

WHAT TO EXPECT FROM A DOL INVESTIGATION

1 STEP

NOTICE LETTER

You will receive a Notice Letter from the Department of Labor's (DOL) Employee Benefits Security Administration (EBSA) informing you that your plan has been selected for an investigation.

2 STEP

DOCUMENT GATHERING

The Notice Letter will include a list of documents and materials the DOL wants; Typically a relatively short turnaround time is given for providing materials.

Send requested documents to investigator, be sure to clarify which documents. These can be sent electronically.

3 STEP

ON-SITE INTERVIEW

The investigator may wish to interview individuals with knowledge of plan operations such as administrators, record custodians, fiduciaries, service providers, and plan participants.

Before the on-site interview, meet with your audit team to confirm everyone's role and areas of expertise.

4 STEP

INVESTIGATION REVIEW

At the conclusion of the on-site interview, the investigator will review provided materials.

5 STEP

ERISA WILL ISSUE EITHER:

1. **Voluntary Compliance Request Letter:** Violation(s) are detailed; necessary corrections are identified in order to bring your plan into compliance. Corrective actions may include the payment of penalties or restoration of losses to the plan.
2. **No Action Closing Letter:** No violations were identified OR violations were identified, but do not warrant action. Therefore, no further employer action is required.

POTENTIAL AREAS OF INVESTIGATION FOCUS

- Legal & Operational Compliance
- Fiduciary and prohibited transaction violations
- Form 5500 Compliance
- Eligibility, Claims, & Claims Procedures
- Qualification Issues for Cafeteria Plans & Other Benefits
- Proper Tax Treatment of Benefits
- Third-Party Administrator (TPAs) Issues
- Group Health Plans: Special Compliance Issues

Compliance
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PLAN DOCUMENTS

DOCUMENTS FOR REVIEW INCLUDE

- Plan documents & amendments
- Minutes/resolutions adopting plan or plan amendments, & authorizing person(s) to act on the plan sponsor's behalf
- Summary Plan Descriptions (SPDs) and Summaries of Material Modifications (SMMs)
- Insurance contracts & applications
- Third-party administrator agreements
- Administrative manuals
- Collective bargaining agreements
- Enrollment materials
- Notices & disclosures

SPD & OTHER PARTICIPANT DISCLOSURES

DOCUMENTS FOR REVIEW INCLUDE

- Information regarding use of electronic media to distribute required participant disclosures (e.g., records of e-mails sent & information on the extent of employee access to the computer system as part of job-related activities)
- Participant/beneficiary documents
- Copies of SPDs, SMMs, & Summary Annual Reports (SARs)
- Policies regarding distribution of SPDs
- Records demonstrating how, when, and to whom SPDs, SMMs, and SARs were distributed
- Policies/procedures regarding requests for copies of plan documents and records demonstrating timely responses
- Sample COBRA notices, EOBs

TRUST, PLAN ASSETS, AND BONDING RULES

DOCUMENTS FOR REVIEW INCLUDE

- Documents demonstrating use of participant contributions and compliance with DOL Technical Release 92-01
- IRS determination letter regarding tax-exempt status of trust (if applicable)
- Documentation regarding designation of trustee and acceptance/resignation by trustee (if applicable)
- Records of trust transactions demonstrating:
 1. compliance with ERISA prohibited transaction restrictions;
 2. rules on using plan assets to pay plan administrative expenses (if applicable)
- Bond information on plan funds and persons who handle them (if applicable)
- Handling of MLR rebates

FORM 5500 COMPLIANCE

DOCUMENTS FOR REVIEW INCLUDE

- Information on the number of ERISA health and welfare plans maintained
- Copies of filed Form 5500s (including Schedules)
- Any DOL notices regarding incomplete/inaccurate information & responses
- Information on the number of participants covered by plans (to evaluate reliance, if any, on reporting exemptions)
- Records demonstrating timely filing of Form 5500, including Form 5558 extension requests

ELIGIBILITY, CLAIMS, & CLAIMS PROCEDURE COMPLIANCE

DOCUMENTS FOR REVIEW INCLUDE

- Plan document, plan amendments, SPD and any SMMs that address eligibility and benefits
- Manuals or policies on open enrollment procedures
- Open enrollment packages & communications
- Enrollment forms, claims forms, denial letters, & appeal documentation (including documentation of administrative activities by third parties, such as TPAs)
- Benefit payment information (samples of actual claim files and benefit calculations)
- Demographic information regarding covered plan population (e.g., who is on the payroll but not receiving benefits, how service is counted & how rehires are treated)
- For insured benefits (or where claims administration has been delegated to an outside third party) the insurer's or third party's claims procedures

QUALIFICATION ISSUES CAFETERIA PLANS & OTHER BENEFITS

DOCUMENTS FOR REVIEW INCLUDE

- Plan documents, plan amendments, SPDs & SMMs
- Service contracts with third-party vendors
- Election forms, reimbursement request forms, & employee communication materials
- Payroll information showing contributions
- Documentation of claims filed (including whether paid or denied), date of reimbursement, & substantiation of expenses
- Income, participation, and contribution information for nondiscrimination testing
- Nondiscrimination testing reports and information on testing methodology

ISSUES INVOLVING THIRD-PARTY ADMINISTRATORS (TPAs)

DOCUMENTS FOR REVIEW INCLUDE

- Plan documents & SPDs
- TPA contracts (e.g., third-party claims administrator, COBRA administrator, & pharmacy provider)
- Information on fees
- Request for proposals (RFPs), market surveys, quotes, etc. and documentation regarding selection of TPA
- Fiduciary liability insurance
- Tax records, including W-2s & imputed income calculations
- Communications with employees about taxability of benefits
- Plan documents, SPDs, & SMMs
- Certifications of dependent status (e.g., for domestic partners who qualify as employee's tax dependents)
- Enrollment forms

SPECIAL COMPLIANCE ISSUES FOR GROUP HEALTH PLANS

MAY INCLUDE:

- COBRA compliance
- USERRA compliance
- HIPAA portability compliance
- HIPAA privacy, security, and other administrative simplification compliance
- Other federal mandates for group health plans

Additional Tips from an Investigation

1

ORGANIZE MATERIALS & MAKE THEM EASILY ACCESSIBLE.

Consider engaging legal counsel to assist with the investigation.

2

ENSURE DOCUMENTATION DATA MATCHES WHAT IS REPORTED

on the M-1's and 5500's and terms are treated consistently (i.e. 'members' vs. 'lives') and keeps copies of all documents furnished.

3

TREAT THE INVESTIGATORS RESPECTFULLY AND KINDLY.

- Provide a comfortable room
- The investigator will ask for materials. Pull the information for them; don't permit the investigator to rifle through your files.