that 96.1% (58.3% + 37.8%) would receive electronic disclosures.

²³ Generally only participants, not beneficiaries, are eligible to receive electronic disclosures under the wired-at-work provision of the 2002 safe harbor. SECURE 2.0 requires an initial notice for newly eligible participants and beneficiaries who first become eligible for benefits after December 31, 2025. However, for the purposes of this burden analysis, only wired-at-work participants are assumed to receive the initial paper notice, as beneficiaries who have affirmatively consented to electronic disclosure under the 2002 safe harbor will likely receive the existing advance statement on paper instead. *See* section II.B above.

The Department further assumes that the share of plans using the 2002 safe harbor for some or all of their participants will mirror this at 37.4 percent.²⁴ Since plans would be using the 2002 safe harbor for the purposes of maintaining electronic disclosure, the Department believes that this population would maintain an electronic disclosure rate equal to the pre-statutory period. If this were not the case, then moving participants to the 2002 safe harbor would yield no benefits. As such, 96.1 percent of the wired-at-work population is expected to receive electronic disclosure under the 2002 safe harbor. However, the primary effect of SECURE 2.0 on the 2002 safe harbor is to provide participants with an initial notice explaining the right to receive paper documents. The Department believes that this document will be added to standard new-hire documents for all newly-eligible wired-at-work participants. Thus, this regulatory impact analysis will assume the affected population is all newly-hired wired-at-work participants, regardless of whether or not they continue to receive electronic disclosure under the 2002 safe harbor in the future.

Regarding the 2020 safe harbor, the Department assumes that all plans that provided electronic disclosure prior to SECURE 2.0 will continue to use the 2020 safe harbor for some or all their participants. It should be noted that some plans using the 2020 safe harbor may also use the 2002 safe harbor for some of their participants. As a result of this overlap, the number of plans providing electronic disclosure will not equal the sum of plans using the 2002 and 2020 safe harbors individually.

The Department assumes that all non wired-at-work participants, will be covered under the 2020 safe harbor. Thus, the Department estimates that 62.6 percent²⁵ of participants will be covered under the 2020 safe harbor. Prior to SECURE 2.0 the Department assumed that these

²⁴ Access to internet at work as a core function of job duties may vary by industry and plans, but because it can also vary by type of worker within a plan, the Department uses the same 37.4 percent as a simplifying assumption. A sensitivity analysis examining the effects of changing this assumption can be found in Table 11.

²⁵This is calculated as $62.6\% = 100\% - 37.4\%$

participants would receive electronic disclosure at the same rate as wired-at-work participants, which was assumed to be 96.1 percent.

However, after SECURE 2.0's implementation, the Department believes that the use of electronic disclosure among participants covered under the 2020 safe harbor will decrease. As a result of inertia, many participants are expected to leave their statement settings at the default and receive the required paper benefit statement. However, some participants are expected to opt back into exclusive electronic disclosure. In comments received on the Department's RFI²⁶ on SECURE 2.0, Vanguard indicated that 80 percent of its participants had signed up for online account access and that 63 percent of its participants received disclosures electronically. Since Vanguard's electronic delivery also requires an affirmative opt-in, the Department thinks that this 63 percent is a reasonable estimate for the long-run share of people who will affirmatively opt back into electronic disclosure after SECURE 2.0's implementation. While this number is derived from a single comment, it mirrors the Department's previous estimate for the share of participants that would sign up for electronic disclosure, which was 61 percent. This was derived from a survey²⁷ which reported the share of internet users that banked online, which the Department used as a proxy for the use of electronic disclosure. As such, the Department assumes that electronic disclosure rates amongst participants covered by the 2020 safe harbor will sharply fall after SECURE 2.0 is implemented, and then slowly rise to a long-run rate of 63 percent. The Department estimates that the rate of growth for this figure will be 51.3 percent, which is calculated in Table 3.

Taken together, the Department assumes that 51.3 percent of participants covered under the 2020 safe harbor will opt in to electronic disclosure in the first year. This is referred to as the short-run rate of electronic disclosure. Each year after that, the Department assumes more

²⁶ "Request for Information-SECURE 2.0 Reporting and Disclosure." Federal Register, vol. 88, no. 154, 11 Aug. 2023, pp. 54511-54534. <https://www.federalregister.gov/documents/2023/08/11/2023-17249/request-for-information-secure-20-reporting-and-disclosure>.

²⁷ "51% of U.S. Adults Bank Online." *Pew Research Center*, 7 Aug. 2013, <https://www.pewresearch.org/2013/08/07/51-of-u-s-adults-bank-online/>.

participants will sign up for electronic disclosure, and the gap between the short-run and long-run electronic disclosure rates will decrease by another 51.3 percent. The Department believes that this model of slowly increasing electronic disclosure, also known as a diminishing gains assumption, will better model participant behavior than simply assuming an immediate 63 percent electronic disclosure rate.

SECURE 2.0 includes provisions which affect paper delivery, such as the prohibition of fees for duplicate paper statements. As a result, all participants covered under the 2020 safe harbor, regardless of whether they receive pension benefit statements electronically or on paper, will be affected by SECURE 2.0 and the proposal.

The Department requests comment on these assumptions. The Department also acknowledges that this analysis is particularly sensitive to these assumptions. To address this sensitivity, the Department conducted an extensive uncertainty analysis which demonstrates how differing assumptions of these variables would affect the final regulatory impact. For instance, plans may decide that moving participants over to the 2002 safe harbor just to avoid a paper disclosure is not what they want to do. In this case, leaving participants on the 2020 safe harbor would result in a higher estimated cost for SECURE 2.0 and the proposal. Alternatively, if a larger proportion of participants are being covered by the 2002 safe harbor, the estimated costs for SECURE 2.0 and the proposal would be lower. See section VI.J. of the regulatory impact analysis for the associated uncertainty analysis.

The Department also assumes that many plans will rely on service providers to assist in legal compliance with SECURE 2.0 and the proposal. The Department does not have recent data on the use of service providers by plans but believes that a large majority of plans use service providers for various elements of plan administration. In 1998, the Department cited²⁸ a report by Spencer & Associates which stated that “less than 5% of 401(k) plans were being administered

²⁸ United States, Pension and Welfare Benefits Administration. *Study of 401(k) Plan Fees and Expenses*. https://www.dol.gov/sites/dolgov/files/ebsa/pdf_files/study-of-401k-plan-fees-and-expenses.pdf. Accessed 22 Apr. 2025.

in-house exclusively and only 30% by in-house staff supported by vendors.”²⁹ The report also stated that “59% of 401(k) plans use bundled services from full service providers” and that “among plans with fewer than 250 participants, 85% rely on bundled services.”³⁰ The Department believes that the spread of the internet since the publication of this report is likely to have increased the ease of use and prevalence of service providers amongst plans.

To validate this with more recent data, the Department analyzed Schedule C records from the Form 5500, which detail payments to service providers for a subset of plans that file Schedule C, specifically those with 100 or more employees on the first day of the plan year and only then if the compensation (whether direct or indirect) received by any service provider in connection with services rendered to the plan is at least \$5,000. The Department found that 80 percent of plans filing a Schedule C reported using service providers for “Plan Administration, Recordkeeping, or Recordkeeping Fees.” While that share excludes smaller plans that don’t file the Schedule C, Department assumes that smaller plans have fewer resources to conduct in-house plan management and are thus more likely to use service providers. With these considerations in mind, the Department assumes that 90 percent of all plans will rely on service providers to review the proposal, inform them of the needed changes, and prepare the needed forms, rather than carrying out these tasks in-house.

Using the 2022 Form 5500 Schedule C data, the Department identified 3,552 unique EINs for service providers in the “Plan Administration, Recordkeeping, or Recordkeeping Fees” service codes. The Department assumes that this type of service provider will be involved in reviewing the proposal and preparing the new initial notice for the 2002 safe harbor and electronic delivery explanation for the 2020 safe harbor. The Department requests comment on these assumptions.

²⁹ Spencer, C. & Associates, “Employers Happy With 401(k) Administration, Shift More Costs to Employees,” Spencer’s Research Reports on Employee Benefits, November 15, 1996.

³⁰ Fink, M., Investment Executives Institute, “Statement before the U.S. Department of Labor, Pension and Welfare Benefits Administration Public Hearing on 401(k) Plan Fees,” November 12, 1997.

Table 4.—*Affected Entities*

Entities	Description	Value
Plans Using 2002 Safe Harbor	37.4% of Plans	299,712
Plans Using 2020 Safe Harbor	96.1% of Plans	770,117
Subtotal: Affected Plans	100% of Plans	801,370
Newly Eligible Participants Covered by 2002 Safe Harbor	37.4% of Participants x 5% Newly Eligible for Benefits	2,833,356
All Participants and Beneficiaries Covered Under 2020 Safe Harbor	62.6% of Participants + Beneficiaries Eligible for Benefits	95,697,905
Subtotal: Affected Participants	66% of Participants + Beneficiaries Eligible for Benefits	98,531,261
Service Providers Conducting Rule Review and Compliance Support	Service Providers for Plan Administration and Recordkeeping Service Codes	3,552
Total Affected Entities		99,336,183

* This subtotal differs from the sum of each group as some plans use both safe harbors.

