

HEALTH WEALTH CAREER

ENHANCING MANDATED PLAN DISCLOSURES

FOR PARTICIPANTS AND
SPONSORS

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KEY CONCLUSIONS

1. Disclosures burden sponsors, and this can discourage smaller employers from providing benefits.
2. Litigation and legal precedents lead sponsors to produce disclosures focused on mitigating legal risk and on compliance, rather than on participant understanding.
3. Often, particularly because of 2, above, disclosures are not user friendly and as a result participants do not use them.
4. There are steps the Department can take, to relieve the burden on sponsors and produce more useful disclosures for participants.

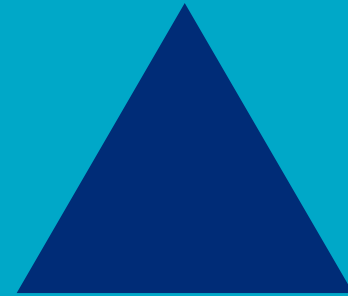
MERCER RECOMMENDATIONS TO REDUCE THE BURDEN AND IMPROVE DISCLOSURES

1. Amend ERISA to restore the original purpose and status of SPDs (see Advisory Council report from 2005), to have:
 - the SPD be a summary,
 - the SPD include references to the plan document,
 - the plan document contain the full details, and
 - the plan document govern in disputes/conflicts.
2. Provide models for structure and content, as well as model/safe harbor language, to serve as a foundation for compliant SPDs and other notices.
3. Require readability measures for SPDs and other notices, at a 10th- or 11-grade level, using a readily available measure, such as Flesch-Kincaid or Gunning Fog.
4. Amend ERISA to provide exemptions or otherwise lighten the burden on smaller sponsors, so that the disclosure burden does not discourage them from sponsoring plans.

MORE ON MERCER'S RECOMMENDATIONS

- These recommendations touch on health and welfare plans, as well as retirement.
- On page 15, we have provided our perspective on the relative benefits and burdens of each recommendation, for participants, sponsors, and the DOL.
- Following our recommendations on page 15, we have reiterated some of the recommendations and added more detailed suggestions.
- We note that several of our recommendations reiterate recommendations cited in past Advisory Council reports from 2005 and 2009.

YOUR QUESTIONS



MERCER'S RESPONSES TO YOUR QUESTIONS

- **Question A:** Are there duplicative disclosure requirements and/or specific disclosures that could be eliminated or combined to relieve the burden on the plan sponsor and/or the participants/beneficiaries?
- **Answer:** Consider combining the annual funding notice and the annual personal benefit statement as one required notice.

For retirement plans, the other notices are generally appropriate. Because events trigger some notices, they cannot be combined. Notably, the deadline for Summaries of Material Modification (SMMs) is too long after the change for SMMs to be useful, as noted in the Council's 2005 report.

MERCER'S RESPONSES TO YOUR QUESTIONS (CONT.)

- **Question B:** Is the content of the disclosures understandable and are there specific recommendations and examples that can be provided to improve the communication of the content in existing disclosures?
- **Answer:**
 - For all notices, add a callout box on page 1, titled “Why This Notice?” and briefly explaining the intent of the notice (DOL to provide a model).
 - For the annual funding notice, use pie charts to indicate the funding level more readily.
 - For all notices, provide model formats that are easy to scan/skim, so that participants become familiar with the notices and must not learn to decipher new formats if they change employers.

MERCER'S RESPONSES TO YOUR QUESTIONS (CONT.)

- **Question C:** Are disclosures readable in accordance with federal plain language guidelines?
- **Answer:** Sometimes they are, sometimes they are not. To ensure that more of them are, we recommend that DOL:
 - Require that sponsors ensure that disclosures score a 10th- or 11th-grade level on a standard readability index, such as Flesch-Kincaid or Gunning Fog.
 - Provide a glossary of simpler terms to use that would be compliant, in place of plan terms that are unfamiliar to most participants (for example, allow “earned” instead of “accrued”).
 - Provide improved model notices, that are more clearly written and formatted.
- **Question D:** Are the disclosures valuable to users and are the disclosures material to a participant’s understanding of the plan and their decision making?
- **Answer:** The disclosures are only valuable:
 - When participants understand why they are receiving the disclosure, especially when it is a notice required in response to a plan change or other event.
 - When participants can access the disclosure on demand, such as online, in response to an event or question arising in the participant’s life.

MERCER'S RESPONSES TO YOUR QUESTIONS (CONT.)

