

# Reporting and disclosure guide

Multiemployer retirement and welfare benefit plans – U.S. edition  
January 2018



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# All ERISA plans

## All ERISA plans

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Plan documentation</b>	All plans subject to Title I of ERISA	Serves as the basis for operation of the plan. Plan documentation includes plan document, most recently updated SPD, collective bargaining agreement, latest Form 5500, trust agreement, contract, and other instruments under which the plan is established or operated  ERISA §§104(b)(2) and (4), 104(a)(6), DOL reg. §§2520.104b-1, 2520.104a-8	Plan administrator	Participants, beneficiaries, DOL upon request	<ul style="list-style-type: none"> <li>Plan administrator must make copies available at its principal office and certain other locations</li> <li>Plan administrator must provide copies within 30 days of receipt of a written request from a participant or DOL</li> </ul>	<ul style="list-style-type: none"> <li>Court may hold plan administrator who fails to comply within 30 days personally liable for up to \$110/day/ affected person from date of failure</li> <li>DOL may impose penalty of up to \$152/day for failure to provide to DOL (up to \$1,527 per request)</li> </ul>
<b>Summary plan description (SPD)</b>	All plans subject to Title I of ERISA	Provides summary of important plan provisions in format designed to be understood by average participant and sufficiently comprehensive to apprise covered persons of their benefits, rights, and obligations under the plan  ERISA §§102, 104(b), DOL regs. §§2520.102-2, 2520.102-3, 2520.104b-1, 2520.104b-2, 2520.104a-8	Plan administrator	Participants, pension plan beneficiaries receiving benefits, and DOL upon request	<ul style="list-style-type: none"> <li>New participants: within 90 days of becoming covered by the plan, or in case of pension plan beneficiaries, within 90 days after first receiving benefits</li> <li>New plans: 120 days after becoming subject to ERISA</li> <li>Amended plans: updated SPD every 5 years if plan is amended</li> <li>All others: every 10 years</li> <li>DOL reg. §2520.102-4 provides option for different SPDs for different classes of participants</li> </ul>	<ul style="list-style-type: none"> <li>Court may hold plan administrator who fails to comply within 30 days personally liable for up to \$110/day/affected person from date of failure</li> <li>DOL may impose penalty of up to \$152/day for failure to provide to DOL within 30 days (up to \$1,527 per request)</li> </ul>

## All ERISA plans

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Summary of material modification (SMM)</b>	All plans subject to Title I of ERISA	Provides description of changes to information required to be in SPD  ERISA §§102, 104(b), DOL reg. §§2520.102-2, 2520.102-3, 2520.104b-1, 2520.104b-3, 2520.104a-8	Plan administrator	Participants, beneficiaries, and DOL upon request	<ul style="list-style-type: none"> <li>• Within 210 days after the close of the plan year in which the change is adopted</li> <li>• Timely distribution of updated SPD satisfies this requirement</li> <li>• See special additional rule for group health plans – summary of material modification – reduction in covered services of benefits</li> </ul>	<ul style="list-style-type: none"> <li>• Court may hold plan administrator who fails to comply within 30 days personally liable for up to \$110/day/affected person from date of failure</li> <li>• DOL may impose penalty of up to \$152/day for failure to provide to DOL (up to \$1,527per request)</li> </ul>
<b>Form 5500 annual report</b>	All plans subject to Title I of ERISA, except (in some cases with conditions): <ul style="list-style-type: none"> <li>• Welfare plans with fewer than 100 participants at the beginning of the plan year</li> <li>• Welfare plans in certain group insurance arrangements</li> <li>• Apprenticeship or other training programs</li> <li>• Top hat plans</li> <li>• Day care centers</li> <li>• Dues financed welfare or pension plans sponsored by an employee organization</li> <li>• SEPs and SIMPLEs</li> </ul>	Provides financial and other information about the plan. Requirements vary according to type of filer (e.g., small plan, large plan)  ERISA §§103 104, 4065, DOL reg. §§2520.103, 2520.104, IRC §6058  <a href="#">DOL website</a>	Plan administrator	DOL; participants within 30 days of written request. Also DB plan forms published on Internet by DOL and by plan sponsor on company Intranet	<ul style="list-style-type: none"> <li>• Last day of the 7<sup>th</sup> month following the end of the plan year (July 31 of the following year for calendar year plans)</li> <li>• Up to 2½ month extension can be requested (Form 5558)</li> </ul>	<ul style="list-style-type: none"> <li>• Up to \$2,140/day for not filing a complete and accurate report</li> <li>• \$25/day (up to \$15,000) for not filing returns for certain plans of deferred compensation, trusts and annuities, and bond purchase plans</li> <li>• \$1,000 for not filing an actuarial statement (Schedule MB [Form 5500])</li> </ul>



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<b>Summary annual report (SAR)</b>	Generally plans required to file Form 5500s, except pension plans subject to the Annual Funding Notice and totally unfunded welfare plans regardless of size	Provides a narrative summary of Form 5500 using DOL model notices  ERISA §104(b)(3), reg. §2520.104b-10	Plan administrator	Participants, pension plan beneficiaries receiving benefits	Within 9 months after end of plan year, or 2 months after due date for filing Form 5500, if extension requested	Court may hold plan administrator who fails to comply within 30 days personally liable for up to \$110/day/affected person from date of failure
<b>Form 5558 – Application for extension of time to file certain employee plan returns</b>	All plans required to file Form 5500 series, Form 8955-SSA or pay excise taxes on Form 5330	<ul style="list-style-type: none"> <li>To request an extension of the Form 5500, Form 8955-SSA, or Form 5330 due date</li> <li>Requests for Form 5330 extensions are subject to approval</li> <li>Filing of form does not provide extension for payment of tax</li> </ul> <a href="#">Form 5558 instructions</a>	Plan administrator	IRS	<ul style="list-style-type: none"> <li>No later than 7 months after plan year end</li> <li>Requests for extension of filing Form 5330 should be made with sufficient time to allow for processing and approvals</li> </ul>	Late filing penalties for affected Form 8955-SSA/5330/5500 series forms

## All ERISA plans

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Form 5330 – Return of excise taxes related to employee benefit plans</b>	All plans and persons engaging in barred practices	Report excise tax on: <ul style="list-style-type: none"> <li>• Excess contributions or excess aggregate contributions from plans with cash or deferred arrangements (CODA)</li> <li>• Minimum funding deficiencies</li> <li>• Failure to comply with multiemployer plan funding improvement or rehabilitation plan</li> <li>• Failure to meet requirements for plan in endangered status or critical status</li> <li>• Failure to adopt rehabilitation plan within 240 days of entering critical status</li> <li>• Failure to give notice of significant reduction in rate of future benefit accrual</li> <li>• Nondeductible contributions</li> <li>• Prohibited transactions</li> <li>• Funded welfare plan disqualified benefits</li> </ul> <a href="#">Form 5330 instructions</a>	Board of trustees	IRS	<ul style="list-style-type: none"> <li>• For excess CODA amounts, last day of 15th month after close of plan year to which excess contributions or excess aggregate contributions relate</li> <li>• For minimum funding deficiencies, failure to comply with multiemployer plan funding improvement or rehabilitation plan, failure to meet requirements for plan in endangered or critical status, and failure to adopt rehabilitation plan within 240 days of entering critical status, last day of 7<sup>th</sup> month after end of tax year; 8½ months after last day of plan year that ends within tax year</li> <li>• For nondeductible contributions, prohibited transactions, and funded welfare disqualified benefits, last day of the 7<sup>th</sup> month after end of employer's tax year, as applicable</li> <li>• For failure to give notice of a significant reduction in rate of future benefit accruals, last day of month following month in which failure to satisfy notice occurs</li> </ul>	<ul style="list-style-type: none"> <li>• Late filing of form – 5% of unpaid tax for each month return is late, up to 25% of unpaid tax</li> <li>• Late payment of tax – 0.5% of unpaid tax for each month return is late, up to 25% of unpaid tax</li> </ul>

## All ERISA plans

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Notification of benefit determination (claims notices or explanation of benefits)</b>	All plans subject to Title I of ERISA	Provides information about benefit claim determinations  ERISA §503, DOL reg. §2560.503-1	Plan administrator	Claimants (participant, beneficiary or authorized claims representatives)	Requirements vary depending on type of plan and type of benefit claim involved	Exhaustion of administrative remedies
<b>Form 990-T – Exempt organization business income tax return</b>	Form 990-T – qualified retirement plans, IRAs, Roth IRAs, SEPs, SIMPLEs, Coverdell Educational Savings Accounts, Section 529 Qualified Tuition programs, and Archer Medical Savings Accounts if the plan has unrelated trade or business income (e.g., from investments in unincorporated trades or businesses) exceeding \$1,000	<a href="#">Form 990-T</a> is a tax return for a tax-exempt trust that has unrelated business taxable income	Trustee	IRS, and to participants within 30 days of written request	By 15 <sup>th</sup> day of 4 <sup>th</sup> month after end of trust year unless a 6-month extension is requested using Form 8868	Failure to file – 5% of unpaid tax for each month return is late, up to 25% of unpaid tax

# ERISA defined benefit and defined contribution plans

## ERISA defined benefit and defined contribution plans

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Individual benefit statements (periodic benefit statements)</b>	DB and DC plans	<ul style="list-style-type: none"> <li>Provides statement of total accrued benefits, and if not vested, when vesting will occur</li> <li>Must describe any permitted disparity or floor offset provision</li> <li>For individual account plans: value of each investment, limits on investing, importance of diversification, information on DOL's webpage, and statement of value of each investment</li> </ul> <p>ERISA §105(a), DOL Field Assistance Bulletins 2006-03 and 2007-03, see also ERISA §209</p>	Plan administrator	Participants and beneficiaries	<ul style="list-style-type: none"> <li>Participant directed individual account plans – quarterly within 45 days</li> <li>Other individual account plans – annually by Form 5500 due date</li> <li>Other plans – every 3 years (for participants with nonforfeitable benefits and employed by employer), or notice of availability of benefit statement annually</li> <li>Upon request, once a year</li> </ul>	<ul style="list-style-type: none"> <li>Court may hold plan administrator who fails to comply within 30 days personally liable for up to \$110/day/affected person from date of failure</li> <li>DOL can impose penalty of up to \$29/person for failure to report benefit information to participants</li> </ul>
<b>Form 8955-SSA – annual registration statement identifying separated participants with deferred vested benefits</b>	DB and DC Plans	<p>Reports information about separated participants who have vested benefits remaining in plan</p> <p>IRC §6057(a), <a href="#">Form 8955-SSA instructions</a></p>	Plan administrator	IRS	<ul style="list-style-type: none"> <li>Last day of 7<sup>th</sup> month following end of plan year (July 31 of following year for calendar year plans)</li> <li>Up to 2½-month extension can be requested (Form 5558)</li> </ul>	\$1/day/participant not reported (up to \$5,000/plan year) unless due to reasonable cause

