

## Guidelines for SPD Distribution

**NOTE:** Your wrap documents are not complete without the benefit summaries, certificates of insurance and/or insurance contracts for each insured or self-funded plan option or component plan, including premium conversion plans, health reimbursement accounts and flexible spending accounts. These materials, which are incorporated into the wrap documents, must generally be obtained from the insurer or TPA. For a complete list of the required content that must be included in the SPD, please see the federal regulations at [29 C.F.R. §2520.102-3](#).

The SPD should be distributed to all participants in a manner reasonably calculated to ensure actual receipt, which means it may be hand delivered or sent by first, second or third class mail. The SPD also may be delivered electronically, for example, by e-mail or intranet, if it is reasonably expected that eligible employees will receive it and if certain DOL electronic delivery requirements are satisfied.

### Due dates for SPD distributions:

- The plan must distribute the SPD to a new participant (and any summary of material modifications not yet incorporated into the SPD) within 90 days after the employee becomes a plan participant. However, it is a better practice to distribute SPDs to new participants no later than the time they become plan participants.
- The initial SPD for a new plan or a plan newly subject to the SPD requirements would be due no later than 120 days after the plan is first subject to the SPD requirements. Practically speaking, however, the distribution should be made as soon as possible.
- For a plan that already has an SPD, if there are changes to the plan on or before the end of a five year period that affect the SPD, a new SPD must be distributed no later than 210 days after the end of the fifth plan year. A new SPD is required 210 days after the tenth plan year if there are no changes.
- Group health plans that have had a “material reduction in covered services or benefits” must provide a Summary of Material Modifications (“SMM”), or an updated SPD, 60 days after the adoption of the modification. Alternatively, the employer may provide descriptions of material reductions at regular intervals of not more than 90 days. A material reduction in covered services or benefits means any modification to the plan or change in the information required to be included in the SPD that, independently or in conjunction with other contemporaneous modifications or changes, would be considered by the average plan participant to be an important reduction in covered services or benefits under the plan.
- SPDs must also be distributed to a participant or beneficiary who requests the SPD within 30 days of the request. An employer can be assessed a penalty by a court for failure to meet this requirement.

**Note:** Under the Affordable Care Act’s 60 day advance notice rule, a plan administrator or insurer must give plan participants advance notice if there is a “material modification” to a group health plan. A “material modification” is defined as any change that the average participant would find important that would affect the content of the Summary of Benefits and Coverage (which is generally provided by the insurer). However, if the change occurs in connection with a renewal or reissuance of insurance contracts, then the 60 day rule is not applicable. The notice should be consistent with the format of the Summary of Benefits and Coverage.

Acceptable distribution methods for SPDs include:

- In-hand delivery to employees at their worksites.
- Special insert in an employee periodical if:
  - a. the distribution list is comprehensive, up to date, and accurate, and
  - b. the front page prominently states the SPD is inserted. (*Note:* If some participants and beneficiaries are not on the mailing list for the periodical, this method may be combined with another distribution method.)
- Electronic distribution if the distribution method or methods satisfy the DOL’s requirements.
- First-class mail.
- Second- or third-class mail if return and forwarding postage are guaranteed and address corrections are requested. (*Note:* If SPDs are distributed by second- or third-class mail and an SPD is later returned with a corrected address, the plan administrator must distribute the SPD again by first-class mail or personal delivery to the participant at his or her worksite.)

Electronic Distribution

As a general rule, materials required to be furnished under ERISA may be provided electronically if the plan administrator takes appropriate and necessary measures reasonably calculated to ensure that the system for furnishing documents results in actual receipt of the material. Ways to ensure receipt of an SPD include using return-receipt or notice of undelivered email features, or conducting periodic reviews or surveys to confirm receipt. In addition, in order to provide materials electronically:

- The administrator must take steps reasonably calculated to ensure that the system protects the confidentiality of personal information relating to the individual’s accounts and benefits;
- The electronically delivered documents must be prepared and furnished in a manner consistent with the style, format and content requirements applicable to the particular document;
- Notice must be provided to each participant, beneficiary or other individual, at the time a document is furnished electronically, that informs the individual of the significance of the document when it is not otherwise reasonably evident as transmitted (e.g., the attached document describes changes in the benefits provided by your plan) and of the right to request and obtain a paper version of such document; and
- Upon request, the participant, beneficiary or other individual must be furnished a paper version of the electronically furnished documents.

Unless an individual has the ability to effectively access documents furnished in electronic form at any location where the individual is reasonably expected to perform his or her duties as an employee, and access to the employer or plan sponsor's electronic information system is an integral part of an individual's job duties, he or she must affirmatively consent to receive documents through electronic media. In the case of documents to be furnished through the Internet or other electronic communication network, consent must be given in a manner that reasonably demonstrates the individual's ability to access information in the electronic form that will be used to provide the information. Prior to consenting, the individual must be provided a clear and conspicuous statement indicating:

- The types of documents to which the consent would apply;
- That consent can be withdrawn at any time without charge;
- The procedures for withdrawing consent and for updating the individual's address for receipt of electronically furnished documents or other information;
- 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
- Any hardware and software requirements for accessing and retaining the documents.

## **Foreign Language Requirements**

The foreign language requirements apply when a certain number of plan participants speak the same foreign language.

For plans covering fewer than 100 participants at the beginning of the plan year, the foreign language requirements apply if 25 percent or more of the participants are literate only in the same foreign language.

For plans covering 100 or more participants at the beginning of the plan year, the foreign language requirements apply if either:

- 500 or more participants are literate only in the same foreign language, or
- 10% or more of all plan participants are literate only in the same foreign language.

If the requirements apply, the SPD must prominently display a notice in the foreign language common to the participants, offering them assistance. The notice must clearly state the procedures the participants are to follow to obtain assistance. The following sample notice is from DOL regulations:

“This booklet contains a summary in English of your plan rights and benefits under Employer A Pension Plan. If you have difficulty understanding any part of this booklet, contact Mr. John Doe, the plan administrator, at his office in Room 123, 456 Main Street, Anywhere City, State 20001. Office hours are from 8:30 a.m. to 5:00 p.m. Monday through Friday. You may also call the plan administrator’s office at 202-555-2345 for assistance.”