



## Most Common Summary Plan Description (SPD) Mistakes

One of the most important documents a participant must receive when becoming covered under an ERISA plan is the Summary Plan Description or SPD. **ERISA**, the Employee Retirement Income Security Act, is a federal law that establishes minimum standards and protections to health and welfare plan participants. Many employers are confused about this very important ERISA-required disclosure, which can put them at risk.

The U.S. Department of Labor (DOL) has increased its audits of small, medium, and large-sized companies. Industry trends are showing SPD compliance violations as a key audit trigger. The Q&A below provides a summary of the most common misunderstandings associated with SPD requirements and outlines how employers can avoid costly penalties.

### Isn't the information distributed by carriers considered an SPD?

ERISA requires plan administrators (typically the employer that sponsors the group health plan) to maintain and distribute SPDs that accurately reflects the contents of the plan and include specific information required under federal law—**much of which is typically missing from the benefit summaries and insurance certificates distributed by insurance companies.**

While carriers do provide plan and benefit information, they typically do not provide the required provisions that must be included in an SPD. Therefore, an employer/plan administrator who relies solely on information provided by the insurer will not be compliant with SPD requirements and may face the risk of penalties and other complications if participants only receive a benefits booklet/summary or certificate of insurance.

### Can the SPD just be made available upon request?

### Does it actually have to be distributed to plan participants?

The SPD is required to be distributed to all participants in a manner reasonably calculated to ensure actual receipt. This means it may be hand-delivered or sent by first, second, or third-class mail. The SPD also may be delivered electronically, by e-mail or intranet, if it is reasonably expected that eligible employees will receive it and if certain DOL electronic delivery requirements are satisfied.



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## Isn't the SPD the same as a Plan Document?

In addition to an SPD, all ERISA-covered benefit plans must, by law, be administered in accordance with a **written Plan Document**. ERISA, as amended by HIPAA and other federal laws, requires the Plan Document contain certain specified provisions. Many employers assume that insurance contracts for fully-insured products are written Plan Documents. **Insurance companies, however, draft their contracts to comply with state insurance laws and, as a result, the contracts do not contain many of the required or recommended provisions that protect the plan, the employer, and plan fiduciaries.** The Plan Document does not have to be distributed automatically—rather, it must be kept on file with the employer/plan administrator should a participant or beneficiary request it.

## Will employers be compliant if they distribute Wrap SPDs to plan participants?

A Wrap SPD is designed to incorporate or "wrap around" existing certificates of insurance and benefit plan booklets to provide the information necessary to comply with ERISA's reporting and disclosure requirements. To be compliant with ERISA's reporting and disclosure requirements, the Wrap SPD and accompanying benefit plan component documents must be distributed to plan participants. The Wrap SPD and benefit plan component documents do not have to be distributed at the same time, as long as plan participants receive all of the required documents with the most current information that applies to plan benefits.

## Does a new SPD have to be distributed if there is a change to the benefit plan?

ERISA requires plan administrators to notify plan participants of material plan changes by either updating the SPD or distributing a Summary of Material Modifications (SMM) describing the change to plan participants.





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## Electronic Disclosure Guidelines

Distribution materials required to be furnished under ERISA may be provided electronically if the plan administrator takes necessary measures to ensure that the system for delivery results in receipt of the material. **Ways to ensure receipt of an SPD include using return-receipt, notice of undelivered email features, or conducting periodic reviews or surveys to confirm receipt.** In addition, in order to provide materials electronically:

- The administrator must take reasonably calculated steps to ensure that the system protects the confidentiality of personal information;
- The electronically-delivered documents must be prepared and furnished in a manner consistent with the style, format, and content requirements applicable to the particular document;
- The notice must be provided to each participant, beneficiary or other individual, at the time the document is furnished electronically, and inform the individual of the significance of the document (e.g., "the attached document describes changes in the benefits provided by your plan"). Participants must be made aware of their right to request and obtain a paper version of their SPD.
- Upon request, the participant, their spd beneficiary or other individual must be furnished a paper version of the electronically-furnished documents.

With limited exceptions, affirmative consent to receive documents through electronic media must also be obtained.

## My company has never distributed an SPD. Why now?

Every employer that sponsors a group health plan must comply with this important ERISA requirement, or the employer runs the risk of exposure to a number of serious problems, including:

- Failing a DOL audit
- Penalties of up to \$110/day per participant or beneficiary for failing to provide an SPD or plan document within 30 days of receiving a request

Perhaps most importantly, distributing SPDs to plan participants could protect against dissatisfaction or complaints from employees if issues regarding benefit plan coverage arise.



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## When to Distribute an SMM or Updated SPD

The following are some basic timelines for distributing an updated SPD or SMM:

- Under the Affordable Care Act, group health plans and carriers are required to provide **at least 60 days' advance** notice to participants before the effective date of any material modification to the plan that would affect the content of the Summary of Benefits and Coverage (SBC) and that is not reflected in the most recently provided SBC, **unless the change occurs in connection with a renewal or reissuance of coverage.**
- If a change occurs in connection with a renewal or reissuance of insurance contracts and results in a material reduction in covered services or benefits, then participants have to be notified **within 60 days after the modification is adopted.**
- If neither of the two preceding rules apply, the plan administrator has until **210 days after the end of the plan** year to notify participants of the change; however, it is always prudent to notify participants of any material modifications as soon as possible.



We are here to help educate and guide you to the most appropriate approach for producing this legally mandated document.

\*Information in this document is general in nature and not intended to replace legal advice in any particular manner.

### Contact Us With Any Questions

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