Out of participants covered under the 2002 safe harbor, primarily newly-hired workers would be affected. Additionally, workers who become newly eligible through promotion or conversion from part- to full-time would also be affected. The Department does not have data on existing workers who become newly eligible to participate through full-time conversion or promotion. To account for these workers, the Department adjusts the new-hire rate of 3.6 percent up to 5 percent of participants when considering newly-eligible participants. Accordingly, the Department assumes that 5 percent of participants covered by the 2002 safe harbor will be affected by this proposal.

Plans relying on the 2002 safe harbor for some or all of their electronic disclosures will be required to provide participants who become eligible to participate after December 31, 2025 with a one-time notice that they will receive electronic notifications. Thus, all plans using the 2002 safe harbor for some or all participants will be affected by this proposal.

Plans relying on the 2020 safe harbor for electronic disclosure will now be required to provide certain pension benefit statements on paper unless participants affirmatively opt in to receiving these statements electronically. Defined contribution plans will be required to provide

at least one statement per year on paper, while most defined benefit plans will be required to provide at least one statement every three years on paper.³¹ To establish the right to opt in to receiving these statements electronically, affected plans must include explanations of these rights and how to opt out of receiving this statement on paper. Additionally, affected plans will now be prohibited from charging for additional paper copies of pension benefit statements. All plans using and participants covered under the 2020 safe harbor are expected to be affected by this proposal.

Finally, service providers involved in reviewing the proposal and preparing the new initial notice for the 2002 safe harbor and electronic delivery explanation for the 2020 safe harbor will be affected by this proposal. The Department's estimates for the number of affected entities are displayed in Table 4 above.

G. Benefits

This proposal is mandated by Congress to align the Department's safe harbors with SECURE 2.0's amendments to section 105(a) of ERISA. As such, one benefit of this proposal will be decreasing regulatory confusion amongst plans and participants as a result of the inconsistent electronic disclosure requirements between SECURE 2.0 and Departmental safe harbors.

Second, the changes made by SECURE 2.0 will also create additional regulatory uniformity between the 2002 and 2020 safe harbors by requiring participants covered under the 2002 safe harbor to be provided a global right to opt out of electronic disclosure, and properly informed of it. Both participants under the 2020 and 2002 safe harbors will now receive similar initial notices, notifying participants of their right to receive paper disclosure at the start of their eligibility. Furthermore, the paper statement required to be provided at least once a year in the

³¹ The Department assumes that most frozen defined benefit plans will opt to provide an annual notice of statement availability, rather than the standard triennial statement.

updated 2020 safe harbor will mean that non-wired-at-work participants will only be able to receive exclusively electronic disclosure if they affirmatively request it. This will make the requirements under the 2002 safe harbor more similar to the requirements under the 2020 safe harbor and ensure that all participants are properly informed of their right to opt out of electronic disclosure.

Additionally, as discussed in section VI.B above, SECURE 2.0 and the accompanying proposal will better align the Department's safe harbors with participant's preferences. This will better support elderly, low-to-moderate income, and non-wired-at-work participants, who report a greater desire for paper delivery of statements.³² These populations tend to have less access to the internet and are therefore less well-served by default electronic disclosure regimes.³³ Fifty-eight percent of participants receiving paper statements do so because it is the default option for their plan.³⁴ Thus, by encouraging plans to change the plan default to include at least one paper benefit statement per year, SECURE 2.0 and the proposal will promote better access to retirement information across groups. Moreover, since participants that receive paper statements report that they are more likely to fully review the statement,³⁵ SECURE 2.0 and the proposal are likely to increase participant knowledge of the state of their retirement benefits.

Taken together, SECURE 2.0 and the proposal will allow plans to have more clarity for providing electronic disclosure by addressing the differences between statute and current safe harbors. The additional notices will also reduce the differences between the 2002 and 2020 safe harbors, which will allow plans to use similar administrative procedures regardless of which safe harbor they use. By encouraging more paper delivery, SECURE 2.0 and proposal will also

³² Brown, S. Kathi. Retirement Account Statements: Paper or Electronic?, AARP Research, May 2022, <https://doi.org/10.26419/res.00529.00>. Accessed March 27, 2025.

³³ National Telecommunications and Information Administration. *NTIA Data Explorer*. <https://www.ntia.gov/data/explorer#sel=workInternetUser&demo=age&pc=prop&disp=chart>

³⁴ Brown, S. Kathi. Retirement Account Statements: Paper or Electronic?, AARP Research, May 2022, <https://doi.org/10.26419/res.00529.00>. Accessed March 27, 2025.

³⁵ *Ibid.*

support populations which are underserved by the current electronic disclosure standards and increase participant knowledge of their pensions.

H. Costs

Section 338 of SECURE 2.0 requires plans using the 2020 safe harbor to provide certain pension benefit statements on paper, with a new explanation, and requires plans using the 2002 safe harbor to provide a new initial notice that participants and beneficiaries will receive electronic delivery and how to receive statements on paper to newly-eligible participants and beneficiaries. SECURE 2.0 also provides that plans may not charge any fee for delivery of any paper statement. Previously, the 2020 safe harbor only prohibited plans from charging fees for the first copy of a paper benefit statement, so this prohibition was expanded to include additional copies beyond the first. Finally, SECURE 2.0 also directs the Department to allow plans to furnish duplicate electronic statements and requires that all ERISA-required disclosures provided electronically include an explanation of how to request the disclosures in paper form. The Department believes that these provisions are met by the existing safe harbor and will require no change. The proposal will not add any additional costs beyond those imposed by SECURE 2.0. The Department used a number of sources and assumptions in its estimation of the costs associated with the statutory provisions in SECURE 2.0. These assumptions, including mailing and labor cost assumptions, were discussed and displayed in tables 2 and 3 above.

(1) Reviewing of Rule and Planning for Implementation

As a result of the updated provisions of SECURE 2.0, plans will need to review SECURE 2.0, the proposal and relevant guidance to devise an implementation plan to bring their disclosure procedures into compliance. As discussed in section VI.F above, the Department assumes that 90 percent of plans will rely on service providers to review SECURE 2.0 and the proposal and provide guidance to plans on implementation.

The Department assumes that the proposal will take approximately four hours to review, regardless of whether the plans are reviewing the proposal in-house or utilizing service providers. Per discussions with OMB on previous regulations, the Department applies an average reading speed of 250 words per minute to the preamble and regulatory text. This yields a reading time of approximately 45 minutes. The Department assumes a further 3 hours and 15 minutes to account for additional work to plan for implementation of SECURE 2.0 and the proposal. The Department requests comment on these assumptions. The costs associated with this requirement are displayed in Table 5 below:

Table 5.—*Costs for Rule Review and Implementation Planning*

Description	Affected Entities	Hours per Entity	Hourly Wage	Total Hours	Equivalent Cost
	(A)	(B)	(C)	(A x B)	(A x B x C)
Rule Review (Service Providers)	3,552 Service Providers	4	\$181.06	14,208	\$2,572,500
Rule Review (In-House)	80,137 = 801,370 Plans x 10% Not Using a Service Provider	4	\$181.06	320,548	\$58,038,421
Total				334,756	\$60,610,921

(2) 2002 Safe Harbor: Notice for New Participants and Beneficiaries

SECURE 2.0 requires that participants and beneficiaries covered under the 2002 safe harbor, who are newly eligible to participate, or for benefits after December 31, 2025, must be provided with a one-time paper notice. This notice must explain that by default they will receive electronic documents in the future. This will require legal professionals to prepare the notice, and clerical professionals to add contact and plan information to the notice. The Department assumes that this notice would be included along with other new-hire and benefit explanation documents. As such, the Department assumes there would be no additional distribution costs for this notice.

The Department assumes that the share of plans using service providers for preparation of this notice will mirror the share of plans using service providers for rule review. For plans utilizing service providers, the Department assumes that it will take an additional five minutes

for a clerical worker to add contact and plan information to the prepared notice. The Department requests comment on these assumptions.

The costs associated with this requirement are discussed in Table 6 below:

Table 6.—*Costs for Preparation of 2002 Safe Harbor Notice*

Description	Affected Entities (A)	Hours per Entity (B)	Hourly Wage (C)	Total Hours (A x B)	Equivalent Cost (A x B x C)
Notice Preparation (Service Providers)	3,552 Service Providers	1	\$181.06	3,552	643,125
Notice Preparation (In-House)	29,971 = 299,712 Plans x 10% Not Using a Service Provider	1	\$181.06	29,971	5,426,592
Adding Contact and Plan Information to Drafted Notices	269,741 = 299,712 Plans x 90% Using a Service Provider	5/60	\$70.29	22,478	1,580,009
Total				56,002	\$7,649,726

*(3) 2020 Safe Harbor: Electronic Disclosure Explanation and Additional
Paper Benefit Statements*

SECURE 2.0 requires that, unless otherwise exempted, defined contribution plans provide at least one pension benefit statement per year on paper, and that defined benefit plans provide at least one pension benefit statement every three years on paper. The Department assumes that most plans prefer electronic disclosure and are currently sending as many of these statements electronically as possible. With this new requirement, participants who previously opted in to electronic disclosure would begin receiving paper statements unless they pre-emptively opt out of electronic disclosure before the first statement is sent.

