

March 2017

*Please pass the matches*

## The Unfortunate Truth about Your SPDs

By Katherine Tange-duPré

*[Scene: A chilly winter evening. The sky is clear and filled with stars. Inside, a 30-something male sits in front of a blazing fire reading. The man faces the camera and speaks.]*

*I love winter: laughing children making snow men, newly fallen snow gleaming in the moonlight, chilly evenings spent relaxing in front of a cozy fire with a good read. That's why I always have a stack of summary plan descriptions sitting beside my favorite chair. Their subtle blend of legalese, multisyllabic words, and convoluted sentences make them the perfect fireside companion on a cold winter's night.*

*I'm sorry. Could you repeat that? I couldn't hear you over the crackling flames.*

*Read them? Oh no, I don't read them. I use them for kindling.*

Of course, your employees aren't using your benefit plans' summary plan descriptions to start fires on cold winter nights (we hope). But are they reading them? And if they are, how well do they understand them?

### The Case for More Summary and Less Plan Description

The idea behind SPDs is simple and straightforward: to provide plan participants with an easily understood overview of the benefits a plan provides and how the plan operates. As such, it is one of the most important documents an employee will receive when he or she becomes a participant in an ERISA-covered benefit plan.<sup>1</sup>

As important as SPDs are, however, very few people ever sit down and read an SPD from cover to cover. Instead, the SPD serves as a reference tool. When a participant initially receives an SPD, he or she may look at a highlights page or table of contents and flip to a topic of interest. Typically, the

participant does not look at the SPD again until something major happens in his or her life, such as getting married, changing jobs, needing a specific benefit (such as an organ transplant or a loan), or when it is time to retire.

Because the SPD is a reference tool for the participant, it is essential that it be an effective one. To do this, the SPD needs to meet two requirements:

1. A participant must be able to find the information he or she wants quickly and easily.
2. Once the information is found, it has to be easily understood by the participant.

The rules governing SPDs offer specific guidelines on the information that must be provided to participants. The SPD must inform participants about their rights, benefits, and responsibilities under the plan. This information includes (but is not limited to) when an employee can begin to participate in the plan, what benefits are provided, how service and benefits are calculated, how expenses are paid, when benefits become vested, when and in what form benefits are paid, how to file a claim for benefits, and how benefits are protected.

The guidance is more nebulous when it comes to exactly how to present the information. The style and format requirements state, "The summary plan description shall be written in a manner calculated to be understood by the average plan participant and shall be sufficiently comprehensive to apprise the plan's participants and beneficiaries of their rights and obligations under the plan. In fulfilling these requirements, the plan administrator shall exercise considered judgment and discretion by taking into account such factors as the level of comprehension and education of typical participants in the plan and the complexity of the terms of the plan. Consideration of these factors will usually require the limitation or elimination of technical jargon and of long, complex sentences, the

use of examples and illustrations, the use of clear cross-references, and a table of contents.”<sup>2</sup>

Easy enough, right? Or at least it should be.

Unfortunately, somewhere between the drafting of these requirements and the drafting of the typical SPD, we’ve lost sight of the key phrase “calculated to be understood by the average plan participant.”

In reality, SPDs generally are not easily understood by the average participant. Litigation has changed the original focus of the SPD from being a clear and concise summary of benefits to being an extensive and legalistic enumeration of a plan’s provisions. Instead of plain, easy-to-understand English, the typical SPD is crammed with detailed minutia about the plan, which is generally written in the finest “legalese.”

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This conflict between effective communications and legal protection often leads to one unfortunate truth: legal concerns have undermined plan sponsors’ willingness and ability to provide understandable communications. The result is a 30- or 40-page (or more) booklet that is a regurgitation of the plan document rather than a useful summary of plan provisions. As a result, SPDs often consist of too much plan description and too little summary.

Even when the language isn’t legalese (or actuarial, as is often the case with defined benefit plan SPDs), it isn’t necessarily easy to understand. A quick review of the Flesch-Kincaid readability statistics associated with the following definition of emergency room care taken from a health plan SPD reinforces this point.

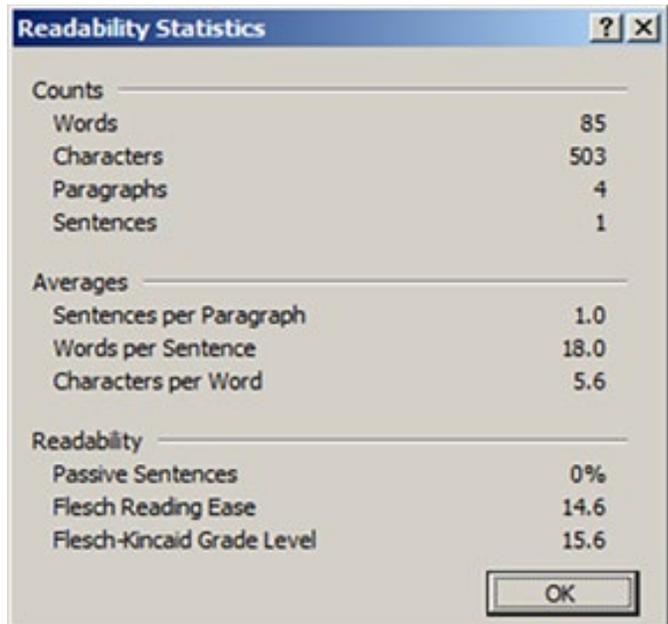
Facility and professional provider services and supplies for the initial treatment of a sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect that the absence of immediate medical

