

Guidelines for Distributing ERISA-Required Documents

See if you can save paper and use electronic methods (like a website, intranet, or email) to meet the U.S. Department of Labor requirements for sharing ERISA-required documents.

Document Sharing Requirements

The U.S. Department of Labor (DOL) specifies that employers must deliver certain ERISA-required benefit plan disclosures to their plan participants through a method “reasonably calculated to ensure actual receipt.” ERISA-required benefit plan disclosures to be shared with participants include *Summary Plan Descriptions (SPDs)*, *Summaries of Material Modification (SMM)*, *Summary Annual Reports (SAR)*, and other notices. You do not need to follow these guidelines for sharing general education about your benefit plan.

Sharing via Electronic Methods (Website, Intranet, or Email)

There are two sets of criteria that you may use to determine if you can send benefit plan disclosures via electronic methods to meet the DOL requirements. The criteria you use also determines the information you need to communicate to participants.

Option 1: Regular Employee Computer Access Criteria

You may distribute disclosures electronically to employees who meet **both** of these regular computer access criteria.

Employee has ready access to their employer’s computer system in the same area where the employee is expected to perform their duties (employees using a shared computer or central kiosk do not qualify)

Employee accesses their employer’s computer system as an integral part of their duties (may include an employee accessing the system regularly from a home office)

What to Include: Every time you send ERISA-required disclosures to these participants, you must notify them of the significance of the benefit plan disclosure and their right to receive a paper copy upon request at no charge.

Option 2: Employee Consent Criteria

If your employees don’t meet the regular computer access criteria, you may still distribute benefit plan disclosures electronically to employees who meet **both** of these employee consent criteria.

Employee provides an email address where the benefit plan documents can be delivered

Employee provides written consent agreeing to electronic delivery of benefit plan documents via a method that demonstrates their ability to receive electronic documents (the easiest way to do this is require that consent be provided electronically, like via email!)

What to Include: When using employee consent criteria, you must provide notice of the following information before the participant gives consent **and again** every time a benefit plan disclosure is shared with them electronically.

- What types of documents will be provided electronically
- How electronic disclosures will be delivered
- What system requirements (hardware or software) is needed to receive the disclosures – if system requirements change, these participants must be notified of the change and their right to withdraw consent, and they must complete a new consent form
- That consent can be withdrawn at any time at no cost and how to withdraw it
- How to update their information for receiving electronic disclosures
- The right to request a paper copy and if a charge (not always allowed) applies

Additional Requirement for Electronic Communication Methods

In addition to the employee computer access criteria and the employee consent criteria, employers must meet these requirements for electronic methods of sharing benefit plan disclosures.

All Electronic Methods	<ul style="list-style-type: none"> • Prepare and furnish disclosures in line with the documents' other requirements • Safeguard participant privacy
Website	<ul style="list-style-type: none"> • Direct participant to the disclosures with a link or email • Keep the disclosures available for a reasonable period of time • Provide instructions for login and password retrieval, if needed
Email	<ul style="list-style-type: none"> • Delivery verification methods, such as tracking undeliverable mail or using return receipts, are required

Non-Electronic Methods for Sharing Benefit Plan Documents

If your participants do not meet the criteria for sharing ERISA-required disclosures via electronic methods, you must use another delivery method, such as U.S. Mail, to provide ERISA-required disclosures to them.

Reference: 29 CFR §2520.104b-1



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