As shown in Table 3, the Department believes that 51.3 percent of participants covered under the 2020 safe harbor will pre-emptively opt out of these newly required paper statements. Of those who do not pre-emptively opt out, the Department estimates that the remainder of defined contribution plan participants and one-third of participants in non-frozen defined benefit

plans will begin receiving paper statements in the first year.³⁶ Participants in frozen defined benefit plans are expected to receive a shorter notice of statement availability annually, rather than the full triennial defined benefit statement. After receiving their first statement on paper, the Department believes that many participants will opt out of receiving paper statements in the future. The Department believes that a further 51.3 percent of participants receiving a paper statement will opt out of paper statements before their next statement in each subsequent year. Through these diminishing gains, the rate of electronic disclosure will eventually approach 63 percent. The Department requests comment on these assumptions.

All statements required to be provided on paper must also include an explanation of how to request the documents in electronic form. This additional disclosure would be prepared by a legal professional. The Department assumes a similar share of plans will utilize service providers to prepare this explanation as they did for the initial notice in the 2002 safe harbor. The Department assumes this disclosure will be included with the paper statements, rather than mailed separately. A clerical professional would add contact and plan information to the prepared explanation.

The costs associated with this requirement in year one are displayed in Tables 7 and 8 below:

³⁶ Since defined benefit plans are only required to provide one statement every third year, the Department assumes that these statements are uniformly distributed across participants, and that one third of all defined benefit participants will receive a paper statement per year.

Table 7.—Cost for Preparation of Explanation of Electronic Delivery for 2020 Safe Harbor (Year 1)

Description	Affected Entities (A)	Hours per Entity (B)	Hourly Wage (C)	Total Hours (A x B)	Equivalent Cost (A x B x C)
Explanation Preparation (Service Providers)	3,552 Service Providers	1	\$181.06	3,552	\$643,125
Explanation Preparation (In-House)	77,012 = 770,117 Plans x 10% Not Using a Service Provider	1	\$181.06	77,012	\$13,943,731
Adding Contact and Plan Information to Drafted Explanations	693,105 = 770,117 Plans x 90% Using a Service Provider	5/60	\$70.29	57,759	\$4,059,862
Total				138,322	\$18,646,718

Table 8.—Cost for Distribution of New Paper Benefit Statements for 2020 Safe Harbor (Year 1)

Description	Affected Entities (A)	Pages per Disclosure (B)	Material Costs per Page (C)	Distribution Costs per Disclosure (D)	Total Cost Burden (A x [(B x C) + D])
Distribution of Statements for DB Plans	4,268,874 = ((1/3) x 16,916,210 Participants in Non-Frozen DB Plans Under 2020 Safe Harbor + 3,899,580 Participants Frozen DB Plans Under 2020 Safe Harbor) x (96.1% Pre-Statute E-Disclosure Rate - 51.3% Post-Statute E-Disclosure Rate)	1	\$0.05	\$1.00	\$4,065,617
Distribution of Statements for DC Plans	34,367,195 = 76,789,620 DC Participants and Beneficiaries Covered by 2020 Safe Harbor x (96.1% Pre-Statute E-Disclosure Rate - 51.3% Post-Statute E-Disclosure Rate)	5	\$0.05	\$1.00	\$42,958,993
Total					\$47,024,610

The Department expects that many plans use service providers to process regular mass disclosures. Sometimes these services will be provided by service providers as a package deal for plan administration, while other times it will be done by a dedicated mass mailing service. Plans conducting regular mailing in-house are also likely to use mass mailing machines to prepare documents for mailing, rather than using a clerical professional to prepare each piece manually.

To estimate this cost, the Department examined Schedule C Data for plans that reported using a separate mass mailing service. The Department then calculated the cost per participant of these service providers. Assuming that each participant receives only one paper document per year, this figure is then used to estimate the cost of mass mailing. By only examining separate mailing service providers, rather than including other, one-stop service providers that provide participant communication or copying services, the Department believes it can be more certain that its estimates only include mailing and printing services. This analysis provided a median cost per disclosure of 65 cents, and an average cost of \$1.05.

The Department also examined publicly available estimates from mailing services. USPS direct mailing services for plan-designed letters sent by first class mail yielded an approximate estimate of 95 cents per piece. Examining private companies offering these services, the Department found per-piece rates ranging from 77 cents up to \$2.65. Taking all of these data points into consideration, the Department decided to set a per-piece mailing cost of \$1.00 per piece, with an added charge of 5 cents per additional page, which falls squarely in the range of observed datapoints. The Department requests comment on these assumptions.

As discussed earlier, the Department assumes that 51.3 percent of participants covered under the 2020 safe harbor will pre-emptively sign up for electronic disclosure of the required paper benefit statements. After that, the Department assumes that 51.3 percent of participants who receive a paper benefit statement in a given year will sign up for electronic disclosure before their next statement. Over time, the electronic disclosure rate will slowly converge to a 63 percent electronic disclosure rate. The Department's estimates for these costs over time are displayed in Table 9 below.

Table 9.—*Ten-Year Total Costs Associated with Statute and Proposal*

Years	Electronic Disclosure Rates			Statute and Proposal Costs				Total Costs ¹
	2020 Safe Harbor Electronic Disclosure Rate	2020 Safe Harbor Paper Disclosure Rate	Change to 2020 Safe Harbor Paper Disclosure Rate from Statute and Proposal	Rule Review	Notice and Explanation Preparation	Adding Contact and Plan Information to Drafted Notices	Distribution Cost for Additional Paper Benefit Statements	
Pre-Statute	96.1%	3.9%	0.0%	\$0	\$0	\$0	\$0	\$0
1	51.3%	48.7%	44.8%	\$60,610,921	\$20,656,573	\$5,639,871	\$47,024,610	\$133,931,975
2	57.3%	42.7%	38.8%	\$0	\$0	\$0	\$40,736,877	\$40,736,877
3	60.2%	39.8%	35.9%	\$0	\$0	\$0	\$37,677,581	\$37,677,581
4	61.7%	38.3%	34.4%	\$0	\$0	\$0	\$36,189,080	\$36,189,080
5	62.3%	37.7%	33.8%	\$0	\$0	\$0	\$35,464,850	\$35,464,850
6	62.7%	37.3%	33.4%	\$0	\$0	\$0	\$35,112,476	\$35,112,476
7	62.8%	37.2%	33.3%	\$0	\$0	\$0	\$34,941,028	\$34,941,028
8	62.9%	37.1%	33.2%	\$0	\$0	\$0	\$34,857,610	\$34,857,610
9	63.0%	37.0%	33.1%	\$0	\$0	\$0	\$34,817,023	\$34,817,023
10	63.0%	37.0%	33.1%	\$0	\$0	\$0	\$34,797,276	\$34,797,276

¹ Cost estimates are not inflation adjusted and are presented in constant dollars.

I. Transfers

SECURE 2.0 prohibits plans from charging fees for copies of pension benefit statements provided on paper. Prior to the passing of SECURE 2.0, plans were only prevented from charging a fee on the first copy. This represents a transfer of costs from participants requesting additional copies of pension benefit statements to plans.

This transfer would only affect copies beyond the first. The Department does not have reliable data regarding the number of participants requesting additional copies of their statements but expects the share of participants to be relatively small. The Department assumes that only participants who received paper statements prior to the passage of SECURE 2.0 would request additional copies. This is because participants who previously received electronic statements, and who only began receiving paper disclosure as a result of SECURE 2.0 and the proposal, would be unlikely to request additional paper statements. Since requesting duplicate copies would require active requests, the Department believes that this population is unlikely to request multiple copies of their statements.

As discussed in the Costs section, the Department estimates that 3.9 percent of participants received paper statements prior to SECURE 2.0. In this analysis, the Department assumes that 10 percent of these participants will request a duplicate statement per year. Comments are requested on this assumption.

The Department's estimate for this transfer is displayed in Table 10 below. For more information on the material and distribution cost estimates, refer to section VI.H(3) of the Cost section.

Table 10.—*Transfers*

Description	Affected Entities (A)	Pages (B)	Material Costs per Page (C)	Distributio n Costs (D)	Material and Postage Transfer (A x [(B x C) + D])
Duplicate Statements for DB Plan Participants	81,182 = 32,112,433 DB Participants x 3.9% Receiving Paper Statements Pre-Statute x 10% Receiving Duplicate Statements Per Year	1	\$0.05	\$1.00	\$77,429
Duplicate Statements for DC Plan Participants	299,480 = 122,160,103 DC Participants and Beneficiaries x 3.9% Receiving Paper Statements Pre-Statute x 10% Receiving Duplicate Statements Per Year	5	\$0.05	\$1.00	\$374,349
Total	380,661				\$451,779

J. Regulatory Alternatives

In accordance with Executive Order 12866, the Department considered alternative regulatory approaches to achieve the goal of the proposal.