## ERISA defined benefit and defined contribution plans

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Notice to separated participants with deferred vested benefits</b>	DB and DC plans	Describes participant's deferred vested benefits and benefits that are forfeitable if participant dies before a certain date (as reported on the Form 8955-SSA)  IRC §6057(e), IRS reg. §301.6057-1, ERISA §§105(c) and 209	Plan administrator	Separated participants	No later than due date for filing Form 8955-SSA-Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits	\$50/willful failure
<b>Domestic relations order (DRO) and qualified domestic relations order (QDRO) notices</b>	DB and DC plans	Provides notification of receipt of a DRO, plan's procedures for determining qualification, and the determination as to whether DRO is qualified  ERISA §206(d)(3); IRC §414(p)	Plan administrator	Participants and alternate payees (i.e., spouse, former spouse, child, or other dependent of a participant named in a DRO as having a right to receive all or a portion of the participant's plan benefits)	<ul style="list-style-type: none"> <li>Initially upon receipt of the DRO (including the plan's procedures for determining its qualified status)</li> <li>Notice on whether the DRO is qualified within a reasonable period of time after receipt of the DRO</li> </ul>	Fiduciary may be held liable to alternate payee who brings an action under ERISA's civil enforcement scheme
<b>Explanation of rollover and certain income tax withholding options</b>	DB and DC plans	Informs payee of rules for rollovers, mandatory 20% income tax withholding if not rolled over, right to elect out of income tax withholding on other periodic and nonperiodic payments  IRC §§402(f), 3405. IRS reg. §§1.402(f)-1, 35.3405-1 and -1T, and 31.3405(c)-1, <a href="#">Notice 2014-74</a> includes model 402(f) notice	Plan administrator	Participants and beneficiaries who receive an eligible rollover distribution	<ul style="list-style-type: none"> <li>Eligible rollover notice – no less than 30 (absent affirmative election) or more than 180 days before date of distribution (or first payment in case of a series)</li> <li>Periodic payment withholding notice – no earlier than 6 months before first payment and no later than when making first payment; thereafter, once each calendar year</li> <li>Nonperiodic payment withholding notice – may be provided with benefits application</li> </ul>	<ul style="list-style-type: none"> <li>Rollover notice: unless due to reasonable cause, \$100/participant not reported (up to \$50,000/calendar year)</li> <li>Withholding notice: unless due to reasonable cause, \$10/participant not reported (up to \$5,000/calendar year)</li> </ul>

## ERISA defined benefit and defined contribution plans

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Explanation of consent to distribution</b>	DB and DC plans	<p>Informs participant of available distribution options and consequences of failing to defer commencement of benefits to extent permitted</p> <p>IRC §411(a)(11), IRS reg. §§1.411(a)-11, 1.401(a)-20, IRS Notice 2007-7 Q33, IRS prop. reg. §1.411(a)-11(c)(2), ERISA §203(e)</p>	Plan administrator	Participants	No less than 30 or more than 180 days before the annuity starting date (distribution date/date of plan loan), unless there is an affirmative election to distribute	<ul style="list-style-type: none"> <li>• Risk of disqualification</li> <li>• Duplicate benefits may be payable</li> </ul>
<b>Explanation of qualified joint and survivor annuity (QJSA)</b>	DB and DC plans subject to minimum funding standard, certain other DC plans	<p>Informs participant of terms and conditions of QJSA or the Qualified Optional Survivor Annuity (QOSA), right to waive, right to revoke waiver, spousal consent requirement, and explanation and relative value of other optional benefit forms</p> <p>ERISA §205(c), IRC §417(a)(2), IRS reg. §§1.401(a)-11, 1.401(a)-20, 1.417(a)(3)-1, 1.417(e)-1, IRS Notice 2008-30</p>	Plan administrator	Participants	No less than 30 or more than 180 days before the annuity starting date, unless there is an affirmative election, in which case payment date cannot be sooner than 7 days after notice	<ul style="list-style-type: none"> <li>• Risk of disqualification</li> <li>• Duplicate benefits may be payable</li> </ul>

## ERISA defined benefit and defined contribution plans

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Explanation of qualified preretirement survivor annuity (QPSA) / beneficiary designation</b>	<ul style="list-style-type: none"> <li>DB plans, DC plans subject to minimum funding standard, certain other DC plans</li> <li>Exempt DC plan to select non-spouse beneficiary</li> </ul>	<p>Provides explanation of terms and conditions of QPSA, right to waive, right to revoke waiver, spousal consent requirement</p> <p>ERISA §205(c), IRC §417(a)(2), IRS reg. §§1.401(a)-20, 1.417(a)(3)-1, 1.417(e)-1</p>	Plan administrator	Participants not yet in pay status	<ul style="list-style-type: none"> <li>During period from beginning of plan year in which employee turns age 32 to end of plan year in which employee turns age 34</li> <li>Special rules for participants who commence participation after age 34 or who separate from service before age 35</li> <li>If plan fully subsidizes QPSA and does not allow a participant to waive it or to select a non-spouse beneficiary, notice is not required</li> <li>Exempt DC plans not subject to age range restriction</li> </ul>	<ul style="list-style-type: none"> <li>Risk of disqualification</li> <li>Duplicate benefits may be payable</li> </ul>



## ERISA defined benefit and defined contribution plans

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Summary plan report</b>	DB and DC plans	<p>Summarizes plan's status, including:</p> <ul style="list-style-type: none"> <li>• Contribution schedules, benefit formulas, and any modification</li> <li>• Number of employers obligated to contribute</li> <li>• List of employers that contributed more than 5% of total contributions</li> <li>• Number of participants with no recent employer contributions</li> <li>• Whether plan was in critical or endangered status</li> <li>• Number of employers that withdrew during preceding year and aggregate withdrawal liability assessed against them</li> <li>• Actuarial valuation of assets and liabilities of merged or transferred plans during year preceding merger or transfer</li> <li>• Information on amortization extension or use of shortfall funding method, and</li> <li>• Notification of right to a copy of SPD, SMM, and annual report filed with the DOL</li> </ul> <p>ERISA §104(d)</p>	Plan administrator	Each employee organization and contributing employer	Within 30 days after the due date for filing the annual report (Form 5500)	No monetary penalty specified in ERISA, but courts have imposed penalties where the plan administrator fails to provide this report in response to a participant request

## ERISA defined benefit and defined contribution plans

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Plan information</b>	DB and DC plans	Provides current plan document, trust agreement, and SPD, current Form 5500, annual funding notice, actuarial reports, financial reports, and any application to IRS asking for an extension of amortization period (and IRS' response), latest funding improvement or rehabilitation plan and certain contribution schedules  ERISA §101(k), DOL reg. §2520.101-6	Plan administrator	<ul style="list-style-type: none"> <li>• Participants and beneficiaries</li> <li>• Bargaining parties</li> </ul>	No later than 30 days after receipt of a written request (one per 12-month period)	DOL may assess civil penalty of not more than \$1,693/day/violation
<b>Notice of funding waiver application</b>	DB and money purchase plans	Provides notice of trustees' intent to apply for funding waiver  IRC §412(c)(6), Rev. Proc. 2004-15 (includes <a href="#">model notice</a> )	Board of trustees	<ul style="list-style-type: none"> <li>• Participants and beneficiaries</li> <li>• Alternate payees</li> <li>• Employee organization representing employees covered by plan</li> <li>• PBGC</li> </ul>	Within 14 days before the date the application is filed with the IRS	Provision of notice is a precondition to receipt of waiver
<b>Notice of significant reduction in future benefit accruals</b>	DB and money purchase plans subject to minimum funding standards	Provides notice of plan amendments that involve a significant reduction in rate of future benefit accruals or elimination or significant reduction in an early retirement benefit or retirement-type subsidy  ERISA §204(h), IRC §4980F, IRS reg. §54.4980F-1	Plan administrator	<ul style="list-style-type: none"> <li>• Participants, beneficiaries entitled to benefits</li> <li>• Labor organizations representing them</li> <li>• Each employer who has an obligation to contribute under the plan</li> </ul>	<ul style="list-style-type: none"> <li>• Generally, 15 days before the effective date of the amendment</li> <li>• Special rules for certain amendments and plan transfers, mergers and consolidations</li> </ul>	<ul style="list-style-type: none"> <li>• Plan may be subject to tax of \$100/day/ applicable individual in noncompliance period (up to \$500,000)</li> <li>• If egregious failure, participants entitled to greater of benefits before and after amendment</li> </ul>

## ERISA defined benefit and defined contribution plans

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Disclosure of service provider fees under section 408(b)(2)</b>	<ul style="list-style-type: none"> <li>All covered service providers</li> <li>Disclosure requirements vary depending on type of service provider and whether indirect or direct compensation is involved</li> </ul>	<ul style="list-style-type: none"> <li>Provides plan fiduciaries with necessary information to assess reasonableness of total compensation, both direct and indirect, received by CSP</li> <li>Identifies potential conflicts of interest</li> </ul> <p>ERISA §408(b)(2), DOL reg. §2550.408b-2(c) <a href="#">DOL information</a></p>	Covered service provider (CSP)	Responsible plan fiduciary (RPF)	<ul style="list-style-type: none"> <li>Reasonably in advance of the contract date or renewal date</li> <li>No later than 30 days from acquisition of plan assets</li> <li>No later than 60 days from date CSP learns of change (annually for certain investment information)</li> </ul>	Prohibited transaction penalties
<b>Notice of covered service providers (CSP) failure to disclose required information</b>	Contracts with CSPs that fail to provide required information within 90 days following written request	<p>To report failure of a CSP to provide necessary disclosure of compensation received from plan</p> <p>ERISA §408(b)(2), DOL reg. §2550.408b-2(c) <a href="#">Reporting notice</a></p>	Responsible plan fiduciary (RPF)	DOL	No later than 30 days following the earlier of the CSP's refusal to provide information or 90 days after written request	Prohibited transaction penalties
<b>Notice to interested parties</b>	DB and DC plans	<p>Advises plan participants and beneficiaries that trustees will file request for determination letter</p> <p>IRS reg. §§601.201(o)(3), 1.7476-2, Rev. Proc. 2017-4 (includes <a href="#">model notice on page 221</a>)</p>	Plan administrator, trustees	Present employees, former employees, beneficiaries, and union representative	No less than 10 days or more than 24 days before submission of determination letter request to IRS	Provision of notice is precondition to review of determination letter request

