

## SPD DISTRIBUTION BY ELECTRONIC MEANS

Under ERISA, plan administrators are generally required to provide each participant in a benefit plan with a copy of the SPD for the plan. Employers often inquire whether the SPDs may be distributed electronically in order to save time and money.

Labor Regulation § 2520.104b-1 ("the Disclosure Regulation") requires plan administrators to "use measures reasonably calculated to ensure actual receipt" of any materials that the administrator is obligated to furnish to plan participants and beneficiaries under ERISA. The regulation sets forth a "safe harbor" for the distribution of plan documents by electronic media. The safe harbor includes several requirements regarding participant notice of the availability of the SPD in electronic format, participant consent to receipt of the SPD in electronic format, and measures to ensure actual receipt (see link below).

There are a variety of options for employers to consider regarding SPD distribution, including distribution by CD-Rom, central posting on a secure company website, and individually emailed copies (with receipt confirmation). When considering these options, keep in mind that the baseline standard remains that the administrator has the duty to "take measures reasonably calculated to ensure receipt of the SPD." Also, consider that according to the DOL regulations, all employees may not be eligible to receive an SPD electronically. For example, emailing an SPD or posting the SPD on a company website would likely not be effective to meet the distribution requirements for an employee whose job does not entail use of a computer, and who would not have the same ready access to the SPD as those for whom the company has provided a computer.

This link provides a helpful resource for more detailed information about the 2003 DOL regulations on SPD distribution:

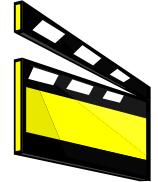
<http://www.bccb.com/publications/Detail.aspx?id=b60ba22d-35b5-45a7-b869-aff9dd8ed5c3>.

Contact your legal counsel for legal advice on whether your current method or proposed method meets the requirements of ERISA.

## Quickies

### ♦ Note Change in Billing and Payment Register Distribution

**ProBenefits** has modified and streamlined its processing system for billing and payment registers. Effective July 1, all payment registers and bills are being sent to administrators from two new email addresses— [paymentregister@probenefits.com](mailto:paymentregister@probenefits.com) and [billing@probenefits.com](mailto:billing@probenefits.com). Also, account balance reports are being sent from [accountbalances@probenefits.com](mailto:accountbalances@probenefits.com).



Please add these addresses to your "Safe List" and make sure that no messages are being blocked by your spam server.

## O&A

### *What does my company need to do if we are interested in adding the FSA grace period to our plan?*

The last *Flex Plan News* advised of the new FSA 75-day grace period announced by the IRS. Since that time, we have been gathering information and working to incorporate the new grace period option into our administrative system.

We are still waiting on certain outstanding guidance from the IRS relating to tax issues relating to the new rule. In addition, we are awaiting one of our software vendors to complete the programming on the administration side. For all calendar year plans, we will be contacting you soon with further information on your options.

If your plan renews prior to January 1, and your company is interested in the grace period for your FSA plan, please contact Jason Cogdill, 888-722-8382, ext. 132, or [Jason@probenefits.com](mailto:Jason@probenefits.com).

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