

Navigating Through a DOL Audit

Presented By

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**Attorney-Developed Online HR library, Wrap SPDs,
Newsletters, ACA Alerts**



What Triggers a DOL Audit?

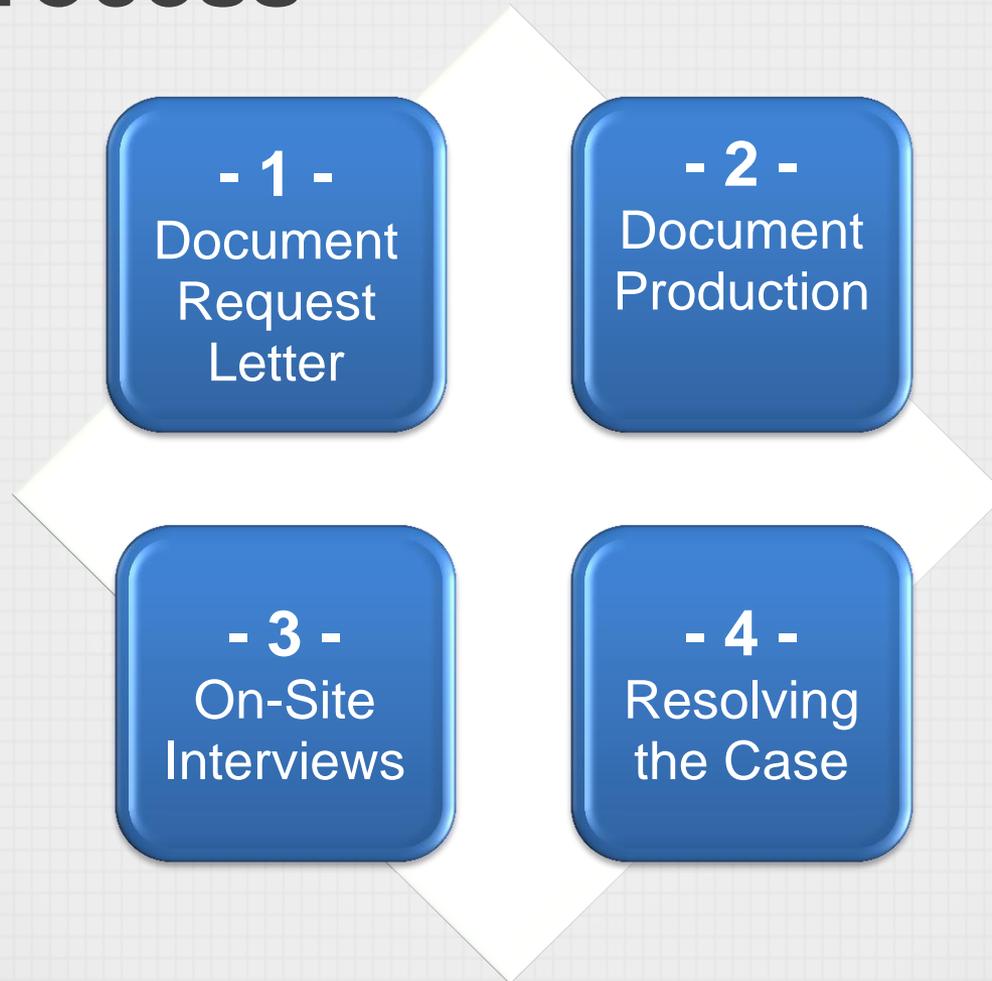
Reasons for a DOL Audit:

- Complaints by plan participants to the EBSA (a DOL agency)
- Inaccurate or late filings of Form 5500
- National enforcement initiatives investigating the ACA
- Transfer of cases from the IRS to the DOL
- Random selection

DOL audits of group benefit plans are happening more frequently to companies of every size

The DOL Audit

4 Step Process



Step 1

Document Request Letter

The DOL typically starts a plan audit with a letter requesting an extensive range of documents related to:

Administration of the group benefit plan

Required notices

Compliance with a number of laws:

ERISA, ACA, HIPAA—other laws include:

- The Newborns' and Mothers' Health Protection Act
- The Women's Health and Cancer Rights Act
- The Mental Health Parity and Addiction Equity Act
- The Genetic Information Nondiscrimination Act (GINA).

Step 1

Document Request Letter

Examples of the documents requested include:

Required Plan Documentation - such as SPDs and Plan Documents, including amendments

Administrative Records - such as insurance billing invoices and records of payroll deductions for employee premiums

Affordable Care Act (ACA) Related Documents – such as SBCs 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 – i.e., COBRA and Newborns' Act notices

Step 2

Document Production: Do's and Don'ts

- **Don't** ignore or delay compliance with the **DOL Document Request Letter**.
- **Do** submit ALL requested documents within the specified deadline.
- **Don't** provide documents that are NOT requested.

Step 2

Document Production: Do's and Don'ts

- **Do** create a binder with tab headings, indexed in the order the documents were requested & organized chronologically. *(The DOL typically requests documents from the last 3-5 years.)*
- **Do** provide a written explanation of the reason for any missing documents & a proposed resolution to the problem.

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

Step 3

On-Site Interviews *Special Tips for Getting Through the Process*

- Designate a **key staff person** who is knowledgeable about the plan to represent the company.
- **Retain** an ERISA attorney or compliance professional if no suitable staff person is available.
- **Review all documents** in advance with an ERISA attorney.
- Find a quiet, comfortable **location**.

Step 3

On-Site Interviews *Special Tips for Getting Through the Process*

- Respond only to the questions asked – ***do not volunteer additional information.***
- Ask for further **clarification** if unsure how to answer a question.
- Make any **corrections** or **additions** to the documentation, as instructed by the DOL.
- Have **patience** – a DOL audit can last for a few months to two or more years.

Step 4

How DOL Audits Are Resolved

No Violations 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.

If all the documents were provided to the

DOL...
Required changes were made and submitted to the DOL in a timely manner... the case should generally be resolved with no further action required.

Step 4

How DOL Audits Are Resolved

Other Violations Found

- 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)
- Failure to comply with ERISA Part 7 and the ACA

Criminal Violations

- The EBSA also conducts investigations of criminal violations regarding employee 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.

DOL Policy

Promoting Voluntary Compliance

- Making corrections to the plan includes ensuring that claims are properly processed and paid, as well as paying penalty amounts (when applicable).

The DOL policy for ERISA violations is to promote voluntary compliance whenever possible.

- 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.

DOL Policy

Promoting Voluntary Compliance

- 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.
- Plan participants or beneficiaries can still initiate litigation against the employer/plan sponsor, regardless of the DOL determination.

Be Ready for a DOL Audit

- Make sure plan documents are organized and compliant, and notices have been distributed in a timely fashion.
- To get started: use **HR360's DOL Health Plan Audit Document Checklist** to help your clients conduct their own “self-audit” to see if they have all the required documents.

For More Compliance Tools



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