

COMPLIANCE CLASSROOM NOTES

In Summary: What Fiduciaries Need to Know About SPDs

What is an SPD?

- Employee-centered document governed by ERISA regulations
- Employee receives SPD if they are a participant in benefit plan.

What must an SPD contain?

- Tells participants:
 - What the plan provides
 - How the plan operates
- Informs participants:
 - When they may begin to participate in the plan
 - How services & benefits are calculated
 - When & in what form benefits are paid
 - How to file a claim for benefits
- If the plan sponsor changes the plan, they must inform participants of the change:
 - Revised SPD or Summary of Material Modifications (SMM)
- WARNING! A plan booklet or document provided by the insurer or TPA may NOT be ERISA-compliant.
 - Employer needs to verify or have reviewed by counsel.

Who should receive an SPD?

- Plan participants;
- COBRA participants;
- Parent/guardian of child qualified under medical child support order (QMCSO);
- Spouse or dependent of deceased retiree who remains entitled to benefits; or
- Guardian of an incapacitated person

How may an SPD be provided?

- DOL-Approved Delivery Methods:
 - First-Class Mail;
 - Second/third class if return/forwarding postage is guaranteed and address correction requested
 - Hand-delivery of SPD at worksite (Simply placing in a location is not acceptable.)
 - Electronically if ALL employees have access to computers and notice is provided at time of distribution

Required Design and Purpose of the SPD:

- Provided to plan participant:
 - 90 days after they first become covered under plan ; or
 - Within 30 days of a written request, free of charge; or
 - With plan enrollment materials
- Update the SPD:
 - every 5 years if plan is amended
 - every 10 years if no changes
- Be sufficiently comprehensive to apprise covered persons of their benefits, rights, and obligations under the plan
 - Must be thorough and not omit anything necessary!
- Accurately reflect plan content as of the date and no earlier than 120 days before the date of the SPD is disclosed
- Under specific circumstances, SPD & SMM must “state an offer of assistance” in a non-English language
 - Must provide a “reasonable opportunity to become informed as to their rights and obligations under the plan”
 - Should appear at the beginning of the SPD or SMM or on its cover

SMM: Summary of Material Modifications

- Describes material modifications to a plan and changes in the information required in the SPD

- Must be distributed no later than 210 days after the end of the plan year in which the change was adopted (updated SMM or SPD)
- SMM distributed outlining change no later than 60 days from the date the change was adopted
 - If SPD is updated and disseminated within this time period, SMM doesn't need to be sent

Summary of Material Reduction

- Applies to reduction in covered services or benefits considered by the “average plan participant” as an important reduction in these benefits
 - MUST be distributed to plan participants within 60 days of adoption of the material reduction of GHP services

Penalties for Failure

- To provide to the DOL on request:
 - \$ 156 /day (max \$1,566 per request) starting 31st day after request is made
- To provide to a participant:
 - \$ 110 /day starting 31st day after request is made
- To comply with content or format rules:
 - Claim for breach of fiduciary duty if SPD misleads plan participants (fails to inform)
 - Unenforceability of T&C of plan conditions
 - Payment of added benefits not intended to be in the plan
- To prepare or supply the SPD:
 - Participants may bring suit
 - If willfully violated (by individual or company) penalties may be assessed:
 - Up to \$100k and 10 years in prison
 - Up to \$500k if assessed against a company

Why do we care about fiduciaries?

- Evaluation of compliance obligations depends upon it
- “Fiduciary” exercises discretion over the plan in some capacity

Who are fiduciaries?

- Determined by the function of the person:
 - Administering the plan
 - Management of the plan
 - Plan Administrators
 - Trustees
 - Investment Managers
 - Individual exercising discretion in the administration of the plan
 - ALL members of the plan's administrative committee
 - Persons who select committee officials

Not typically fiduciaries:

- When acting solely in their professional capacity:
 - Attorneys
 - Accountants
 - Actuaries
 - When performing solely ministerial tasks:
 - TPA
 - Recordkeeper
 - Utilization reviewer
- NOTE: Any of these roles may become a fiduciary if they begin to exercise discretion i.e. control

Fiduciaries

- If you determine participant eligibility = fiduciary
- Plan must have at least one fiduciary named in the SPD (identified by office or name)
- If employer sponsors fully-funded or partially self-funded plan = Fiduciary
- Fully-insured plan status depends on discretion element

Business Decisions NOT Governed by ERISA:

- Establish a plan
 - Determine benefits package
 - Include features of a plan
 - amend a plan
 - Terminate a plan
- HOWEVER: When an employer implements these actions or hires someone to act, they are acting on behalf of the plan, so they may be a fiduciary.