

DON'T ROLL THE DICE
ON DEPARTMENT OF
LABOR AUDITS





Charting a Course

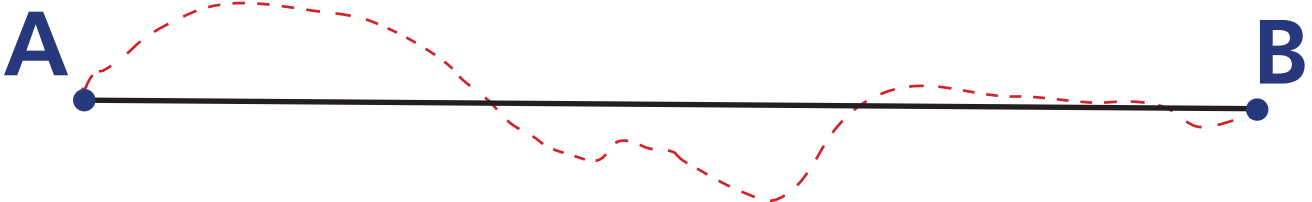
Like a road map to a destination, this white paper is available as a resource for anyone seeking guidance on DOL audits. It does not replace advice from a qualified individual or agency, but it is a great place to start in terms of educating oneself and referring back to it as needed. Knowledge is power and the more knowledge you can gain prior to an audit will be beneficial.

In this white paper, we'll delve into how to prepare for the audit, the best way to acclimate your staff to the audit process, what the DOL wants, and complying with requests.



It's Not a Matter of "If," But "When" You Get Audited By the U.S. Department of Labor

As the saying goes, an ounce of prevention is worth a pound of cure, and that's definitely the case when it comes to a health plan audit by the U.S. Department of Labor (DOL). And prevention is certainly warranted, according to Jeff Hadden, Partner at LHD Benefit Advisors, because it's not a matter of "if" you're getting audited, but "when" you get a letter from the DOL that your company is being audited. Hadden said that 12 of their clients received DOL audits of their group health plans in the past 20 years. However, out of those 12 audits, nine of those clients went through the audit process in just the previous two years. That's a significant increase and a harbinger that more audits are likely to come from the DOL.



Definition of a DOL Audit

So what exactly is a DOL audit? According to the DOL, the purpose of an audit is not to rehash past mistakes but to look at past events with a view toward improving future performance. Findings from an audit can be used as a basis for adjusting policies, priorities, structure or procedures in order to make operations as efficient, economical and effective as possible.

What can trigger a DOL audit? Usually it's one of two things — either a complaint, which leads to an investigation, or it's totally random. Regarding the former, any audit is not limited in scope to the area of the complaint. The audit may cover all aspects of plan administration, often going back several years. Lesa Caputo, Principal/Advisor at Beneflex Insurance Services, emphasizes that you should try to audit-proof your company as best as possible in order to minimize any issues when and if an audit does happen.

Robert N. Corrigan Jr., Principal at Carlisle-Corrigan Benefits, said that while a DOL audit may or may not be triggered by the following, there are certain ways in which employers expose themselves to unnecessary risks. Those are:

- 1 Not submitting Form 5500 reports on time if they have 100 or more participants
- 2 Not having Summary Plan Descriptions (SPDs) for each Employee Retirement Income Security Act (ERISA) covered benefit or not using an SPD wrap document
- 3 Not completing all the various annual employee notifications such as Medicare Part D, Children's Health Insurance Program (CHIP), Mental Health Parity Act (MHPA), Newborns' and Mothers' Health Protection Act (NMHPA), Women's Health and Cancer Rights Act (WHCRA), Patient Protection and Affordable Care Act (ACA), Health Insurance Portability and Accountability Act (HIPAA), Health Exchange, etc.
- 4 Not generating Summary of Material Modification (SMM) whenever they have material changes to benefits and then not saving these SMMs for future reference
- 5 Not keeping Section 125 Premium Only Plan (POP) and Flexible Spending account (FSA) documents current and accurate
- 6 Not filing their Form 1095/1094 reports in a timely fashion, or if they have conflicting information on these reports
- 7 Not properly following the controlled group rules for owners of multiple organizations

The resource section at the end of this white paper has links from the DOL that are a “self-compliance checklist” that plan sponsors (i.e., employers) can utilize to help ensure that their plans are in compliance with DOL requirements.

Never Ignore a Notice, Regardless Of the Confidence in Your Team or the Quality of Your Business Practices

Not many things incite more fear than receiving a notice that you’re about to have an audit, especially from the DOL. The DOL is a cabinet-level department of the U.S. federal government responsible for occupational safety, wage and hour standards, unemployment insurance benefits, re-employment services, and some economic statistics. It is headed by the U.S. Secretary of Labor.



