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SAR Distribution Rules

General Overview

ERISA mandates that if the Plan Sponsor filed a Form 5500, certain details of the 5500 must be disclosed to enrolled and former enrolled Plan Participants. The mandate is met by providing these details within a document the **Summary Annual Report** (SAR).

Distribution Rules

The regulations require the Plan Sponsor to be prepared to prove that it furnished one in a way that was "reasonably calculated to ensure actual receipt," using a method "likely to result in full distribution":

- Hand-delivered to employees at their worksite (merely posting material is not acceptable). Best to keep a log to track receipt
- U.S. mail via first, second or third class only if return and forwarding postage is guaranteed and address correction is requested.
- Electronic media (in accordance with electronic distribution guidelines).
  - Plan Sponsors may send through an email or posting on the plan sponsor's website.
  - *Website Retention.* Covered documents must remain on an internet website until superseded by a subsequent version, but in no event for less than one year.

The DOL Assigned Safe Harbor Provisions *(DOL's regulations 29 CFR 2520.104b-1 lists full set of details)*

- For Participants *with* work-related computer access, electronic distribution can be used without the Plan Sponsor receiving prior consent to send via electronically.
- For Participants *without* work-related computer access, Plan Administrators can issue the SAR via first class mail or handing out in person. Electronic distribution is also an option if the participant affirmatively consents and provides an email address.

SAR Due Date to Plan Participants

The SAR is to be furnished within nine months from the end of the ERISA Plan Year or within two months of the 5500 due date. If the 5500 is extended by 2 ½ months this will also extend the SAR distribution date. It will be due within two months after the extended due date. Here are two examples:

- A Plan with an ERISA Plan year of 1/1-12/31: 5500 is due by the following July 31st; the SAR must be distributed by Sept. 30th.
- The Plan's 5500 is due July 31st and is extended 2 ½ months to October 15th; the SAR must be distributed by Dec. 15th.

Plans that are 100% self-funded (unfunded- funds derive only from general assets) like a FSA-plan are exempt from issuing SARs to participants (see 29 CFR 2520.104b-10)

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Key Questions

Who is a Plan Participant?

- **Answer:** The term "participant" means an enrolled active employee, a former employee enrolled in COBRA or enrolled retiree of the ERISA Plan.

  If the Plan has only one of the following benefits: Business Travel Accident (BTA), Employee Assistance Program (EAP) Plan or Severance Plan, the status of being eligible equates to being eligible (unless the Plan Documents state otherwise).

Should former non-COBRA employees receive the SAR if they were participants during the Plan year, although not at the end of the Plan Year?

- **Answer:** The DOL issued an Advisory Opinion letter (79-64A) implying that SARs should be provided to all of those who were participants during the Plan year.

Are SARs to be furnished if the 5500 is marked as a final report?

- **Answer:** No, however if the following two elements are satisfied to show that ERISA § 502(c)(1) has been violated, then a penalty can be imposed which is: $110 per day.

  (1) the administrator was required by ERISA to make available to the participant the information requested by the participant,

  (2) the participant requested in writing and the administrator failed or refused to provide the requested information within 30 days of the request. Source: *Per 29 CFR §2575.502c-1*

Is there a penalty if the SAR is not disclosed to participants?

- **Answer:** No, however if the following is satisfied to show that ERISA § 502(c)(1) has been violated, then a penalty can be imposed which is: $110 per day.

  - the participant requested in writing and the administrator failed or refused to provide the requested information within 30 days of the request. Source: *Per 29 CFR §2575.502c-1*

Are SARs needed for DFVC and amended filings?

- **Answer:** Technically SARs for DFVC and amended filings should be distributed to the participants. However, distributing SARs after multiple years have passed or after one was already provided for a plan year may cause confusion. Per the reference guide from Thomson Reuters' EBIA, the suggestion is to keep the SAR for DFVC filings on file and distribute upon a request, this would be the same for amended filings. We encourage you to seek the advice of an ERISA attorney to review the Plan's attributes and determine if this course of action should be followed.

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