- **Question E:** When should disclosures be made to participants to optimize the objective of the specific disclosures?
- **Answer:** Disclosures that announce plan changes should be made in advance of the plan change, so that participants can take appropriate action. Even if the change does not permit the participant to make changes *within* the plan, the plan change might prompt the participant to make other changes, such as changes to the investment allocation of retirement assets outside the plan.

Disclosures that describe plan or benefit statuses, such as the annual funding notice and the annual benefit notice should be made within 90 days of the date of the status the notice describes, so that the information is timely.

Disclosures that document the plan but do not address changes or the status of the plan, such as the SPD, should be updated more often than currently required, and the disclosure should always clearly note the effective date of the described provisions. Ideally, SPDs should be updated annually.

MERCER'S RESPONSES TO YOUR QUESTIONS (CONT.)

- **Question F:** Should the disclosures indicate “Action Required”; “Action Requested”; “No Current Action Required”; “For Information Purposes Only” or other introductory comments to inform participants of their purpose?
- **Answer:** Yes, this proposal is a good idea, combined with our suggestion to add a “Why This Notice?” callout.
- **Question G:** Would a ‘Summary’/Quick Start Guide” to disclosures help achieve the above objectives?
- **Answer:** While the separate disclosures could all be improved by introductions and putting the details in context, an overall summary or guide to all notices would not generally be helpful, if this approach is what you are suggesting.

Participants do not want to understand what all the different notices are and when they get them, although this summary is useful for sponsors. Participants simply want to understand the plan.

MERCER'S RESPONSES TO YOUR QUESTIONS (CONT.)

- **Question H:** What is/are the most effective and efficient methods of design and distribution?
- **Answer:**
 - For participants, disclosures related to an event such as a plan freeze or termination should be delivered by mail. E-mail, website, and smart phone notifications could supplement the paper mail announcement to ensure the disclosure is not overlooked.
 - For disclosures that are not related to an event, such as SPDs and annual funding notices/personal benefit statements can be posted online for participants with access. A mailed notification that the disclosure is available online can be sent to the participants. Hard copies would need to be sent to participants who would not have online access. The mailed announcement should be supplemented with e-mail, website, and smart phone notifications that the disclosure is available.
 - For online disclosures, the ideal format for participants is as a website with robust navigational tools and a search tool. If a website is beyond a sponsor's resources, a "clickable" PDF of the disclosure, with navigational features and working links for cross-references and tables of contents is the next best choice. In all cases, the same content should also be available as a printed document or non-clickable PDF.
 - See our recommendations on pages 16 to 22 for more details on the most effective design and distribution methods.

MERCER'S RESPONSES TO YOUR QUESTIONS (CONT.)

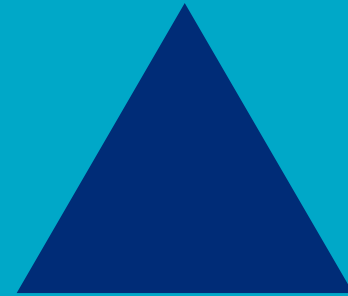
- **Question H:** What is/are the most effective and efficient methods of design and distribution?
- **Answer (continued):**
 - For sponsors, the relevant issue is the methods used to produce and distribute effectively designed disclosures efficiently. Because most sponsors are experts in their plans but not experts in production and distribution methods, Mercer generally recommends engaging a specialist partner to handle production and distribution. To minimize the burden on the sponsor, the specialist should:
 - Deliver drafts to the sponsor for review in a familiar, easy-to-use format, such as in Microsoft Word, where the sponsor's writers/reviewers can easily revise the drafts, track changes, and compare previous drafts.
 - Use content management tools that the specialist manages, to automate the re-use of identical text to ensure consistency, without the sponsor having to learn the technical ins and outs of these tools.
 - Use automated layout/production tools, to efficiently produce easy-to-read print layouts, PDFs, clickable PDFs, or websites, as needed by the sponsor.
 - For smaller sponsors, who are not able to engage a specialist partner, DOL models available in an easy-to-adapt format can help reduce the burden.

MERCER'S RESPONSES TO YOUR QUESTIONS (CONT.)

- **Question I:** How do the above considerations differ between small, medium and large single and multiemployer plans?
- **Answer:** The features that make the disclosures the best for participants do not vary based on plan size or type. But the burden on sponsors increases significantly as the number of plan participants decreases, driving up the per capita cost of each disclosure.

The best way to address this challenge is to have the DOL provide more safe harbor models for the structure, required content, and actual text of each required disclosure, as editable documents that sponsors can easily adapt. A further improvement would be having simpler requirements for the disclosures for small sponsors.

