Employers offering health and welfare benefits such as medical, dental, life, and disability insurance must provide all participants with a Summary Plan Description (SPD) or an SPD Wrap document. In addition, various other notices must be provided, depending on the number of employees and benefits setup such as: COBRA, CHIP, MHPA, NMHPA, HIPAA, WHCRA, Wellness, Grandfathered Plan, Exchange, Medicare Part D, and other notices. See SPD & Employee Notice Requirement: [http://www.hrserviceinc.com/pdf_files/Employee Notification Requirements-0.pdf].

In order to meet delivery requirements, SPDs and Notices must be delivered to participants in a way “reasonably calculated” to ensure actual receipt.

The electronic and non-electronic methods described in this article, along with the attached handouts, will help your company meet these ERISA requirements.

Use one of the below distribution methods to distribute the SPD document and component plan documents to all benefit plan participants. Be prepared to prove that you furnished the SPD(s), Wrap, and Employee Notices.

Non-Electronic Methods of Delivery

**US Mail:** Material distributed through the mail may be sent by first, second, or third-class mail. However, distribution by second or third-class mail is acceptable only if return and forwarding postage is guaranteed and address correction is requested. Any material sent by second or third-class mail which is returned with an address correction shall be sent again by first-class mail or personally delivered to the participant at his or her worksite.

For distribution of documents/materials in a format other than paper, such as electronic storage devices including CD-R and flash/memory stick, consent must be obtained from employees of their ability to access such devices for viewing of materials.

See Attachment A below, “Acknowledgment of Material Distribution Format.”

**Hand Delivery:** If using a hand delivery method, consider obtaining a receipt from participants of the notice delivery. It is not acceptable to merely place copies of the material in a location frequented by participants.

See sample Attachment B below, “Acknowledgment of Receipt of Important Documents.”

**Periodical/Company Publications:** It is acceptable to deliver documents as a special insert in a periodical distributed to employees, such as a union newspaper or a company publication, if the distribution list for the periodical is comprehensive and up-to-date. It must also show a prominent notice on the front page of the periodical advising readers that the issue contains an insert with important information about rights under the plan.

If some participants and beneficiaries are not on the mailing list, a periodical must be used in conjunction with other methods of distribution.
Electronic Delivery Methods

**Work Email:** Documents can be sent via email (without consent) to employee’s work email address, *as long as the following is in place:*

1. the work email is specifically for and used by the employee on a regular basis as a part of daily work responsibilities;
2. an actual receipt of transmitted information is confirmed, such as through failure to deliver notice, periodic review or survey of employees to confirm materials are being received or confirmation receipt received by sender from recipient;
3. the email includes a statement as to the significance of the document;
4. contains the right to request a paper version at no cost and instructions on how to request a copy, and the notice content does not contain any identifiable protected personal information.

*See sample Attachment C below, “Email or Mail Notice of Availability Important Documents.”*

**Personal Email:** If employees do not have a primary work-issued email address, they may elect, with written consent, to provide the employer with a personal email address for receipt of specific electronic notices. This consent must be obtained yearly and must include the following:

1. the types of documents to which the consent would apply;
2. that consent can be withdrawn at any time without charge;
3. the procedures for withdrawing consent and for updating the participant's, beneficiary's or other individual's address for receipt of electronically-furnished documents or other information;
4. 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
5. any hardware and software requirements for accessing and retaining the documents.

*See sample Attachment D below, “Consent for Electronic Delivery of Documents.”*

**Company Intranet:** Employers may post documents to a designated site on the Internet. Under this method, the employer must ensure employees have the ability to, and can access, these documents at will during and after business hours. Employers must provide a separate notification sent via electronic or non-electronic method to each employee notifying them of:

1. the document’s availability;
2. the importance of the information contained in the documents;
3. the right to receive this information by another acceptable means, non-electronic or electronic, as described above.

*See sample Attachment C below, “Email or Mail Notice of Availability of Important Documents.”*

**Documentation:** Regardless of the distribution method used, the employer should always retain evidence of the notice being given, including a copy of the notice(s), the date provided, and to whom it was provided.

These notices and any other relevant Plan Documents or Notices should be made available to employees upon request at no cost. For purposes of section 104(b)(4) of the Act, materials furnished upon written request shall be mailed to an address provided by the requesting participant or beneficiary or personally delivered to the participant or beneficiary.

*See sample Attachment E below, “Request for Copy of Documents.”*

*by Debbie Siddoway, HR Coach & Ken Spencer, President*  
*HR Service, Inc. and ERISA Solutions*

**SPD Wrap or Employee Notices**  
For assistance with your SPD Wraps, Employee Notices, or 125 Premium Only Plan (POP) documents contact HR Service, Inc. to access our web-based solutions at Info@HRServiceInc.com or by calling (855) 447-3375. You can also visit us on-line at www.HRServiceInc.com or www.ERISASolutions.com.
ATTACHMENT A

Acknowledgment of Material Distribution Format

Under the Employee Retirement Income Security Act of 1974 (ERISA) and related regulations, [Insert Company Name] is required to provide to all benefit participants a Summary Plan Description (SPD) and supporting documents for all benefits that describe key provisions of the plan(s).