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attention could result in:

- Permanently placing the covered person’s health in jeopardy
- Causing other serious medical consequences
- Causing serious impairment to bodily functions, or causing serious and permanent dysfunction of any bodily organ or part

The Flesch-Kincaid readability statistics are among the most frequently used methods of calculating readability. For the reading ease score, the higher the score the easier the passage is to read; the lower the score the more difficult a passage is to read.



Readability Statistics	
Counts	
Words	85
Characters	503
Paragraphs	4
Sentences	1
Averages	
Sentences per Paragraph	1.0
Words per Sentence	18.0
Characters per Word	5.6
Readability	
Passive Sentences	0%
Flesch Reading Ease	14.6
Flesch-Kincaid Grade Level	15.6

As you can see, the definition of emergency room care has a reading ease score of 14.6. This is significantly more difficult than a score of 60 to 70, which is considered an acceptable score for literate adults. The grade level indicates the years of education required to read a particular passage. An average eighth grader is assumed to read at an 8th grade reading level, and a twelfth grader at a 12th grade level. People who have completed college are assumed to read at the 16th grade level. This passage has a grade level score of 15.6.

If all your employees are college graduates, this shouldn't be a problem; however, most Americans don't read at college level. Several studies done in the United States and Canada estimate the average reading skill level to be at the 8th to 9th grade level. A study by the University of Utah Health Sciences Center found that about one in five adults (20%) had a reading skill level at the 5th grade level or below,<sup>3</sup> and according to the Literacy Project Foundation, 50% of adults cannot read a book written at an eighth grade level.<sup>4</sup>

*... plan sponsors should consider communication and design techniques that will make the SPD a better reference tool . . .*

## Turning your SPDs into a Useful Tool

There are numerous factors that affect how easy — or how hard — a document is to read and understand, including word choice, sentence length, the use of examples, layout and formatting, and overall organization of the contents. Because both the organization and the presentation of the SPD are key to helping participants understand the SPD, plan sponsors should consider communication and design techniques that will make the SPD a better reference tool by making it:

1. Easy to navigate
2. Easy to understand
3. Easy to access

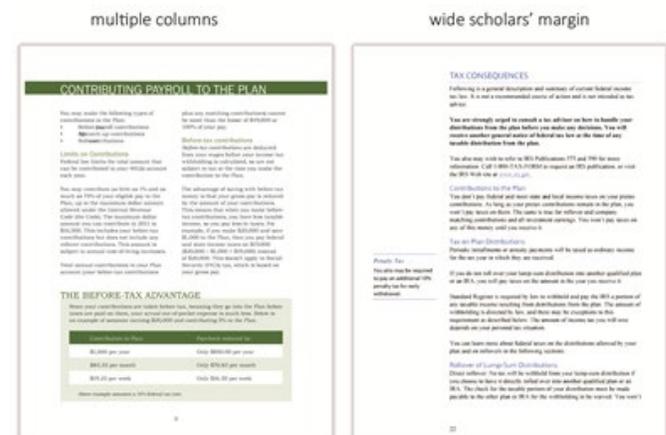
**Easy to navigate.** Your SPDs provide a wealth of information about your benefit plans, but if participants can't find the information they need easily and quickly, all that hidden treasure will go to waste.

To make navigating the SPD easy, include a table of contents and an index. Provide a glossary for technical terms. Arrange the SPD in a "life event" order that corresponds with how plan participants think about their benefits. Begin with eligibility and joining the plan and continue through earning, owning, applying for, and

receiving benefits. Include a life event table that tells participants what they need to do (and how quickly they need to do it) in the event of marriage, divorce, adding or removing dependents, termination, disability, retirement, and death. Provide cross-references to other information that may be available outside the SPD, such as websites and call centers. "Administrative" information like the plan sponsor, plan number, and the many other pieces of information that are required by law but don't tell the reader about a plan's provisions, is best left at the back of the SPD.

Rather than dense paragraphs of text, consider bullet points, lists, and tables, which allow the participant to quickly read and gather information. You can emphasize or highlight information by using pull quotes and side bars. Use headings and subheadings to guide your readers through the information being presented.

