

BENEFIT NEWS BRIEFS

Follow Up on Distribution Dates for SBCs

In follow-up to [Client Bulletin 2011-53](#), the Research Department spoke informally with an EBSA staff member working on the "4-page" Summary of Benefits and Coverage (SBC) *Proposed* regulations and *Proposed* templates.

The *Affordable Care Act (ACA)* called for the SBC regulations to be released by March 23, 2011, so these regulations are, understandably, "late" by about six months. Plan Sponsors can only be hopeful that there will be some delayed implementation date to allow enough time to prepare their SBCs. The UAS Research Department has prepared a test run and it takes longer than the *Preamble* estimates to prepare an SBC.

Before reviewing the distribution rules under the *Proposed* regulations and summarizing our conversation with the EBSA staffer, one item of interest that came to light after working with the template is that the formatting requirements in the *Proposed* regulations and the SBC *Proposed* template instructions do not agree regarding the required font type. The *Proposed* regulations only require the font type "*not include print smaller than 12-point font*"; whereas, the Instructions specified "*12-point Times New Roman.*" The *Proposed* templates provided by the EBSA use 12-point Garamond type and the font used makes a difference. We have provided comments to the EBSA regarding this discrepancy.

SBC Distribution Rules For GHPs To Participants And Beneficiaries

The *Proposed* SBC regulations at *ERISA* Section 2590.715–2715(a)(1)(ii) govern the distribution of SBCs to participants and beneficiaries by group health plans (GHPs), including multiemployer GHPs. What is missing is any indication if all of these requirements "kick in" on March 23, 2012 or if they only apply once the first SBC is distributed at renewal. It is hopeful that these type of ambiguities will be worked out once comments on the proposed SBC regulation are reviewed by the EBSA.

As the current rule is written, a GHP is required to distribute the SBC under the following circumstances:

- **With Written Application Materials OR First Date of Eligibility**
The SBC must be provided **as part of any written application materials** that are distributed by the plan or issuer for enrollment. If the plan does not distribute written application materials for enrollment, the SBC must be distributed no later than **the first date the participant is eligible** to enroll in coverage for the participant or any beneficiaries.

If there is any change to the information required to be in the SBC before the first day of coverage, the plan or issuer must update and provide a current SBC to a participant or beneficiary no later than the first day of coverage.
- **Special Enrollees**
The plan or issuer must provide the SBC to **special enrollees** (as described in Section 2590.701–6 of this Part) within seven days of a request for enrollment pursuant to a special enrollment right.
- **Renewal Coverage**
If the plan or issuer requires participants or beneficiaries to renew in order to maintain coverage (for example, for a succeeding plan year), the plan or issuer must provide a **new SBC when the coverage is renewed**. The second example is what will apply to most multiemployer GHPs.
 1. If **written application is required** for renewal (in either paper or electronic form), the SBC must be provided no later than the date the materials are distributed.
 2. If **renewal is *automatic***, the SBC must be provided no later than 30 days prior to the first day of coverage under the new plan year.
- **Upon Request**
A plan or issuer must provide the SBC to participants or beneficiaries **upon request**, as soon as practicable, but in no event later than seven days following the request. The SBC must be provided even if a recent mailing was just completed.

Informal Conversation with EBSA

The staffer was most helpful and noted the EBSA had just posted a Word version of the SBC template online. The document is available by "[clicking here](#)" or at: <http://www.dol.gov/ebsa/SBCSampleCompleted.doc>. She indicated individuals commenting on the *Proposed* template could use the document to submit suggested "redline" changes.

The discussion turned to some hypothetical questions the Research Department had sent in to the EBSA during this current comment period about SBC distribution dates under the *Proposed* regulations. The staffer agreed that the regulations are "*not exactly clear*" on some aspects of the distribution dates for the SBC.

She emphasized that these were only **PROPOSED** regulations and templates. She also noted that the agencies have specifically requested comments on a number of items. In that light, she also indicated that the *Proposed* regulations were likely to change and most likely will have a phased-in transition period. She also referenced ACA FAQ 1 (link below) which emphasizes that the agency is interested in "assistance" rather than "penalties" for non-compliance. To review the FAQs, see: <http://www.dol.gov/ebsa/faqs/faq-aca.html>.

In most multiemployer GHPs there is no annual enrollment, however, a participant who has worked sufficient hours to maintain eligibility is "*automatically*" reenrolled in the plan at the start of each Plan Year. In that context, the staffer agreed that if the proposed regulation became final the first generally distributed SBC would be due 30 days before the first day of the first Plan Year beginning on or after March 23, 2012. Thus, a plan with a May 1, 2012 Plan Year start date would need to distribute the first SBC 30 days beforehand and so on. (As noted on the previous page of this publication, the regulations call for distribution in "automatic" reenrollment situations to be 30 days before the start of the Plan Year.)

As of now, the safest course would be to provide the SBC in any situation that arose after March 23, 2012 – even if such triggers occurred before the first general distribution date. However, we imagine this, and many other matters will be cleared up before March 23, 2012.

Reviewing the plan (and amendments) for required items to be included in the templates would be a prudent exercise, as well as, preparing the information aforesaid. In the event of changes from the EBSA after the comment period is completed, the template is easy to edit in order to amend your initial draft for those changes.

Plans should not feel rushed to implement the regulation by March 23, 2012 as a delayed implementation date may be granted. The deadline for comments is on or before October 21, 2011. We encourage our readers to submit comments based on your experience to the drafters.

Comments to the Department of Labor

Comments to the Department of Labor, identified by RIN 1210–AB52, can be submitted on or before October 21, 2011 by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* <mailto:E-OHPSCA2715.EBSA@dol.gov>.
- *Mail or Hand Delivery:* Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, Room N–5653, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, *Attention:* RIN 1210–AB52.

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