Employee Benefits Compliance Guide

ERISA Health & Welfare Plan Disclosure and Reporting

GRAHAM COMPANY

Introduction: General ERISA Requirements

The Employee Retirement Income Security Act of 1974 (ERISA) requires plans to designate one or more parties who are responsible for performing certain fiduciary duties in accordance with the statute and its various regulations. Such duties include, among other things, setting and following plan terms such as benefit inclusions/exclusions, eligibility for coverage, and claims procedures. Fiduciaries are also responsible for the proper handling of funds (plan assets); adopting formal plan documents; providing participant disclosures (e.g., Summaries of Benefits and Coverage, claims notices, Summary Material Modifications, among others); and reporting certain information to the government (e.g., Form 5500s). The various requirements are intertwined. For example, failure to adequately communicate plan terms and coverage via a Summary Plan Description (SPD) may be considered a breach of fiduciary duty.

This Employee Benefits Compliance Guide provides an overview of the primary disclosure and reporting requirements that apply to group health plans subject to ERISA. This guide summarizes the purpose, content and timing of each disclosure or report, and the acceptable forms of distribution for all participant disclosures.

ERISA Plan Documents

Section 402 of ERISA requires that group benefit plans subject to the law's governance *"be established and maintained pursuant to a written instrument."* This legal written instrument is the ERISA Plan Document, which serves as documentation of the benefits available and all parties' obligations under the plan. In addition, the Plan Document provides the plan administrator with guidelines by which decisions are made about the health plan's claims and operation.

An ERISA Plan Document does not have any specific formatting or structural requirements, but in accordance with ERISA's regulations, must include the following content:

- Plan name, number, and plan year;
  - ERISA plan numbers start at 501 and then continue for each separate ERISA plan maintained by the employer (502, 503, 504, etc.).
  - The ERISA plan year is established by the Plan Document. An ERISA plan year cannot exceed 12 months. It may be necessary to run a short plan year for various business reasons (e.g., going out of business, merger/acquisition, change in plan year), which is permitted. The plan year often matches the insurance contract or policy year, but could be different (e.g., for an extended rate guarantee).
- Eligibility rules and benefits included/excluded;
  - Eligibility rules should include all participating entities if multiple employers are sharing benefit plans.
  - Differing eligibility rules (including waiting periods) should be clearly outlined for distinct categories of employees or different benefits bundled into a single ERISA plan via a Wrap Plan Document. Eligibility rules should also address any special conditions that may apply due to rehire or leaves of absence.
  - Exclusions or limitations on benefit coverage should be clearly addressed.
- Named fiduciary and allocation of responsibilities;
- Description of funding (e.g., insured or self-insured) and how payments are made;
- Claims and appeal procedures;
- Amendment procedures;
- Distribution of assets upon plan termination; and
- For group health plans, COBRA, HIPAA and other federal mandate descriptions (e.g., mental health parity, USERRA, FMLA, QMCSO).

Employers often rely upon carrier and/or third-party administrator (TPA) documentation to serve as their ERISA Plan Document, but those materials may lack content that is required under ERISA and will not always be in the best interest of the employer. For example, insurer-prepared documentation will generally represent the insurer's best interests and be drafted to comply with requirements set forth under state insurance law, not necessarily with federal ERISA requirements. The following items are often missing, incorrect, or not adequately addressed in vendor documents:

- Plan name and number;
- Named fiduciary(ies) and allocation of responsibilities;
- Distribution of plan assets upon plan termination;
- Employer-specific processes/procedures;
- Accurate eligibility rules;
- Limitations or requirements for the handling of benefit claims and litigation;
- Inconsistency between documents (e.g., plan document, SPD, employee handbook, insurance contract);
- Up-to-date information (e.g., eligibility rule changes, vendor changes); and
- Language granting the plan sponsor discretionary authority to interpret the plan terms.

A Wrap Plan Document is frequently created to add employer-specific terms and to address any missing ERISA-required content not included in the insurer's Certificate of Coverage (COC), insurance policy or a TPA's benefits summary. A Wrap Plan Document can also function to bundle multiple benefits (e.g., medical, dental, life) into a single ERISA plan; this is sometimes referred to as a "mega-wrap" or "umbrella" document. For example, rather than treating an employer's medical, dental, vision, life, disability, and health FSA as six separate ERISA plans (501, 502, 503, 504, 505 and 506) requiring a separate plan document for each distinct plan, those lines of coverage could all be bundled into a single ERISA plan (501) requiring only one Plan Document with each of the benefits described incorporated into the single Wrap document. Bundling benefits into a single ERISA Wrap plan can reduce the amount of documentation required and can also simplify the Form 5500 filing process if applicable (see more later).