Avoid using all upper-case letters when you want to emphasize specific information. All upper-case letters slow the reader down, and readers who slow down often stop reading altogether. Instead, use bold or italic type or use a different typeface. Wide columns of text also tend to slow reading time, so consider using multiple columns or wide, scholars' margins.



When it comes to making your document visually appealing, take a hint from graphic design. Incorporating white space (open, text-free areas) will make a page less text heavy, less intimidating, and more inviting. Elements such as photographs and illustrations will make your SPD more visually interesting while supporting a secondary goal, such as educating employees about your organization's history, culture, vision, or values.

**Easy to understand.** When it comes to making your SPDs easy to understand, tone and language matter. Start by making your readers part of the process by referring to them as “you” rather than “the plan participant.”

Keep things simple by putting everything in terms that your readers will understand and that are meaningful to their lives. Using a simple Q&A format provides readers with “real life” answers to benefit questions such as: When do my benefits begin? How do I add a new dependent when I get married or have a baby? How much time do I have to add a new dependent? What should I do if I need to have surgery? What happens if I quit my job?

Just be sure to keep your answers brief and write them using the same tone and language you would use if you were speaking to the reader. Use words that are easy to read, easy to pronounce, and easy to understand. Avoid long words when short words will do. The following are just a few examples of long words or phrases that are commonly found in SPDs and their possible replacements.

Avoid	Replace with
commence	start or begin
endeavor	try
facilitate	help or make easy
finalize	finish
fluctuations	changes
for the purpose of	to
in certain circumstances	at times
in excess of	more than or greater than
in the event that	if
locate	find
prior to	before
subsequent	after or later
terminate	end
utilize	use

Of course, benefit plans are complex, and you may not be able to avoid technical language. When this happens, include an explanation that tells your reader “what this means to you.” The following “what this means to you” example is from a defined benefit plan SPD.

*Combination of Single Payment and Monthly Income. You may elect to receive part of your accrued benefit as a single payment and the balance as a monthly annuity payable in the form of your choice. The amount of the single payment will be determined based upon the value of your vested accrued benefits. You may elect to receive 10%, 20%, 30%, 40%, or 50% of your accrued benefit as a single payment. Your monthly annuity payment and any benefits payable after your death will be based on the remaining portion of your accrued benefit.*

*What this means to you. This option lets you receive part of the benefit you’ve earned in one payment when you retire and still receive a monthly benefit payment for life. If you choose this option, you will never receive less than the full value of the benefit you’ve earned from the Plan, and you may receive much more if your monthly benefits continue for many years. Keep in mind that the larger your single payment is, the smaller your monthly income will be. If you die before the full value of your accrued benefit is paid out, your beneficiary will receive the remaining value of your benefit.*

**Easy to access.** In order to be useful, plan participants must have access to the SPD. That begins when an employee first becomes eligible to participate in the plan, and it continues through updates and revisions to the SPD. While meeting the distribution requirements with paper copies is still the “norm” for many plan sponsors, providing ongoing access to electronic documents just makes good sense. Sponsors should be aware, however, that the DOL does have strict rules concerning digital distribution.

Digital SPDs offer many advantages to plan sponsors and plan participants. They are easy to keep current through quick updates, they are less expensive to produce, store, and distribute than paper copies.

It is also easy to enhance the content and usability of digital SPDs by including informational pop-up boxes and links to information such as carrier websites, provider directories, investment fund information, forms, summary annual reports, IRS publications, and the DOL and PBGC websites. Such features turn the digital SPD into an easy-to-use reference tool participants want and need. Digital

SPDs can give the reader easy access to information that is typically not available in a printed SPD without wading through reams of paper.

There is one possible drawback to electronic disclosure: participants who lose access to the plan sponsor's network when their employment ends may also lose access to these helpful electronic versions. Participants should be reminded to keep their paper copies of SPDs for future reference.

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Whether your SPD is paper or digital, be sure to include the effective date.

## In Perspective

When it comes to benefits, SPDs should be one of the most valuable tools participants have. All too often, however, SPDs are difficult to understand and hard to use. Treating your SPDs as the communication tools they were originally intended to be — rather than a mechanism to protect your plan in the event of a lawsuit — can increase the value of your SPD and your benefits to you and your plan participants.

<sup>1</sup> Non-ERISA plans are not subject to SPD requirements.

<sup>2</sup> Code of Federal Regulations (CFR) 29 §2520.102-2: Style and format of summary plan description, [http://edocket.access.gpo.gov/cfr\\_2002/julqtr/29cfr2520.102-2.htm](http://edocket.access.gpo.gov/cfr_2002/julqtr/29cfr2520.102-2.htm).

<sup>3</sup> <http://www.humanfactors.com/downloads/jun02.asp>

<sup>4</sup> <http://literacyprojectfoundation.org/>