

What to Expect from a DOL Audit

STEP 1

NOTICE LETTER

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

STEP 2

DOCUMENT GATHERING

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

- ▣ Once information is pulled together, it is sent to the investigator.
 - ▣ Ask what they will and will not accept electronically.

STEP 3

ON-SITE INTERVIEW

The Interview lasts approximately 3-4 hours, but it is recommended that you block out the entire day in case it runs long or unforeseen issues arise.

- ▣ Before the actual on-site interview, have a final meeting of your audit team to confirm everyone's role and areas of expertise.

STEP 4

AUDIT REVIEW

At the conclusion of the interview, the investigator will return to his or her office to review the materials that were provided and the information gathered in the interview process.

STEP 5

EBSA WILL ISSUE EITHER

1. **Voluntary Compliance Request Letter:** Violation(s) are detailed, and necessary corrections are identified that you must make in order to bring your plan into compliance.
2. **No Action Closing Letter:** No violations were identified OR violations were identified, but it was deemed that they did not warrant action, and therefore no further action is required.

POTENTIAL AREAS OF AUDIT FOCUS

- » Legal and Operational Compliance
- » Form 5500 Compliance
- » Eligibility, Claims, and Claims Procedures
- » Qualification Issues for Cafeteria Plans and Other Benefits
- » Proper Tax Treatment of Benefits
- » Issues Involving Third-Party Administrators (TPAs)
- » Special Compliance Issues for Group Health Plans

PLAN DOCUMENTS

Documents for review include:

- ❑ Plan documents and amendments
- ❑ Minutes/resolutions adopting plan or plan amendments, and authorizing person(s) to act on the plan sponsor's behalf
- ❑ SPDs and summaries of material modifications (SMMs)
- ❑ Insurance contracts and applications
- ❑ Third-party administrative agreements
- ❑ Administrative manuals
- ❑ Collective bargaining agreements
- ❑ Enrollment materials
- ❑ Notices and 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)
- ❑ Documents made available for participant/beneficiary review
- ❑ Copies of SPDs, SMMs, and SARs
- ❑ Policies regarding distribution of SPDs and records demonstrating how SPDs, SMMs, and SARs were distributed, when, and to whom
- ❑ Policies/procedures regarding requests for copies of plan documents and records demonstrating timely responses

TRUST, PLAN ASSETS, & 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, acceptance/resignation by trustee (if applicable)
- ❑ Records of trust transactions demonstrating compliance with ERISA prohibited transaction restrictions and compliance with rules on using plan assets to pay plan administrative expenses (if applicable)
- ❑ Bond and information on plan funds and persons who handle them (if applicable)

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 and 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 and 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 FOR CAFETERIA PLANS & OTHER BENEFITS

Documents for review include:

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

PROPER TAX TREATMENT OF BENEFITS

Documents for review include:

- ❑ Tax records, including W-2s and imputed income calculations
- ❑ Communications with employees about taxability of benefits
- ❑ Plan documents, SPDs, and SMMs
- ❑ Certifications of dependent status (e.g., for domestic partners who qualify as employee's tax dependents)
- ❑ Enrollment forms

ISSUES INVOLVING THIRD-PARTY ADMINISTRATORS (TPAs)

Documents for review include:

- ❑ Plan documents and SPDs
- ❑ TPA contracts (e.g., third-party claims administrator, COBRA administrator, pharmacy provider)
- ❑ Information on fees
- ❑ RFPs, market surveys, quotes, etc. and documentation regarding selection
- ❑ Fiduciary liability insurance

SPECIAL COMPLIANCE ISSUES FOR GROUP HEALTH PLANS

Special Issues of interest 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 ACTUAL AUDIT

1. "Always have your ducks in a row."
 - » Materials organized and easily accessible
2. Make sure the information provided in your documentation matches what is reported on the M-1s and 5500s and terms are treated consistently [members vs. lives]
3. Treat the investigator with respect and kindness.
 - » Provide a nice comfortable room to work in.
 - » The investigator will ask for materials. Plan to pull the information for them; don't expect the investigator to rifle through your files