

Employee Benefits Series

# Top Tips for Navigating Through a DOL Health Plan Audit

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## Top Tips for Navigating Through a DOL Health Plan Audit

U.S. Department of Labor (DOL) audits of group benefit plans are happening with greater frequency to companies of all sizes. Reasons for a DOL audit may include:

- Complaints by welfare benefit plan participants to the Employee Benefits Security Administration (EBSA), the DOL agency responsible for administering and enforcing the provisions of Title I of the Employee Retirement Income Security Act of 1974 (ERISA);
- Inaccurate or late filings of the Form 5500 Annual Report;
- National enforcement initiatives investigating compliance with laws such as ERISA and the Affordable Care Act (ACA);
- The transfer of cases from the Internal Revenue Service (IRS) to the DOL; or
- Random selection.

The following chart outlines the steps that are generally involved in a DOL audit of a welfare benefit plan, with tips to help employers/plan sponsors or plan administrators navigate through the process.

### Step 1: Document Request Letter

The DOL typically initiates a welfare benefit plan audit with a letter requesting an extensive range of documents related to your group benefit plan, including:

- Administration of the group benefit plan;
- Required notices; and
- Compliance with a number of laws, such as:
  - ERISA, the ACA, the Health Insurance Portability and Accountability Act (HIPAA), the Newborns' and Mothers' Health Protection Act (Newborns' Act), the Women's Health and Cancer Rights Act (WHCRA), the Mental Health Parity and Addiction Equity Act (MHPAEA), and the Genetic Information Nondiscrimination Act (GINA).

#### **Examples of the types of documents typically requested:**

- **Required Plan Documentation** — such as Summary Plan Descriptions (SPDs) and Plan Documents, including amendments
- **Administrative Records** — such as insurance billing invoices and records of payroll deductions for employee premiums
- **ACA Related Documents** — such as the plan's Summary of Benefits and Coverage (SBC) and Health Insurance Exchange Notices
- **HIPAA Related Documents** — such as the plan's eligibility rules and Notice of Privacy Practices
- **Other Health Insurance Law Related Documents** — such as Consolidated Omnibus Budget Reconciliation Act (COBRA) and Newborns' Act notices

*For a detailed list of documents which are typically requested in a DOL audit letter, please [click here](#).*

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### Step 2: Document Production

Providing all of the requested documents during the audit process in an organized and timely manner will reflect an employer's good-faith efforts to cooperate as fully as possible, and will help facilitate the entire audit.

The following are some "Do's and Don'ts" for producing the required documents:

- **Do** submit all requested documents to the DOL by the specified deadline.
- **Don't** ignore or delay compliance with the DOL document request letter.
- **Do** create a binder with tab headings indexed in the order the documents were requested and organized chronologically (the DOL typically requests documents from the last 3-5 years).
- **Don't** provide documents that are not requested.
- **Do** provide a written explanation of the reason for any missing documents as well as a proposed resolution to the problem.

### Step 3: On-Site Interviews

The following are special tips and guidelines to help you through the on-site interview process:

- Designate a staff person knowledgeable about your welfare benefit plan to be interviewed and represent the company.
- If you don't have an appropriate staff person, retain an ERISA attorney or other knowledgeable benefits compliance professional to do the job.
- Review all documents in advance of the on-site interview with an ERISA attorney (if possible) and your designated representative.
- Find a quiet and comfortable location for the on-site interview.
- Respond only to the questions asked—don't volunteer additional information or documentation.
- Ask for further clarification if you don't understand a particular question.
- Make any corrections or additions to your documentation, as instructed by the DOL.
- Have patience—a DOL audit can last from a few months to two or more years.

*Remember: The more organized and complete your documentation, the less time the DOL will spend during any subsequent on-site interview; in fact, an organized and complete response may actually eliminate the DOL's need to conduct such an interview altogether.*

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### Step 4: How DOL Audits Are Resolved

A range of outcomes can result from a DOL audit of a welfare benefit plan:

#### No Violations Found

If no violations are found, the employer/plan sponsor or plan administrator will be informed of the results by letter.

#### Minimal Violations Found

Violations in areas such as reporting and disclosure, or improper administrative practices of a de minimis nature, generally will be resolved as long as corrective steps were taken and are documented in the case file. Generally, if all documents are provided to the DOL as requested and all changes are made to the documentation per the DOL's direction, and are submitted to the DOL in a timely manner, no further action will be taken.

#### Other Violations Found

Examples of violations found during a DOL audit of a welfare benefit plan include:

- Failure to properly select and monitor service providers;
- Taking any adverse action against an individual for exercising his or her rights under the plan (e.g., being fired or otherwise discriminated against); or
- Failure to comply with ERISA Part 7, including the ACA.

#### Criminal Violations Found

The EBSA also conducts investigations of criminal violations regarding welfare benefit plans such as embezzlement, kickbacks, and false statements under Title 18 of the U.S. Criminal Code. Prosecution of these criminal violations is handled by U.S. Attorneys' offices.

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### DOL Policy—Promote Voluntary Compliance

If an investigation reveals an ERISA violation, the DOL takes action to obtain correction of the violation. It is the policy of the DOL to promote voluntary compliance whenever possible. Making corrections to the plan includes:

- Ensuring that claims are properly processed and paid; and
- Paying penalty amounts (when applicable).

If corrective actions are taken, the DOL generally will not bring a civil lawsuit. When voluntary compliance is not achieved, the DOL may refer a case for litigation.

Even if the DOL decides against taking action, it may still refer the plan to another governmental agency, such as the IRS or the Department of Health and Human Services. In addition, plan participants or beneficiaries can still initiate litigation against the employer/plan sponsor, regardless of the DOL determination.

### Delinquent Filing Program for Form 5500

In an effort to encourage the filing of [Form 5500s](#), the DOL provides plan administrators with the opportunity to pay reduced civil penalties for voluntarily complying under the Delinquent Filer Voluntary Compliance Program (DFVCP). In general, plan administrators are eligible for relief under the DFVCP if they comply with the program's filing requirements before receiving written notice from the DOL of a failure to file a timely annual report.

For guidance on how to participate in the DFVCP, please [click here](#).

### Be Ready for a DOL Audit—Conduct Your Own "Self-Audit"

Finally, the best way to prepare for a DOL audit is to make sure your welfare benefit plan documents are organized and compliant, and notices have been distributed in a timely fashion. A great way to get started is to download HR360's [DOL Health Plan Audit Document Checklist](#) and conduct your own "self-audit" to see if you have all the required documents.

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