The Plan Document or Wrap Plan Document is commonly written in legalese and may be difficult for the average participant to read and understand. There is no requirement to automatically furnish the Plan Document to plan participants, but it must be made available to a plan participant within 30 days upon their written request for the document and "all other instruments under which the plan is established or operated". The Department of Labor (DOL) is also entitled to a receive a copy of an ERISA Plan Document within 30 days of a request.

Having a formal Plan Document in place is strongly recommended to avoid: (i) liability for additional benefits or coverage arising from unclear eligibility rules or coverage limitations/exclusions; (ii) audit hassle with the DOL; (iii) claims of breach of fiduciary duty for failure to communicate and follow plan terms: and (iv) litigation risk, including less favorable standards of review by courts and decisions made based on past practices and extrinsic (outside) evidence rather than on specified plan terms. Failure to supply an accurate, current Plan Document to a plan participant in a timely fashion can result in a penalty of up to $110 per day. Additional (and more severe) enforcement penalties of up to $184 per day (indexed annually) may be levied if the plan sponsor is unable to supply the DOL with a Plan Document and other governing plan materials within 30 days. Lack of a formal Plan Document can also complicate Form 5500 compliance if there are questions about plan year or plan setup (e.g., separate ERISA plans versus a single ERISA plan due to benefits bundled via a Wrap Plan Document).

Once a Plan Document or Wrap Plan Document is written and formally adopted, we recommend that the content be reviewed annually; amendments will be required whenever changes to the language in the Plan Document are necessary.

Summary Plan Description (SPD)

ERISA also requires all group health benefit plans to maintain an SPD and automatically furnish a copy to each individual who is entitled to benefits under the plan. According to the DOL, "*the SPD is the primary vehicle for informing participants and beneficiaries about their rights and benefits under the employee benefit plans in which they participate*" and should supply sufficient detail to ensure all plan terms are clearly understood. An SPD is intended to be the plain language explanation of the more complex language typically included in the legal Plan Document; ERISA regulations provide that an SPD must be *"written in a manner calculated to be understood by the average plan participant."*

Similar to the discussion above regarding the Wrap Plan Document, most ERISA plan sponsors use a Wrap SPD to add missing and required content to an insurer's or TPA's documents and consolidate into a single governing document.

However, where a Wrap SPD is used to satisfy the disclosure requirement, the SPD is not complete without all benefit summaries, Certificates of Coverage, policies of insurance or other vendor-supplied summary material for each insured or self-funded component line of coverage. As is the case with a Wrap Plan Document, these supplemental vendor materials are incorporated into the ERISA SPD by reference and attachment; therefore, failure to attach and provide all relevant vendor materials to participants along with the Wrap SPD language can be perceived as a failure to meet the plan's overall SPD disclosure obligation.

Specific SPD content requirements are set forth in ERISA's regulations linked here (29 CFR § 2520.102-3). Although the Plan Document is a separate requirement from the SPD, some employers also use a single document to serve as both the Plan Document and the SPD. The more conservative approach is to have separate documents, but it may be possible to prepare a single document so long as that document satisfies all regulatory content requirements for both categories of ERISA disclosures.

Unlike the Plan Document, an SPD must be distributed to plan participants (employees and former employees, but not spouses or dependents) at specific times: (i) within 90 days of the individual's effective date of coverage; (ii) within 120 days upon the creation of a new ERISA plan; (iii) every 5 years (if material changes have been made to the document); (iv) every 10 years (if no material changes have been made); and (v) upon request. However, it's considered a best practice to update and furnish a revised SPD annually as part of the plan's renewal cycle, provided one or more changes to vendors, coverage or plan terms were adopted within the preceding year. As described in further detail below, the SPD may be distributed by hand, by mail, or electronically as permitted under the DOL safe harbor (i.e., regular workplace access or consent).

Like the more formal Plan Document, failure to distribute compliant SPDs to plan participants can result in civil penalties for breach of fiduciary duties, and up to a $110 per day penalty for failure to respond to written document requests from plan participants within 30 days. Plan sponsors may also face the more severe consequences discussed above for failure to supply the DOL with an SPD upon request.

