

## Date of Testimony

June 6, 2017

## Name of Individual Providing Testimony

Anthony J. Sorrentino

SilverStone Group Incorporated

Principal/General Counsel

[tsorrentino@ssgi.com](mailto:tsorrentino@ssgi.com)

## 2017 Advisory Council Issue Statement

### ***Reducing the Burden and Increasing the Effectiveness of Mandated Disclosures with respect to Employment-Based Health Benefit Plans in the Private Sector***

(More specifically, the responses are to address three proposals: (1) the elimination of the Summary Annual Report (SAR) requirement for health benefit plans not already exempt; (2) the consolidation of each of the various annual notices into a single annual notice issued in a standard format, and (3) the modification of the Summary Plan Description (SPD) requirements to allow a short resource reference tool updated annually (this tool would guide participants and beneficiaries to source materials to answer any questions regarding the plan's contents, their rights, and additional important information.

## Executive Summary

**(SARs):** With respect to **the elimination of the SARs**, the information required in the document (funding and insurance information, basic financial information, rights to additional information, and offer of assistance in Non-English Language) is largely misunderstood by plan participants, or is information that can (or should) be incorporated into other documents. More specifically, information related to the total premiums paid (insured plans) is somewhat irrelevant to the plan participant when communicated without other key information. Also, most "mid-size" plans no longer utilize a trust arrangement, therefore, do not (technically) have plan assets, and are thereby exempt from such reporting,.....which was not the case many years ago when most large plans utilized a trust mechanism.

**(Annual Notices):** With respect to the potential **consolidation of each of the various annual notices into a single annual notice issued in a standard format**,.....as compliance requirements continue to mount with the passing of more and more healthcare legislation, we question why each and every regulatory pronouncement is worthy of a separate and distinct annual notice. Much of the content of such notices is boilerplate information, that when issued separately, is extremely duplicative. Whether the notice addresses HIPAA Privacy Notices, Notice of Availability, FMLA, USERRA, CHIP, Medicare Part D or

WHCRA, much of the verbiage could be consolidated for ease of administration, as well as reduction of cost for plan sponsors. In addition, if plan participants received just one annual notice, they would be more apt to actually read (and comprehend) the contents of the document.

The responses to our survey of selected clients on this topic supports this assertion (see infra).

**(SPDs):** When ERISA was passed in 1974, most employers offered one medical option. Today, two or even three options are the norm.....plus a menu of life, dental, vision, EAP, FSA, LTD, STD, and voluntary plans that may be subject to ERISA.

In 1974, a medical SPD was a small, 5x7 pamphlet. Since then, laws like FMLA, COBRA, HIPAA and ACA have been passed and all required language to be added to the SPD. Medical SPDs have grown to 75 to 100 double-sided, 8 1/2 x 11 pages.

It was common practice through the early 2000's that insurance carriers would print supplies of books for employers to distribute. Now, most carriers no longer provide the SPDs, and that leaves employer plan sponsors to print and distribute the booklets.

Since carriers no longer print documents, their quality control with making changes is virtually gone. When the carrier bore the brunt of printing, they would provide Summaries of Material Modification for minor changes. Now, between constant regulatory changes and carriers revising template documents, SPD booklets are restated every year. Rather than training customer service employees how to read amendments, insurance carriers (those that continue to offer such service) simply reissue the entire booklet for minor changes, leaving the employer to hire an attorney to create an SMM or forcing them to print and distribute entire books every year.

Originally in 1974, ERISA regulations set forth timeframes by which employers are required to restate and incorporate changes into the SPD every 5 years, or every 10 years if there are no changes. Back then, it was reasonable to expect a plan could go 10 years without a change.

In addition, the manner of communicating (the oversize) SPDs has become more complicated due to the length and content of the document, and electronic medium regulations have not necessarily kept up with the needs and technological advances available to plan sponsors.

The responses to our survey of selected clients on this topic supports this assertion (see infra).

### **Supporting Client Survey Data (Summarized)**

As part of the preparation for testimony on this year's issue statement, we surveyed 6 of our mid to large size plan sponsors, and asked them to respond to questions regarding their compliance process as it pertains to the topics at hand, as well as give some indication of the cost (in man hours and dollars), and any feedback from employee plan participants. We received very little feedback on the topic of

SARs, however we did receive substantial feedback on the topics of unified notices and SPDs, which we have utilized to formulate our suggestions for consideration by the Advisory Council. Below is a summary of client responses, by topic:

#### Notices:

There was a wide range of responses with regard to the creation and distribution of annual notices. Common to all respondents was a desire to unify the notices into one mailing for purposes of saving on time and money in the distribution process (whether distributed by paper or electronically).

Those who have most (or all) of their employees available through electronic access incurred the least amount of time and money, however, it is rare that all employees have such availability, so employers continue to struggle with the delivery of paper notices.

Those that cannot qualify under the electronic standards for distribution continue to utilize up to 3 people on a fairly regular basis just to accommodate the need for paper notice throughout the year, and have difficulty scheduling such projects due to the sporadic timing deadline of each notice.

In addition, some plan sponsors struggle with the "compliance calendar" as far as knowing when to send what notice, and have to rely on outside vendors for such information. A unified notice procedure that is mailed/sent once a year (preferably at open enrollment when benefits are top of mind) would be welcome.

Costs of printing for those not able to use electronic methods has also risen in the past, particularly for those that cannot absorb the cost into an internal communications department. This outside printing process also slows down the communication effort. Such costs range from \$500-\$5,000.

In general, despite the effort of the plan sponsors, most employee plan participants express confusion as to why they are getting (so many) notices, and forward questions to the Human Resource area as to whether they are supposed to take any action steps related to the notices.....even referring to the paper copies as "white noise".

#### SPDs:

We proposed questions regarding SPDs to our selected clients in such a fashion as to elicit the amount of effort and time expended in the creation (or review) of the documents, the cost of such process, the method of delivery, and finally, a glimpse into employee plan participant feedback.

Without exception, each plan sponsor lamented the length and complexity of the document, in relation to the "perceived value" to the plan participant. The answers to the most common questions are either not found in the document, or the document is so overwhelming, that plan participants simply don't use it. Indeed, the SPD has replaced what used to be known as the "plan document", and now is anything BUT a "summary".

Delivery of the document carries similar concerns as that enumerated above in relation to annual notices. Those that are able to communicate the document in an electronic fashion are far less burdened than those that cannot. A relaxation or amendment of the regulations governing this type of communications is in order, as plan participants have no interest in receiving benefit information in anything other than electronic format.

The range of costs to prepare (or review) SPDs had exponentially increased as the number of plan offerings has (and will continue) to rise as options increase with more plan flexibility being necessary to accommodate a more diverse workforce.

Most plan sponsors indicated that their range of full time employees dedicated to creation/review/distribution/administration of SPD-related responsibilities was in the range of 1/2 to 2 full time employees, depending on the funding methodology of the plan and the amount of services outsourced to third parties.

All plan sponsors felt that a shorter, less technical, and more easily-accessible document would increase plan understanding, employer usability, and in the long run, make for more efficient plan utilization and lower plan costs.