

DOCUMENT DISCLOSURES REQUIRED UNDER ERISA

Summary Plan Description

The Summary Plan Description (SPD) is a plain language description of the retirement plan provisions that must be disclosed to participants according to ERISA. The specifics of the disclosures are set forth in regulations issued by the Department of Labor (DOL). The SPD must be written so it can be understood by the average plan participant (generally at no more than an eighth grade reading level). An SPD must generally be furnished no later than 90 days after an employee becomes a participant in the plan, or, for a beneficiary receiving benefits under the plan, within 90 days after an employee becomes a participant in the plan, or, for a beneficiary receiving benefits under the plan, within 90 days after the beneficiary first receives benefits.

If the plan is materially modified but a new SPD is not created, then participants must receive a Summary of Material Modifications (SMM). An SMM reports a change in any of the information that is provided in the SPD and is generally due within 210 days after the close of the plan year in which the change became effective.

Every five years, participants must be provided with an updated SPD that incorporates new plan amendments made during the five-year period, even if a SMM was provided. The updated SPD must be distributed no later than 210 days after the end of the fifth year after the previous SPD was issued. If there have been no plan amendments, then the SPD must be updated and redistributed every 10 years. Given the frequency of required amendments, it is unlikely an SPD will remain unchanged for 10 years.

As we recently advised you, we are beginning the process of restating our clients' plans for the Economic Growth and Taxpayer Reform Act of 2001 (EGTRRA). As part of the restatement process you will receive a restated SPD. Once a plan is restated onto the new EGTRRA plan document, an SPD must be provided by the 210th day after the close of the plan year during which the plan was restated. For example, the new SPD for an EGTRRA restatement of a prototype plan in 2008 is not required until 210 days after the close of the 2008 plan year. We recommend you provide plan participants the restated SPD as soon as you receive it.

Potential Foreign Language Requirement

If a plan has participants who are literate only in a particular foreign language, the plan administrator may be required to provide a notice written in that language indicating that assistance with the SPD is available. The notice must include the plan administrator's

phone number and information about where and when the assistance will be made available.

For plans with fewer than 100 participants as of the beginning of the plan year, the foreign language requirement applies if 25% or more of participants are literate only in a particular foreign language. For plans with 100 or more participants as of the beginning of the plan year, the requirement applies if *the lesser of* 500 participants or 10% of the total number of participants are literate only in a particular language.

Summary Annual Report

The Summary Annual Report (SAR) is a summary of financial transactions, number of participants, and other plan-related information. An SAR is to be provided within 60 days after the filing deadline of a plan's Form 5500.

Effective with the 2008 plan year, defined benefit plans are exempt from the SAR requirement, but are now subject to an annual funding notice disclosure requirement.

Participant Requests for Plan Documents

ERISA requires employers to make documents available for participant review, including the plan document, the SPD, the participant's beneficiary designation, Form 5500 and schedules, etc. Information about other participants may not be provided. When a participant or the beneficiary of a deceased participant submits a written request for copies of plan documents, the copies must be provided within 30 days. A reasonable fee may be charged to cover the cost of copying and providing the documents.

Employers who do not timely respond to documents requests (except for reasons that are beyond their control) can be hit with a daily penalty of up to \$100, plus attorneys fees if the participant successfully seeks court enforcement of his or her request.

DOL Rules for Electronic Disclosures

The DOL permits employers to use electronic media to provide qualified plan disclosure materials, including SPDs, SMMs, SARs, and all other notices required under Title 1 of ERISA. To use electronic media to distribute plan-related materials, DOL regulations state that the plan administrator must:

- Ensure that participants actually receive the transmitted information by using a return-receipt electronic mail feature or by conducting periodic surveys designed to confirm the integrity of the electronic mail delivery system;
- Prepare the electronic disclosures in a manner that is consistent with the style, format, and content of the written documents;

- Notify each plan participant (including retirees, terminated employees with vested benefits, and beneficiaries) electronically or in writing which documents are provided electronically; and
- Inform participants and beneficiaries that they have the right to receive paper copies of each document free of charge.