# ERISA defined benefit plans only

## ERISA defined benefit plans only

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Notice of insolvency</b>	DB plans	Provides notice that plan is or may become insolvent while in critical status  ERISA §4245(e)(1), PBGC reg. §4245.3, 4000.3	Board of trustees	PBGC, plan participants and beneficiaries, each employee organization, and contributing employer	<ul style="list-style-type: none"> <li>• PBGC filing (and notice to participants not yet in pay status and bargaining parties) no later than 30 days after the sponsor determines that the plan is or may become insolvent while in critical status</li> <li>• Notice to participants in pay status with first benefit payment made more than 30 days after determination</li> <li>• Notice to participants not yet in pay status and bargaining parties can be posted at worksites or published in newsletter</li> </ul>	Civil penalties up to \$285/day/violation
<b>Notice of insolvency benefit level</b>	DB plans	Provides notice for each insolvent year explaining level of benefits expected to be paid during year  ERISA §4245(e)(1), PBGC reg. §4245.5, 4000.3	Board of trustees	<ul style="list-style-type: none"> <li>• PBGC, plan participants and beneficiaries, each employee organization, and contributing employer</li> <li>• Limited to PBGC and participants and beneficiaries in pay status, or reasonably expected to enter pay status, during the insolvency year for year after Notice of Insolvency was delivered</li> </ul>	<ul style="list-style-type: none"> <li>• 60 days before the beginning of the insolvency year, except that if the determination of insolvency is made fewer than 120 days before the beginning of the insolvency year, the notices should be delivered within 60 days after the date of the multiemployer board of trustees' determination</li> <li>• Delivery options similar to Notice of Insolvency</li> </ul>	Civil penalties up to \$285/day/violation

## ERISA defined benefit plans only

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Notice of potential withdrawal liability</b>	DB plans	Provides notice, upon request, to any contributing employer of estimated amount of such employer's withdrawal liability if such employer withdrew on last day of plan year preceding date of request and explanation of how such estimated liability amount was determined  ERISA §101(l)	Board of trustees or administrator	Any employer who has an obligation to contribute to the plan	<ul style="list-style-type: none"> <li>• 180 days after receipt of written request</li> <li>• DOL regulations may provide for longer time as may be necessary to determine withdrawal liability</li> </ul>	DOL may assess civil penalty of not more than \$1,693/day for each violation
<b>Funding status certification</b>	DB plans in endangered or critical status	Provides annual certification from plan's actuary as to whether or not the plan is in endangered or critical status for the plan year, would be endangered but for the ten year projection, is/will be in critical and declining status for the year or succeeding 5 plan years, and, in the case of a plan in a funding improvement or rehabilitation period, whether or not plan is making scheduled progress in meeting requirements of its funding improvement or rehabilitation plans  IRC §432(b)(3)(A); Prop Reg §1.432(b)-1(d) ERISA §305(b)(3)(A)	Plan actuary	IRS and board of trustees	By the 90th day of the plan year	Treated as failure to file annual report (Form 5500). DOL may assess civil penalty of not more than \$2,140/day for each violation, but, in practice, DOL policies impose significantly lower penalties

## ERISA defined benefit plans only

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Notice of adoption of funding improvement plan</b>	DB plans in endangered status	Provides bargaining parties with one or more schedules showing revised benefit structures, revised contribution structures, or both, in accordance with improvement plan IRC §432(c)(1)(B) ERISA §305(c)(1)(B)	Board of trustees	Bargaining parties	Within 30 days after the adoption of the funding improvement plan	Cannot implement improvement plan
<b>Notice of adoption of rehabilitation plan</b>	DB plans in critical status	Provides bargaining parties with one or more schedules showing revised benefit structures, revised contribution structures, or both, in accordance with rehabilitation plan IRC §432(e)(1)(B) ERISA §305(e)(1)(B)	Board of trustees	Bargaining parties	Within 30 days after the adoption of the funding rehabilitation plan	Cannot implement rehabilitation plan, leading to loss of exemption from minimum funding deficiency penalty

## ERISA defined benefit plans only

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Notice of endangered or critical status</b>	DB plans in endangered or critical status	<ul style="list-style-type: none"> <li>Provides notice that plan is or will be in endangered or critical status for a plan year</li> <li>If in critical status, notice explains possibility that adjustable benefits may be reduced and such reductions may apply to participants and beneficiaries whose benefit commencement date is on or after date such notice is provided for first plan year in which plan is in critical status</li> <li>Also explains restrictions on certain optional forms such as lump sum distributions, employer surcharge</li> </ul> <p>IRC §432(b)(3)(D) and (e)(7)(D), ERISA §305(b)(3)(D) and (e)(7)(D), IRS prop. reg. §1.432(b)-1(e), <a href="#">model critical status notice</a></p>	Board of trustees	<ul style="list-style-type: none"> <li>Participants and beneficiaries</li> <li>Bargaining parties</li> <li>PBGC</li> <li>DOL</li> </ul>	No later than 30 days after date of actuarial certification of endangered or critical status	If notice is not provided or does not include all required information, benefit restrictions will not apply



## ERISA defined benefit plans only

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Notice of election to be in critical status</b>	DB plans projected to be in critical status in any of the succeeding 5 years	<ul style="list-style-type: none"> <li>Provides notice that plan has voluntarily elected to be in critical status for a plan year</li> <li>Explains possibility that adjustable benefits may be reduced and such reductions may apply to participants and beneficiaries whose benefit commencement date is on or after date such notice is provided for first plan year in which plan is in critical status</li> <li>Also explains restrictions on certain optional forms such as lump sum distributions</li> </ul> IRC §432(b)(3)(D), ERISA §305(b)(3)(D)	Board of trustees	<ul style="list-style-type: none"> <li>Participants and beneficiaries</li> <li>Bargaining parties</li> <li>DOL</li> <li>PBGC</li> <li>IRS</li> </ul>	No later than 30 days after date of actuarial certification	If notice is not provided or does not include all required information, benefit restrictions will not apply
<b>Notice of projection to be in critical status in a future plan year</b>	DB plans projected to be in critical status in any of the succeeding 5 years (but not the current plan year) that have not elected to be in critical status for the current plan year	Provides notice that plan's actuary has certified that the plan will be in critical status in any of the succeeding 5 years (but not the current plan year)  IRC §432(b)(3)(D), ERISA §305(b)(3)(D)	Board of trustees	PBGC	No later than 30 days after date of actuarial certification	No penalty specified
<b>Notice of endangered status if not for ten year projection</b>	DB plans that would be in endangered status but for the projection that they will not be endangered in ten years	Provides notice that the plan's actuary has certified status on this basis  IRC §432(b)(3)(D), ERISA §305(b)(3)(D)	Board of trustees	<ul style="list-style-type: none"> <li>PBGC</li> <li>Bargaining parties</li> </ul>	Not specified	No penalty specified

## ERISA defined benefit plans only

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Notice of proposed suspension of benefits</b>	DB plans in critical and declining status that apply to IRS for approval of a benefit suspension	Provides notice that plan is applying to the IRS for approval of a benefit suspension and information on the effect of the suspension on benefit payments  IRC §432(e)(9)(F) IRC §1.432(e)(9)-1(f) ERISA §305(e)(9)(F) <a href="#">Rev. Proc. 2017-43</a>	Board of trustees	<ul style="list-style-type: none"> <li>Participants and beneficiaries</li> <li>Bargaining parties</li> </ul>	Up to four business days prior to application to the IRS for approval of suspension of benefits and no later than two business days after receiving notification of complete application	If notice is not provided or does not include all required information, benefit suspension will not go into effect
<b>Notice of partition</b>	DB plans applying for a partition	Provides notice of a proposed multiemployer plan partition  ERISA §4233(a)(2) PBGC §4233.11	Board of trustees	<ul style="list-style-type: none"> <li>Participants and beneficiaries</li> <li>Bargaining parties</li> <li>PBGC</li> </ul>	Within 30 days of PBGC's notice that the application for partition is complete	Partition cannot proceed
<b>Notice of reduction to adjustable benefits</b>	DB plans in critical status	Provides notice that plan is in critical status for a plan year and identifies adjustable benefits that will be reduced based on outcome of collective bargaining to address critical status  IRC §432(e)(8)(C) ERISA §305(e)(8)(C)	Board of trustees	<ul style="list-style-type: none"> <li>Participants and beneficiaries</li> <li>Bargaining parties</li> </ul>	30 days before the date of the reduction	Cannot reduce adjustable benefits
<b>Notice of application for extension of amortization period</b>	DB plans	Provides notice to affected parties that trustees will submit to IRS an application for extension of amortization period for any unfunded liability  ERISA §304(d) IRC §431(d) Rev. Proc. 2010-52 (includes <a href="#">model notice</a> )	Board of trustees	<ul style="list-style-type: none"> <li>Participants and beneficiaries</li> <li>Alternate payees</li> <li>Employee organization representing employees covered by the plan</li> <li>PBGC</li> </ul>	Within 14 days prior to the date of an application for extension	Provision of notice is precondition to receipt of extension