(1) Amend the 2020 safe harbor to clarify existing provisions

First, the Department considered explicitly adding additional provisions to address SECURE 2.0's directive that the 2020 safe harbor:

1. Allow plans to furnish duplicate electronic copies of paper statements, as directed in section 338(b)(2)(D) of SECURE 2.0,
2. Require all ERISA-required disclosures provided electronically to include an explanation of how to request the disclosures in paper form, as directed in section 338(b)(2)(E) of SECURE 2.0.

However, the Department believes the existing safe harbors already accomplish these requirements. Additionally, should the Department include additional provisions on these topics in the proposal, then plans may be required to update their disclosures if they differed from the new requirements of the safe harbor. This would incur additional costs on plans without further advancing the goals of the proposal and was thus rejected.

(2) Expand Disclosure Requirements to All Paper Statements

The Department also considered requiring that all pension benefit statements furnished on paper include a statement of how to obtain electronic disclosure, rather than just limiting this requirement to the statements required to be provided on paper under SECURE 2.0. This would have benefits for regulatory uniformity, as it would provide a blanket requirement across all pension benefit statements. However, limiting the disclosure requirement just to these required statements reduces the burden on plans and participants while still fulfilling SECURE 2.0's mandate. Since this alternative would have raised costs without furthering the goals of this proposal, it was rejected.

(3) Do Not Issue Proposal

The Department is unable to consider a “no-change” alternative scenario. This proposal addresses the directive established by Congress under SECURE 2.0 and aligns the Department's safe harbors with SECURE 2.0. Absent this proposal, the Department would be in violation of SECURE 2.0 and the Department's safe harbors would be inconsistent with it, resulting in

regulatory uncertainty. As a result, a no-change scenario does not accomplish the goals of this proposal and was rejected.

(4) Uncertainty

The largest source of uncertainty in these estimates originates from assumptions surrounding the prevalence of electronic disclosure and the share of plans and participants relying on the 2002 and 2020 safe harbors. The Department has assumed that most plans rely on the 2020 safe harbor for some or all participants and that a smaller share rely on the 2002 safe harbor for some or all participants. The Department believes that more plans rely on the 2020 safe harbor because it is more flexible, and allows plans to provide electronic disclosure to participants who are not wired-at-work or have not affirmatively opted in.

The Department acknowledges that plan behavior could affect these assumptions. The Department assumes that plans will furnish pension benefit statements to all wired-at-work individuals under the 2002 safe harbor to avoid the paper benefit requirement. However, if plans instead choose to rely on the 2020 safe harbor for all participants and encourage participants to opt out of the paper disclosure, then this could lead to a higher share of plans and participants under the 2020 safe harbor. Alternatively, the wired-at-work population or the usage of the 2002 safe harbor pre-statute could be higher than the Department's estimate, which would lead to a higher share of plans and participants under the 2002 safe harbor.

The only requirement that applies to the 2002 safe harbor is a one-time notice notifying newly-eligible participants or beneficiaries that they will receive electronic delivery. Meanwhile, the 2020 safe harbor requires plans to provide certain pension benefit statements on paper, provide an additional explanation for these statements, and forbids them from charging fees for additional copies of paper statements. Therefore, the marginal cost on plans and participants relying on the 2002 safe harbor is lower than the 2020 safe harbor. Thus, if the proportion of plans using the 2002 safe harbor is larger, then the overall cost of SECURE 2.0 would be lower.

Conversely, if the proportion of plans using the 2002 safe harbor relative to the 2020 safe harbor is lower, the overall costs would be higher.

To demonstrate this, the Department includes its analyses for a range of scenarios in Table 11 below. These scenarios depict uniform usage of the 2020 safe harbor, uniform usage of the 2002 safe harbor, and an even split of the two safe harbors compared against the assumptions used in the Regulatory Impact Analysis. These scenarios in Table 11 below provide the maximum theoretical range for each of these values and thus demonstrate the largest possible effects that these assumptions could have.

Table 11.—*Uncertainty Analysis*

	Regulatory Impact Analysis Assumptions	All Plans and Participants Use 2020 Safe Harbor	All Plans and Participants Use 2002 Safe Harbor	All Plans Use Both Safe Harbors, Participants Are Split Evenly
Share of Participants Covered Under 2020 Safe Harbor	62.60%	100.00%	0.00%	50.00%
Share of Participants Covered Under 2002 Safe Harbor	37.40%	0.00%	100.00%	50.00%
Share of Plans Using 2020 Safe Harbor	96.10%	100.00%	0.00%	100.00%
Share of Plans Using 2002 Safe Harbor	37.40%	0.00%	100.00%	100.00%
<i>Costs</i>				
Rule Review (Year 1 Only)	\$60,610,921	\$60,610,921	\$60,610,921	\$60,610,921
Preparation: 2020 Safe Harbor Explanation (Year 1 Only)	\$14,586,856	\$15,152,730	\$0	\$15,152,730
Preparation: 2002 Safe Harbor Notice (Year 1 Only)	\$6,069,717	\$0	\$15,152,730	\$15,152,730
Add Contact Info: 2020 Safe Harbor Explanation (Year 1 Only)	\$4,059,862	\$4,224,622	\$0	\$4,224,622
Add Contact Info: 2002 Safe Harbor Notice (Year 1 Only)	\$1,580,009	\$0	\$4,224,622	\$4,224,622
Subtotal: Costs (Year 1 Only)	\$86,907,365	\$79,988,274	\$79,988,274	\$99,365,627
Printing and Postage Cost Additional Pension Benefit Statements (Year 1)	\$47,024,610	\$74,835,538	\$0	\$37,417,769
Printing and Postage Cost Additional Pension Benefit Statements (Year 2) ¹	\$40,736,877	\$64,829,163	\$0	\$32,414,582
Total Costs in Year 1	\$133,931,975	\$154,823,812	\$79,988,274	\$136,783,396
Total Costs in Year 2	\$40,736,877	\$64,829,163	\$0	\$32,414,582
<i>Transfers</i>				
Total Transfers (Annual)	\$451,779	\$719,220	\$0	\$359,610

¹ Years 1 and 2 are presented to show the effects of different assumptions on the first year and long-term costs. Over time, the costs associated with additional pension benefit statements will come down as the electronic disclosure rate continues to rise. To see the cost trends for this requirement over all ten years, see Table 9.

VII. Paperwork Reduction Act

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format,

reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Department is soliciting comments concerning the proposed amendments to the information collection requests (ICR) with the control numbers 1210-0166 and 1210-0121 incorporated in the proposed rule relating to use of electronic communication by employee benefit plans. A copy of the ICRs may be obtained by contacting the PRA addressee shown below or at RegInfo.gov.

The Department has submitted a copy of the proposed amendments to the information collections to the Office of Management and Budget (OMB) in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used,
- Enhance the quality, utility, and clarity of the information to be collected, and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Commenters may send their views on the Departments' PRA analysis in the same way they send comments in response to the proposed rule as a whole (for example, through the www.regulations.gov website), including as part of a comment responding to the broader proposed rule. Comments are due by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] to ensure their consideration.

ICRs are available at RegInfo.gov (reginfo.gov/public/do/PRAMain). Requests for copies of the ICR can be sent to the PRA addressee:

By mail	PRA Officer Office of Research and Analysis Employee Benefits Security Administration U.S. Department of Labor 200 Constitution Avenue NW Room N-5718 Washington, DC 20210
By email	ebsa.opr@dol.gov

The following burden estimates show the burden of the currently approved information collection and also the additional burden imposed by the changes made by SECURE 2.0 and the proposed regulations. Therefore, the total estimated burden is larger than the incremental burden shown in the RIA.

A. Control Number 1210-0166 Pension Benefits Statement

Section 338 of SECURE 2.0 amends section 105(a)(2) of ERISA to require the provision of certain pension benefit statements on paper, as well as amending the Department's 2002 and 2020 safe harbors. These amendments include a required initial notice for participants and beneficiaries covered under the 2002 safe harbor who first become eligible to participate in the plan or for benefits after December 31, 2025, as well as an additional explanation for participants receiving the newly required paper statements under the 2020 safe harbor.

Section 105(a)(1) of ERISA requires pension benefit statements to be sent:

- at least once each quarter, in the case of a defined contribution plan that permits participants and beneficiaries to direct their investments;
- at least once each year, in the case of a defined contribution plan that does not permit participants and beneficiaries to direct their investments;
- at least once every 3 years or upon request in the case of defined benefit plans.

Additionally, section 105(a)(3)(A) of ERISA permits plan administrators of defined benefit plans to fulfill the requirements of section 105(a)(1)(B)(i) by providing participants with a notice of statement availability on an annual basis.

The Department has an OMB approved information collection associated with the pension benefit statement under control number 1210-0166 that accounts for the burden of the general requirement to furnish pension benefit statements. This analysis focuses on the additional hour and cost burden associated with the new requirements of section 338.

(1) Baseline Cost of Preparing and Delivering Pension Benefit Statements.

