



Plan Sponsor Council of America
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ERISA Advisory Council Testimony

Presented by
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I am providing this information to you solely in my capacity as an individual with knowledge and experience in the industry and not as legal advice – based on my thirty-one years of experience in a plan sponsor role at four different Fortune 500 employers, over four years of experience working in a legal research and compliance role with mostly smaller and mid-sized employers, and three years as an independent benefits consultant. The issues presented here may have legal and tax implications. This presentation is not (and you/others should not use it as a substitute for) legal, accounting, actuarial, tax or other professional advice. My comments are my own and do not necessarily reflect those of any employer, educational institution or trade association I have been employed by or affiliated with, past, present or future. This testimony is solely based on my professional experience prior to joining PSCA.

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“Super-Mini” SPD

- **SPD Use Today:** Some scan, a few read, most exclude from everyday decision-making, often greatest utility is as a non-compliance litigation opportunity
- **Results:** 50+ year failure if goal = understanding benefits provided, eligibility, etc.
- **Plan Sponsor Response:** Some expand to allow for everyday use, others limit to minimize legal exposure.
- **Major SPD Shortcoming:** Legalistic nature of disclosure, length due to requirements; mismatch with literacy and numeracy capabilities of most workers
- **Proposed Solution:** Make “Super-mini SPD” available as an alternative:
 - Minimize text. Focus on notification of eligibility, how to obtain legal details.
 - Issue at hire similar to I-9 processing (acknowledgement, document retention)
 - Issue annually to accompany Summary Annual Report
 - Upload to DOL database as part of 5500 filing, accessible by participants
 - Measure results/create metrics: Pre- and post- issuance surveys, pre- and post- issuance count of plan document request documenting requests for surveys
- **Repeated Notice of Access:** Any/all plan communications/marketing materials must reference specific plan provisions, confirm opportunity to obtain plan document easily and quickly.

404(a)(5) Participant Disclosure

Participant Fee Disclosure:

- Compliance expense – incidence on plan sponsors/service providers, impact (primarily paid by) plan participants
- No one specifically asked for, few read, fewer understand, still fewer will apply information in investment decision-making, only a handful will correctly apply

Recommendations:

- No change at this time. Don't add new expense to participants who aren't using.
- Issue no new regulations. First complete a review of all Executive Order 12866 cost/benefit analysis completed for each regulation effective prior to 12/31/12. If you can confirm success, continue. If not, update or revoke.
- In interim, amend fee regulations to specifically confirm plan expense issues – what can be (cannot be) charged against plan assets, impact of applying fees in the form of per capita and transaction fees, whether compliance and litigation expenses incurred by the plan qualify, and finalize individual account plan fee disclosure requirements for self-directed brokerage and non-Core investments.
- Gather all 404(a)(5) required disclosures in a database searchable by plan sponsors, plan administrators, plan fiduciaries, service providers, participants.