

Electronic Delivery Rules

Department of Labor (DOL) Safe Harbor

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.
- 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.