Based on discussions with the regulated community in 2021, the Department believes the all-inclusive cost to produce pension benefit statements for defined contribution plan participants and beneficiaries on paper was approximately \$1.50 per statement, while the all-inclusive cost to produce pension benefit statements for defined benefit plan participants on paper is approximately \$15.00 per statement. The Department believes that administrators of frozen defined benefit plans will provide the notice of statement availability, as described in section 105(a)(3)(A), to frozen defined benefit plan participants in lieu of a pension benefit statement, at an all-inclusive cost of approximately \$0.75 per notice. The Department has inflation-adjusted these figures to \$1.71, \$17.05, and \$1.19, respectively.³⁷ The Department obtains the cost of these statements delivered electronically by subtracting out the all-inclusive mass-mailing cost estimate of \$1.00 per piece, plus an additional 5 cents per page. The baseline costs associated with the provision of pension benefit statements is displayed in Table 12 below:

³⁷ The Inflation adjusted value of \$0.75 is \$0.85. However, to accommodate the updated mailing cost assumptions, the Department increased the assumed cost for the notice of pension availability from \$0.75 to \$1.05. This was then inflation adjusted to \$1.19.

	Disclosures	Cost Per Disclosure	Pages per Disclosure	Material and Mailing Costs per Page	Equivalent Cost
	(A)	(B)	(C)	(D)	AxB or Ax((CxD)+E)
DC Statement Preparation	464,444,095 = (114,094,664 participants in self-directed plans x 4 quarterly statements) + 8,065,439 annual statements for participants not in DC plans without self-direction	\$0.46	-	-	\$211,354,692
Non-Frozen DB Statement Preparation	8,702,640 = 26,107,919 participants in non-frozen DB Plans x 33.3% receiving a statement each year	\$16.00	-	-	\$139,248,349
Frozen DB Plan Statements Preparation	6,004,514 = 6,004,514 participants in frozen DB Plans x receiving a notice of statement availability each year	\$0.14	-	-	\$861,943
DC Statement Distribution	18,113,320 paper statements = 464,444,095 DC Statements x 3.9% delivered by paper	-	5	\$1.25 ¹	\$22,641,650
DB Statement Distribution	339,403 paper statements = 8,702,640 non-frozen DB Statements x 3.9% delivered by paper	-	1	\$1.05	\$356,373
Frozen Statement Distribution	234,176 paper statements = 6,004,514 frozen DB Statements x 3.9% delivered by paper	-	1	\$1.05	\$245,885
					\$374,708,891

On top of this baseline burden, SECURE 2.0 and associated proposal will add costs due to the provision of additional paper benefit statements. The costs associated with providing the additional paper benefit statements in the first year are displayed in detail in Table 13 below. The additional costs in Years 1-3 are then summarized in Table 14 below.

Table 13.—Additional Cost Burden to Prepare & Distribute Pension Benefit Statements (Year 1 Detail)

	Affected Entities	Pages per Disclosure	Material Costs per Page	Distribution Costs per Disclosure	Total Cost Burden
	(A)	(B)	(C)	(D)	(A x [(B x C) + D])
Distribution of Statements for DB Plans	3,872,016 = ((1/3) x 15,385,053 Participants in non-frozen DB plans under 2020 safe harbor + 3,523,231 Participants in frozen DB plans under 2020 safe harbor) x (96.1% Pre-Statute E-Disclosure Rate - 51.3% Post-Statute E-Disclosure Rate)	1	\$0.05	\$1.00	\$4,065,617
Distribution of Statements for DC Plans	34,367,195 = 76,789,620 DC Participants and Beneficiaries Covered by 2020 Safe Harbor x (96.1% Pre-Statute E-Disclosure Rate - 51.3% Post-Statute E-Disclosure Rate)	5	\$0.05	\$1.00	\$42,958,993
Total					\$47,024,610

Table 14.—Additional Cost Burden to Prepare & Distribute Pension Benefit Statements (Years 1-3)

	Years				
	Pre-Statute	1	2	3	3-Year Average
2020 Safe Harbor Electronic Disclosure Rate (62.6% of participants)	96.10%	51.35%	57.33%	60.24%	56.31%
2002 Safe Harbor Electronic Disclosure Rate (37.4% of participants)	96.10%	96.10%	96.10%	96.10%	96.10%
Weighted Average Electronic Disclosure Rate	96.10%	67.97%	71.73%	73.56%	71.08%
Change in Electronic Disclosure	0.00%	-28.13%	-24.37%	-22.54%	-25.02%
Additional Paper DB Statements	0	3,872,016	3,354,283	3,102,380	3,442,893
Additional Paper DC Statements	0	34,367,195	29,771,904	27,536,066	30,558,388
Additional Paper DB Statement Cost (1 Page)	\$0	\$4,065,617	\$3,521,997	\$3,257,498	\$3,615,037
Additional Paper DC Statement Cost (5 Pages)	\$0	\$42,958,993	\$37,214,880	\$34,420,082	\$38,197,985
Total Additional Costs	\$0	\$47,024,610	\$40,736,877	\$37,677,581	\$41,813,022

Table 15.—Pension Benefit Statement Burden Summary

	Hourly Burden	Cost Burden
Baseline Burden to Distribute Benefit Statements		\$374,708,891
Additional Burden Added by Secure 2.0 and Proposal		\$41,813,022
Other Burden Associated With This Control Number ¹	162	\$148,837
Total	162	\$416,670,750

¹ A description of how the burden is calculated may be obtained by contacting the PRA addressee or by going to www.reginfo.gov/public/do/PRAMain and searching for OMB control number 1210-0166.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Pension Benefit Statement

Type of Review: Revision of currently approved collection of information.

OMB Control Number: 1210-0166.

Affected Public: Private Sector: business or other for-profit and not-for-profit institutions.

Respondents: 801,370

Responses: 479,151,249 annually

Frequency of Response: Quarterly, Annually, Triennially

Estimated Total Burden Hours: 162

Estimated Total Costs: \$416,670,750

B. Control Number 1210-0121 Consent to Receive Employee Benefit Plan

Disclosures Electronically

The Department has an OMB approved information collection associated with previous electronic disclosure rules under control number 1210-0121. SECURE 2.0 adds additional disclosure requirements that need to be added to this collection. Employee benefit plan administrators utilizing the 2002 safe harbor will need to furnish an initial notice of electronic availability, which notifies participants of their right to receive documents on paper, to all participants who first become eligible to participate, and beneficiaries who first become eligible for benefits, after December 31, 2025.

The Department made a number of assumptions and calculations regarding electronic disclosure rates and the usage of the 2002 and 2020 safe harbor, which are discussed in detail in the regulatory impact analysis. The Department assumes that 37.4 percent of plans and participants³⁸ will be affected by the changes to the 2002 safe harbor. The costs associated with this requirement are displayed in Table 15 below:

³⁸ Generally, only participants, not beneficiaries, are eligible to receive electronic disclosures under the wired-at-work provision of the 2002 safe harbor. SECURE 2.0 requires an initial notice for newly eligible participants and beneficiaries who first become eligible for benefits after December 31, 2025. However, for the purposes of this burden analysis, only wired-at-work participants are assumed to receive the initial paper notice, as beneficiaries who have affirmatively consented to electronic disclosure under the 2002 safe harbor will likely receive the existing advance statement on paper instead. *See* section II.B above.

Table 15.—*Hour Burden and Equivalent Cost for Preparation of 2002 Safe Harbor Notice*

Description	Affected Entities (A)	Hours per Entity (B)	Hourly Wage (C)	Total Hours (A x B)	Equivalent Cost (A x B x C)
Notice Preparation (Service Providers)	3,552 Service Providers	1	\$181.06	3,552	\$643,125
Notice Preparation (In-House)	29,971 = 299,712 Plans x 10% Not Using a Service Provider	1	\$181.06	29,971	\$5,426,592
Adding Contact and Plan Information to Drafted Notices	269,741 = 299,712 Plans x 90% Using a Service Provider	5/60	\$70.29	22,478	\$1,580,009
Total				56,002	\$7,649,726

Plans using the 2020 safe harbor for electronic disclosure will also be required to make changes under this proposal. Employee benefit plan administrators utilizing the 2020 safe harbor shall:

1. Furnish one pension benefit per year on paper to defined contribution participants and beneficiaries, and one statement per three years on paper to defined benefit participants,
2. Establish a system allowing participants to opt out of these mandatory paper disclosures, including an explanation sent with the statement which explains how to receive these documents electronically,
3. Remove all policies that would charge participants for paper pension benefit statements.

The costs associated with preparing the explanation of how to opt out of this mandatory paper benefit statement are included in Table 16 below.

Table 16.—Hour Burden and Equivalent Cost for Preparation of Explanations for 2020 Safe Harbor

Description	Affected Entities (A)	Hours per Entity (B)	Hourly Wage (C)	Total Hours (A x B)	Equivalent Cost (A x B x C)
Explanation Preparation (Service Providers)	3,552 Service Providers	1	\$181.06	3,552	\$643,125
Explanation Preparation (In-House)	77,012 = 770,117 Plans x 10% Not Using a Service Provider	1	\$181.06	77,012	\$13,943,731
Adding Contact and Plan Information to Drafted Explanations	693,105 = 770,117 Plans x 90% Using a Service Provider	5/60	\$70.29	57,759	\$4,059,862
Total				138,322	\$18,646,718

In addition to the new requirements included in SECURE 2.0, the existing collection also includes existing burdens for the notice of internet availability, maintaining a website for electronic disclosure, and preparing a list of bounce back emails. These existing provisions account for 1,076,344 burden hours and \$2,930,343 additional costs.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Consent to Receive Employee Benefit Plan Disclosures Electronically

Type of Review: Revision of currently approved collection of information.

