

June 6, 2017

Terence Dailey testimony to U.S. Department of Labor's ERISA Advisory Council

**“Reducing the Burden and Increasing the Effectiveness of Mandated Disclosures with Respect to Employment–Based Health Benefit Plans in the Private Sector”**

Introduction

- Partner with Mercer and serves as a compliance resource for health and welfare clients of Mercer.
- Mercer Health & Benefits generally provides consulting services to medium and large employers across the country.

General Feedback

- Employers are administratively burdened by disclosure requirements applicable to health and welfare plans and feel participants are not well served by required disclosures
- Participants generally do not read or value required disclosures
- Required disclosures are not accomplishing goals of ERISA disclosure scheme

Elimination of Summary Annual Report (SAR) for health plans not already exempt

- SARs do not provide useful information or value for participants – not meeting goals for SARs
- Hardly ever read by participants and not worth administrative burden on employers to produce and distribute
- For insured plans, the required information about the insurance carrier is already in the SPD; total premiums paid is meaningless to participants and doesn't provide any useful information on the financial situation of plan
- Would recommend eliminating SAR entirely for non-exempt health plans or possibly consider keeping SAR requirement for plans with contributions held in a trust
- If Department favors mandating disclosure of information currently in SAR, such information could be provided in other annual notices or in the SPD

#### Annual Notice Consolidation and Formatting

- Consolidation and streamlining required notices would be a welcome improvement
- Notices are often included in legal notices section of Open/ New Hire Enrollment materials and not read or valued by participant
- Not all required notices are required to be disclosed at same time or same frequency
- Employers would welcome single notice with condensed/streamlined language disclosed at single point during year
- Participants would benefit from updated, more user friendly language written in practical terms and updated periodically by DOL

#### SPD Formatting and Method of Delivery

- Due to increasing complexity of health plans and compliance obligations, SPDs have become long, complex documents often over 80-100 pages

- SPDs no longer serve as an easily understood summary of plan terms, with the result that SPDs do not effectively serve their ERISA purpose and have a short shelf life
- Most participants don't read entire SPD, but rather use SPD on event-driven basis
  - For example, ... [birth of a baby? Taking a leave—am I covered?]
- Permissive use of executive summary/quick reference guide with links or instructions on how participants can obtain further information would be a more effective communication tool, easier to navigate and more in line with how people use info today; it would also be easier for plan sponsors to maintain
- Should be user-friendly with key information provided – a model from Department would be helpful to plan sponsors
- To be effective, should be developed in connection with updated electronic distribution rules. In today's world, one way of sending a simpler, summary document is to embed links to the material summarized for those who want more detailed information. That way, rather than summarizing all of the plan's subrogation rules, for example, there could be a paragraph about what subrogation is, with a clickable link for the small minority of readers who are looking for details about those rules.
- Employers would not welcome another document requirement that simply adds to the current line-up(SBC, SPD and Executive Summary doc), so any new document requirement should be permissive or Department should alleviate other document disclosure requirement
- The administrative burden of preparing SPDs could also be lessened by the Department providing condensed, user-friendly model language for certain SPD sections such as claims procedures (similar to ERISA rights language)