

# SUMMARY OF NOTICES & DISCLOSURES

The Summary Plan Description (SPD) is the primary vehicle for informing participants and beneficiaries about their rights and benefits under the employee benefit plans in which they participate.

ERISA defines in general terms the content that must appear in the SPD. Because of differing benefits, this information can vary widely from plan to plan. However, various laws also require disclosure about specific rights and benefits. The chart below summarizes many of the disclosures that are applicable to these mandates and must appear in the SPD. If the disclosure or notice must also appear in other plan material, it is noted under "Other Disclosure Requirements."

In addition, the Notices and Disclosures: Upon Initial Enrollment chart shows other notices that can be (and often are) included in the SPD. However, this is done primarily for convenience and these notices are not required to appear in the SPD.

Please note that the Affordable Care Act (ACA) mandated certain coverage requirements, such as the PHSA Mandates, which are not reflected in this chart.

SPD Distribution Requirements: The SPD must be provided to participants within 90 days of coverage. An updated SPD must be furnished every 5 years if the plan is amended or every 10 years if it is not. A notice or new SPD must be provided when there is a material change to the plan. Email and other Internet-based methods that comply with the DOL safe harbor can be used to distribute the SPD electronically.

PLAN TYPE	NOTICE/DISCLOSURE	ALSO INCLUDE IN THE SBC?
ALL PLANS	<p><b>NEWBORN'S AND MOTHER'S HEALTH PROTECTION ACT (NMHPA)</b></p> <p>For group health plans providing maternity or newborn infant coverage, the SPD must disclose a mother's and newborn's rights after childbirth.</p>	NO
ALL PLANS	<p><b>QUALIFIED MEDICAL CHILD SUPPORT ORDER (QMCSO)</b></p> <p>The SPD must disclose the procedures for determining whether a Medical Child Support Order is qualified (QMCSO) or a statement indicating how a participant may obtain a copy of the procedures. A National Medical Support Notice (NMSN) might also be considered a QMCSO.</p> <p><b>Other Disclosure Requirements:</b> After receiving a medical child support order, plans must respond with letters to the participant and alternate recipients notifying them of the receipt of a medical support order and whether an order has been determined to be a QMCSO.</p>	NO
ALL PLANS	<p><b>CONTINUATION COVERAGE</b></p> <p>The SPD must disclose continuation coverage rights and requirements, such as those available under COBRA or state mandated continuation coverage.</p> <p><b>Other Disclosure Requirements:</b> Plans subject to COBRA must disclose COBRA rights to participants AND covered spouses in a COBRA Initial Notice that is often mailed to the employee participant's home address. Additional notices are required when a participant or beneficiary experiences a qualifying event.</p>	NO
GRAND-FATHERED PLANS	<p><b>GRANDFATHERED STATUS</b></p> <p>All group health plans claiming "grandfathered status" under the ACA must disclose this in all plan materials distributed to participants describing benefits under the plan, including the SPD. A Non-Grandfathered plan does not have to disclose its status.</p> <p><b>Other Disclosure Requirements:</b> A plan's grandfathered status should be included in all materials that describe benefits under the plan.</p>	YES

WHEN ELIGIBLE

UPON INITIAL ENROLLMENT

ANNUAL

UPON CERTAIN EVENTS

SPD

PLAN TYPE	NOTICE/DISCLOSURE	ALSO INCLUDE IN THE SBC?
<p><b>NON-GRAND-FATHERED PLANS THAT REQUIRE DESIGNATION OF A PCP</b></p>	<p><b>PATIENT PROTECTIONS</b></p> <p>Non-Grandfathered plans that require the designation of a primary care provider (PCP) must provide information relative to a participant’s rights under the ACA. The plan’s SPD should describe a participant’s rights when choosing a PCP.</p> <p><b>Other Disclosure Requirements:</b> A participant’s rights under the ACA relative to selection of a PCP must be included in all materials that describe benefits under the plan.</p>	<p><b>YES</b></p>
<p><b>PLANS WITH WELLNESS PROGRAMS THAT OFFER STANDARD-BASED INCENTIVE</b></p>	<p><b>WELLNESS INCENTIVE (HIPAA REQUIREMENTS)</b></p> <p>The plan must disclose the availability of a waiver or alternative standard to receive a standard-based wellness incentive in all plan materials that describe the standard-based incentive. If the SPD describes this incentive, it must also include information about the availability of a waiver or alternative</p> <p><b>Other Disclosure Requirements:</b> A notice of the availability of a waiver or alternative standard must be included in all plan materials that describe the standard-based wellness incentive.</p>	<p><b>SEE DOL SAFE HARBOR</b></p>

## 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

### 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 web site

- » 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

## 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.

## DEPARTMENT OF LABOR (DOL) SAFE HARBOR (CONTINUED)

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- » 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. Employees 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; and
  - » 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.