Part One: Annual / Calendar-based Requirements

Calendar-Based ERISA Mandated Reporting Duties

Method of Distribution of Notices Electronic Disclosure (Subject To Conditions for Electronic Disclosure)
Electronic distribution (i.e., e-mail or intranet posting of the document) can be used for the documents listed below. In order to use electronic disclosure, however, for each individual to whom distribution is required, the disclosure procedure (including notices and consents) must satisfy ERISA standards.

- **Summary Plan Description (SPD) and Plan Document Requirements.**
- **Summary of Material Modification.**
- **Summary Annual Report.**
- **Women's Health and Cancer Rights Act (WHCRA) Notice.**
- **Summary of Benefits and Coverage (SBC).**
- **Medicare Part D Prescription Drug Creditable/Non-creditable Coverage Disclosure Notices** (only if a reference to this notice is prominently displayed on the first page of the materials).
- **Initial Notice of COBRA Rights** (distribution on paper via U.S.P.S. First-Class Mail is recommended at initial enrollment or later if no prior documented distribution).
- **HIPAA Initial Preexisting Condition Exclusion Disclosure** (distribution on paper via U.S.P.S. First-Class Mail is recommended at initial enrollment, or later if no prior documented distribution. Under the Affordable Care Act (ACA), plans cannot have pre-existing conditions, thus this notice is no longer required after the Plan's 2014 renewal).
- **HIPAA Special Enrollment Disclosure** (distribution on paper via U.S.P.S. First-Class Mail is recommended when enrollment is offered, or later if no prior documented distribution).

For further details on **Electronic Disclosure and ERISA**, please see the next page.

**Paper**

Enrollment packet notices for which distribution on paper via U.S.P.S. First-Class Mail is recommended:

- **Initial Notice of COBRA Rights** (required when plan participation begins, and/or if revised since last distribution; or later if no prior documented distribution. Also, required distribution to covered spouse).
- **Children's Health Insurance Program Reauthorization Act (CHIPRA) Notice.**
- **HIPAA Initial Preexisting Condition Disclosure** (upon enrollment or later if no prior documented distribution. Pursuant to the Affordable Care Act (ACA), plans cannot have pre-existing conditions, thus this notice is no longer required after the Plan's 2014 renewal).
- **HIPAA Special Enrollment Disclosure** (when enrollment is offered or later if no prior documented distribution).
- **HIPAA Notice of Privacy Practices.**

**Note on ERISA Standards:** DOL electronic distribution rules will vary significantly depending on the type of employer workplace. DOL rules generally center on two types of employers: (1) Those with workforces that generally have only employees who use computers in their daily work activities, and; (2) Those that may not offer computer access to all as part of their daily work duties (e.g., a manufacturing facility). Electronic disclosure is available to workers without on-the-job computer access, but the employer must first obtain worker authorization / consent to provide these documents via electronic disclosure (e.g., email, in particular if they do not have access to employer email as part of their daily job function). Also, electronic confirmation of delivery is needed (e.g., return receipt), and all recipients must have the option to request paper copies free of charge. Other compliance duties should also be considered. Plan sponsor must also use care not to overlook COBRA participants, Qualified Medical Child Support Order (QMCSO) recipients, retirees, or others who require disclosure of Plan Documents.
Electronic Disclosure & ERISA – General Information

Under ERISA, federal law requires that employers provide certain documents relating to their employee benefit plans to individuals who are covered by those plans. The Department of Labor (DOL) has issued regulations that permit an array of such material to be provided electronically - but subject to specific conditions and limitations. These rules often require that an employer use a two-track system where part of the workforce receives electronic notice, and the balance of the target population receives traditional hard-copy notifications.

General Rule
The general rule for disclosure of ERISA documents is that they must be furnished in a manner reasonably calculated to ensure actual receipt of the document by the intended recipient. The regulations on electronic disclosure are a safe harbor, meaning that if the requirements of the regulations are met by the employer, the disclosure will be considered to have been made in a manner reasonably calculated to ensure actual receipt. Electronic disclosure may be made in other manners, but if the disclosure is made outside of the safe harbor, DOL or the intended recipients of the documents may challenge the electronic disclosure as not being appropriate. [Regulations governing electronic disclosure rules are published at 29 CFR § 2520.104b-1.]

Specific Documents May Be Electronically Disclosed
Under the DOL regulations, any documents required to be provided under Title I of ERISA may be disclosed electronically. Furthermore, other agencies have adopted the DOL Safe Harbor electronic disclosure requirements for certain documents.

Key items include:
- Summary Plan Descriptions (SPDs);
- Summaries of Material Modifications (SMMs);
- Summary Annual Reports (SARs);
- Summary of Benefits and Coverage (SBC)
- SBC notice of material modification;
- Medicare part D annual notice;
- COBRA notifications;
- Qualified Medical Child Support Order (QMCSOs) related notices;
- HIPAA certificates of creditable coverage; Qualified Domestic Relations Order (QDROs) related notices, including QMCSO;
- Pension statements; and
- Plan loan related communications.

