

# SUMMARY OF NOTICES & DISCLOSURES

These notices and disclosures should be provided to employees on an annual basis. Generally, the notices can be provided at any time during the plan year unless specified below.

**Note:** If an employee becomes eligible for the plan after the distribution of an annual notice, the employee should be given the notice upon enrollment.

PLAN TYPE	NOTICE/DISCLOSURE	DISTRIBUTE ELECTRONICALLY
ALL PLANS	<p><b>CHILDREN'S HEALTH INSURANCE PROGRAM (CHIP)</b></p> <p>The Children's Health Insurance Program Reauthorization Act (CHIPRA) requires plans to disclose certain special enrollment opportunities to participants or beneficiaries (employees, dependents, COBRA qualified beneficiaries, etc.) residing in states that provide a premium assistance subsidy under Medicaid or CHIP. Because an employer may not always be aware of what states provide this assistance and where all employees and their beneficiaries reside, many employers take the cautious approach and provide the notice to all employees.</p> <p><b>Distribution Requirement:</b> Distribute annually to all employees who meet the criteria described above, not just those who are eligible or enrolled in the health plan.</p>	FOLLOW DOL SAFE HARBOR
ALL PLANS	<p><b>MEDICARE PART D CREDITABLE COVERAGE NOTICE</b></p> <p>Plans must notify Medicare Part D eligible participants of whether the employer sponsored prescription drug benefit provides creditable coverage. Because an employer may not always be aware of which employee participants and their beneficiaries are (or will be) eligible for Medicare Part D, many employers take the cautious approach and provide the notice to all employees.</p> <p><b>Distribution Requirement:</b> The notice must be provided annually to all employees who meet the criteria described above on or before <b>October 15th</b> of each year.</p> <p><b>Other Disclosure Requirements:</b> The notice must also be provided upon enrollment, following changes in creditable coverage, and upon request of a Part D eligible individual.</p>	SEE FOOTNOTE <sup>1</sup>
ALL PLANS	<p><b>WOMEN'S HEALTH AND CANCER RIGHTS ACT (WHCRA)</b></p> <p>Group health plans that provide coverage for medical and surgical benefits with respect to mastectomies must disclose a woman's right to coverage of reconstructive surgery after a mastectomy. Plans sponsored by self-funded, nonfederal governmental employers may elect to opt-out of this provision, which would require that an "opt-out notice" be provided at enrollment and annually thereafter.</p> <p><b>Distribution Requirements:</b> Distribute the notice annually to plan participants at any time during the plan year. A separate notice must be given to a plan beneficiary whose last known address is different from that of the participant.</p> <p><b>Other Disclosure Requirements:</b> In addition to the annual notice, disclosure of a woman's rights relative to WHCRA must be provided upon enrollment</p>	FOLLOW DOL SAFE HARBOR

## PLAN TYPE

## NOTICE/DISCLOSURE

## DISTRIBUTE ELECTRONICALLY

## SELF-INSURED PLANS

**SUMMARY OF BENEFITS & COVERAGE (SBC)**

In addition to when an individual first becomes eligible for the plan, an SBC must be provided at each renewal. If a plan or issuer requires participants and beneficiaries to actively elect to maintain coverage during an open enrollment, or provides them with the opportunity to change coverage options in an open enrollment, the plan or issuer must provide the SBC at the same time it distributes open enrollment materials. If there is no requirement to elect to renew, and no opportunity to change coverage options, renewal is considered to be automatic and the SBC must be provided no later than 30 days prior to the first day of the new plan or policy year.

**Other Disclosure Requirements:** The SBC must also be provided as part of any written application materials. In addition, the SBC must be provided within seven business days upon request and when an individual becomes eligible for the plan, including through special enrollment. A Notice of Material Modification or a new SBC must be provided when there is a change during the plan year that would affect the content of the SBC. Notice must be provided no later than 60 days before the change becomes effective.

SEE FOOTNOTE<sup>1</sup>

## FULLY-INSURED PLANS

**SUMMARY OF BENEFITS & COVERAGE (SBC)**

The insurer is jointly responsible with the plan administrator (typically the employer) for furnishing the SBC to participants and beneficiaries. In addition to when an individual first becomes eligible for the plan, an SBC must be provided at each renewal. If a plan or issuer requires participants and beneficiaries to actively elect to maintain coverage during an open enrollment, or provides them with the opportunity to change coverage options in an open enrollment, the plan or issuer must provide the SBC at the same time it distributes open enrollment materials. If there is no requirement to elect to renew, and no opportunity to change coverage options, renewal is considered to be automatic, and the SBC must be provided no later than 30 days prior to the first day of the new plan or policy year.

**Other Disclosure Requirements:** The SBC must also be provided as part of any written application materials. In addition, the SBC must be provided within seven business days upon request and when an individual becomes eligible for the plan, including through special enrollment. A Notice of Material Modification or new SBC must be provided when there is a change during the plan year that would affect the content of the SBC. Notice must be provided no later than 60 days before the change becomes effective.

SEE FOOTNOTE<sup>1</sup>

## PLANS THAT FILE A FORM 5500 (EXCLUDING LARGE, UNFUNDED PLANS)

**SUMMARY ANNUAL REPORT (SAR)**

The plan must provide to employee participants a narrative summary of the financial information contained on the Form 5500. This requirement does not apply to plans that are exempt from filing a Form 5500; or large welfare benefits plans whose benefits are paid solely from the employer's general assets.

**Distribution Requirement:** Distribute to employees participating in the plan within 9 months of the close of the plan year or 2 months after the due date for filing the Form 5500.

FOLLOW DOL SAFE HARBOR

**FOOTNOTES**

- 1) Electronic distribution is allowed via the DOL Safe Harbor, but the CMS prefers using paper documents because Part D eligible individuals are more likely to receive and understand them.
- 2) A safe harbor specifically for SBCs allows the SBC to be provided electronically to participants and beneficiaries in connection with their online enrollment or renewal of coverage. If online enrollment is not available, the SBC may be provided electronically according to the DOL safe harbor for participants covered under the plan. For participants and beneficiaries who are eligible but not enrolled, the SBC may be provided electronically if the format is readily accessible, which includes an Internet posting if the individuals are notified in paper form (such as a postcard) or via email that the documents are available on the Internet. Special rules may apply for non-federal governmental plans.

## ELECTRONIC DELIVERY RULES

The plan administrator may electronically furnish to participants and/or beneficiaries any documents or notices that are required by ERISA. 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

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### 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 meets the requirements of applicable privacy laws.
- The plan administrator must provide notice (electronically or non-electronically) to each recipient at the time the 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.

### 1. 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.

### 2. Posting documents to a company website

- DOL Recommendations for meeting the General Requirements.
- If the documents are newly posted to an intranet site, the intended recipients must be alerted to the fact that they are now available.
  - » Annual or periodic notice is not sufficient.
- Conduct periodic reviews or surveys to confirm receipt of transmitted material.

# DEPARTMENT OF LABOR (DOL) SAFE HARBOR

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## DELIVERY METHODS

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### RECIPIENT REQUIREMENTS

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

#### 1. Employees Have Work-Related Computer Access

- The employee has the ability to access documents at any location where he/she could reasonably be expected to perform his/her employment duties.
- The employee's access to the electronic information system is an integral part of his/her employment duties..
- 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 employees meet 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. Individuals Without Work-Related Computer Access 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.
- If 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

**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 have to 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; HIPAA creditable coverage certificates must be sent to any beneficiary who loses coverage. In such cases, electronic notice may not be the most effective compliance method.