RECOMMENDATIONS



RECOMMENDATIONS WITH THEIR BENEFITS & BURDENS

RECOMMENDATION	BENEFIT FOR PARTICIPANTS	BENEFIT / BURDEN FOR SPONSORS	BENEFIT / BURDEN FOR DOL
Amend ERISA to ensure SPDs serve as summaries, and do not take precedence over plan documents	SPDs that are less detailed, but easier to read/less legalistic	SPDs that are easier to produce and create less risk	Significant undertaking, to change the legislation. But could benefit both participants and sponsors, so potential win/win
Provide models for structure and content, as well as model/safe harbor language, to serve as a foundation for compliant SPDs and other notices	Clearer documents, and disclosures that are more consistent between sponsors, improving understanding	Documents that are easier to produce with less risk because they are based on approved models	Significant undertaking to create models. One major challenge will be getting stakeholders to agree on what is a good model, as tastes vary
Require readability measures for SPDs and other notices, at a 10th- or 11-grade level	Documents that are measurably easier to understand	Slight added burden, to test and revise documents to comply with the standard, but benefit will be improved participant understanding	Seems to be a simple step, and seems to be within DOL jurisdiction to add this requirement
Propose legislation to amend ERISA to lighten the burden on smaller sponsors, so that the disclosure burden does not discourage them from sponsoring plans	Presumably better for employees to have a benefit, with less robust disclosures, than to have no benefit at all	Reduced burden, but would the different requirements inhibit small sponsors from growing bigger?	Significant undertaking to modify legislation when it could be seen as reducing participant protections
Detailed, tactical recommendations on following pages	Improved documents	Most recommendations increase the sponsor burden	DOL would need to document guidance

FORMATTING RECOMMENDATIONS

RECOGNIZING THAT MANY READERS SKIM

Use Prominent Headings

Prominent headings help readers who are skimming find information relevant to them. Keep the headings short to make them easier to skim.

USE CALLOUTS
The callout format draws the reader to critical points that should be highlighted.

Don't Use Unbroken Text

Long blocks of text are hard to skim and are even hard to digest for those reading in full. Break the information up logically.

Use Meaningful Subheadings

Subheadings provide additional support in finding relevant information.

Break Lists and Series Into Bullets

- Bullets help readers digest information that covers a series of ideas.
- Numbered bullets make sequential steps easier to follow.

WRITING STYLE RECOMMENDATIONS

IMPROVING READABILITY AND UNDERSTANDING

Use Active Voice (Not Passive)

To improve understanding, use active verbs that show who does what. Say “The plan administration determines who is eligible,” instead of “Eligibility is determined by the plan administrator.”

Your Benefits: Write in the Second Person

Say, “You are eligible if...,” not “Eligible participants include those who....”

Keep Sentences and Paragraphs Short

Use proofing tools to avoid run-on sentences. Use bullets to break up lists.

Avoid Jargon and Use Simple Words

Use simple terms wherever possible, such as “earned” instead of “accrued.” Say “used” instead of “utilized.” The DOL should consider providing a list of acceptable, compliant simpler words to substitute for technical terms.

MEASURE READABILITY

Use readability
measures to check
the writing.

Consider requiring
an appropriate
grade level for
mandated notices.

STRUCTURE RECOMMENDATIONS

USE AN ORDER LOGICAL TO THE PARTICIPANT

Organize Information Based on User, Not HR Org Chart

- Don't organize the information for the convenience of the sponsor's writers/reviewers.
- Use better structure to avoid confusion – for example, describe the Health Care Flexible Spending Account and the Dependent Care Flexible Spending Account separately, to avoid confusion and unintentional forfeitures.

ORGANIZATION AND NAVIGATION

The organization/structure of an SPD helps users find the information they want, but they also need navigational tools, as noted on the next page.

Organize Information Based on Priority to User

- Move ERISA rights and other required administrative details to the back, as they are not high priority for most users.

Where Possible, Use a Benefits Handbook Format

- The most useful format for participants is to describe all of the benefits in a comprehensive handbook.
- However, sponsors with numerous different plans (such as many pension plans) may not be able to use handbooks, as the combinations could require too many different handbooks.

NAVIGATION RECOMMENDATIONS

HELP READERS FIND THE INFO THEY NEED

Use Short Headings

Prominent headings help readers who are skimming find information relevant to them. Keep the headings short to make them easier to skim.

Use Different Heading Levels to Highlight Sections

Long blocks of text are hard to skim and are even hard to digest for those reading in full. Break the information up logically.

Use Tables of Contents and Menus with Varying Levels

A table of contents or website navigation menu with more than a dozen headings at the same level is too long to skim. Use sections to group related information, and indent tables of contents to make the structure clear.

Consider using a table of contents of sections at the start, with more detailed tables of contents at the start of each section, just covering that section's headings.

