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Why a Wrap Plan Document? What Welfare Benefit Plan Sponsors Need to Know

By John Lucas and Scott Williamson

A wrap plan document combines and incorporates some or all of an employer's group insurance policies and contracts that cover employee welfare benefits.

Most welfare benefit plans are subject to the Employee Retirement Income Security Act (ERISA), which requires that a welfare benefit plan be established and maintained pursuant to a written document. ERISA also requires specific, express provisions to be part of the plan document.

Oftentimes, plan sponsors look to their insurance company policy or contract as their *plan document*, but doing so is incorrect and creates problems, as the documents are almost always incomplete by ERISA standards. Group insurance policies are written to cover the legal needs of the insurance carrier—not to satisfy ERISA requirements or to provide legal protection to the plan sponsor.

There are two overarching practical reasons for adopting a wrap plan document:

1. The wrap plan document will contain important and explicit language covering the plan sponsor's legal obligations, discretionary powers, benefit limitations compared to the policy, and power to amend and/or terminate the plan. For ERISA purposes, the wrap plan document fills in the compliance gaps where coverage documents fall short.
2. Adopting a wrap plan document enables the plan sponsor to collapse Form 5500 filings (life, LTD, medical, dental, vision, etc.) into a single filing, thus eliminating much of the form preparation time and expense and the potential for multiple late-filing penalties.

Some plan sponsors think they can file multiple welfare benefit plans on a single Form 5500 filing in the belief that comparable benefits can be consolidated without a wrap plan document. This line of thinking is wrong. Without a written wrap plan document that combines the benefits into a single plan, multiple filings are required. If discovered in an audit or review, the IRS or DOL can impose missed filing penalties and take corrective action by rejecting the filing and requiring that each of the plans refile separately for all prior years. In the absence of a wrap plan document that combines the benefits into a single plan, the DOL will assess penalties based on each policy or program separately.

Wrap SPD

First, let's make one thing clear: the plan document and the SPD are not the same thing, and yes, you need them both. Some drafters will combine the SPD and plan document into a single document.

This is unwise for two reasons:

1. Some courts have objected to the idea that a document can summarize itself.
2. The SPD has a completely different focus and tone than the document. The SPD is supposed to be distributed to participants and written so that they can understand it.

Common Misperceptions

1. **The Certificate of Insurance is the SPD.**
   False, often the insurance booklet provided by an insurer or TPA will contain coverage descriptions but will specifically state that it is not intended to be an SPD. These preprinted marketing materials do not incorporate all required ERISA disclosures.
2. **The Wrap SPD by itself meets the SPD requirements.**
   Not true, the wrap SPD combines the various benefit program communications and wraps them with ERISA-required language. It ties the benefit booklets together and adds all of the employee/participant disclosures required to meet the plan sponsor's ERISA employee communication obligations. When delivering the wrap SPD, the sponsor should also attach the insurance booklet.
3. **The employer is not responsible for filing the Form 5500; the insurer or the accountant is responsible for filing the 5500.**
   It is the responsibility of the plan administrator/sponsor (not the TPA) to timely file the Form 5500. This means the sponsor is on the hook for any late-filing penalties.

4. **It is the insurance carrier's responsibility to draft or deliver the SPD.**
   Not true, the plan administrator/employer (not the TPA) is responsible for providing the SPD and paying penalties relating to nondelivery.
5. **Small employers don't need to comply with SPD requirements.**
   ERISA SPD requirements apply to most plans regardless of the number of employees/participants covered.

Penalties

Wrap Plan/SPD Nondelivery Penalties—Failure to distribute a wrap plan document/SPD within 30 days of a request from a participant or beneficiary can result in a penalty of up to $110/day for each violation. It can also trigger a DOL audit. With increased DOL staffing in recent years, more companies—large and small—are being audited.

Late Form 5500 Filing Penalties for each ERISA Plan—The IRS penalty for the late filing of a Form 5500 is $25 per day, up to a maximum of $15,000. The DOL maximum penalty for a late filing is $2,140 per day for assessments after January 2, 2018 (subject to annual increases), with no maximum. Put simply, failing to properly address and document multiple welfare benefit programs under a wrap plan document can result in costly penalties as it may result in the failure to properly comply with the IRS Form 5500 filing requirements.

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