

ELECTRONIC DELIVERY RULES

The plan administrator may electronically furnish to participants and/or beneficiaries any documents or notices that are required by ERISA¹. Documents delivered electronically must be furnished in the required style and format. However, the appearance of paper and electronic versions do not need to be identical.

DELIVERY METHODS

GENERAL REQUIREMENTS

- The plan administrator must take steps to ensure the actual receipt of information that is distributed electronically.
- The plan administrator must ensure that the method for providing documents that contain personal information (such as notices of claim decisions and QMCSO eligibility) meets the requirements of applicable privacy laws.
- The plan administrator must provide notice (electronically or non electronically) to each recipient at the time electronic documents are furnished regarding the significance of the document and the right to obtain a paper version of it.
- Paper versions of the electronic documents must be available upon request. In addition, the paper copies must be provided at no charge if the document in question must otherwise be provided at no charge

EMAIL OR ATTACHMENT TO EMAIL

DOL RECOMMENDATIONS FOR MEETING THE GENERAL REQUIREMENTS:

- Use the return-receipt email feature.
- Use the undelivered email feature.
- Ensure recipients can distinguish documents that are delivered via email from all other items in their inbox.
- Conduct periodic reviews or surveys to confirm receipt of transmitted material.

POSTING DOCUMENTS TO A COMPANY WEBSITE

DOL RECOMMENDATIONS FOR MEETING THE GENERAL REQUIREMENTS:

- The distribution list for the document must be comprehensive and up-to-date.
- If the documents are newly posted to an intranet site, the intended recipients must be alerted to the fact that they are now available via a prominent notice appearing on the front page of the publication advising readers that the publication contains important information about rights under the plan.
- Disclosure documents should remain on the website for a reasonable period of time after participants and beneficiaries are notified of their availability.
- Annual or periodic notice is not sufficient.
- Conduct periodic reviews or surveys to confirm receipt of transmitted material.

¹Note that this document applies to ERISA welfare plans with a focus on group health plans. Regulations issued in 2020 provide an alternative safe harbor for ERISA pension plans.

RECIPIENT REQUIREMENTS

Plan administrators may electronically distribute ERISA disclosures provided the recipients meet the following conditions:

1 EMPLOYEES WHO HAVE WORK-RELATED COMPUTER ACCESS

The employee must have the ability to access documents at any location where he/she could reasonably be expected to perform his/her employment duties. Access at a kiosk or similar site does not meet this requirement.

The employee's access to the electronic information system is an integral part of his/her employment duties.

Employees must be informed of the right to request and obtain a paper copy of the notice each time it is given.

Employees working out of a home office will fall under this provision provided that they meet the requirements above and that the home office is a location where the employment duties could be reasonably performed and that access to the employer's computer system is an integral part of the employee's duties.

If the employee meets the criteria above, they DO NOT have to:

- Have the ability to print out a paper copy at the place where they have computer access
- Consent to receive documents electronically

2 EMPLOYEES AND OTHER INDIVIDUALS WITHOUT WORK-RELATED COMPUTER ACCESS MUST AFFIRMATIVELY CONSENT TO THE ELECTRONIC DELIVERY OF MATERIALS

A consent must include a clear and conspicuous statement that explains:

- The types of documents to which the consent will apply
- That consent can be withdrawn at any time without charge
- The procedures for withdrawing consent and for updating the address used for receipt of electronically furnished documents
- The right to request and obtain a paper version of an electronically furnished document, including whether the paper version will be provided free of charge
- Hardware or software needed to access and retain the documents delivered electronically

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If the delivery is through the Internet or other electronic communication system:

- the individual must affirmatively consent in a manner that reasonably demonstrates the individual's ability to access information in the electronic format that will be used.

Requiring that the consents be furnished back to the employer electronically is a reasonable demonstration of the individual's access ability.

An individual must provide an address for delivery of documents.

[Click here to view a sample Electronic Delivery Consent Form.](#)

IMPORTANT EXCEPTIONS TO THE CONSENT REQUIREMENT

- **NOTICE OF PRIVACY PRACTICES:**
the affirmative consent rules always apply regardless of employee computer access.
- **SBCs FOR PERSONS WHO ARE ELIGIBLE BUT NOT ENROLLED:**
the SBC may be provided to these participants and beneficiaries via Internet posting if the participants and beneficiaries are notified in paper form (such as a postcard) or via email that the documents are available on the Internet.
- Statements of coverage under IRC sec. 6055 and 6056: affirmative consent rules apply

Note: The plan administrator is generally not required to distribute Summary Plan Descriptions (SPDs), Summary of Material Modifications (SMMs), or Summary Annual Reports (SARs) to each beneficiary under the plan. Therefore, the plan administrator is not required to obtain consent from each beneficiary under the plan (e.g. spouses and dependents). However, other notices must be distributed to both participants (who may have work-related access to computers) and beneficiaries (who will most likely not have such access). For example, COBRA initial notices must be sent to both the employee and spouse similarly, QMSCO notifications must be delivered to the employee and the alternate recipient. In such cases, electronic notice may not be the most effective compliance method.

The logo for Compliance Dashboard, featuring a green checkmark icon inside a circle to the left of the text "Compliance" in a large, bold, green font, with "Dashboard" in a smaller, grey font below it, followed by a registered trademark symbol.