OMB Control Number: 1210-0121

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 833,328

Responses: 59,688,464

Estimated Total Burden Hours: 1,270,344

Estimated Total Costs: \$2,930,244

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)³⁹ imposes certain requirements with respect to federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act.⁴⁰ Under section 603 of the RFA, agencies must submit an initial regulatory flexibility analysis (IRFA) of a proposal that is likely to have a significant economic impact on a substantial number of small entities, such as small businesses, organizations, and governmental jurisdictions. The Department provides its IRFA of the proposed rule, below.

A. Need for and Objectives of the Rule.

As discussed earlier in this preamble, section 338 of SECURE 2.0 directed the Department to promulgate this proposal to update its electronic disclosure safe harbors. Not promulgating this proposal would violate the directive established by SECURE 2.0 and leave the existing safe harbors inconsistent with its requirements.

As discussed in the RIA, a survey by the AARP⁴¹ found that a majority of participants would like to receive at least one statement per year on paper, and participants that receive documents on paper are more likely to fully review them than participants that exclusively receive electronic statements. Despite this, the majority of participants who receive paper statements do so because it was a default plan option, rather than affirmatively opting-in. By requiring plans to change their default plan options to include at least one paper statement per year, plans can overcome a general preference to maintain their current situation and encourage more participants to receive at least one paper statement.

This effect will be particularly profound amongst older Americans, lower-income Americans, and Americans without access to the internet at home, who are all more likely to indicate a preference for paper pension benefit statements.

³⁹ 5 U.S.C. 601 *et seq.*

⁴⁰ 5 U.S.C. 601(2), 603(a); also see 5 U.S.C. 551.

⁴¹ Brown, S. Kathi. Retirement Account Statements: Paper or Electronic?, AARP Research, May 2022, <https://doi.org/10.26419/res.00529.00>. Accessed March 27, 2025.

B. Affected Small Entities.

For purposes of the IRFA, the Department considers employee benefit plans with fewer than 100 participants to be small entities.⁴² The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for plans that cover fewer than 100 participants. Under section 104(a)(3) of ERISA, the Secretary may also provide for exemptions or simplified annual reporting and disclosure for welfare benefit plans. Pursuant to the authority of section 104(a)(3), the Department has previously issued (see 29 C.F.R. § 2520.104–20, § 2520.104–21, § 2520.104–41, § 2520.104–46, and § 2520.104b–10) simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans that satisfy certain requirements.

While some large employers have small plans, small plans are generally maintained by small employers. Thus, the Department believes that assessing the impact of this proposed exemption on small plans is an appropriate way to evaluate its effect on small entities. The definition of small entity applied for this purpose differs, however, from a definition of small business based on size standards promulgated by the Small Business Administration⁴³ pursuant to the Small Business Act.⁴⁴ Therefore, the Department requests comments on the appropriateness of the size standard used in evaluating the impact of this proposed rule on small entities.

The Department's data on small plans and participants in small plans is displayed in Table 16 below. In addition, the corresponding affected entities are described in Table 17 below.

⁴² The Department consulted with the Small Business Administration in making this determination, as required by 5 U.S.C. § 603(c) and 13 C.F.R. § 121.903(c). Memorandum received from the U.S. Small Business Administration, Office of Advocacy on July 10, 2020.

⁴³ 13 C.F.R. § 121.201 (2011).

⁴⁴ 15 U.S.C. § 631 et seq. (2011).

For more information regarding how the affected entities were determined, see section (F) of the RIA.

Table 16.—*General Data*

Description	Assumption	Source
Number of Small Defined Contribution (DC) Plans	663,107	2022 Form 5500 Data
Number of Small Defined Benefit (DB) Plans	40,117	2022 Form 5500 Data
All Participants in Small Plans	14,588,887	2022 Form 5500 Data
Service Providers for Accounting, Actuarial Services, and Plan Administration Services	3,552	2022 Schedule C Data
Small Plan Participants under 2002 Safe Harbor	263,393	37.4% of Participants in Small Plans x 5% Newly-Eligible for Benefits
Small Plan Participants and Beneficiaries under 2020 Safe Harbor	9,318,462	62.6% of Participants in Small Plans and all beneficiaries
Subtotal: Participants and Beneficiaries in Small Plans Affected by the Proposal	9,581,855	Participants in small plans covered by either safe harbor

Table 17.—*Affected Small Plans*

Affected Small Plans	Description	Number of Small Plans
Plans Using 2002 Safe Harbor	37.4% of Small Plans	263,006
Plans Using 2020 Safe Harbor	96.1% of Small Plans	675,798
Subtotal: Affected Small Plans	100% of Small Plans	703,224

C. Projected Reporting, Recordkeeping, and Other Compliance Requirements

As discussed in section H.2 of the regulatory impact analysis, small plans utilizing the 2002 safe harbor will now be required to send an initial notice to participants who first become eligible to participate, and beneficiaries who first become eligible for benefits, after December 31, 2025. Small plans utilizing the 2020 safe harbor will be required to begin providing some pension benefit statements on paper and include an additional explanation of how to receive these statements electronically. They will also be prohibited from charging fees for additional paper copies of pension benefit statements. All pension plans will be required to review and implement the proposal. The Department’s estimates for these requirements in the first year are in Tables 18-21 below.

Table 18.—*Cost Pertaining to Rule Review*

Description	Affected Entities (A)	Hours per Entity (B)	Hourly Labor Cost (C)	Total Hours (A x B)	Equivalent Cost (A x B x C)
Rule Review (Service Providers)	3552 Service Providers	4	\$181.06	14,208	\$2,572,500
Rule Review (In-House)	70,322 = 703,224 Small Plans x 10% Not Using a Service Provider	4	\$181.06	281,290	\$50,930,295
Total				295,498	\$53,502,795

Table 19.—*Cost for Preparation of 2002 Safe Harbor Notice*

Description	Affected Entities (A)	Hours per Entity (B)	Hourly Labor Cost (C)	Total Hours (A x B)	Equivalent Cost (A x B x C)
Notice Preparation (Service Providers)	3,552 Service Providers	1	\$181.06	3,552	\$643,125
Notice Preparation (In-House)	26,301 = 263,006 Small Plans x 10% Not Using a Service Provider	1	\$181.06	26,301	\$4,761,983
Adding Contact and Plan Information to Drafted Notices	236,705 = 263,006 Small Plans x 90% Using a Service Provider	5/60	\$70.29	19,725	\$1,386,501
Total				49,578	\$6,791,608

Table 20.—*Cost for Preparation of 2020 Safe Harbor Explanation*

Description	Affected Entities (A)	Hours per Entity (B)	Hourly Labor Cost (C)	Total Hours (A x B)	Equivalent Cost (A x B x C)
Notice Preparation (Service Providers)	3,552 Service Providers	1	\$181.06	3,552	\$643,125
Notice Preparation (In-House)	67,580 = 675,798 Small Plans x 10% Not Using a Service Provider	1	\$181.06	67,580	\$12,236,003
Adding Contact and Plan Information to Drafted Notices	608,218 = 675,798 Small Plans x 90% Using a Service Provider	5/60	\$70.29	50,685	\$3,562,639
Total				121,817	\$16,441,768

Table 21.—*Cost for Distribution of Additional Paper Benefit Statements for 2020 Safe Harbor (Year 1)*

Description	Affected Entities	Pages per Disclosure	Material Costs per Page	Distribution Costs per Disclosure	Total Cost
	(A)	(B)	(C)	(D)	(Ax[(BxC)+D])
Distribution of Statements for DB Plans	62,046 = ((1/3) x 244,378 Participants in Small Non-frozen DB Plans Under 2020 Safe Harbor + 57,177 Participants in Small Frozen DB Plans Under 2020 Safe Harbor) x (96.1% Pre-Statute E-Disclosure Rate - 51.3% Post-Statute E-Disclosure Rate)	1	\$0.05	\$1.00	\$65,149
Distribution of Statements for DC Plans	4,035,517 = 9,016,908 DC Participants and Beneficiaries in Small Plans Covered by 2020 Safe Harbor x (96.1% Pre-Statute E-Disclosure Rate - 51.3% Post-Statute E-Disclosure Rate)	5	\$0.05	\$1.00	\$5,044,396
Total					\$5,109,545

Table 22.—*Costs of Duplicate Paper Statements to Small Plans¹*

Description	Affected Entities	Pages per Disclosure	Material Costs per Page	Distribution Costs per Disclosure	Total Cost
	(A)	(B)	(C)	(D)	(Ax[(BxC)+D])
Duplicate Statements for DB Plan Participants	1,176 = 301,554 DB Participants in small plans under the 2020 safe harbor x 3.9% Receiving Paper Statements Pre-Statute x 10% Receiving Duplicate Statements per Year	\$1.00	\$0.05	\$1.00	\$1,235
Duplicate Statements for DC Plan Participants	35,166 = 9,016,908 DC Participants in small plans under the 2020 safe harbor x 3.9% Receiving Paper Statements Pre-Statute x 10% Receiving Duplicate Statements per Year	\$5.00	\$0.05	\$1.00	\$43,957
Total		36,342			\$45,192

¹These costs were displayed as transfers from plans to participants in Table 10 of the RIA. However, since this impact on small plans is viewed as a cost from the small plans point of view the share of the transfer for small plans is included here as an additional impact.

