

ERISA

AS IT APPLIES TO PPI CLIENTS

ACSA & BIEB TRUSTS

ERISA is a federal law that applies to most employers. It establishes a minimum standard of protection for individuals participating in an employer sponsored “employee welfare benefit plan” (Plan). ERISA places specific disclosure requirements on those employers who provide life, disability, medical or dental benefits to their employees. Those requirements will be reviewed later in this document.

Under ERISA, the ACSA and BIEB trusts are considered to be Multiple Employer Welfare Arrangements (MEWA). ERISA disclosure requirements can sometimes apply at the MEWA level, but only where the MEWA qualifies as a “bona fide group or association of employers” under ERISA’s definition of an employer. The ACSA and BIEB trusts would be considered “bona fide groups or associations of employers” only if they demonstrated “commonality of interest” and “control”:

- **Commonality of interest:** requires that both the trusts and the individuals benefitting from trust participation be tied by a common economic interest, besides the provision and receipt of welfare benefits.
- **Control:** requires that participating employers control and direct the activities and operations of the trusts.

The ACSA and BIEB trusts’ participating employers are not related in any way other than trust participation, and they are free to enter or exit the trusts at any time. Furthermore, participating employers exercise no control over the operation of the trusts. Since neither trust qualifies as a “bona fide group or association of employers,”

ERISA applies at the level of the individual participating employers, and not the MEWA level.

Each employer that uses the ACSA and BIEB trusts to provide welfare benefits to its employees is considered by the DOL to have established separate, single employer welfare benefit plans subject to ERISA. The ACSA and BIEB trusts are simply a conduit for providing access to benefits for a number of individual ERISA Plans, and it is the employer who maintains the employer/employee relationship. In addition, an employer may combine insurance benefits obtained through the trusts with other benefits bought directly from insurance carriers, or provided by the employer itself. Therefore, benefits provided through the trusts may only be a part of the employer’s own employee welfare benefit plan.

DOCUMENTS REQUIRED BY ERISA

There are several documents that employers must create in order to satisfy ERISA disclosure requirements: Plan Document, Summary Plan Description (SPD), Summary of Material Modification (SMM), Form 5500, and Summary Annual Report (SAR).

As trust administrator, PPI is required to file a Form 5500 on behalf of both the ACSA and BIEB Trusts. This filing satisfies each participating employer’s obligation to file its own 5500, with respect to those benefits that are provided through the trusts. However, PPI cannot assume responsibility for any of the other ERISA documents. These documents must describe the employer’s employee welfare benefit plan. Benefits provided through the trusts may only be a part of the employee welfare benefit plan created by the employer for its employees.



Furthermore, PPI does not offer legal or tax advice to brokers or clients, and cannot create these documents for the employer. The employer may look to a third party for assistance in establishing and maintaining ERISA policies and procedures and in producing required ERISA documents, but PPI does not provide these services.

Plan Document: ERISA requires that every employee welfare benefit plan be established and maintained pursuant to a written instrument, called a Plan Document. The Plan Document defines the Plan and forms the foundation for the Summary Plan Description (SPD).

The Plan Document must include a description of benefits, eligibility, benefit funding methods, and Plan amendment and termination procedures. The document must designate a named fiduciary Plan administrator (typically the employer), and identify each Plan by name, year and number. Within the Plan Document, different insurance benefits can exist as separate Plans or can be combined into a single Plan. A "Wrap Plan Document" can be used to consolidate separate Plans and avoid duplication of required information.

The Plan Document need not be distributed to employees, but it must be made available upon request. The Plan document is not an SPD Document.

Summary Plan Description (SPD): ERISA requires every Plan to develop and distribute an SPD and a Summary of Material Modifications (SMM), when applicable. The SPD advises Plan participants and beneficiaries of their rights and obligations under the Plan. It must include the Plan name, employer name, type of Plan, type of administration, Plan administrator contact information, legal agent name/address, eligibility requirements, summary of benefits, claims procedures and ERISA rights.