Summary of Material Modification (SMM)

If a change is made to a plan that is either material or affects the required content of the SPD, an SMM must be prepared and distributed to plan participants (unless the SPD is updated and redistributed first). An SMM is a typically single-page, simple notice that should briefly provide the following pieces of information:

- The name of the plan and the SPD to which the SMM relates;
- Identification and explanation of the plan provisions being modified (with a reference to the plan sponsor's amendment rights);
- Effective dates of the changes;
- Description of the SMM's impact (i.e., that the SMM and SPD should be maintained and read together); and
- Whom to contact with questions.

An SMM is typically required when material changes to a plan or coverage are implemented mid-year (i.e., outside of the plan's annual enrollment period), as annual enrollment materials supplied to employees that reflect modifications made at the plan's renewal (commonly through insurer or TPA summaries) often satisfy the SMM requirement.

Whether a change to a plan constitutes a "material" modification (particularly when it is not a reduction in benefits) is not clearly defined and frequently relies on a facts-and-circumstances determination. The prevailing standard is that material modifications include, among other things, amendment provisions that establish new benefits, take away existing benefits, narrow or expand the circumstances under which benefits are paid, or terminate the plan entirely. Plan sponsors are encouraged to take a conservative approach when deciding which modifications will be considered material by plan participants and issue SMMs accordingly.

However, when a plan modification is a reduction in benefits, it generally triggers the SMM requirement unless the plan's SPD is updated and redistributed. DOL regulations provide that an accelerated (60 day) SMM distribution requirement applies for any "*material reduction in covered services or benefits provided under [a group health] plan*." Any modification to the plan or change in the information required to be included in the SPD that, independently or in conjunction with other contemporaneous modification or changes, would be considered by the average plan participant to be an important reduction in covered services or benefits constitutes a "material reduction."

The DOL has provided several regulatory examples of what qualifies as a group health plan reduction in covered services or benefits:

- An elimination or reduction of benefits payable under the plan (including an elimination or reduction that occurs as a result of a change in formulas, methodologies, or schedules that serve as the basis for paying claims);
- An increase in cost-sharing provisions (such as premiums, deductibles, coinsurance, copayments, or other amounts to be paid by a plan participant or their beneficiary;
- A reduction in the service area covered by an HMO; and
- An imposition of new conditions or requirements to obtaining services or benefits under the plan (e.g., new or enhanced preauthorization requirements).

Each time the plan is changed as described above and an updated SPD is not generated, an SMM must be furnished:

- Within 60 days following the adoption of a material reduction in plan benefits; or
- Within 210 days following the close of a plan year when the change is not a material reduction in benefits.

The SMM should be included with the SPD whenever distributed until the SPD itself is formally updated to incorporate the latest changes. As an alternative to distributing a stand-alone SMM, the SPD itself may be amended (even by incorporating updated vendor materials) to reflect the changes and redistributed by the applicable deadline stated above; where possible, this is the recommended best practice. Additionally, while the regulatory deadline to notify participants of a material benefit reduction is 60 days, that delay can give rise to a claim of the plan sponsor's breach of fiduciary duty. Therefore, where possible, the best practice is to supply the notice that explains the plan's mid-year benefit reduction in advance of the effective date of the change.

Annual Form 5500 Reporting

The Form 5500 is a tool used by the IRS and DOL to collect and share information about employee benefit plans and to oversee enforcement of ERISA and Tax Code rules. Annual filings are in the public record and can be found on this page.

A Form 5500 is required to be filed annually, no later than 7 months following the end of the plan year (subject to a 2½ month extension, if requested), for the following plans:

- ERISA welfare plans covering 100 or more participants at the beginning of a plan year;
  - Count employees and former employees, but not spouses or dependents; if there is a Wrap document bundling multiple benefits into a single ERISA plan, the count is based on the number of unique participants across all benefits considered to be part of the same ERISA plan.
- Funded ERISA benefit plans (plan assets held in a trust or VEBA); and
  - Most plans are unfunded, meaning plan costs are paid out of the employer's general assets.
- Most multiple employer welfare arrangements (MEWAs).

One of the benefits of bundling multiple benefits into a single ERISA plan via a Wrap document is that it simplifies annual Form 5500 filing requirements, because the requirements apply on a plan basis. If there is a single ERISA plan, only one Form 5500 is required (listing all included benefits). If filing is required because there are at least 100 unique participants in the plan, all benefits under the plan must be included in the filing regardless of the number of plan

participants in each separate benefit. However, if each benefit is a separate ERISA plan, a separate Form 5500 is required for each plan with 100 or more participants.