REMIND THEM WHERE THEY ARE

In long documents, use cues that help readers know where they are in the document.

Use section names in headers and footers, and section cues such as breadcrumb trails in websites.

CONTENT RECOMMENDATIONS

MAKING TECHNICAL INFO RELEVANT

Include at-a-Glance Overviews

- Include a short list of the key facts of the plan at the start. This can address a large percentage of the questions participants have.
- Typically, we use a two-column table, as this layout is easy to scan for this overview.

Uses FAQs for Common Topics

Not Suitable for at-a-Glance Overviews

- A short set of FAQs can address very common questions that don't easily fit into an at-a-glance format.
- A longer set of FAQs, perhaps based on a DOL model, could reinforce information that is presented in a format other than FAQs.
- However, we generally don't recommend an FAQ format for the entire SPD, because questions used as headings are much longer than non-question headings, which makes the SPD and the table of contents harder to skim.

**CONTENT THAT
MAKES THE SPD
USEFUL**

**Beyond the detailed
plan provisions, add
content as noted
here to summarize
the summary in
useful ways.**

CONTENT RECOMMENDATIONS (CONTINUED)

MAKING TECHNICAL INFO RELEVANT

Provide Life Event Summaries

- We recommend a section organized by key life events, listing the benefits and the actions or considerations appropriate for that benefit based on the event.
- We don't recommend attempting to organize the entire SPD based on life events. Too much of the information can't be fitted into that structure, so the forced fitting would result in a structure that made information hard to find.

**CONTENT THAT
MAKES THE SPD
USEFUL**

**Beyond the detailed
plan provisions, add
content as noted
here to summarize
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useful ways.**

Include Non-ERISA Benefits in Handbook SPDs

- Participants don't distinguish between ERISA benefits and non-ERISA benefits. To help participants see the full package of benefits and use related benefits effectively, include non-ERISA benefits in the handbook, such as time-off benefits.

Include Examples

- Ensure the SPD includes examples, to help explain how the benefits work. Cover topics such as meeting deductibles, reaching out-of-pocket maximums, earning benefits, vesting with breaks in service, etc.

DELIVERY AND ACCESS RECOMMENDATIONS

LET ME GET IT WHEN I NEED IT

Answers On Demand

Make the disclosures online, so users can get the information when they need it, and make sure users know the disclosures are there and can find them easily.

Access for All Who Need It

Online resources that require an ID and login may not help, when a spouse needs to look up information because the employee is ill or injured. Whenever possible, make information available without requiring a login, for family members and former employees.

Provide an Easy Way to Save/Print

Ensure online information can easily be saved and/or printed.

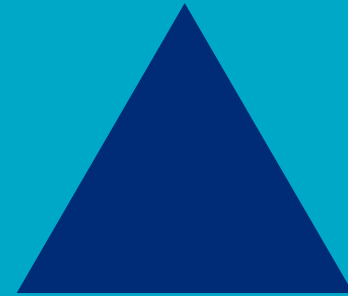
Offer Powerful Search

Benefits information is often long and detailed. For online resources, provide the most powerful search tools that can be offered, depending on the medium.

**LEAVE NO ONE
BEHIND**

**For those without
online access, or
more comfortable
with print, continue
to ensure that easy
to use print versions
of the same content
are always available.**

BIO AND DISCLAIMER



BILL RUBIDGE

PRINCIPAL

Present Responsibilities

- Bill Rubidge is a Principal in the Communications practice of Mercer's Career business. He has more than 25 years of experience in workforce communications, both as a consultant and on corporate staff.

Experience

- Bill helps clients engage and motivate their teams to effectively work through complex and sensitive changes to organizational structure, operations, compensation, benefits, and HR policies.
- Recently, Bill has been especially active with communications related to pension de-risking. He helped develop and continues to refine Mercer's solution for term vested cashout projects and other de-risking offerings.
- Bill has a unique level of expertise in automating communication development and production. He led the development of Mercer's proprietary SPD tools and methods, providing content management and single-source publishing for SPDs and other long documents.
- Prior to his career in workforce communications, Bill worked in theatre and was a story development executive in motion pictures and television.

Education

- Bill holds a Bachelors in English from Yale University. He is a member of the International Association of Business Communicators.



BILL RUBIDGE
Principal

DISCLAIMER

- This presentation provides only general information in response to the ERISA Advisory Council's request, and is not intended to provide legal or other expert advice on any of the subjects mentioned. Mercer's perspective on these topics, as they relate to individual plan sponsors and participants, would be specific to those particular sponsors and/or participants, and might differ from the general information presented here.

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TOMORROW,
TODAY