The only cost in subsequent years arising from SECURE 2.0 are the costs of the additional paper benefit statements required under the 2020 safe harbor and the costs of the

prohibition on charging participants for additional copies of paper benefit statements. The cost of furnishing the additional paper benefit statement will go down over time as more participants switch to electronic disclosure, eventually approaching a long-term electronic disclosure rate of 63 percent. The costs borne as a result of the prohibition on charging for duplicate statements is expected to hold steady over the analysis period. These assumptions are discussed in detail in the RIA. These costs over time are displayed in Table 22 below.

Table 23.—*Ten-Year Total Costs Associated with Statute and Proposal*

Years	Electronic Disclosure Rates			Statute and Proposal Costs				Total Costs ¹
	2020 Safe Harbor Electronic Disclosure Rate	2020 Safe Harbor Paper Disclosure Rate	Change to Paper Disclosure Rate from Statute and Proposal	Rule Review	Notice and Explanation Preparation	Adding Contact and Plan Information to Drafted Notices	Distribution Cost for Additional Paper Benefit Statements	
Pre-Statute	96.1%	3.9%	0.0%	\$0	\$0	\$0	\$0	\$0
1	51.3%	48.7%	44.8%	\$53,502,795	\$18,284,236	\$4,949,140	\$5,154,737	\$81,890,909
2	57.3%	42.7%	38.8%	\$0	\$0	\$0	\$4,471,532	\$4,471,532
3	60.2%	39.8%	35.9%	\$0	\$0	\$0	\$4,139,119	\$4,139,119
4	61.7%	38.3%	34.4%	\$0	\$0	\$0	\$3,977,383	\$3,977,383
5	62.3%	37.7%	33.8%	\$0	\$0	\$0	\$3,898,691	\$3,898,691
6	62.7%	37.3%	33.4%	\$0	\$0	\$0	\$3,860,403	\$3,860,403
7	62.8%	37.2%	33.3%	\$0	\$0	\$0	\$3,841,774	\$3,841,774
8	62.9%	37.1%	33.2%	\$0	\$0	\$0	\$3,832,710	\$3,832,710
9	63.0%	37.0%	33.1%	\$0	\$0	\$0	\$3,828,300	\$3,828,300
10	63.0%	37.0%	33.1%	\$0	\$0	\$0	\$3,826,154	\$3,826,154

¹ Cost estimates are not inflation adjusted and are presented in constant dollars.

The Department also analyzed these costs as a share of plan assets across various sizes of small plans and displayed them in Table 23 below. This data is presented in multiple scenarios to examine the burden to small firms under a variety of assumptions. The fixed cost column describes the costs as a share of plan assets for small plans to read SECURE 2.0 and proposal, as well as prepare any required notices and explanations. This is presented in three columns based on which safe harbor the plan uses, or if it uses both. If a small plan uses the 2020 safe harbor, then there will also be costs which will vary based on the number of participants in the plan, the type of plan, and its electronic disclosure requirements pre-statute. As such, the variable costs

column presents a range of estimates based on the number of participants in each plan. This range assumes that all of the participants in the plan are covered under the 2020 safe harbor, and that all were previously receiving electronic disclosure. Thus, this variable cost column should be viewed as the maximum possible extent of these variable costs, displayed as a share of assets. These are the only costs to firms that will persist beyond the first year. Thus, to estimate the per-firm cost of a plan using the 2020 safe harbor in the first year, the variable cost estimate should be added to the fixed cost estimates for the 2020 safe harbor. The cost in subsequent years would be the variable cost only. The costs for the 2002 safe harbor are only in the first year. Under this range of analysis, the costs per firm range from a minimum of approximately 0.002 percent of plan assets to a maximum of approximately 0.021 percent of plan assets. In subsequent years, the maximum burden would be 0.003 percent of plan assets.

Table 24.—Costs Per Plan as a Share of Plan Assets

Participant Tiers	Plan Count	Mean Assets Per Plan	Fixed First Year Costs			Annual Variable Costs ¹
			2002 Safe Harbor	2020 Safe Harbor	Both Safe Harbors	2020 Safe Harbor
Plans with 1-5 Participants	121,833	\$596,214	0.017% (\$102)	0.017% (\$100)	0.021% (\$126)	From 0.000% to 0.001% (From \$1 to \$6)
Plans with 6-10 Participants	153,541	\$764,808	0.013% (\$102)	0.013% (\$100)	0.017% (\$126)	From 0.001% to 0.002% (From \$6 to \$13)
Plans with 11-20 Participants	158,608	\$1,086,263	0.009% (\$102)	0.009% (\$100)	0.012% (\$126)	From 0.001% to 0.002% (From \$12 to \$25)
Plans with 21-40 Participants	126,267	\$1,758,726	0.006% (\$102)	0.006% (\$100)	0.007% (\$126)	From 0.001% to 0.003% (From \$22 to \$50)
Plans with 41-60 Participants	57,420	\$2,743,041	0.004% (\$102)	0.004% (\$100)	0.005% (\$126)	From 0.002% to 0.003% (From \$43 to \$75)
Plans with 61-80 Participants	33,230	\$3,679,958	0.003% (\$102)	0.003% (\$100)	0.003% (\$126)	From 0.002% to 0.003% (From \$64 to \$100)
Plans with 81-100 Participants	21,378	\$4,723,015	0.002% (\$102)	0.002% (\$100)	0.003% (\$126)	From 0.002% to 0.003% (From \$85 to \$125)

¹ Annual Costs vary based on number of participants and plan types. The presented ranges depict a costs for a DB plan with the minimum number of participants, and a DC plan with the maximum number of participants. This presents the lowest and highest possible value for each category.

The previous table included the assumption used in the regulatory impact analysis that 90 percent of plans would rely on service providers for rule review, notice preparation, and other compliance support. The Department believes this assumption is reasonable as many smaller firms do not have the resources to conduct these services in-house. However, the Department

also did a separate analysis assuming that plans did all of these services in-house, which is displayed in Table 24 below. Even in this unlikely case, the burden on small plans would range from a minimum of approximately 0.019 percent of plan assets to a maximum of approximately 0.183 percent of plan assets in the first year. In subsequent years, the maximum burden would be 0.003 percent of plan assets.

Table 25.—Costs Per Plan (In-House Only) as a Share of Plan Assets

Participant Tiers	Plan Count	Mean Assets Per Plan	Fixed First Year Costs			Annual Variable Costs ¹
			2002 Safe Harbor	2020 Safe Harbor	Both Safe Harbors	2020 Safe Harbor
Plans with 1-5 Participants	121,833	\$596,214	0.152% (\$905)	0.152% (\$905)	0.182% (\$1,086)	From 0.000% to 0.001% (From \$1 to \$6)
Plans with 6-10 Participants	153,541	\$764,808	0.118% (\$905)	0.118% (\$905)	0.142% (\$1,086)	From 0.001% to 0.002% (From \$6 to \$13)
Plans with 11-20 Participants	158,608	\$1,086,263	0.083% (\$905)	0.083% (\$905)	0.100% (\$1,086)	From 0.001% to 0.002% (From \$12 to \$25)
Plans with 21-40 Participants	126,267	\$1,758,726	0.051% (\$905)	0.051% (\$905)	0.062% (\$1,086)	From 0.001% to 0.003% (From \$22 to \$50)
Plans with 41-60 Participants	57,420	\$2,743,041	0.033% (\$905)	0.033% (\$905)	0.040% (\$1,086)	From 0.002% to 0.003% (From \$43 to \$75)
Plans with 61-80 Participants	33,230	\$3,679,958	0.025% (\$905)	0.025% (\$905)	0.030% (\$1,086)	From 0.002% to 0.003% (From \$64 to \$100)
Plans with 81-100 Participants	21,378	\$4,723,015	0.019% (\$905)	0.019% (\$905)	0.023% (\$1,086)	From 0.002% to 0.003% (From \$85 to \$125)

¹ Annual Costs vary based on number of participants and plan types. The presented ranges depict the costs for a DB plan with the minimum number of participants, and a DC plan with the maximum number of participants. This presents the lowest and highest possible value for each category.

D. Duplicate, Overlapping, or Relevant Federal Rules.

This proposal updates existing Departmental safe harbors to comply with the provisions of SECURE 2.0. The Department is not aware of any other rules that would duplicate, overlap, or be relevant to this proposal.