In some cases, schedules must be filed along with the main Form 5500. A Schedule A is generally required for all fully-insured plans and will often be prepared by the carrier. A Schedule C, used to report information about service providers paid by the plan, is likely to be required only if the plan is "funded" (i.e., assets of the plan are segregated from the general assets of the plan sponsor). NOTE: An unfunded self-funded (self-insured) plan is typically required to file only the main portion of the Form 5500 without any schedules.

MEWAs are formed when unrelated entities share benefit plans. For example, benefits shared by entities without enough common ownership to form a controlled group under §414 (i.e., <80% common ownership), benefits shared by entities within an affiliated service group, or benefit plans covering non-employees such as independent contractors, owners, or board members. MEWAs are generally required to annually file a Form M-1 and Form 5500 regardless of the number of plan participants. There is an exception to the Form M-1 filing requirement when non-employees make up less than 1% of the covered plan participants or when there is 25% or more common ownership between the entities sharing benefit plans.

Failure to file the Form 5500 as required can result in significant penalties. Although the maximum penalty is $2,586 per day in 2023 (indexed annually), the standard penalty is $300 per day up to $30,000 per year for non-filers, and $50 per day (with no cap) for late filers. Exposure is increased if there are multiple plans versus a single ERISA plan under which multiple plans are bundled via a Wrap document. There is a delinquent filer voluntary compliance program (DFVCP) that provides for reduced penalties for those who voluntarily report prior to being contacted by the DOL. Under the DFVCP, penalties are reduced to $10 per day, up to $2,000 per year, and capped at $4,000 per plan when there are multiple years of missed filings. Typically, plan documentation must be adopted and effective on only a prospective basis, so it may not be possible to bundle benefits via a Wrap document retroactively to limit penalty exposure.

Example – Failure to File for 3 Years

Acme Group Health Plan(s)	Plan #501 (Benefits Bundled via Wrap Document)	Plans #501, #502, #503 (No Wrap Document)
Maximum Penalty (no filing)	$943,890 x 3 = **$2,831,670**	$943,890 x 3 x 3 = **$8,495,010**
Standard Penalty (no filing)	$30,000 x 3 = **$90,000**	$30,000 x 3 x 3 = **$270,000**
Standard Penalty (late filing)	$18,250 x 3 = **$54,750**	$18,250 x 3 x 3 = **$164,250**
DFVCP	$2,000 x 3 = $6,000 **Capped at $4,000**	$2,000 x 3 x 3 = $18,000 **Capped at $12,000**

The DOL's forms, electronic filing requirements, and other 5500 filing assistance can be found at this page. The DFVC program's FAQs can be found at this page; a link to the DOL's penalty calculator, online payment instructions and other DFVCP resources are available at this page.

Summary Annual Report (SAR)

In addition to the Form 5500 filing, a corresponding summary annual report (SAR) is typically required to be distributed to plan participants. A SAR is a reader-friendly summary of the information reported the plan's Form 5500. The SAR is generally required for any plan subject to Form 5500 filing, but there is an exception for ERISA plans comprised solely of self-insured plan(s) without any segregation of assets in a trust or otherwise (i.e., unfunded). However, this exception

rarely applies when an employer bundles all benefits lines under a single Wrap document. The SAR, when required, must be distributed annually within 2 months from the date Form 5500 is due (including extensions), and it can be distributed by hand, by mail, or electronically as permitted under the DOL safe harbor (i.e., with regular workplace access or consent).

The DOL supplies a template for the SAR to be distributed by an ERISA health plan, which can be found in paragraph (d)(4) of the federal regulations linked here (29 CFR 2520.104b-10).

Guidelines for Distributing Plan Documents, SPDs, SMMs and SARs

Generally, the applicable DOL guidance instructs that the required disclosures listed above should be distributed to all participants *"in a manner reasonably calculated to ensure actual receipt*", which means it may be hand delivered or sent by first, second- or third-class mail. These disclosures also may be delivered electronically, for example, by e-mail or the company's intranet, if it is reasonably expected that eligible employees will receive it and all aspects of DOL electronic delivery safe harbor are satisfied (as explained below).

