

# SUMMARY OF NOTICES & DISCLOSURES

This information is typically provided to employee participants and/or beneficiaries upon the occurrence of certain events.

PLAN TYPE	NOTICE/DISCLOSURE	EVENT
ALL PLANS	<b>COVERAGE OPTIONS (EXCHANGE NOTICE)</b> Employers subject to the Fair Labor Standards Act must provide notice to employees of their coverage options, including options available in the Health Insurance Marketplace. <b>Distribution Requirement:</b> Distribute to all full-time and part-time employees, regardless of plan enrollment status, within 14 days of an employee's start date. Follow the DOL safe harbor for electronic distribution.	UPON HIRE
ALL PLANS	<b>SUMMARY OF MATERIAL MODIFICATIONS</b> A plan must provide written notice to participants if there is a material modification during the plan or policy year that would affect the content of material required to be included in the Summary Plan Description (SPD). <b>Distribution Requirement:</b> Provide to participants no later than 210 days after the end of the plan year in which the change was adopted. If the change was a material reduction in benefits or services, provide to participants within 60 days of adoption of the material reduction. The plan can also send an updated SPD to satisfy this requirement. Follow the DOL safe harbor for electronic distribution.	CHANGE TO PLAN
ALL PLANS	<b>NOTICE OF MODIFICATIONS TO SBC</b> A plan must provide written notice to participants if it makes a material modification during the plan or policy year that would affect the content of material required to be included in the SBC. <b>Distribution Requirement:</b> The notice must be provided to enrollees no later than 60 days prior to the date on which the change will become effective. The plan can also send an updated SBC to satisfy this requirement. Please note that for fully insured plans, the insurer is jointly responsible with the plan administrator (generally, the employer) for furnishing the SBC to participants. Follow the guidelines for the SBC for electronic distribution. <sup>1</sup>	CHANGE TO PLAN
ALL PLANS	<b>NOTICE OF MCSO RECEIPT, PROCEDURES, AND DETERMINATION</b> Upon receipt of a Medical Child Support Order (MCSO), a plan must notify the participant and each alternate recipient named of its receipt; the plan's procedures for determining whether it is "Qualified" (QMCSO); and the plan administrator's determination as to whether the order is a QMCSO. <b>Distribution Requirements:</b> The plan administrator must promptly notify the participant and each alternate recipient of receipt of the MCSO and include the determination procedures. Within a reasonable period after receipt of the MCSO, the plan administrator must notify the participant and each alternate recipient of the determination as to whether the MCSO is qualified. Electronic distribution is theoretically possible using ERISA's electronic distribution rules but challenging in practice since recipients won't have met the consent requirements. Most employers will want to use first-class mail.	RECEIPT OF MCSO

PLAN  
TYPE

## NOTICE/DISCLOSURE

DISTRIBUTE  
ELECTRONICALLYALL  
PLANS**NOTICE OF RECESSION OF COVERAGE**

A group health plan must provide notice to participants whose coverage is rescinded retroactively. Please note that coverage may only be rescinded retroactively in cases where an individual has engaged in fraud, intentionally misrepresented material facts, or failed to pay premiums.

**Distribution Requirements:** The plan must provide written notice to each participant who would be affected by the rescission of coverage at least 30 days before it implements the rescission.

**RETROACTIVE  
TERMINATION  
OF BENEFITS**SELF-  
INSURED  
PLANS**HIPAA NOTICE OF PRIVACY PRACTICES**

A covered entity must provide to individuals a notice of the plan's privacy practices upon enrollment and whenever there is a change to the notice. The plan must also notify individuals then covered by the plan of the availability of and how to obtain the notice at least once every three years after the last distribution or notification. Follow the DOL safe harbor for electronic distribution.

**UPON  
CHANGE OR  
3 YEAR  
ANNIVERSARY**SELF-  
INSURED  
PLANS**BREACH NOTIFICATION**

Following a breach of unsecured protected health information (PHI), covered entities must provide notification of the breach to affected individuals and Health and Human Services (HHS). If the breach affects more than 500 residents of a State or jurisdiction, notice must be made to prominent media outlets serving the State or jurisdiction.

**Distribution Requirements:** The notice to individuals must be provided in written form by first-class mail, or alternatively, by e-mail (if the affected individual has agreed to receive such notices electronically) within 60 days following discovery of the breach. HHS must be notified by submitting a form on the HHS website within 60 days if the breach affects 500 or more individuals, or within 60 days after the end of the calendar year in which the breach is discovered if fewer than 500 individuals are affected. Notice to media outlets can be made in the form of a press release no later than 60 days after discovery.

**BREACH OF  
UNSECURED  
PHI**ERISA AND  
NON-FEDERAL  
GOVERNMENTAL  
PLANS**COBRA ELECTION NOTICES**

COBRA election notices (including notice that COBRA is unavailable) must be provided to qualified beneficiaries upon the plan administrator's receipt of notice of a qualifying event.

**Distribution Requirement:** Send by first-class mail to each qualified beneficiary with 14 days after the plan administrator receives notice of the qualifying event (44 days if the employer and plan administrator are the same entity). Electronic notice under the DOL safe harbor is permitted but will not be practical in many cases and is not recommended.

**LOSS OF  
COVERAGE DUE  
TO: termination of  
employment;  
reduction in hours;  
death; divorce or  
separation; and  
loss of dependent  
child status**

PLAN TYPE	NOTICE/DISCLOSURE	EVENT
FIXED INDEMNITY POLICY	<p><b>NOTICE OF FIXED INDEMNITY</b></p> <p>The notice obligation falls on both the insurer and the fixed indemnity policy.</p> <p>If the employer prepares and distributes any materials which includes mention of the fixed indemnity policy, the notice should be included with those materials well (i.e. an open enrollment packet).</p> <p><b>Notice Display Requirements:</b> The notice requirement applies to materials provided on paper or electronically. It must be in at least 14-point type. Notice to beneficiaries is not required. In discussing the new rule, the Departments state that they will consider a notice to be prominently displayed if:</p> <ul style="list-style-type: none"><li>• It is easily noticeable to a typical consumer within the context of the page (either paper or electronic) on which it is displayed (for example, using a font color that contrasts with the background of the document).</li><li>• It is not obscured by any other written or graphic content on the page.</li><li>• When displayed on a website, it is visible without requiring the viewer to click on a link to view the notice).</li></ul> <p>The notice must accompany marketing materials. This includes any documents or website pages that advertise the benefits of or offer an opportunity to enroll (or re-enroll) in, group market fixed indemnity excepted benefits coverage.</p>	ISSUANCE OF MARKETING MATERIALS, APPLICATIONS, AND ENROLLMENT MATERIALS, ETC.

### FOOTNOTES:

**1)** 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.