

Benefits Insights

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Clarke & Company Benefits, LLC

Summary Annual Report

The Employee Retirement Income Security Act (ERISA) requires plan administrators—the people who run plans—to give plan participants, in writing, the most important facts they need to know about their retirement and health benefit plans, including plan rules, financial information, and documents on the operation and management of the plan. Some of these facts must be provided to participants regularly and automatically by the plan administrator. Others are available upon request, either for a copying fee or free of charge. The request should be made in writing.

Summary Plan Description

A participant of an ERISA-covered retirement or health benefit plan or a beneficiary receiving benefits under such a plan should automatically receive a summary of the plan, called the summary plan description (SPD). The plan administrator is legally obligated to provide the SPD to participants for free. The summary plan description is an important document that tells participants what the plan provides and how it operates. It provides information on when an employee can begin to participate in the plan, how service and benefits are calculated, when benefits become vested, when and in what form benefits are paid, and how to file a claim for benefits. If a plan is changed, participants must be informed, either through a revised summary plan description or in a separate document, called a summary of material modifications, which must also be given to participants free of charge.

Summary Annual Report

In addition to the SPD, the plan administrator must give participants a copy of the plan's summary annual report (SAR), free of charge. This is a summary of the annual financial report that most plans must file with the Department of Labor. These reports are filed on government forms called the Form 5500. To learn more about the plan

assets, participants may ask the plan administrator for a copy of the annual report in its entirety. If a plan is exempt from the annual reporting requirements (Form 5500), it is also exempt from the SAR requirements. A totally unfunded welfare plan does not have to provide a SAR.

Required Content for the SAR

Department of Labor regulations require that certain categories of information be covered in the SAR. If information is not found in the plan's 5500, it need not be included in the SAR. The SAR should include the categories of information listed below. Sample SAR language can be found on the Department of Labor's website at:

<https://www.dol.gov/sites/default/files/ebsa/employers-and-advisers/plan-administration-and-compliance/form-sar-welfare-plan.docx>.

- **Funding and Insurance Information**—If a plan is uninsured, then the SAR must state the types of claims the plan sponsor is committed to pay. If insured, the SAR must state the type of claims the plan has contracts with insurance carriers to pay, along with the names of the insurers and the annual premium paid.
- **Basic Financial Information**—If plan assets are held in trust or a separately maintained fund, the SAR should include the value of the plan assets at the beginning and end of the plan year, as well as the amount of increase or decrease in net assets. The SAR should also include the amount of total income during the plan year and plan expenses.



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- **Rights to Additional Information**—A statement that the individual receiving the report has the right to request a copy of the full annual report or any part of it.
- **Offer of Assistance in Non-English Language**—Large plans (covering more than 100 participants) which have the lesser of 10 percent or 500 or more covered participants literate only in the same language, and small plans (covering fewer than 100 participants) if 25 percent or more of the participants are literate in only the same language must be given an offer of assistance in writing in the non-English language.

Who Should Get an SAR?

SARs should be provided to participants covered under the plan and to those who receive an SPD. The distribution methods that apply to an SPD also apply to a SAR. That means that electronic distribution is permissible. SARs must be given within nine months of the end of the plan year. If a 5500 extension was granted, the SAR is due within two months after the close of the period for which the extension was granted.

What about Disclosure Requirements?

Criminal penalties may be imposed on an individual or company that willfully violates ERISA disclosure requirements. The penalty could be a fine as steep as \$100,000 to \$500,000 and imprisonment for up to 10 years. Plan administrators who do not provide a response to a request for a copy of an SAR may be liable for \$110 per day in penalties. Participants and beneficiaries can also bring lawsuits to enforce provisions of ERISA.