More specifically, acceptable distribution methods for ERISA Plan Documents, SPDs, SMMs and SARs include:

- In-hand delivery to employees at their worksites;
- First-class mail;
- Second- or third-class mail if return and forwarding postage are guaranteed and address corrections are requested;
    - If disclosure is distributed by second- or third-class mail and is later returned with a corrected address, the plan administrator must distribute the disclosure again by first-class mail or personal delivery to the participant at his or her worksite.
- Electronic distribution if the distribution method or methods satisfy the DOL's requirements; and
- Special insert in other periodic benefit or employment materials (e.g., newsletter, payroll receipt) if:
    - the distribution list is comprehensive, up to date, and accurate, and
    - the front page prominently states the ERISA disclosure is inserted; and
        1. If some participants and beneficiaries are not on the mailing list for the periodic communication, this method may be combined with another permitted distribution method.

Electronic Distribution

As a general rule, materials required to be furnished under ERISA may be furnished electronically, provided the plan administrator takes appropriate and necessary measures reasonably calculated to ensure that the system for furnishing documents results in actual receipt of the material. Ways to ensure receipt of these ERISA disclosures include using return-receipt or notice of undelivered email features or conducting periodic reviews or surveys to confirm receipt.

In addition, in order to provide materials electronically, all of the following standards outlined under the DOL's electronic distribution safe harbor rule must be satisfied:

- The administrator must take steps reasonably calculated to ensure that the system protects the confidentiality of personal information relating to the individual's accounts and benefits;
- 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;
- Notice must be provided to each participant, beneficiary or other individual, at the time a document is furnished electronically, that informs the individual of the significance of the document when it is not otherwise reasonably evident as transmitted (e.g., the attached document describes changes in the benefits provided by your plan) and of the right to request and obtain a paper version of such document; and

- Upon request, the participant, beneficiary or other individual must be furnished a paper version of the electronically furnished documents.

Unless individual has the ability to effectively access documents furnished in electronic form at any location where the individual performs his or her employment duties, and access to the employer or plan sponsor's electronic information system is an integral part of an individual's job duties, he or she must affirmatively consent to receive documents through electronic media. In the case of documents to be furnished through the internet or other electronic communication network, consent must be given in a manner that reasonably demonstrates the individual's ability to access information in the electronic form that will be used to provide the information. (For example, if the employee is to receive disclosures through email, prior consent should be requested and obtained through that email account, even if the email address is not work-related.) Prior to consenting, the individual must be provided a clear and conspicuous statement indicating:

- The types of documents to which the consent would apply;
- That consent can be withdrawn at any time without charge;
- The procedures for withdrawing consent and for updating the individual's address for receipt of electronically furnished documents or other information;
- The right to request and obtain a paper version of an electronically furnished document, including whether the paper version will be provided free of charge; and
- Any hardware and software requirements for accessing the documents.

Foreign Language Requirements for SPDs and SMMs

While there is no strict obligation to provide SPDs or SMMs in a language other than English, certain plans must make some minimal language interpretation assistance available to participants.

For plans covering *fewer than 100* participants at the beginning of the plan year, the foreign language assistance requirements apply if 25 percent or more of the participants are literate only in the same foreign language. For plans covering *100 or more* participants at the beginning of the plan year, the foreign language assistance requirements apply if either:

- 500 or more participants are literate only in the same foreign language, or
- 10 percent or more of all plan participants are literate only in the same foreign language.

If the requirements apply, at a minimum, the plan's SPD and any SMMs should prominently display a notice to offer language aid. The notice must be written in the foreign language that is common to the participants and clearly explain the procedures the participants are to follow to obtain assistance. The following sample notice is from DOL regulations and should appear (customized as necessary) at the beginning of the SPD or SMM or on the document's cover:

> This booklet contains a summary in English of your plan rights and benefits under *Employer A Benefit Plan*. If you have difficulty understanding any part of this booklet, contact *Mr. John Doe*, the plan administrator, at his office in *Room 123, 456 Main Street, Anywhere City, State 20001*. Office hours are from *8:30 a.m. to 5:00 p.m. Monday through Friday*. You may also call the plan administrator's office at *202-555-2345* for assistance, or via email at *JDoe@EmployerA.com*.

ERISA's guidance instructs that the language assistance offered to plan participants must be "calculated to provide a reasonable opportunity to become informed as to their rights and obligations under the plan." This effectively calls for the availability of someone fluent in the participant's non-English language who is capable of providing interpretation assistance concerning the plan's terms. While ERISA does not require that a full translated SPD or SMM be offered in these situations, some plan sponsors opt to prepare their written benefit materials in the applicable non-English language.