E. Significant Alternatives Considered

Section 603 of the RFA requires the Department to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. The objective for this proposal is to narrowly address the requirements of SECURE 2.0. Since SECURE 2.0 did not include any potential exemptions for small plans, the Department

could not consider an exemption for small plans while still meeting the goals of the regulation.

As discussed in the RIA, the Department considered the following alternatives.

(1) Amend the 2020 safe harbor to clarify existing provisions

First, the Department considered explicitly adding additional provisions to address SECURE 2.0's directive that the 2020 safe harbor:

1. Allow plans to furnish duplicate electronic copies of paper statements, as directed in section 338(b)(2)(D) of SECURE 2.0; and
2. Require all ERISA-required disclosures provided electronically to include an explanation of how to request the disclosures in paper form, as directed in section 338(b)(2)(E) of SECURE 2.0.

However, the Department believes these requirements can be accomplished under the existing safe harbors. Additionally, should the Department include additional provisions on these topics in the proposal, then plans may be required to update their disclosures if they differ from the new requirements of the safe harbor. This would incur additional costs on plans without further advancing the goals of the proposal and was thus rejected.

(2) Expand Disclosure Requirements to All Paper Statements

The Department also considered requiring that all pension benefit statements furnished on paper include a statement of how to obtain electronic disclosure, rather than just limiting this requirement to the statements required to be provided on paper under SECURE 2.0. This would have benefits for regulatory uniformity, as it would provide a blanket requirement across all pension benefit statements. However, limiting the disclosure requirement just to these required statements reduces the burden on plans and participants while still fulfilling SECURE 2.0's mandate. Since this alternative would have raised costs without furthering the goals of this proposal, it was rejected.

(3) Do Not Issue Proposal

The Department is unable to consider a “no-change” alternative scenario. The goal of this proposal is to fulfill the directive established by Congress under SECURE 2.0 and align the Department’s safe harbors with SECURE 2.0. Absent this proposal, the Department would be in violation of SECURE 2.0 and the Department’s safe harbors would be inconsistent with it, leading to regulatory uncertainty. As a result, a no-change scenario does not accomplish the goals of this proposal and was rejected.

IX. Unfunded Mandates Reform Act.

Title II of the Unfunded Mandates Reform Act of 1995⁴⁵ requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposal that may result in an expenditure of \$100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. For purposes of the Unfunded Mandates Reform Act, as well as Executive Order 12875, this proposal does not include any Federal mandate that will result in such expenditures.

X. Federalism Statement.

Executive Order 13132 outlines fundamental principles of federalism. E.O. 13132 requires Federal agencies to follow specific criteria in forming and implementing policies that have “substantial direct effects” on the States, the relationship between the national Government and States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies promulgating regulations that have federalism implications must consult with State and local officials and describe the extent of their consultation and the nature of the concerns of State and local officials in the preamble to the proposal.

⁴⁵ Pub. L. 104-4, 109 Stat. 48 (1995).

In the Department's view, this proposal does not have federalism implications because it does not have a direct effect on the States, the relationship between the national Government and the States, or on the distribution of power and responsibilities among various levels of government.

List of Subjects

29 CFR Part 2520

Employee benefit plans, Pensions.

29 CFR Part 2560

Claims, Employee benefit plans, Pensions.

For the reasons stated in the preamble, the Department of Labor proposes to amend 29 CFR chapter XXV as follows:

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

1. The authority citation for part 2520 continues to read as follows:

Authority: 29 U.S.C. 1021-1025, 1027, 1029-31, 1059, 1134 and 1135; and Secretary of Labor's Order 1-2011, 77 FR 1088 (Jan. 9, 2012). Sec. 2520.101-2 also issued under 29 U.S.C. 1132, 1181-1183, 1181 note, 1185, 1185a-b, 1191, and 1191a-c. Sec. 2520.101-5 also issued under 29 U.S.C. 1021(f). Sec. 2520.101-6 also issued under 29 U.S.C. 1021(k). Sec. 2520.103-13 also issued under 29 U.S.C. 1023. Secs. 2520.102-3, 2520.104b-1, 2520.104b-3, and 2520.104b-31 also issued under 29 U.S.C. 1003, 1181-1183, 1181 note, 1185, 1185a-b, 1191, and 1191a-c. Secs. 2520.104b-1 and 2520.107 also issued under 26 U.S.C. 401 note, 111 Stat. 788. Div. T, Title III, Sec. 338, Pub. L. 117-328, 136 Stat. 5373, 5374 (Dec. 29, 2022).

2. Amend Section 2520.104b-1 by:

- a. Revising paragraph (c)(1)(iii);
- b. Revising paragraph (c)(1)(iv); and
- c. Adding paragraph (c)(3).

The revision and additions read as follows:

§ 2520.104b-1 Disclosure.

* * * * *

(c) * * *

(1) * * *

(iii) Notice is provided to each participant, beneficiary or other individual, in electronic or non-electronic form, at the time a document is furnished electronically, that appraises the individual of the significance of the document when it is not otherwise reasonably evident as transmitted (e.g., the attached document describes changes in the benefits provided by your plan) and of the right to request and obtain a paper version of such document, and upon request, the participant, beneficiary or other individual is furnished a paper version of the electronically furnished documents; and

(iv) An individual account plan and a defined benefit plan (in each case, other than a one-participant retirement plan) may furnish the pension benefit statement described in subparagraph (E) of section 105(a)(2) of the Act by electronic delivery only if, with respect to participants who first become eligible to participate, and beneficiaries who first become eligible for benefits, after December 31, 2025, in addition to meeting all other requirements under paragraph (c) of this section, the plan furnishes 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 by the plan be furnished on paper in written form.

* * * * *

(3) A plan administrator may satisfy the initial notice requirement in paragraph (c)(1)(iv) of this section by furnishing the statement described in paragraph (c)(2)(ii)(C) of this section on paper.

3. Amend § 2520.104b-31 by:

- a. Revising paragraph (c)(1);
- b. Revising the second sentence of paragraph (f)(1)
- c. Redesignating paragraph (l) as paragraph (m); and
- d. Adding paragraph (l).

The revisions and addition read as follows:

**29 CFR § 2520.104b-31 Alternative method for disclosure through electronic media –
Notice-and-access.**

* * * * *

(c) * * *

(1) Pension benefit plans. In the case of an employee pension benefit plan, as defined in section 3(2) of the Act, any document or information that the administrator is required to furnish to participants and beneficiaries pursuant to Title I of the Act, except for any document or information that must be furnished only upon request, or a pension benefit statement that must be furnished on paper under subparagraph (E) of section 105(a)(2) of the Act.

* * * * *

(f) * * *

(1) * * * Only one paper copy of any covered document must be provided free of charge under this section except for pension benefit statements as provided in paragraph (1)(3) of this section, in which case the plan may not charge any fee to a participant or beneficiary for the delivery of any paper statements (see paragraph (1)(3) of this section).

* * * * *

(l) Special rule for paper statements under subparagraph (E) of section 105(a)(2) of the Act.

With respect to a plan that furnishes covered documents or statements electronically under this section—

(1) A participant or beneficiary who is a “covered individual” as defined in paragraph (b) of this section shall be permitted the opportunity to request that any pension benefit statement required to be furnished on paper as required under subparagraph (E) of section 105(a)(2) of the Act shall instead be furnished by electronic delivery.

(2) Each pension benefit statement furnished on paper as required under a plan pursuant to subparagraph (E) of section 105(a)(2) of the Act shall include:

(i) An explanation of how to request that all such statements be furnished by electronic delivery; and

(ii) Contact information for the plan sponsor, plan administrator, or other designated representative of the plan, including a telephone number.

(3) The plan may not charge any fee to a participant or beneficiary for the delivery of any paper statements.

* * * * *

PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

4. The authority citation for part 2560 continues to read as follows:

Authority: 29 U.S.C. 1132, 1135, and Secretary of Labor's Order 1–2011, 77 FR 1088 (Jan. 9, 2012). Section 2560.503-1 also issued under 29 U.S.C. 1133. Section 2560.502c-7 also issued under 29 U.S.C. 1132(c)(7). Section 2560.502c-4 also issued under 29 U.S.C. 1132(c)(4). Section 2560.502c-8 also issued under 29 U.S.C. 1132(c)(8).

5. Amend § 2560.503-1 by:

- a. Revising the second sentence of paragraph (g)(1); and
- b. Revising the second sentence of paragraph (j).

The revisions read as follows:

§ 2560.503 Claims procedure.

* * * * *

(g) * * *

(1) * * * Any electronic notification shall comply with the standards imposed by 29 CFR 2520.104b-1(c)(1)(i) and (iii), or with the standards imposed by 29 CFR 2520.104b-31 (for pension benefit plans). * * *

* * * * *

(j) * * * Any electronic notification shall comply with the standards imposed by 29 CFR 2520.104b-1(c)(1)(i) and (iii), or with the standards imposed by 29 CFR 2520.104b-31 (for pension benefit plans). * * *

* * * * *

Signed at Washington, DC.

Daniel Aronowitz,

Assistant Secretary, Employee Benefits Security Administration,

Department of Labor.

[FR Doc. 2026-03723 Filed: 2/24/2026 8:45 am; Publication Date: 2/25/2026]