## ERISA defined benefit plans only

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Annual funding notice</b>	DB plans (PBGC-covered)	Provides identifying and funding information, such as plan's funding percentages; participant, asset, liability, and credit balance information; explanation of plan amendments and scheduled benefit changes; and PBGC guarantee	Plan administrator	<ul style="list-style-type: none"> <li>PBGC</li> <li>Participants, beneficiaries, and alternate payees</li> <li>Each labor organization representing participants and beneficiaries</li> <li>In the case of a multiemployer plan, each employer who has an obligation to contribute to the plan</li> </ul>	<ul style="list-style-type: none"> <li>Generally, within 120 days after the end of the plan year</li> <li>Form 5500 date for certain small plans</li> </ul>	Court may hold plan administrator who fails to comply within 30 days personally liable for up to \$110/day/affected person from date of failure
<b>Suspension of benefits notice</b>	DB plans with suspension of benefit provisions	<ul style="list-style-type: none"> <li>Provides notice that benefit payments are being suspended (as defined in DOL regulations) during certain periods of employment or reemployment</li> <li>Description of suspension rules must be included in SPD</li> </ul> DOL reg. §2530.203-3	Plan administrator	Re-employed retirees and active participants older than normal retirement age whose benefit payments are suspended	During the first month or payroll period in which the suspension of benefit payments occurs	Liability for unintended payments
<b>Notice of transfer of excess pension assets to retiree health benefit account or life insurance account</b>	DB plan that makes IRC §420 transfer	Provides notification of transfer of defined benefit plan excess assets to retiree health benefits account or applicable life insurance account IRC §420. ERISA §101(e), ERISA Technical Release 91-1, IRS Announcement 92-54	<ul style="list-style-type: none"> <li>Trustees (to DOL, plan administrator, and bargaining organization) and plan administrator (to participants and beneficiaries)</li> <li>DOL provides to IRS</li> </ul>	<ul style="list-style-type: none"> <li>Secretaries of Labor and Treasury</li> <li>Each employee organization representing plan participants</li> <li>Plan administrator</li> <li>Participants and beneficiaries</li> </ul>	<ul style="list-style-type: none"> <li>Notices must be given no later than 60 days before the date of the transfer</li> <li>Must also be available for inspection in principal office of administrator</li> </ul>	<ul style="list-style-type: none"> <li>Plan administrator who fails to provide notice 60 days before date of the qualified transfer may be found personally liable by court for up to \$110/day from date of failure</li> <li>Trustees may separately face a similar penalty for failure to provide notice</li> </ul>

## ERISA defined benefit plans only

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>PBGC comprehensive premium filing</b>	DB plans	Provides annual premium payment (with supporting data) to PBGC  ERISA §§4006, 4007, PBGC regs. Parts 4006, 4007; PBGC reg. §4007.11	Plan administrator or contributing sponsor, as applicable	PBGC	15th day of 10 <sup>th</sup> full calendar month in plan year	Up to \$2,140/day, plus interest and late payment charges, but PBGC's policy position generally caps at 2½% of late payment per month, or less
<b>Notice of proposed merger/transfer</b>	Merging multiemployer plans	Provides notice of merger transaction so PBGC can decide whether the merger satisfies statutory requirements  ERISA 4231, PBGC reg. §4231.8, PBGC prop. Regs. Part 4231	Plan administrators of merging multiemployer plans file jointly	PBGC	45 days in advance of the merger (120 if a compliance determination is requested; proposal would require 270 days advance notice in the case of a facilitated merger)	Merger cannot proceed

# ERISA defined contribution plans only

## ERISA defined contribution plans only

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Notice of intent to use 401(k) safe harbor</b>	401(k) plans using a safe harbor formula	<ul style="list-style-type: none"> <li>Provides notice that plan is a 401(k) safe harbor plan and describes relevant plan provisions, participant rights and obligations under plan</li> <li>Notice includes matching or nonelective contribution formula, any other plan contribution, matching contribution to another plan on account of elective contributions or employee contributions under plan, plan to which contributions will be made (if other than safe harbor plan), type and amount of compensation that can be deferred, how to make an election, and withdrawal, and vesting provisions</li> </ul> <p>IRC §401(k)(12)(D), IRS reg. §1.401(k)-3(d)</p> <p><a href="#">Notice 2016-16</a></p>	Plan administrator	Employees eligible to participate in the plan	<ul style="list-style-type: none"> <li>Within reasonable time before each plan year (or before the employee becomes eligible)</li> <li>Timing of notice deemed reasonable if provided not less than 30 days or more than 90 days before beginning of plan year (by eligibility date, but not more than 90 days in advance, in case of newly eligible employee)</li> <li>Updated notice required when mid-year change involves the required safe harbor content; must generally be provided at least 30 but not more than 90 days before the effective date of the change</li> </ul>	Possible loss of safe harbor status and tax disqualification

## ERISA defined contribution plans only

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Notice of automatic contribution arrangement (ACA)</b>	401(k) plans with automatic enrollment feature	<ul style="list-style-type: none"> <li>• Informs employee of rights and obligations under arrangement; right to elect not to have salary deferrals made (or right to elect a different percentage)</li> <li>• Gives employee a reasonable period after notice is received and before initial contribution period to make election</li> <li>• Explains how contributions will be invested in absence of an investment election</li> </ul> <p>ERISA 514(e)(3), DOL reg. §2550-404c-5(f), <a href="#">IRS model notice</a></p>	Employer/plan administrator	Employees enrolled in absence of affirmative election	<ul style="list-style-type: none"> <li>• At least 30 days in advance of participant's plan eligibility date, or at least 30 days in advance of date any first investment in QDIA is made on behalf of participant or beneficiary</li> <li>• Within reasonable period of time at least 30 days in advance of each subsequent plan year</li> </ul>	<ul style="list-style-type: none"> <li>• DOL may assess civil penalty of not more than \$1,693/day/person for each violation</li> <li>• Possible tax disqualification</li> </ul>
<b>Notice of eligible automatic contribution arrangement (EACA)</b>	401(k) plans with automatic enrollment feature offering refunds within first 90 days and/or accessing additional 6-month correction extension	<p>Same as ACA. In addition, describes how to request refund in first 90 days, if applicable</p> <p>ERISA 514(e)(3), IRC §414(w), IRS reg. s§1.414(w)-1, <a href="#">IRS model notice</a></p>	Employer/plan administrator	Employees to be auto-enrolled in absence of affirmative election, and newly eligible employees, if refund of deferrals in first 90 days offered	<ul style="list-style-type: none"> <li>• Within reasonable period before each plan year (or before eligibility for enrollment)</li> <li>• Timing of notice deemed reasonable if provided not less than 30 days or more than 90 days before beginning of plan year (by date reasonably in advance of date to decline, but not more than 90 days in advance, in case of newly eligible employee)</li> </ul>	<ul style="list-style-type: none"> <li>• DOL may assess civil penalty of not more than \$1,693/day/person for each violation</li> <li>• Possible tax disqualification</li> </ul>

## ERISA defined contribution plans only

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Notice of qualified automatic contribution arrangement (QACA)</b>	401(k) plans with a safe harbor automatic enrollment feature	<ul style="list-style-type: none"> <li>Provides notice (described above) that plan is a safe harbor plan</li> <li>In addition, informs employee of rights and obligations under automatic contribution arrangement, including right to elect not to have salary deferrals made (or right to elect a different percentage)</li> <li>Explains how contributions will be invested in absence of an investment election</li> </ul> <p>ERISA §514(e)(3), IRC §401(k)(13), IRS reg. §1.401(k)-3(k), <a href="#">IRS model notice</a></p>	Employer/plan administrator	All eligible employees	<ul style="list-style-type: none"> <li>Within reasonable period before each plan year (or before eligibility for enrollment)</li> <li>Timing of notice deemed reasonable if provided not less than 30 days or more than 90 days before beginning of plan year (by date reasonably in advance of date to decline, but no more than 90 days in advance, in case of newly eligible employee)</li> </ul>	<ul style="list-style-type: none"> <li>DOL may assess civil penalty of not more than \$1,693/day/person for each violation</li> <li>Possible tax disqualification</li> </ul>



## ERISA defined contribution plans only

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Notice of plan's 404(c) status when offering investment direction</b>	Participant-directed account plans	<ul style="list-style-type: none"> <li>• Advises plan participant that plan is intended to be an ERISA 404(c) plan and that plan fiduciaries may be relieved of liability for any losses that are the direct and necessary result of investment instructions given by such participant or beneficiary</li> <li>• Must include information about plan investments, fees, and expenses (see Disclosure of Plan Investment Options, Fees and Expenses)</li> </ul> <p>ERISA §404(c), DOL reg. §2550.404c-1</p>	Plan administrator	Participants and beneficiaries	In sufficient time to give the participant or beneficiary a reasonable opportunity to make informed decisions about investment options	Fiduciary retains responsibility for prudent investment of participant accounts
<b>Notice of qualified default investment alternative</b>	Participant-directed individual account plans	<p>Advises participants on how and when their assets may be invested in qualified default investment alternative (QDIA) and how to direct investment of assets in accounts into alternative funds</p> <p>ERISA §404(c)(5), DOL reg. §2550.404c-5, DOL Field Assistance Bulletin 2008-03</p> <p><a href="#">IRS model notice</a></p>	Plan administrator	Participants and beneficiaries	<ul style="list-style-type: none"> <li>• At least 30 days in advance of participant's plan eligibility date, or at least 30 days in advance of date any first investment in a QDIA is made on behalf of participant or beneficiary</li> <li>• On or before date of plan eligibility provided the participant has opportunity to make a permissible withdrawal</li> <li>• Within a reasonable period of time at least 30 days in advance of each subsequent plan year</li> </ul>	Fiduciary retains responsibility for prudent investment of participant accounts

## ERISA defined contribution plans only

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Disclosure of plan investment options, fees and expenses</b>	DC plans with participant-directed individual accounts	<p>Provides annual disclosure of plan- and investment-related information about investment options available through plan and quarterly statement on fees and expenses and description of charges</p> <p>DOL reg. §2550.404a-5, DOL Technical Release No. 2011-03R, DOL Field Assistance Bulletins 2012-02R</p> <p><a href="#">DOL information</a></p>	Plan administrator	Participants and beneficiaries	<ul style="list-style-type: none"> <li>On or before date on which participant or beneficiary can first direct investments, at least annually thereafter, 30-90 days after a change, upon request</li> <li>After making an investment (for voting, tender, and certain other rights)</li> <li>Annual disclosure of "plan-level" and "investment-level" information (including associated fees and expenses) within 14 months of prior year's annual notice</li> <li>Quarterly participant disclosure due no later than 45 days after quarter end</li> </ul>	Fiduciary retains responsibility for prudent investment of participant accounts
<b>Notice of availability of investment advice</b>	Participant-directed individual account plans	<p>Informs participants of investment advice services under an eligible investment advice arrangement that is exempt under ERISA prohibited transaction rules</p> <p>ERISA §§408(b)(14), 408(g)(1), IRC §4975(f)(8), DOL reg. §2550.408g-1, see <a href="#">appendix</a> for model notice</p>	Fiduciary adviser	Participants and beneficiaries	Before the initial provision of investment advice, annually thereafter, upon request, and when required information changes	Prohibited transaction penalties

