



## **To Wrap or Not to Wrap? That is the Question**

Employers and Plan Administrators of employee benefits plans subject to the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) face substantial legal and financial risks for failing to maintain a compliant Plan Document and to provide plan participants with a compliant Summary Plan Description (“SPD”). Many Employers and Plan Administrators mistakenly believe that other documents such as the insurance certificate of coverage are sufficient to satisfy ERISA’s Plan Document and SPD requirements. This is rarely true. What does satisfy the requirements of ERISA, however, is what is commonly referred to as a “Wrap Document.” This article explains the basics of the Plan Document and SPD requirements and articulates why the creation of a well-designed Wrap Document can lessen the burden imposed by these important legal duties.

### **Plan Document / Summary Plan Description Requirements**

*What is a Plan Document?* ERISA §402 requires that all employee benefit plans be “established and maintained pursuant to a written instrument.” The Plan Document is the written instrument – a contract - between the Employer and its employees to establish the plan. It is a comprehensive document that sets forth the rights of the plan’s participants and beneficiaries, and guides the Plan Sponsor and Plan Administrator in making decisions and executing their responsibilities. Comparatively, the SPD is a summary of key facts about the plan. A Plan Document is a requirement and is a contract. Notably, this requirement applies to any plan subject to ERISA, including a group health plan, not just a retirement plan.

*What is an SPD?* An SPD is a disclosure document required by ERISA §102 that provides a summary of key information about an employer’s benefit plan from the Plan Documents, and contains additional information required under ERISA regulations. Plan Administrators must provide this information to participants and beneficiaries of all employee benefit plans. Again, this requirement applies to any plan subject to ERISA, including a group health plan, not just a retirement plan.

*What are the general requirements for a valid SPD?* Every SPD must be written in a manner calculated to be understood by the average plan participant. An SPD must convey complex information contained in the Plan Document to participants and beneficiaries in an easy-to-understand manner.

*What information must be included in the SPD?* Applicable rules and regulations under ERISA require a host of information to be included in the SPD. Examples of common items include: the name of the plan, the name and address of the plan sponsor, eligibility requirements, the type of plan, how the plan is administered, the named fiduciary and other fiduciaries, and a notice of

participant rights under other federal laws.

*When does the SPD have to be furnished?* ERISA requires Plan Administrators to furnish an SPD to each participant and beneficiary within 90 days after an employee becomes a participant or a beneficiary begins receiving benefits or, if later, 120 days after the plan becomes subject to the reporting and disclosure provisions of Title I of ERISA. Once issued, the SPD is generally valid for five years, unless changes are made that require updates, such as the addition of new plan offerings or updated eligibility provisions. In health and welfare plans, updates are frequent as policy and coverages change.

*What are the penalties for not having an SPD?* As of this writing, the penalty for failing to provide an ERISA-compliant SPD to participants in a timely manner, or within 30 days of a written request, can be up to \$152 per day, per request. This figure is adjusted upwards for inflation each year. Although the penalty is currently capped at \$1,527 per request, *each participant and beneficiary* could make a request for an SPD, triggering the penalty with respect to each participant. Further, courts have discretion to impose a larger penalty for failing to act in a fiduciary capacity by withholding an SPD from a participant. Therefore, given the significant potential for exposure, it is critical that employers remain compliant in this area.

## **Wrap Document**

*What is a Wrap Document?* A properly constructed Wrap Document is a written instrument intended to comply with both ERISA's Plan Document and SPD requirements. Wrap Documents take all of the legal requirements described above and incorporate them into one, easily accessible document for participants and beneficiaries. The Wrap Document in essence "wraps around" a single benefit or bundles multiple benefit offerings under a single, easy-to-use ERISA plan. Wrap Documents are extremely valuable, because insurance policies and certificates of coverage do not meet the Plan Document and SPD requirements described above.

*Why do you need a Wrap Document?* In essence, the Wrap Document makes your Certificates of Coverage compliant. A Wrap Document is an easy way to incorporate ERISA-compliant language with an insurance certificate of coverage or other non-compliant benefit plan document. A Wrap Document can also help avoid the significant financial penalties associated with a failure to comply with ERISA's Plan Document and SPD requirements.

A well-constructed and thoughtfully prepared Wrap Document also includes many important features to aid and potentially protect Plan Sponsors. Insurance Carriers and Third-Party Administrators are not focused on protecting the Plan Sponsor's or Employer's interests. In a properly constructed, thoughtful Wrap Document: 1) ERISA fiduciary responsibilities are properly allocated; 2) default language is included, to be sure that the plan has required back-up language for claims processes, COBRA and related terms; 3) the document provides for the necessary full reservation of amendment and termination rights; 4) the important discretionary authority right is included; and 5) often missed complete eligibility and entry date information is included. In other words, all of the critical and important features are included in a well-constructed Wrap Document.

*Do small employers need a Wrap Document? Yes!* There is no small employer exception from the ERISA Plan Document and SPD requirements. In fact, small employers in particular can benefit from the convenience offered by a Wrap Document by avoiding the risk and burden associated with the Plan Document and SPD requirements.

*How does the Wrap Document Affect Form 5500 filing?* Having a valid Wrap Document also allows the employer to file a single Form 5500 with the U.S. Department of Labor for multiple benefit coverages. This saves the employer time and money every year because the Form 5500 is required to be filed annually and includes substantial penalties for the failure to file.

## **Conclusion**

Operating an ERISA-covered employee benefit plan without a compliant Plan and SPD Document is unlawful and plan administrators who do so face considerable financial risk. Fortunately, this risk can be eliminated by adopting a Wrap Document that satisfies all the legal requirements of the Plan Document and SPD. Put plainly, Wrap Documents simplify administration of employee benefit plans and reduce associated costs and risks considerably.