

Guide to Understanding DOL Audits

DOL enforcement is accelerating¹

2/3

of plans audited closed with results

\$3.12B

in direct payments to plans, participants and beneficiaries

300%

increase in collections over 5 years

Common red flags to alert you to a potential plan audit are:

Employee Complaints

DOL Enforcement Policies

Primarily focused on high impact and big money

Delinquent Contributions

Using plan assets to pay unreasonable compensation to service providers or settlor expenses of the employer

If the DOL knocks on your door, these simple steps can help you prepare:

1. Take a deep breath.
2. Put your team together and choose a qualified primary contact person.
3. Strongly consider engaging ERISA counsel. Expert help may avoid missteps and provide an intermediary for difficult conversations.
4. Consider requesting an extension of time to respond. Many initial deadlines can be short for complex exams. Of note, extensions, if reasonable, are routinely granted.
5. Review all documents prior to production. Be ready to report issues found.
6. Deliver documents in a neat and organized fashion.
7. Prepare employees for interviews. Treat it like a deposition. Caution them to take their time, thoughtfully consider their responses and ask for clarification of any questions they do not understand.
8. Always be truthful and respectful.

¹ Department of Labor. "Fact Sheet. EBSA Restores Over \$3.1 Billion to Employee Benefit Plans, Participants and Beneficiaries." 2020.

Organize your Fiduciary Files

Plan document and amendments	Form 5500 and summary annual report
Adoption agreement, board resolution	Required test results (ADP/ACP tests)
Summary plan description	ERISA fidelity bond and fiduciary liability insurance policy
All written policies, including fee policy, education policy, loan policy, and with increasing importance, cybersecurity policy	Signed service provider agreements and expense reports
Individual benefit statements	Qualified domestic relations orders

Be patient. The examination will eventually close. If no violation is found or warranted, the investigator will notify you that the investigation is closed and no further action will be taken. This might not occur until more than two years after the last contact was made.

If a violation(s) is identified, you will receive a voluntary compliance notice with the results of the investigation, including which sections of ERISA have (or may have) been violated. The notice will ask you to complete specific corrective action within a specified period of time or ask you why specific acts do not violate ERISA. You may informally contest the finding and point out any factual errors. If you instead explain what corrective action has been taken, the DOL may issue a closing letter. It may first require a settlement agreement or simultaneously file a complaint and a consent judgment reflecting the settlement. Either may state specific corrective actions, including restoration to the plan and payment of DOL fines.

Going through a DOL audit is not a walk in the park. Take preventative steps to prepare by conducting due diligence and documenting your plan actions. In this way, if you ever get a DOL request, your plan is ready and better positioned to pass.

For more retirement plan best practice guides and other helpful fiduciary education, contact us to setup a conversation.



Jerome Pfeffer, CRC, AIF

Managing Director

INVESTMENT SOLUTIONS GROUP

6020 Academy NE, Suite 206

Albuquerque, NM 87109

(505) 888-4015 Direct

(505) 515-0036 Fax

Jerome.Pfeffer@lpl.com

www.investmentsolutionsgroup.com

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