## ERISA defined contribution plans only

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Notice of qualified changes in investment options</b>	Participant-directed account plans	<ul style="list-style-type: none"> <li>• Advises participants of changes in investment options offered in individual account plan</li> <li>• Provides information comparing existing and new plan investment options available and how they'll be "mapped" to existing investment choices in absence of affirmative investment instructions to the contrary</li> </ul> ERISA §404(c)(4)	Plan administrator	Participants and beneficiaries	At least 30 days and no more than 60 days prior to the effective date of the change	Fiduciary becomes responsible for prudent investment of participant accounts
<b>Notice of blackout period for individual account plans</b>	Participant-directed individual account plans	Provides advance notification of any period of more than 3 consecutive business days when there is a temporary suspension, limitation, or restriction under an individual account plan on directing or diversifying plan assets, or obtaining loans or distributions  ERISA §101(i), DOL reg. §2520.101-3	Plan administrator	Participants and beneficiaries	Generally at least 30 days, but no more than 60 days, advance notice	DOL may assess civil penalty of not more than \$136/day/person for each violation

# ERISA welfare benefit plans

## ERISA welfare benefit plans

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Form 1024 – Application for recognition of exemption under section 501(a)</b>	Trust established under IRC §501(c)(9) (VEBA) or IRC §501(c)(17) (supplemental unemployment compensation)	<a href="#">Form 1024</a> must be filed by a welfare plan trust seeking tax-exempt status under IRC §501(a)	Trustee	IRS	<ul style="list-style-type: none"> <li>• Within 15 months after the end of the month in which the trust is formed</li> <li>• Automatic extension of 12 additional months</li> </ul>	<ul style="list-style-type: none"> <li>• No tax exemption</li> <li>• Penalties may apply for not complying with public disclosure requirements after filing</li> </ul>
<b>Form 990 – Annual return of organization exempt from income tax</b>	Form 990 – a trust established under IRC §501(c)(9) (VEBA) or IRC §501(c)(17) (supplemental unemployment compensation)	<a href="#">Form 990</a> is an information return, providing financial information about the filing organization's financial condition, financial strength and sources of income	Trustee	IRS, and to participants within 30 days of written request	By 15 <sup>th</sup> day of 5 <sup>th</sup> month after end of trust year unless a 6-month extension is requested using Form 8868	Form 990: Failure to file – \$20/day (up to lesser of \$10,000 or 5% of gross receipts for the year); organizations with annual gross receipts exceeding \$1,028,500 – \$100/day (up to \$51,000 for any one return)

# Welfare benefit plans that are group health plans

## Welfare benefit plans that are group health plans

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Summary of material modification – reduction in covered services or benefits</b>	All group health plans subject to Title I of ERISA	Discloses any modifications to a group health plan that an average plan participant would consider an important reduction in covered services or benefits  ERISA §104(b)(1) and (4), DOL reg. §§2520.104b-3(d), 2520.104a-8	Plan administrator	Participants, beneficiaries, and DOL upon request	Generally within 60 days of adoption of modification or change, but may be furnished in plan communications that are provided at regular intervals of not more than 90 days	<ul style="list-style-type: none"> <li>• Court may hold plan administrator who fails to comply within 30 days personally liable for up to \$110/day/affected person from date of failure</li> <li>• DOL may impose a penalty of up to \$152/day for failure to provide to DOL (up to \$1,527 per request)</li> </ul>
<b>Medical child support order (MCSO) notice</b>	Group health plans	Provides notification of receipt of MCSO and determination of status as qualified (QMCSO)  ERISA §609(a)(5)(A), <a href="#">model notice</a> in appendix of final regulations	Plan administrator	Participants, any child named in an MCSO, and his or her representative	<ul style="list-style-type: none"> <li>• Promptly issue notice of receipt of MCSO (including plan's procedures for determining its qualified status)</li> <li>• Issue separate notice as to whether the MCSO is qualified within a reasonable time after its receipt</li> </ul>	Generally, state courts or agencies can enforce QMCSOs
<b>Initial/general COBRA notice</b>	Multiemployer group health plan if any contributing employer employed 20 or more employees on 50% of its typical business days during previous calendar year	Provides notice of right to purchase temporary extension of group health coverage when coverage is lost due to a qualifying event  ERISA §606(a)(1), IRC §4980B(f)(6)(A), DOL reg. §2590.606-1, <a href="#">DOL model notice</a>	Plan administrator	Participants, spouses	<ul style="list-style-type: none"> <li>• Within 90 days of date coverage begins</li> <li>• Handing notice to employee only does not satisfy spouse notice obligation (notice should be mailed to employee's home and addressed to both the employee and spouse, if spouse has coverage)</li> </ul>	<ul style="list-style-type: none"> <li>• IRC: Excise tax of \$100/day/affected person (\$200 family maximum), up to \$500,000/taxable year.</li> <li>• ERISA: Court may hold plan administrator who fails to comply within 30 days personally liable for up to \$110/day/affected person from date of failure</li> <li>• May not be able to enforce notice deadlines</li> </ul>

## Welfare benefit plans that are group health plans

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Employer's notice to plan administrator of COBRA qualifying event</b>	<ul style="list-style-type: none"> <li>Employers contributing to a multiemployer plan subject to COBRA</li> <li>However, not applicable if plan provides that plan administrator determines whether QE has occurred</li> </ul>	<p>Provides notice to plan administrator that a qualifying event (QE), that is employee's death, termination of employment (other than for gross misconduct), reduction in hours, Medicare entitlement, or Chapter 11 proceedings (for retirees), has occurred</p> <p>ERISA §606(a)(2), IRC §4980B(f)(6)(B), DOL reg. §2590.606-2(b) and (c)</p>	Employer	Plan administrator	<ul style="list-style-type: none"> <li>Within 30 days of the later of (a) the qualifying event, or (b) the date coverage would have been lost as a result of the QE</li> <li>Notice period may be longer pursuant to terms of plan</li> </ul>	Courts have required payment of medical expenses incurred during periods in which qualified beneficiary was eligible for, but was not offered, COBRA coverage
<b>COBRA election notice</b>	See Initial/general COBRA notice	<p>Provides notice of right to elect COBRA coverage upon occurrence of qualifying event (QE)</p> <p>ERISA §606(a)(4), IRC §4980B(f)(6)(D), DOL reg. §2590.606-4(b)(3), <a href="#">DOL model notice</a></p>	Plan administrator	Covered employees, covered spouses, and dependent children who are qualified beneficiaries (QBs)	Within later of (a) 14 days after being notified by employer or QB of the QE, or (b) end of time period specified by plan	<ul style="list-style-type: none"> <li>IRC: Excise tax of \$100/day/affected person (\$200/day family maximum) up to \$500,000/taxable year</li> <li>ERISA: Court may hold plan administrator who fails to comply within 30 days personally liable for up to \$110/day/affected person from date of failure</li> </ul>
<b>Notice of unavailability of COBRA</b>	See Initial/general COBRA notice	<p>Provides notice that individual is not entitled to COBRA coverage</p> <p>DOL reg. §2590.606-4(c)</p>	Plan administrator	Individuals who provide notice to administrator of a QE, second QE, or a disability determination by Social Security whom the administrator determines are not eligible for COBRA coverage or an extension of COBRA coverage	Generally within 14 days after receiving notice from the individual	Unclear, but court may hold plan administrator who fails to comply within 30 days personally liable for up to \$110/day/affected person from date of failure



## Welfare benefit plans that are group health plans

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Notice of early termination of COBRA coverage</b>	See Initial/general COBRA notice	Provides notice that a QB's COBRA coverage will terminate earlier than the end of the maximum period of coverage, the reason for early termination, the date of termination and the right (if any) to elect alternative coverage  DOL reg. §2590.606-4(d)	Plan administrator	QBs whose COBRA coverage will terminate earlier than the maximum period of coverage	As soon as practicable following the administrator's determination that coverage will terminate	Unclear, but court may hold plan administrator who fails to comply within 30 days personally liable for up to \$110/day/affected person from date of failure
<b>Notice of insufficient COBRA payment</b>	See Initial/general COBRA notice	<ul style="list-style-type: none"> <li>Provides notice that payment received for COBRA coverage was less than the correct amount (though not significantly less)</li> <li>Must be provided to avoid acceptance of premium as payment in full when shortfall is lesser of 10% of amount due or \$50</li> </ul> IRS reg. §54.4980B-8, Q-5(d)	Plan administrator	QBs	<ul style="list-style-type: none"> <li>Must give reasonable period of time to cure deficiency before terminating COBRA</li> <li>A 30-day grace period is considered reasonable</li> </ul>	Acceptance of premium paid as payment in full

## Welfare benefit plans that are group health plans

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Notice of special enrollment rights</b>	<ul style="list-style-type: none"> <li>Group health plans subject to HIPAA portability rules</li> <li>Does not apply to group health plans with fewer than 2 participants who are active employees on the first day of the plan year (i.e., retiree-only plans)</li> <li>Does not apply to HIPAA-excepted benefits (e.g., limited scope dental or vision coverage offered under a separate policy or that is not an integral part of the group health plan)</li> </ul>	<p>Provides notice describing group health plan's special enrollment rules including the right to special enrollment within 30 days of loss of other coverage or of marriage, birth of a child, adoption, or placement for adoption and right to special enrollment within 60 days of losing Medicaid/CHIP eligibility or gaining eligibility for premium assistance</p> <p>HHS reg. §146.117(c), IRS reg. §54.9801-6(c), DOL reg. §2590.701-6(c) (model language in regulation, but does not include Medicaid/CHIP language)</p>	Plan administrator	Employees eligible to enroll in a group health plan	At or before the time an employee is initially offered the opportunity to enroll	Excise tax of \$100/day/affected person, up to \$500,000/taxable year