Summary of Benefits and Coverage (SBC)

Introduced by the Affordable Care Act (ACA), the SBC acts as a uniform tool that provides an easier way for eligible individuals to compare medical plan options. The SBC is required for all group health plans, but not for excepted benefits (e.g., stand-alone vision or dental, health FSA) or retiree-only plans. Note that an SBC is generally required for a Health Reimbursement Account (HRA), though the SBC requirement for an HRA can be satisfied by including HRA funding information on the SBC for the same employer's major medical plan with which the HRA is integrated. A specific SBC template must be used. The template, instructions and a sample completed document can be found at this page.

The SBC must be distributed to all plan participants, including employees and former employees, and to spouses and dependents; but one notice is adequate for the family unless the employer has reason to know they reside at different addresses. The SBC must be distributed: (i) with benefit application materials upon initial enrollment; (ii) with annual enrollment materials; (iii) within 90 days of special enrollment; and (iv) within seven days of a participant's request. It may be distributed by hand delivery, mail, or electronically as follows:

- For covered participants: (i) those who enroll online may receive the SBC electronically with their enrollment; (ii) those who don't enroll online may receive the SBC electronically if the DOL safe harbor is met.
- For those who are eligible but not enrolled, notification (by paper or email) that the SBC is available on the internet.

If material plan changes affecting the content of the SBC occur mid-plan year (irrespective of whether it's a reduction in benefits), a notice of modification describing the change(s) or new SBC must be provided to plan participants 60 days *in advance* of the effective date of the change. Supplying an updated SBC in such cases can also satisfy the plan's SMM requirement, though that notice must also be incorporated into the plan's SPD by the applicable SMM deadline. Most employers separately create and incorporate an SMM in addition to issuing an updated SBC.

SBCs must be provided in what the federal agencies refer to as a "culturally and linguistically appropriate" manner. The requirement is triggered if the SBC is provided to individuals in any U.S. county where at least 10 percent of the population is literate only in the same non-English language (according to U.S. Census data). Where applicable, the plan must provide interpretive service to those who require it, and English-language SBCs must include a one-sentence statement in the necessary foreign language(s) clearly indicating how to access the plan's language services. Also, a written translation of the full SBC in the appropriate language must be provided upon a participant's request. The agencies have made template language available for this purpose (in Spanish, Chinese, Tagalog, and Navajo) in the "Forms" section of this page.

Failure to distribute compliant SBCs can result in civil penalties of up to $1,362 in 2023 (indexed annually) per failure in addition to excise taxes of up to $100/day for each affected individual.

Summary

We often encounter employers who do not have compliant Plan Document and distribution processes in place as required under ERISA, thereby risking civil penalties, audit difficulties, incorrect Form 5500 filings, and perhaps most importantly, unintended liability for plan coverage for claimants disputing unclear eligibility or coverage descriptions. With a bit of effort and expense on the front end to put proper documentation, distribution, and reporting processes in place, an employer can greatly reduce the risk of significant hassle and expense.

Appendix A: Quick Reference Guide for Distribution of Plan Documents, SPDs, SMMs and SBCs

The ERISA disclosures listed above are intended explain a plan's benefits to its participants. The rules governing each of these disclosures are interconnected. The table below summarizes the timing rules for the distribution of each disclosure, offers alternatives for satisfying each requirement (where applicable), and recommends best compliance practices.

