

Survey May Influence Efforts to Alter ERISA Rules Affecting Notice and Access

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More than 18 months ago, we [alerted](#) readers about a request for information by the Department of Labor (DOL) seeking suggestions from interested parties on the possibility of using electronic media by employee benefit plan sponsors to furnish information to participants. The current ERISA rules under the DOL prevent companies from taking full advantage of using notice and access in lieu of paper copies of proxy statements for employee benefit plan participants as a practical matter. We wrote a comment letter to the DOL in support of moving toward easily sending plan participants electronic versions of a company's annual proxy statement.

However, a recent [survey](#) by the AARP, titled "Paper by Choice," will likely retain the status quo for the time being. In response to concerns that the financial services industry is lobbying to allow retirement plan providers to send out plan documents electronically as the default method, the survey found that of the slightly over 1,000 respondents, 75% of those over the age of 25 prefer paper over online communications and 62% currently receive only paper copies.

Many have criticized the survey as biased, primarily because it failed to ask participants about work-related computer access, which is the touchstone the DOL uses in its electronic delivery safe harbor, and although it asked those surveyed if they read disclosures electronically, no similar question was asked of those receiving disclosures by hard copy. Nonetheless, the survey will still likely influence the DOL's thinking about converting plan participants from paper to electronic, holding back efforts to give companies the ability to avoid stratifying notice and access mailings and moving completely to electronic means of delivery.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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