## Welfare benefit plans that are group health plans

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Notice of continuation coverage available for dependents on a medically necessary leave of absence from school (Michelle's Law)</b>	<ul style="list-style-type: none"> <li>Group health plans subject to HIPAA portability rules that condition dependent benefit eligibility on student status (generally insured plans where state mandates coverage)</li> <li>Does not apply to group health plans with fewer than 2 participants who are active employees on the first day of the plan year (i.e., retiree-only plans)</li> <li>Does not apply to HIPAA-excepted benefits (e.g., limited scope dental or vision coverage offered under a separate policy or not an integral part of the group health plan)</li> </ul>	<p>Discloses terms under which a child who loses full-time student status due to a medically necessary leave of absence may continue coverage for up to one year</p> <p>ERISA §714(c), IRC §9813(c) No model notice</p>	Plan administrator	Participants	Must be included with any notice sent to a participant on requirement to certify student status for dependent coverage purposes	Excise tax of \$100/day/affected person, up to \$500,000/taxable year
<b>Women's Health and Cancer Rights Act (WHCRA) notice</b>	<ul style="list-style-type: none"> <li>Group health plans subject to the HIPAA portability rules that provide mastectomy benefits</li> <li>Does not apply to retiree-only plans</li> </ul>	<p>Provides notice describing required benefits for mastectomy-related reconstructive surgery, prostheses, and treatment of physical complications of mastectomy, if mastectomies covered under plan, and any applicable deductibles and coinsurance</p> <p>ERISA §713, IRC §9815 <a href="#">DOL Q&amp;As on WHCRA</a></p>	Group health plan, insurer, or HMO	Participants, beneficiaries at a different address	Upon enrollment and annually thereafter	Excise tax of \$100/day/affected person may apply, up to \$500,000/taxable year

## Welfare benefit plans that are group health plans

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Newborns' and Mothers' Health Protection Act – notice relating to hospital stay</b>	Group health plans that provide maternity or newborn infant coverage, including retiree-only plans	Describes requirements under federal and/or state law applicable to plan, and any health insurance coverage offered under plan, for hospital length of stay in connection with childbirth for mother or newborn  ERISA §711(d), DOL reg. §§2520.102-3(u), 2590.711, IRC 9811, IRS reg. §54.9811-1, HHS reg. §146.130	Plan administrator or health insurer	Participants	Included in SPD within the SPD timeframe	<ul style="list-style-type: none"> <li>• IRC: Excise tax of \$100/day/affected person, up to \$500,000/taxable year</li> <li>• ERISA: Court may hold plan administrator who fails to comply within 30 days personally liable for up to \$110/day/affected person from date of failure</li> </ul>
<b>Disclosure of criteria for medical necessity determinations related to mental health or substance use disorder benefits</b>	<ul style="list-style-type: none"> <li>• Group health plans subject to HIPAA portability rules that offer both medical/surgical benefits and mental health/substance use disorder benefits</li> <li>• Does not apply to group health plans that have fewer than 2 participants who are active employees on the first day of the plan year (i.e., retiree-only plans)</li> </ul>	Provides information on medical necessity criteria for mental health or substance use disorder benefits  DOL reg. §2590.712(d), IRS reg. §54.9812-1(d), HHS reg. §146.136(d), <a href="#">April 20, 2016 FAQs</a> and <a href="#">June 16, 2017 FAQs</a>	Plan administrator or insurer	Current or potential participants, beneficiaries, or contracting providers	Upon request	<ul style="list-style-type: none"> <li>• IRC: Excise tax of \$100/day/affected person, up to \$500,000/taxable year</li> <li>• ERISA: Court may hold plan administrator who fails to comply within 30 days personally liable for up to \$110/day/affected person from date of failure</li> </ul>

## Welfare benefit plans that are group health plans

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Disclosure of reason for denial of claim for mental health or substance use disorder benefits</b>	<ul style="list-style-type: none"> <li>Group health plans subject to HIPAA portability rules that offer both medical/surgical benefits and mental health/substance use disorder benefits</li> <li>Does not apply to group health plans that have fewer than 2 participants who are active employees on the first day of the plan year (i.e., retiree-only plans)</li> </ul>	<p>Provides information about reason claim for mental health or substance use disorder benefits was denied</p> <p>DOL reg. §2590.712(d), IRS reg. §54.9812-1(d), HHS reg. §146.136(d)</p>	Plan administrator or insurer	Claimants (participant, beneficiary, or authorized claims representatives)	<ul style="list-style-type: none"> <li>ERISA plans must provide within timeframe consistent with claims regulations</li> <li>Plans not subject to ERISA must provide within a reasonable period of time</li> </ul>	<ul style="list-style-type: none"> <li>IRC: Excise tax of \$100/day/affected person, up to \$500,000/taxable year</li> <li>ERISA: Court may hold plan administrator who fails to comply within 30 days personally liable for up to \$110/day/affected person from date of failure</li> </ul>
<b>Notice of increased cost exemption from Mental Health Parity and Addiction Equity Act (MHPAEA)</b>	<ul style="list-style-type: none"> <li>Group health plans subject to HIPAA portability rules that offer both medical/surgical benefits and mental health/substance use disorder benefits</li> <li>Does not apply to group health plans that have fewer than 2 participants who are active employees on the first day of the plan year (i.e., retiree-only plans)</li> </ul>	<p>Provides notice that plan is claiming exemption from MHPAEA for a plan year because changes made to comply with law increased costs for preceding plan year above certain thresholds</p> <p>DOL reg. §2590.712(g), IRS reg. §54.9812-1(g), HHS reg. §146.136(g)</p>	Group health plan or insurer	Participants, beneficiaries, and DOL	<ul style="list-style-type: none"> <li>Notice must be provided at least 30 days before date exemption will become effective</li> <li>Must make supporting documentation available upon request</li> </ul>	Not eligible for exemption

## Welfare benefit plans that are group health plans

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Disclosure about group health plan benefits to states for Medicaid &amp; Children's Health Insurance Program (CHIP) eligible individuals</b>	Group health plan subject to the HIPAA portability rules	Provides state Medicaid and CHIP programs with information to determine whether offering premium assistance for group health plan coverage effective way to provide coverage  ERISA §701(f)(3)(B)(ii), IRC §9801(f)(3)(B)(ii), <a href="#">model form</a>	Plan administrator	State agency upon request	No more than 30 days after request	<ul style="list-style-type: none"> <li>• IRC: Excise tax of \$100/day/affected person, up to \$500,000 per taxable year. Not applicable to church plans</li> <li>• ERISA: Court may hold plan administrator who fails to comply within 30 days personally liable for up to \$114/day/affected person from date of failure</li> </ul>
<b>Premium assistance for Medicaid &amp; Children's Health Insurance Program (CHIP) eligible individuals</b>	Employers that maintain a group health plan subject to the HIPAA portability rules in a state that provides premium assistance under a state Medicaid plan or a State children's health plan to pay for group health coverage	Informs employees of potential premium assistance opportunities currently available in state where employee resides  ERISA §701(f)(3)(B)(i)(I), IRC §9801(f)(3)(B)(i)(I), <a href="#">model notice</a>	Employers	Employees who reside in a state that provides premium assistance for coverage under employer plan to Medicaid and CHIP eligible individuals	Annually, may be furnished concurrently with other plan materials (e.g., open enrollment materials) if it appears as a separate, prominent document	<ul style="list-style-type: none"> <li>• IRC: Excise tax of \$100/day/affected person, up to \$500,000 per taxable year</li> <li>• ERISA:DOL, court may hold employer who fails to comply within 30 days personally liable for up to \$110/day/affected person from date of failure</li> </ul>
<b>HIPAA – wellness programs</b>	<ul style="list-style-type: none"> <li>• Group health plans subject to HIPAA portability rules</li> <li>• Does not apply to group health plans with fewer than 2 participants who are active employees on the first day of the plan year (i.e., retiree-only plans)</li> </ul>	Discloses the availability of a reasonable alternative standard for obtaining a reward under a health-contingent wellness program, or if applicable, the possibility of waiver of the standard  HHS reg. §146.121(f), IRS reg. §54.9802-1(f), DOL reg. §2590.702(f)	Plan administrator	Participants	<ul style="list-style-type: none"> <li>• In plan materials describing the terms of the program</li> <li>• If plan materials simply mention that program is available, without describing its terms, disclosure is not required</li> </ul>	<ul style="list-style-type: none"> <li>• IRC: Excise tax of \$100/day/affected person, up to \$500,000/taxable year</li> <li>• ERISA: Failure to provide precludes imposition of surcharge or denial of reward</li> </ul>

## Welfare benefit plans that are group health plans

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<p><b>Notices regarding disclosures of genetic information under the Genetic Information Nondiscrimination Act (GINA)</b></p>	<p>Group health plans/health insurance issuers/ employers requesting completion of health risk assessments (HRA), or otherwise soliciting family medical history or genetic information, in exchange for an inducement</p>	<p>Advises individuals completing health risk assessments (HRA) not to disclose family medical history or other genetic information or if reward for completing HRA, that they do not have to answer identified questions requesting such information to receive reward</p> <p>Advises employees and spouses providing family medical history or genetic information in exchange for an inducement, about the information to be obtained, the general purposes for which the information will be used, and the disclosure restrictions that apply</p> <p>Title I and Title II of GINA</p> <p>DOL reg. §2590.702(d)(2)(ii)(B), IRS proposed reg. §54.9802-3(d)(2)(ii)(B), HHS reg. §146.122(d)(2)(ii)(B)</p> <p>EEOC reg. §1635.8(b)</p> <p>EEOC is currently reconsidering these rules</p>	<p>Group health plan/health insurance issuer/employer</p>	<p>Employees and spouses completing an HRA or otherwise providing family medical history or other genetic information in exchange for an inducement</p>	<p>In instructions for completing HRA or other request for family medical history or genetic information</p>	<p>Title I</p> <ul style="list-style-type: none"> <li>• IRC: Excise tax of \$100/day/affected person may apply, up to \$500,000/taxable year</li> <li>• ERISA: DOL may impose penalty of up to \$114/day/affected individual, up to \$569,468</li> </ul> <p>Title II</p> <ul style="list-style-type: none"> <li>• Compensatory and punitive damages, attorney's fees, and injunctive relief</li> </ul>