Disclosure	Timing of Distribution	Alternatives	Notes and Best Practices
Plan Document/Wrap Plan Document	• Within **30 days** of a participant's written request • Within **30 days** of DOL's written request • No automatic disclosure requirement absent a request		• Failure to furnish an accurate, up-to-date plan document (including all vendor certificates and summaries) within 30 days of request can result in penalties of $110 per day and increases the risk of the DOL/attorney involvement. • Failure to respond to a DOL request on a timely basis can result in a penalty of up to $184 per day in 2023 (indexed annually)
SPD/Wrap SPD (Automatic disclosure for new and ongoing participants, absent request)	• Within **90 days** of a new enrollee's effective date of coverage • Within **120 days** upon the creation of a new ERISA plan • **Every 5 years** (if material changes have been made to the SPD content during that period) • **Every 10 years** (if no material changes have been made) • Employers are free (and encouraged) to distribute sooner or more frequently if they wish to do so as a courtesy.	• When plan changes are adopted that result in a change to the ERISA SPD content and do not impact the plan's SBC, SMM can be created, furnished to participants, and inserted to the SPD as a placeholder until the next-required SPD distribution.	• While there is no annual SPD disclosure requirement, when changes are adopted (either mid-year or at renewal) that are not a reduction in benefits, **best practice** is to distribute or post an updated SPD and/or related vendor materials as close to the start of the next plan year as possible. • New participant disclosure requirement is triggered by new hires and special enrollees who start coverage mid-year, and employees enrolling for the first time during open enrollment. • When plan changes do not modify the ERISA SPD content and are only reflected in supplemental vendor materials, there is no need to update and redistribute the full ERISA SPD; new vendor materials can be obtained and distributed to members to satisfy the disclosure requirement. • Failure to supply a timely and accurate SPD can result in penalties of $110 per day and give rise to claims of the employer's fiduciary failure.
SPD/Wrap SPD (Upon Request)	• Within **30 days** of a participant's written request • Within **30 days** of DOL's written request		• Failure to furnish an accurate, up-to-date SPD (including all vendor certificates and summaries) within 30 days of request can result in penalties of $110 per day and increases the risk of DOL/attorney involvement. • Failure to respond to a DOL request on a timely basis can result in a penalty of up to $184 per day in 2023 (indexed annually).

Disclosure	Timing of Distribution	Alternatives	Notes and Best Practices
SMM (No reduction in benefits)	• Within **210 days** after the end of the plan year in which the material change to benefits, or a change that impacted the required content of the SPD, was adopted. • Employers are free (and encouraged) to notify participants of plan changes sooner than 210 days after end of the plan year via an SMM or updated SPD if they wish to do so as a courtesy.	• If the material change also affects the content of the plan's SBC, a notice of the plan change must be supplied 60 days in advance of the effective date to comply with SBC requirements. That earlier SBC notice may also satisfy the SMM requirement, provided an explanation of the change is separately added to the plan's SPD. • In lieu of a standalone SMM, updated vendor materials can be furnished to members by no later than 210 days after the close of the plan year (or sooner, as a courtesy).	• **Best practice** for a mid-year change that is not a material reduction and does not affect the SBC is to incorporate the change in the plan's next SPD update and distribute the new SPD, which should occur as close as possible to the next subsequent plan renewal date. • An employer who wishes to notify participants of mid-year change before the 210-day deadline or prior to the start of the next plan year can use an SMM. In such cases, SMM should be added as insert to the plan's SPD as a placeholder until the next-required SPD update and distribution.
SMM (Reduction in benefits)	• Within **60 days after** the plan's adoption of a material reduction in benefits, or **within 60 days** of adoption of a change that impacts the required content of the plan's SPD.	• If the material reduction in benefits also affects the content of the plan's SBC, a notice of the benefit reduction must be supplied 60 days in advance of the effective date to comply with SBC requirements. • Distribution of updated SPD and/or relevant vendor material can satisfy the SMM requirement, though the accelerated timeframe for this notice requirement may make the SMM the most reasonable choice.	• While the regulatory deadline to supply notice of a benefit reduction is 60 days following adoption of the change, a 60-day delay can give rise to a breach of fiduciary duty claim. **Best practice** is to distribute the SMM in advance of the benefit reduction, or as soon as reasonably possible. • If a mid-year reduction in benefits also affects the content of the plan's SBC, **best practice** is to furnish an updated SBC by the 60-day advanced deadline and separately incorporate notice of the benefit reduction into the plan's SPD by the applicable SMM deadline.
SBC	• **60 days in advance** of the effective date of a mid-year plan change that affects the content of the SBC; • With benefit application materials upon initial enrollment; • With annual enrollment materials during plan's annual renewal period; • Within **90 days** of special enrollment (with SPD); • Within **7 days** of a participant's request.		• 60-day advanced notice of material changes to content in the SBC applies irrespective of whether the change is a reduction in benefits. • Whenever updated SBCs must be supplied, the plan's SPD and/or vendor materials should also be updated to reflect new benefit-specific information. When this occurs mid-year, **best practice** is to furnish an updated SBC by the 60-day advanced deadline and separately incorporate notice of the plan change into the plan's SPD by the applicable SMM deadline. • Failure to distribute SBCs as required can result in civil penalties of up to $1,362 in 2023 (indexed annually) per failure plus excise taxes of up to $100/day for each affected individual.