



Solution Tool

Preparing for a DOL Audit


Introduction

The Department of Labor (DOL) has broad authority to investigate or audit an employee benefit plan's compliance with the Employee Retirement Income Security Act (ERISA). DOL audits often focus on violations of ERISA's fiduciary obligations and reporting and disclosure requirements. Recently, the DOL has been using its investigative authority to enforce compliance with the health care reform law, or the Affordable Care Act (ACA).

Being selected for a DOL audit can have *serious financial consequences* for an employer. In addition, a DOL audit may negatively affect an employer's normal business operations because the audit process can be both stressful and time-consuming. The best time for an employer to analyze whether it is ready for a DOL audit is before the DOL comes knocking.

Preparing for a DOL Audit

As a general rule, the best way to prepare for a DOL audit of your health plan is to confirm that your plan complies with all applicable federal laws, such as HIPAA and the ACA. It is also important to have documents showing your compliance and to maintain these documents so they are easy to access in the event of a DOL audit. If an employer takes these steps before being selected for audit, it can reduce its exposure to penalties and make the audit process more manageable.



Minimizing the Risk

As a practical matter, an employer has little control over whether it will be audited by the DOL. **However, an employer can take some steps to help minimize its exposure to a DOL audit.** Employers should respond timely to participant questions and requests for information, file Form 5500 accurately and completely, distribute participant notices required by law, and make timely updates to plan documents to reflect current information.

The best way to prepare for a DOL audit is to remain in compliance with the law and establish a recordkeeping system for maintaining all of the important documents relating to your employee benefit plans. **Retaining complete and accurate records** will help move along the audit process and provide an accurate picture of your employee benefits. As a general rule, these records should be retained for seven years.

Compliance Review

Correcting Mistakes

If an employer reviews its health plan's compliance with employee benefit laws and discovers a violation, **there may be a way to address the mistake before the DOL discovers it.** The DOL has self-correction programs for certain violations that an employer discovers prior to being audited: the Delinquent Filer Voluntary Compliance Program and the Voluntary Fiduciary Correction Program.

On top of dealing with the disruption of an audit, employers that are found to be not in compliance with applicable requirements can be subject to penalties. The DOL assesses a **20 percent civil penalty for breaches of fiduciary duty, and may bring civil litigation against fiduciaries for ERISA breaches.** In extreme cases, criminal actions can significantly increase the overall amount of any penalty.

Penalties for Non-Compliance

Navigating a DOL Audit

Every year, thousands of employee benefit plan fiduciaries (including plan sponsors) are selected by the DOL for audit. Knowing how the DOL audit process works will help an employer successfully respond to and navigate an audit.



Audit Letter & Document Request

Generally, the initial audit letter from the DOL will include a request for a list of plan-related documents. Employers that receive audit letters may be surprised and overwhelmed by the number of documents requested by the DOL auditor. It is important for them to maintain employee benefit documents in an organized fashion so they can respond to a DOL audit request in the event this occurs.



Action Items

Once an employer knows that it's being audited by the DOL, there are a number of things it can do to prepare for the investigation:

- Establish a contact person at the company for the investigation
- If desired, secure legal counsel for assistance with the audit process



Deadlines

Typically, the audit letter will request that the documents be provided by a specified date. It is critical to respond by this deadline. Inadequate or late responses could trigger additional document requests, interviews, on-site visits and even DOL enforcement actions.

- Establish a contact person at the company for the investigation
- If desired, secure legal counsel for assistance with the audit process
- Negotiate or clarify the scope of the document request and, if necessary, ask for an extension to the response deadline
- Make copies of all the requested documents for the DOL and review them for accuracy
- If a discrepancy is found while compiling the documents, consider providing an explanation
- Prepare your staff for on-site visits and interviews

Checklist of Commonly Requested Documents

This checklist includes documents that are commonly requested by the DOL during an audit of an employer’s health plan. In addition to maintaining these documents in an easily accessible location, employers should keep records showing that participant notices and other required disclosures are provided in a timely fashion.

Type of Document	Maintained by Employer
Plan document (or insurance booklet/certificate for an insured plan)	●
Summary plan description (SPD), including updates or summaries of material modifications (SMMs)	●
Forms 5500 and attachments, including supporting documentation (if applicable)	●
Summary annual reports (if required for plan)	●

Type of Document	Maintained by Employer
List of all plan service providers and related contracts	●
All contracts with insurance companies	●
Open enrollment materials, including documents describing cost responsibilities for the employer and employees	●
Newborns' and Mothers' Health Protection Act notice (may be included in the SPD)	●
Women's Health & Cancer Rights Act notice	●
Annual Children's Health Insurance Program (CHIP) notice	●
Materials describing any wellness programs or disease management programs offered by the plan, including rewards based on a health factor	●
Documents showing compliance with COBRA, including general notice, election notice, notice of COBRA unavailability, notice of early termination and notice of insufficient payment	●
Documents showing compliance with HIPAA's portability rules, including certificates of creditable coverage, pre-existing condition exclusions and special enrollment rights	●
If the plan has grandfathered status under the ACA, documents that verify the plan's status and the notice of grandfathered plan status	●
If the plan has rescinded coverage, a list of those participants and dependents whose coverage has been rescinded, the reasons for the rescission and the notice of rescission	●
Plan provisions regarding lifetime and annual limits and the notice describing enrollment opportunities for individuals who previously lost coverage due to a lifetime limit	●

Type of Document	Maintained by Employer
Summary of Benefits and Coverage and any 60-day advance notice of a mid-year material change to the plan	●
Exchange notice	●
For non-grandfathered plans, notice of patient protections and selection of providers	●
For non-grandfathered plans, information on the plan's claims and appeals procedures	●
A notice describing enrollment opportunities for children up to age 26 for plans with dependent coverage	●

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