## Welfare benefit plans that are group health plans

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>HIPAA notice of privacy practices</b>	Group health plans, other than self-administered plans with fewer than 50 participants	Provides notice of how plan uses and discloses protected health information (PHI) and an individual's rights for that PHI  HHS reg. §164.520	<ul style="list-style-type: none"> <li>Group health plans that are self-insured</li> <li>If an insured plan gets PHI other than summary health or enrollment information from insurer, plan must maintain notice and provide upon request</li> <li>If plan is fully insured and does not have access to PHI, obligation on insurer</li> </ul>	Participants	<ul style="list-style-type: none"> <li>Automatically at time of enrollment and to others upon request</li> <li>Within 60 days of a material revision to notice</li> <li>Every 3 years, a notice of availability of HIPAA privacy notice</li> </ul>	\$100/violation, up to \$1.5 million for violation of identical provision in calendar year



## Welfare benefit plans that are group health plans

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>HIPAA breach notification</b>	Group health plans, other than self-administered plans with fewer than 50 participants, that discover a breach of protected health information (PHI)	To provide notification that a breach of PHI (as defined under the HIPAA privacy rules) has occurred  HHS reg. §§164.404, 164.406, 164.408, 164.412, 160.404, 160.406	Group health plan (can delegate by contract to business associate)	Individuals whose PHI has been subject to a breach, to HHS, and, in some cases, to the media serving a state or jurisdiction	<ul style="list-style-type: none"> <li>To individuals: Without unreasonable delay, and no more than 60 days after breach considered discovered. Generally to be provided by first class mail or electronically with consent; special substitute notice rules if contact information is insufficient or out-of-date</li> <li>To HHS: For breaches involving 500 or more individuals, at same time as notice provided to individuals. For breaches involving fewer than 500 individuals, within 60 days after end of calendar year in which breach considered discovered</li> <li>To the media: For breaches affecting more than 500 residents of a state or jurisdiction, notice must be provided to prominent media outlet in such state or jurisdiction within same timeframe as for individuals</li> <li>In all instances, there may be a limited "law enforcement delay"</li> </ul>	Up to \$1,677,299 for violation of the same provision in a calendar year <sup>1</sup>

<sup>1</sup> 2017 penalty; 2018 penalty not yet available at time of publication

## Welfare benefit plans that are group health plans

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Medicare Part D notice of creditable/non-creditable coverage</b>	Group health plans that provide prescription drug coverage to active and retired employees who are Medicare Part D eligible individuals, except entities that contract with or become a Part D plan	Provides notice stating whether or not expected amount of paid claims under group health plan's prescription drug coverage is at least as much as expected amount of paid claims under Medicare Part D standard drug benefit  Social Security Act §1395w-113(b)(6), HHS reg. §423.56(c), <a href="#">model notice</a> of creditable coverage, <a href="#">model notice</a> of non-creditable coverage	Board of trustees	Individuals enrolled or seeking to enroll in the group health plan who are eligible for Medicare Part D	At a minimum: <ul style="list-style-type: none"> <li>• Prior to October 15 each year</li> <li>• Prior to an individual's initial enrollment period for Part D</li> <li>• Prior to effective date of coverage for any Medicare-eligible individual who joins plan</li> <li>• Whenever prescription drug coverage ends or changes so that it is no longer creditable or becomes creditable</li> <li>• Upon a beneficiary's request</li> </ul>	No specific penalties prescribed but request for retiree drug subsidy requires certification that this notice was timely provided to participants
<b>Creditable/non-creditable coverage disclosure to Centers for Medicare &amp; Medicaid Services (CMS)</b>	<ul style="list-style-type: none"> <li>• Group health plans that provide prescription drug coverage to Medicare Part D-eligible individuals, except entities that contract with or become a Part D plan</li> <li>• Plans approved for retiree drug subsidy are exempt from providing disclosure for retirees for whom plan is claiming subsidy</li> </ul>	Electronic disclosure to CMS whether prescription drug coverage is creditable or non-creditable. Must use disclosure notice form on <a href="#">CMS creditable coverage disclosure web page</a> unless specifically exempt as outlined in related CMS guidance  Social Security Act §1395w-113(b)(6), HHS reg. §423.56(e)	Board of trustees	CMS	<ul style="list-style-type: none"> <li>• Annually within 60 days after beginning of plan year, and</li> <li>• Within 30 days of termination of plan's prescription drug coverage or after change in creditable coverage status of plan</li> </ul>	No specific penalties prescribed

## Welfare benefit plans that are group health plans

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Medicare secondary payer reporting</b>	<ul style="list-style-type: none"> <li>Group health plans, including health reimbursement arrangements with an annual benefit of less than \$5,000 (including amounts rolled over from prior year)</li> <li>Does not apply to health FSAs, limited scope dental or vision, and other plans providing benefits not covered by Medicare</li> </ul>	<p>To report certain “active covered individuals” with employer-sponsored coverage who may be Medicare eligible and for whom Medicare would pay secondary under the Medicare secondary payer rules</p> <p>Medicare, Medicaid, and SCHIP Extension Act of 2007 §111</p> <p><a href="#">GHP User Guide</a></p>	<p>Responsible reporting entities for a group health plan:</p> <ul style="list-style-type: none"> <li>Health insurer</li> <li>Third party administrator</li> <li>Administrator or fiduciary for a self-funded, self-administered plan, as applicable</li> </ul>	CMS, through electronic process	Quarterly, based on assigned submission timeframes	\$1,157/day of noncompliance /each individual for whom information should have been submitted <sup>2</sup>
<b>Request for exemption from Medicare secondary payer working aged rules</b>	Multiemployer group health plans that have some participating employers with 20 or more employees and some participating employers with fewer than 20 employees	<ul style="list-style-type: none"> <li>Allows employer with fewer than 20 employees that participates in a multiemployer plan to obtain an exemption from Medicare Secondary Payer “working aged” rules and have Medicare pay primary for its employees and their covered spouses</li> <li>Must also notify affected individuals once request granted</li> </ul> <p>Social Security Act 1395y (b)(1)(A)(iii), HHS reg. §411.172(b)</p>	Multiemployer group health plan	CMS	Prior to treating Medicare as primary payer for affected individuals	Medicare may recover amounts that it would not have paid if it had paid secondary from the plan

<sup>2</sup> 2017 penalty; 2018 penalty not yet available at time of publication

## Welfare benefit plans that are group health plans

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Marketplace notice</b>	Employers	Provides information on existence of the health insurance marketplace (marketplace), availability of premium tax credit, and possible consequences of purchasing coverage through the marketplace  Fair Labor Standards Act (FLSA) §18B, <a href="#">model notices</a> provided by DOL	Employer	New employees, regardless of benefit eligibility	Within 14 days of hire	No monetary penalty specified
<b>Disclosure of grandfathered status</b>	Group health plans and health insurance issuers asserting grandfathered status	Notification that a group health plan or health insurance issuer believes that its coverage is grandfathered allowing for exemption from certain ACA mandates  ACA §1251, IRS reg. §54.9815-1251 (a)(2), DOL reg. §2590.715-1251(a)(2), HHS reg. §147.140(a)(2), <a href="#">model notice</a>	Group health plans and health insurance issuers	Plan participants and beneficiaries	Must be provided in any plan materials describing benefits	Loss of grandfathered status
<b>Disclosure of method used for calculating amount paid for out-of-network emergency services</b>	Non-grandfathered group health plans and health insurance issuers	Disclosure of how plan calculates the minimum amount it must pay for out-of-pocket network emergency services  ACA §1001, IRS reg. §54.9815-2719A(b), DOL reg. §2590.715-2719A(b), HHS reg. §147.138(b), <a href="#">FAQs</a>	Non-grandfathered group health plans and health insurance issuers where participant may be balanced billed for out-of-network emergency services	Plan participants (or their authorized representatives)	Within 30 days of request	DOL may impose penalty of up to \$152/day for failure to provide to DOL (up to \$1,527 per request)

## Welfare benefit plans that are group health plans

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Summary of benefits and coverage (SBC)</b>	<ul style="list-style-type: none"> <li>Group health plans and health insurance issuers</li> <li>Does not apply to retiree-only plans or plans providing HIPAA-excepted benefits</li> </ul>	<p>Provides a summary explanation that describes benefits and coverage under each benefit package</p> <p>ACA §1001, IRS reg. §54.9815-2715, DOL reg. §2590.715-2715, <a href="#">DOL SBC materials</a>, HHS reg. §147.200(b)</p>	Group health plan or health insurance issuer	Plan participants and beneficiaries	<p>Must be provided:</p> <ul style="list-style-type: none"> <li>To newly eligible individuals as part of enrollment materials</li> <li>To individuals enrolling during a special enrollment period within 90 days of enrollment</li> <li>By beginning of open enrollment period</li> <li>Upon request (as soon as practicable, but no later than 7 business days after receipt of request)</li> </ul>	<ul style="list-style-type: none"> <li>Up to \$1,128 per affected person for each willful failure</li> <li>Unclear, but possible IRC excise tax of \$100/day/affected person, up to \$500,000 per taxable year</li> </ul>
<b>Notice of modification</b>	<ul style="list-style-type: none"> <li>Group health plans or health insurance issuers making mid-year changes to plan terms or coverage</li> <li>Does not apply to retiree-only plans or plans providing HIPAA-excepted benefits</li> </ul>	<p>Provides notice of material modification to any of plan terms or coverage not reflected in most recently provided SBC</p> <p>ACA §1001, IRS reg. §54.9815-2715(b), DOL reg. §2590.715-2715(b), HHS reg. §147.200(b)</p>	Group health plan or health insurance issuer	Participants and beneficiaries	Must be provided no later than 60 days before date on which modification will become effective	<ul style="list-style-type: none"> <li>Up to \$1,128 for each willful failure</li> <li>Unclear but IRC excise tax of \$100/day/affected person, up to \$500,000 per taxable year</li> </ul>
<b>Notice of patient protections</b>	Non-grandfathered group health plans and health insurance issuers that offer participants opportunity to designate a primary care provider	<p>Provides notice about right to choose a primary care provider, pediatrician, or obstetrician/gynecologist without prior authorization</p> <p>ACA §1001, IRS reg. §54.9815-2719A (a), DOL reg. §2590.715-2719A(a), <a href="#">model notice</a>, HHS reg. §147.138(a)</p>	Group health plans and health insurance issuers	Plan participants	Required whenever plan or issuer provides a participant with a description of benefits	IRC: Excise tax of \$100/day/affected person, up to \$500,000/taxable year

