

Compliance Classroom Q&A

In Summary: What Fiduciaries Need to Know About SPDs

YOUR QUESTIONS ANSWERED BY PROFESSOR OLIVIA

Q. Are there timeframes for when the SMM or SPD needs to be provided before a penalty is imposed?

A. Penalties typically take effect the first day following the time period given for providing the SPD. For instance, an employer must provide the SPD within 30 days of a written request, free of charge. If they fail to do so, a penalty of \$110 per participant per day applies on the 31st day and continues thereafter for each day the SPD is not provided. And, if the employer fails to furnish the SPD to the DOL in a timely matter, (again, within 30 days of the request) a penalty of \$156 per day up to \$1,566 applies and begins on the 31st day after the written request.

Q. Is a change in cost to the employee considered a “change” that triggers an SMM or new SPD?

A. Great question! Please refer to the SPD Requirements handout provided during the webinar. In general, the SMM or SPD should reflect details of the group health plan. If there have been “material” modifications or material reductions in benefits, then this information must be shared with the participant. Please also reference the completed Lesson Recap at the bottom of page 1 and onto page 2.

Without knowing more specific details of what a “change in cost” is for your particular plan, the guidance provided is general. Whether a change is “material” is a topic to be discussed with plan sponsors and counsel.

Q. Who should be providing and preparing the SPD & SMM for employers? There is confusion around this. Is it the insurance carrier, broker, attorney, etc.?

A. Ultimately, the plan sponsor, as a fiduciary, must ensure distribution of the SPD to all beneficiaries of the plan. This responsibility includes management of any third parties the plan sponsor hires to aid them in providing benefits. A plan booklet or document provided by an insurer or TPA may not be ERISA-compliant, which is why the plan sponsor must ensure plan information is included in whatever document is given to participants.

Sometimes the plan sponsor contracts with an insurer or TPA (who is sometimes a fiduciary and therefore legally responsible—but only if they have “discretionary” decision making in the plan). The best way to know who should provide and prepare the SPD and SMM is to start with the plan sponsor. They sponsor the plan, so they should know what they have created and with whom they have contracted (as applicable) to provide services.

It may also be wise to review any contracts with vendors who provide services to the plan. Remember, though, if an entity makes *discretionary* decisions regarding the plan, they are a fiduciary and therefore legally responsible for plan oversight.