[Insert Company Name] will mail or hand-deliver to you a copy of these documents. To reduce the number of printed documents, [Insert Company Name] would like to provide alternative formats for delivery of these documents. Indicate below your preferred delivery method:

- PDF documents saved to a mass storage device, like a flash/memory stick
- PDF documents saved to CD-R (compact disc-Read Only Memory)

I consent to the alternative media option selected above for disclosure of all Employee Benefit notices, including Summary Plan Descriptions, plan documents, and plan amendments.

I understand that I have the right to receive paper copies of all Employee Benefit notices, including Summary Plan Descriptions and plan amendments, upon request at no additional charge. I also confirm that I have the ability and the necessary equipment and software to access the format selected in order to view and print documents.

Employee Name (Printed)                      Employee Signature

__________________________________  ______________________________

Date

__________________________________
ATTACHMENT B

Sample - Acknowledgment of Receipt of Important Documents
(Optional, insert Company Name and/or logo)

I, the undersigned employee, acknowledge receipt of the following documents from [Insert Company Name]:

1. Summary Plan Descriptions and copies of relevant component plan documents for applicable benefit programs. 

2. 

3. 

________________________________________________________________________

Employee Signature                                      Date

________________________________________________________________________

Employee Name Printed
ATTACHMENT C

Sample - Email or Mail Notice of Availability of Important Documents

Dear Employee,

[Insert Company Name] would like to make you aware of access to and the availability of important benefit documents. In addition to those documents you are provided upon enrollment, more details can be found in the summary plan description, summary of material modifications, insurance contracts and other supporting documents.

[Insert company name] {has created a [Insert specifics – like share file on the company website] where all of these documents can be viewed} [or] {has attached these documents for your convenience}.

[If using a shared drive or web location, include the following statement and remove this instruction statement.] [If you wish to receive a hard copy of this information, at no cost, please contact [insert contact person, name, number and/or email] with your preference.]

Sincerely,

[Insert name and title]
ATTACHMENT D

Consent for Electronic Delivery of ERISA Documents

The purpose of this notice is to inform you that [Company Name] is offering you the opportunity to receive electronically all notices about your employee benefits. Such notices will include (but not be limited to) newsletters, enrollment announcements, Summary Plan Descriptions (SPDs), Summaries of Material Modifications (SMMs), Summary Annual Reports (SARs), general COBRA notices, Summaries of Benefits and Coverage, Health Insurance Marketplace notices, HIPAA certificates of creditable coverage and other related benefit notices.

Optional [All notices are available online at: ________________________________ ]

Each benefit plan in which you enroll has a Summary Plan Description ( SPD) that describes the key provisions of the plan. Plan amendments describe any material changes made to the benefit plan since its SPD was originally drafted. A plan’s SPD and plan amendments are very important documents.

If you do not have access to a computer through your normal work functions, in order for us to provide you with this opportunity, you must consent to receive Employee Benefit notices electronically by signing the form below.

Prior to consenting, you should understand that:

• When a new benefit notice, announcement, newsletter, SPD or other document is posted via [insert web address or method of access to document], you will receive a notification at the email address you provide to inform you of the availability and location of the document.

• You have the right to withdraw your consent to electronic distribution at any time at no charge to you. To withdraw consent, you must notify [insert name] at [insert phone number and/or email].

• If you consent to electronic distribution, you may still request a paper version of any document free of charge by contacting [insert name] at [insert phone number and/or email].

• All benefit notices, including SPDs and plan amendments, will be available [indicate where] in the following document format [insert format, i.e., pdf]. If you do not have the ability to access the following types of electronic document storage [distribution type, i.e., CD, memory stick, intranet or Internet website], or if you do not have the programs necessary to view this type of file, you should not consent.

• To withdraw your consent or update your email address, please notify [insert name] at [insert email address and/or phone number].

I consent to the electronic disclosure of all Employee Benefit notices, including Summary Plan Descriptions, plan documents, plan amendments and any other benefit notices.

I acknowledge that I have read the “Notice of Electronic Disclosure” and understand that I am entitled to withdraw my consent at any time at no cost to myself. I understand that I have the right to receive paper copies of all Employee Benefit notices, including Summary Plan Descriptions and plan amendments, upon request at no additional charge. I also confirm that I have the ability and the necessary equipment and software to access [insert specifics, i.e., the Employee Benefits websites, open and view documents provided].

Employee Name (Printed)                                          Employee Signature

___________________________                              _______________________________

Employee Email Address                                           Date

___________________________                             ________________________________
ATTACHMENT E

Request for Copy of Documents

I wish to exercise my right to receive a copy, at no cost to me, of the following benefit documents:

☐ Summary Plan Description(s) and component plan documents.
☐ Summary of Material Modification(s)
☐ Other supporting documents indicated here _____________________________
_________________________________________________________________

If available, I would like to request the above information in a format other than paper as indicated below:

☐ CD - Compact disc – read only memory
☐ Memory stick containing PDF files
☐ Via email as PDF files sent to the following email address ________________________________

Employee Name (Printed)  Employee Signature  Date
_________________________  ______________________________________  __________