Note: Although the DOL specifically approves of electronic notification for COBRA and HIPAA communications, most plan sponsors will prefer to use traditional hard copy notifications. COBRA and HIPAA tend to pertain to highly sensitive compliance issues and are, thereby, often subject to legal challenge. As a best practice it is suggested that at minimum, COBRA initial (general) notice materials should be sent by first class US mail to the individuals last known address, and actual COBRA qualifying even notices should be mailed first class with certificate of mailing. (Certificate of mailing is available through the Postal Service and it will serve as proof that an item was correctly deposited into the mail. From there a legal presumption applies that presumes such items are actually delivered to intended recipients. This helps avoid the problem that occasionally arises with certified mail; namely that the plan sponsor is made aware of unsuccessful delivery.) Although certified mailing is not required (only a contemporaneous record is required it will help provide proof of mailing. More information about COBRA procedures is discussed in the COBRA Section of this document. Plan sponsors will generally find it advantageous to rely on the most conservative type of notification delivery systems.
Electronic Disclosure & ERISA – Consent

Who Is Entitled To Receive Electronic Notifications?
Electronic disclosure may be made to participants (employees who are covered by the plan), beneficiaries (e.g., spouses and dependents who are covered by the plan), and other persons legally entitled to ERISA materials (e.g., the custodial parent of a child covered by a QMCSO). Electronic disclosures are subject to very specific conditions, including whether the intended recipient must give affirmative consent to the Plan Sponsor in order for the Plan Sponsor to furnish the documents electronically to the recipient.

Electronic Disclosure: Consent Not Required (Generally, Workers with Desktop Computer Access)
Electronic disclosures to a participant, inside or outside the workplace, meet the requirements of the safe harbor without the specific consent of the participant, if the disclosures meet all of the following requirements:

1. The participant has the ability to access documents furnished in electronic form at any location where the participant is reasonably expected to perform his or her duties as an employee; and
2. Accessing the electronic information system is an integral part of the participant’s duties as an employee.

Note: The DOL has specifically disapproved the use of kiosks or computer stations located in common areas of the workplace where employees can access the electronic information system (e.g., a cybercafé or computer located in a shared workstation).

Electronic Disclosure: Consent Specifically Required (Generally, Workplaces Where Workers Lack Computer Access, Such As At A Manufacturing Facility)
A plan's electronic disclosures to a participant that does not meet the requirements set out above, and any disclosures to a beneficiary or other person, meet the safe harbor requirements of the regulations if:

- The intended recipient has affirmatively consented to receive the documents electronically and has not withdrawn the consent;
- For documents to be furnished using the internet, the intended recipient has affirmatively consented, or confirmed consent, electronically and in a manner that reasonably demonstrates the individual’s ability to access information in the electronic form that will be used and has provided an address for the receipt of such information;
- Prior to consent, the target individual receives a clear and conspicuous statement explaining the following:
  - The types of documents to which the consent applies;
  - That consent can be withdrawn at any time without charge;
  - The procedures for withdrawing consent and for updating the address for receipt of electronic documents; and
  - The right to a paper version of an electronically furnished document, and whether there will be a charge for the paper version.

Please refer to the next page for the section on Electronic Disclosure and ERISA–Requirements.
Electronic Disclosure & ERISA – Requirements

General Requirements
To qualify for the safe harbor, a Plan Sponsor that makes electronic disclosures must take appropriate and necessary measures reasonably calculated to ensure that the system:

- Results in actual receipt of the documents (e.g., by using electronic return receipt or notice of undelivered e-mail features or conducting periodic reviews or surveys to confirm receipt of the Documents); and
- Protects the confidentiality of personal information relating to accounts and benefits.

Internally Documenting the Use of Electronic Disclosure
As a best practice, many employers prepare a memo to file that identifies the particular notices that were distributed, the dates of electronic distributions, and list of email recipients. Later, as electronic return receipts arrive, those receipts should be saved and added to files. Detailed information should also be retained to explain how the plan sponsor delivered required notification to individuals whom are not eligible to receive electronic disclosure (e.g., members of staff without computer access).

Rules Governing Format and Style
Documents that are disclosed electronically must be consistent with the style, format, and content requirements that otherwise apply to the particular document (e.g., an SPD that is disclosed electronically must include the full statement of ERISA rights that is required to be in all SPDs).

Notice Requirements
When a document is furnished electronically, the intended recipient must be notified of the significance of the document, if its significance is not otherwise immediately and apparently evident. (For example, a Summary of Material Modifications that changes the benefits provided by a Plan should include enough obvious information to reasonably alert the individual about the document’s significance; e.g., “Summary of Material Modification – Your Required Deductible Changes on January 1.”)

In addition, the intended recipient must always be notified of the right to request a paper version of the document.

Assessing Fees
The plan may not impose a fee for a paper copy of a document that is furnished electronically if the plan is otherwise required to furnish the document without charge, such as an SPD. However, if the plan is otherwise permitted to charge a fee for a document (e.g., for a trust agreement), and the document is available electronically but a paper copy is requested, a reasonable copying fee may be imposed. Most plan sponsors find it beneficial to waive all administrative charges associated with this matter.