An insurer's booklet-certificate provides almost all of the information needed to create an SPD, and some insurers even include SPD language within the certificate. However, there is specific Plan information that must appear in an SPD, and if this language is not in the certificate, the certificate is not an SPD. Very often, the Plan administrator (the employer) creates its SPD by adding information about its Plan to the certificates provided by each insurer. It is the employer's responsibility to create the "wrapper" that includes the required Plan information and incorporates the carrier booklets.

Summary of Material Modification (SMM): A summary of material modifications (SMM) must be distributed whenever a Plan is amended or whenever changes are required to the SPD.

Form 5500: Every group health Plan subject to ERISA is required to file Form 5500 with the DOL. Exceptions can apply for insured health Plans with fewer than 100 participants. It is the employer's responsibility to determine if Form 5500 must be filed.

As trust administrator, PPI is required to file a Form 5500 on behalf of both the ACSA and BIEBT trusts. Under this Group Insurance Arrangement (GIA), Form 5500 and all required Schedules are filed on behalf of the trusts as a whole. Form 5500 is completed using information provided by insurers or produced by PPI, and includes aggregate information derived from multiple participating employers. Information specific to a particular employer, therefore, is not readily identifiable.

Still, according to Form 5500 instructions, PPI's GIA 5500 filing satisfies each participating employer's obligation to file its own 5500, with respect to those benefits that are provided through the trusts. The employer remains responsible for filing Form 5500 for those portions of its employee welfare benefit plan that are not included in the trust filing (i.e. any benefits that are not administered by PPI). Trust involvement does not mitigate the employer's responsibility to distribute the Plan document, the SPD, the SSM or the SAR.

Summary Annual Report (SAR): If an employer is required to file Form 5500, then it is also required to file a Summary Annual Report (SAR). The SAR provides information about the employer's ERISA Plan (Plan name, Plan number, Plan year), the existence of a cafeteria plan, benefits available through the Plan, how the Plan is funded, and notice of the employee's right to obtain additional information. All of this information is specific to the employer's employee welfare benefit plan.

The SAR also tells employees that they have the right to request a copy of Form 5500. PPI does not, however, distribute copies of its Form 5500 filing to participating employers because it is a very large document that includes data representing multiple participating employers.



A copy of the full annual report can be found at <http://www.dol.gov/ebsa/>. Once there PPI clients and their employees should follow these instructions:

1. Under the EBSA at a Glance – Click on Form 5500 - Informational Copies of 2018 Form 5500
2. Under Quick Links - Form 5500 Filing Search
3. Enter the following search criteria (EIN: 237300650 for ACSA, or EIN: 042782032 for BIEBT) and (PIN: 501) and Search
4. You should see a number of BIEBT Form 5500 filings.
5. The top row contains the most recent filing. This is the 5500 that was filed on behalf of the trust. To verify that a specific employer was included, click on the arrow on the far left, and select Schedule D. Open the PDF and search for “employer”. (edit/find/“employer”)

Because PPI files on behalf of the trusts, the trusts’ Form 5500 filing includes aggregate information derived from multiple participating employers. Although information specific to a particular employer is not readily identifiable, PPI’s GIA 5500 filing does satisfy each participating employer’s obligation to file its own 5500, with respect to those benefits that are provided through the trusts. No similar exemption exists for the SAR. The employer remains responsible for creating its own SAR.

FOR ERISA SERVICES NOT HANDLED BY PPI

ERISA Pros, LLC is a professional services company founded by Bernard Kearse, a health and welfare attorney with over 25 years of experience. Bernard started ERISA Pros to assist employers with the complexities of ERISA reporting and disclosure compliance requirements for health and welfare benefit plans. Mr. Kearse has focused on ERISA for over twenty-five years and has designed, drafted and reviewed virtually every type of employee benefit plan, representing both public and private companies. ERISA Pros compliance specialists have years of experience based knowledge and training in ERISA and employee benefit plans. A proprietary Wrap-Tightsm system of preparing Plan Documents and SPD wrappers is based on industry best practices with the goal of delivering state-of-the-art documents at an affordable cost.

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