



“Wrap” Plan Documents to Simplify ERISA Compliance

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Welfare Benefit Plan Documentation is a Legal Requirement

Proper documentation of employee welfare benefit plans has always been important. In addition to saving employers countless administrative headaches and huge monetary penalties, ERISA and HIPAA regulations also make it clear that if plans are not properly documented (or worse, have no formal documentation at all), the government will dictate what the rules are for the plan. Plan sponsors now have another reason to review and update welfare plans — new and proposed Cafeteria Plan regulations effective for plan years starting next year.

Isn't My Insurance Policy Enough?

Plan sponsors generally have been very careful to satisfy these documentation requirements for their pension, 401(k) and other retirement plans. Many employers, however, do not have the requisite documentation for some or all of their welfare plans. Many of these programs are offered via insurers and employers typically have an insurance policy or contract provided by the insurer to describe the benefits under their plans. They may also have a “premium only plan”, offered by AFLAC or an FSA administrator. These documents rarely, however, include all of the information required in a plan document. They also may not be frequently updated to reflect changes in coverage or applicable law. Similarly, benefit booklets or certificates rarely suffice as Summary Plan Descriptions (SPDs). Financial penalties typically begin at \$110 per day of infraction and plan administrators may be held personally liable.

Review of Requirements Imposed By ERISA

ERISA specifies that all plans, regardless of the number of participants, must be established and maintained pursuant to a written document containing express provisions: (1) Naming one or more plan fiduciaries with authority to control and manage plan administration; (2) Describing a procedure for establishing and carrying out a funding policy; (3) Describing plan procedures for allocating plan operation and administrative responsibilities; (4) Describing a procedure for and identifying who can make plan amendments; and (5) Describing the basis on which payments are made to and from the plan. ERISA imposes strict fiduciary standards on persons responsible for maintaining and administering welfare benefit plans.



What Is a “Wrap” Plan?

Following the passage of ERISA, many plan sponsors reviewed their insurance policies, and other plan documentation, and found them insufficient for ERISA purposes. Many took the opportunity to adopt what practitioners often refer to as a “wrap” plan document with the following purposes:

- To satisfy ERISA’s plan document requirements by supplying information often missing from insurance policies, and
- To simplify plan reporting requirements under ERISA’s reporting and disclosure rules.

A “wrap” plan document is simply a document that wraps around, and incorporates by reference, the contracts or booklets provided by insurance carriers for the benefits they provide, and contains text to describe the programs (such as cafeteria plans) that are not described in them. By wrapping around existing policies, it creates a single employee welfare benefit plan. The number of insurance policies, or other written agreements currently in force, and whether they are insured, self-insured, funded through a trust, or paid from the general assets of the employer are of little consequence. The critical factor is simply that some writing describing the plans actually exists.

What are the Advantages of a “Wrap” Plan?

- **SINGLE PLAN YEAR:** The primary advantage of the consolidated approach is that it can establish a single “plan year” for all of the coverages being consolidated. The plan year for the consolidated plan can be arbitrarily chosen, and need not coincide with any or all insurance policy anniversary dates, policy years, or even the plan sponsor’s tax year (usually the most selected date).
- **SINGLE ANNUAL REPORT:** If a consolidated wrap around approach is used, only a single Annual Report (Form 5500) need be filed with the IRS for the newly created consolidated welfare plan, thereby reducing administrative costs.
- **SINGLE SPD:** Properly drafted wrap around documentation may also include all of the other information required to be provided in a summary plan description for all of these programs, and to comply with other applicable requirements under ERISA, HIPAA and COBRA.
- **OPPORTUNITY FOR COMPLIANCE SELF AUDIT:** The process of adopting and consolidation to a wrap plan approach can also provide the plan sponsor with an excellent opportunity to
 - Review existing benefit plan documentation, and even plan design, if appropriate.
 - Pull plan documentation together so it is readily available and in one place in the future (for easy reference and future revisions).



- Reveal whether the plan is being operated in accordance with its express terms. Failure to operate a plan in accordance with its terms can raise a host of issues, including potential discrimination and even possible breaches of fiduciary duty by the plan administrator.
- Review the division of fiduciary functions and responsibilities among those administering various benefit programs. Many employers have discovered the hard way that concentrating fiduciary and administrative responsibility in a few knowledgeable individuals is preferable to having benefit duties spread too widely (or providing inadequate authority to the individuals with the responsibilities).

The disadvantages of the consolidated approach generally involve either the nature of the employer's workforce, or the administrative expense and/or timing involved to restructure various plans into one consolidated welfare plan.

Next Steps

Each plan sponsor should review its welfare benefit plan documents to ensure that: (1) they accurately describe the welfare benefits offered, (2) the benefits as intended and (3) they comply with various legal requirements (old and new). In the event they are not insufficient for ERISA purposes, then a consolidated welfare plan may just be what is required to fill in the gaps and ensure that the welfare plan documents are ERISA-compliant.

Editors Note:

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