## Welfare benefit plans that are group health plans

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Expanded claims appeals procedures</b>	Non-grandfathered group health plans and health insurance issuers, including non-ERISA plans	Provides notice of available processes for internal and external appeals of coverage determinations and claims. Must satisfy certain content requirements and be provided in culturally and linguistically appropriate manner  ACA §1001, DOL reg. §2590.715-2719; IRS reg. §54.9815-2719; HHS §147.136 <a href="#">model notices</a> of final external review decision, final internal adverse benefit determination, and adverse benefit determination	Non-grandfathered group health plans and health insurance issuers	Participants	After an adverse benefit determination	IRC: Excise tax of \$100/day/affected person, up to \$500,000/taxable year
<b>Rescissions</b>	<ul style="list-style-type: none"> <li>Group health plans and health insurance issuers seeking to terminate a covered individual's coverage retroactively</li> <li>Does not apply to retiree-only plans or plans providing excepted benefits</li> </ul>	Provides notice that a group health plan or a health insurance issuer is retroactively cancelling coverage due to fraud or an intentional misrepresentation of material fact  ACA §1001, IRS reg. §54.9815-2712T, DOL reg. §2590.715-2712, HHS reg. §147.128	Group health plans and health insurance issuers	Plan participants	Must provide at least 30 days advance written notice of proposed rescission to an affected participant	Rescission ineffective

## Welfare benefit plans that are group health plans

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Patient-centered outcomes research institute (PCORI) fees</b>	Health insurance issuers and trustees of self-funded group health plans, including retiree-only plans	Provides reporting and payment of fees imposed on health insurance issuers and trustees of self-funded group health plans to fund Patient Centered Outcomes Research Institute  ACA §6301, IRC §§4375, 4376, 9511(b)(1), IRS reg. §§46.4375-1, 46.4376-1	Trustees of self-insured health plans and health insurance issuers	IRS on Form 720	<ul style="list-style-type: none"> <li>By July 31 immediately following calendar year in which year ended</li> <li>Applicable to plan years ending after September 30, 2012, and before October 1, 2019</li> <li>Fee generally cannot be paid from plan assets, except where sponsor does not have source of funding other than plan assets, (e.g., a multiemployer plan's board of trustees)</li> </ul>	Full amount of unpaid fee, possibly coupled with IRS penalties for failure to timely file and pay
<b>IRC §6055 reporting of minimum essential coverage</b>	Trustees of self-insured medical plans, and issuers of individual or group policies	Provides individuals and IRS with information on whether individual had "minimum essential coverage" for prior calendar year for purposes of "individual mandate"  IRC §6055, IRS reg. §1.6055-1, 2017 Form <a href="#">1095-B</a> , <a href="#">1094-B</a> and <a href="#">instructions: 1095-C, 1094-C and instructions</a>  <a href="#">Notice 2018-06</a>	Board of trustees	<ul style="list-style-type: none"> <li>IRS</li> <li>"Primary" insured (generally employee or former employee)</li> </ul>	<ul style="list-style-type: none"> <li>Must provide individual statement by January 31 of each year about prior calendar year's coverage; for 2017 reporting, deadline extended to March 2, 2018</li> <li>Must file by February 28 of each year (for prior calendar year) or by March 31 if filed electronically; deadline is April 2 for 2018 because March 31 falls on Saturday</li> <li>Report for 2017 due in 2018</li> </ul>	<ul style="list-style-type: none"> <li>Up to \$260/return, \$3,218,500 maximum/calendar year for returns required to be filed in 2018; up to \$270/return, \$3,282,500 maximum/calendar year for returns required to be filed in 2019</li> <li>Similar penalties for failure to furnish statement</li> </ul>

## Welfare benefit plans that are group health plans

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>IRC §6056 reporting</b>	Employers that employed at least 50 full-time and full-time equivalent employees in preceding calendar year	<ul style="list-style-type: none"> <li>Provides individuals and IRS with information on contributing employer's compliance with "employer mandate" and whether coverage satisfied affordability and minimum value requirements to avoid IRC §4980H penalty</li> <li>Also used in determining eligibility of employees for premium tax credits</li> </ul> <p>IRC §6056, IRS reg. §301.6056-1, 2017 Form <a href="#">1095-C</a>, <a href="#">1094-C</a>, and <a href="#">instructions</a> <a href="#">Notice 2018-06</a></p>	Employer (multiemployer plans may, but are not required to, facilitate filing and furnishing)	IRS and to each full-time employee	<ul style="list-style-type: none"> <li>Must provide individual statement by January 31 of each year about prior calendar year's coverage; for 2017 reporting, deadline extended to March 2, 2018</li> <li>Must file by February 28 of each year (for prior calendar year) or by March 31 if filed electronically; deadline is April 2 for 2018 because March 31 falls on Saturday</li> <li>Report for 2017 due in 2018</li> </ul>	<ul style="list-style-type: none"> <li>Up to \$260/return, \$3,218,500 maximum per calendar year; up to \$270/return, \$3,282,500 maximum/calendar year for returns required to be filed in 2019</li> <li>Similar penalties for failure to furnish statement</li> </ul>
<b>Form M-1</b>	Multiple employer welfare arrangements (MEWAs) and entities claiming exception (ECEs)	<p>Reports compliance with federal health legislation, including HIPAA portability, WHCRA, MHPA, and NMHPA to DOL</p> <p>ERISA §101(g), DOL reg. §2520.101-2, <a href="#">Form M-1</a></p>	Plan administrator	DOL	<ul style="list-style-type: none"> <li>March 1 of each year for previous calendar year</li> <li>For newly established MEWA, within 90 days of date coverage begins unless established (origination date) between October 1 and December 31. In that case, March 1 date applies</li> </ul>	Up to \$1,558/day for not filing a complete and accurate report



## Welfare benefit plans that are group health plans

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Form 8928</b>	Employers and group health plans liable for IRC §§4980B, 4980D and 4980G excise taxes	Reports excise tax due for failure to comply with federal requirements, including COBRA, HIPAA portability, WHCRA, MHPAEA, NMHPA, ACA benefit mandates, and HSA comparability rules to IRS  IRC §§4980B, 4980D and 4980G	Employer or plan	IRS	<ul style="list-style-type: none"> <li>For failure to comply with COBRA or benefit mandates, must file on or before last day of 7<sup>th</sup> month following end of plan year</li> <li>For failure to satisfy HSA comparability rules, must be filed before 15<sup>th</sup> day of 4<sup>th</sup> month following calendar year in which noncomparable contributions were made</li> </ul>	<ul style="list-style-type: none"> <li>Penalty for late filing of return: 5% of unpaid tax/each month return is late, up to 25% of unpaid tax</li> <li>Penalty for late payment of tax: half of 1% of unpaid tax for each month tax is not paid, up to 25% of unpaid tax</li> </ul>
<b>Transparency in coverage reporting and cost-sharing disclosures</b>	Non-grandfathered group health plans and issuers offering group or individual coverage, both inside and outside the marketplace	<ul style="list-style-type: none"> <li>Transparency in coverage reporting provides information on claims payment, financial disclosures, enrollment, cost-sharing, and other specified information</li> <li>Cost-sharing disclosures provide individuals with information about cost-sharing, including deductibles, copayments, and coinsurance</li> </ul> <p>ACA §1311</p>	Non-grandfathered group health plans and health insurance issuers	<ul style="list-style-type: none"> <li>Transparency in coverage reporting: the marketplace (for policies inside the marketplace), the Department of Health &amp; Human Services, and state insurance commissioner</li> <li>Cost-sharing disclosures: Individuals, upon request</li> </ul>	Technically already effective, but HHS has not yet begun to collect the required data	No monetary penalty specified, but final guidance expected

## Welfare benefit plans that are group health plans

Document	Applies to	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
<b>Quality of care reporting</b>	Non-grandfathered group health plans and health insurance issuers	Provides annual report addressing plan or coverage benefits and provider “reimbursement structures” that may affect quality of care PHSA §2717(a)(2)	Non-grandfathered group health plans and health insurance issuers	Department of Health & Human Services, enrollees	<ul style="list-style-type: none"> <li>• Report to be provided annually, but guidance on reporting requirements remains outstanding</li> <li>• Copies of the report must be made available to enrollees during each open enrollment period</li> </ul>	No monetary penalty specified, but guidance expected

- \* Noncompliance with reporting and disclosure requirements may also result in litigation by participants, beneficiaries, fiduciaries, the DOL, or other entities under ERISA's civil enforcement scheme, which includes actions to compel compliance, and for breach of fiduciary duty, payment of benefits, damages for unpaid benefits, interest, and attorneys' fees. Penalties for willful failures and criminal penalties may also apply in some circumstances.



This *Reporting and disclosure guide: multiemployer retirement and welfare benefit plans – U.S. edition* has been prepared for your convenience by the Knowledge Resource Center. The guide addresses the major federal requirements for ongoing multiemployer plans governed by ERISA.

The guide is intended as an overview of multiemployer plan reporting and disclosure requirements. We recommend obtaining professional consultation when addressing these federal requirements.

Important note: Please use this guide for informational purposes only. The guide is not intended as, and does not constitute, legal, tax, or accounting advice and cannot be used by any taxpayer for the purpose of avoiding tax penalties. The contents of this guide may not be comprehensive or up to date, and we will not be responsible for updating any information contained in the guide. Some information contained in this guide has been obtained from third party sources and has not been independently verified. We make no representation as to the accuracy or completeness of the information provided in this guide and assume no liability whatsoever for any action taken in reliance on the information contained in the guide, including without limitation for direct or indirect damages resulting from use of the guide and its contents. Reproduction, distribution, republication and retransmission of material contained in this guide are prohibited without our prior consent.