

Electronic delivery rules for required participant disclosures are outlined in the [DOL's Technical Release 2011-03r](#). The technical release indicates that "The plan administrator may use the safe harbor of section 2520.104b-1(c) to furnish section 2550.404a-5 disclosures through electronic media". Below is a summary of the requirements of section [2520.104b-1\(c\)](#). If you would like to discuss electronic delivery, please contact Brian Baroni at (916) 918-0223 or (800) 557-3679.

Requirements for employees with work-related computer access

Definition of work-related computer access: The employee has the ability to access documents at any location where they reasonably could be expected to perform employment duties. In addition, access to the employer's electronic information system must be an integral part of their employment duties.

1. Electronic materials must be prepared and delivered in accordance with otherwise applicable requirements (e.g., timing and format requirements for SPDs as outlined under ERISA).
2. A notice must be provided to each recipient, at the time that the electronic document is furnished, detailing the significance of the document.
3. The notice must advise the participant of their rights to have the opportunity, at their work site, to access documents furnished electronically and to request and receive (free of charge) paper copies of any documents received electronically.
 - o This can be mailed or hand delivered.
4. The Employer must take appropriate measures to ensure the electronic distribution will result in actual receipt of information by the participants (i.e. return-receipt).
5. If the disclosure includes personal information relating to an individual's accounts and benefits, the plan must take reasonable and appropriate steps to safeguard the confidentiality of the information.

Additional requirements for non-employees or employees with non-work related computer access

1. Affirmative consent for electronic distribution must be obtained from the individual. Before consent can be obtained, a pre-consent statement must be furnished that explains:
 - o The types of documents that will be provided electronically;
 - o The individual's right to withdraw consent at any time without charge;
 - o The procedures for withdrawing consent and updating information (e.g. updating the address for receiving electronic disclosure);
 - o The right to request a paper version and its cost (if any); and
 - o The hardware and software requirements needed to access the electronic document.
2. The regulations permit the pre-consent statement to be provided electronically if the Employer has a current and reliable email address.
3. If system hardware or software requirements change, a revised statement must be provided and renewed consent from each individual must be obtained.
4. If the documents are to be provided via the Internet, the affirmative consent must be given in a manner that reasonably demonstrates the individual's ability to access the information in electronic form, and the individual must have provided an address for the receipt of electronically distributed documents.
5. The Employer must keep track of individual electronic delivery addresses, individual consents and the actual receipt of emailed documents by recipients.
6. Steps 1, 2, 4, and 5 outlined above under "**Requirements for employees with work-related computer access**" must also be followed.

Sincerely,
PenSys, Inc.