Regardless of how sound your company’s business practices may be, a DOL audit needs to be dealt with professionally and expediently. Every organization should be prepared so that this potential disaster can be handled with confidence.

It can be potentially catastrophic to ignore an audit request from the DOL, so whatever you do, *DO NOT* ignore it! The request will not go away and the DOL has the authority to pursue both civil and criminal penalties.

Preparing for the Audit: The Key to a Winning Strategy

According to Hadden, it takes approximately one to two weeks, depending on the size of the business and how well they are organized, to properly prepare for a DOL audit. Part of that preparation is building an audit binder with known documents. You won't just hand over the binder, but it will be an excellent repository. UBA has a generic list of most documents needed for a DOL audit. These types of documents are typically what are requested ahead of time by the DOL auditor. For a copy of this list, contact your local UBA Partner Firm. You can find a list of firms at <http://www.ubabenefits.com/ContactUs/OfficeLocations>.

Caputo said that ideally, the employer should keep these documents as hard copies in addition to any electronic copies. That way, if the employer maintains its own document files, then it is not at the mercy of their vendors should they need a certain document in a hurry.

Deanna Johnson, Director of Compliance at Benefit Insurance Marketing, said not to forget that if you have a grandfathered plan, make sure you have year-over-year documentation to support that. The document request can be very burdensome on the employer depending on whether they've prepared in advance for the audit, or if they have the personnel and financial resources to comply with it. Caputo said that compiling the necessary documents isn't just a drain on both those resources, it also takes a significant amount of time.

For this reason, both Caputo and Josie Martinez, Senior Partner and General Counsel at EBS Capstone, said that whenever you do get that letter from the DOL informing you that you've been selected to be audited, the following steps should be taken:

Call the DOL phone number

The very first thing that should be done is to call the DOL phone number listed on the letter and request an extension. If granted, this additional time is vital and should be used to your advantage to help prepare.

Call your attorney and your broker

Last, but certainly not least, said Johnson, is call your attorney and your broker's office and give them a heads-up.

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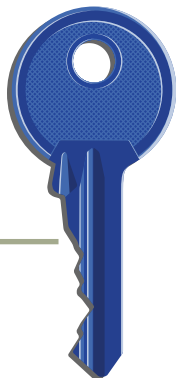
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Get specific information about the audit

The second thing that should be done is to contact the auditor to ascertain specific information about the audit he or she is going to perform. An important question to ask is what the focus of the investigation will be.

While the audit can and usually will review an organization's entire plan history, there will often be one thing of particular focus (e.g., the claims and appeals process) or it could focus on a defined benefit year(s).

3



Important questions to ask the auditor

What time periods he or she wants to review, and the names of any people who the auditor wants to interview. Again, only provide exactly what the auditor wants and nothing more.

Get All Your Team on the Same Page

Note: Hold a mock interview and have your attorney or broker go through the interview process with you.

As with any major issue of government compliance, it's often necessary to meet with the appropriate management and staff of a company and familiarize them with the entire audit process. Those who will meet with the auditor should be coached to understand that they need to answer any question truthfully, but don't go any further. Sometimes when people are nervous, they have a tendency to ramble or a need to explain their answer. This should be avoided at all costs. Caputo said that a great way to help reduce the potential anxiety during an interview by a DOL auditor is to hold a mock interview and that the employer's attorney and advisor go through this with you. This will help most personnel to feel confident and comfortable during the process. Also, if the auditor asks a question, or requests information that does not pertain to your organization, never hesitate to say that it's "not applicable." This is better than trying to make an answer fit or worse, not answering the question at all. Johnson stressed that if the staff doesn't understand a question on the audit, or is not sure what the question is truly asking, then they should ask the auditor before they arrive to clarify what they need rather than make an assumption.



Similar to just answering the question and only the question, Martinez notes to never provide more documentation than what is requested. She adds that once you have all the documentation in place, identify the specific document(s) that responds to the request and then highlight the exact location on that document. After all, what good is giving them a box of documents and telling the auditor, "good luck, it's in there." The goal is to get the auditor out of your office as quickly as possible.

Courage In The Face of Adversity

Whether it's your company's legal department, senior staff, or any other group of employees, make sure to empathize with their concern during a DOL audit. No matter how well prepared you and your company may be, there is bound to be some trepidation. Assuming you are indeed prepared for a DOL audit, remember that confidence breeds confidence. Show your employees that the situation is well in hand and they have nothing to fear.



What the DOL Wants

It's important to note that no two DOL audits are the same, yet equally important to be aware that questions are typical and there is usually an expansive list of Q&A documents. When you receive these questions, it's recommended that they be sorted and that you color-code them based on what the question references (e.g., third-party administrator, client answered, etc.).

Luckily, the DOL seems to be very receptive to an organization's preparedness. It certainly makes the auditor's job easier when a company has everything already in place and doesn't require time to gather it all.

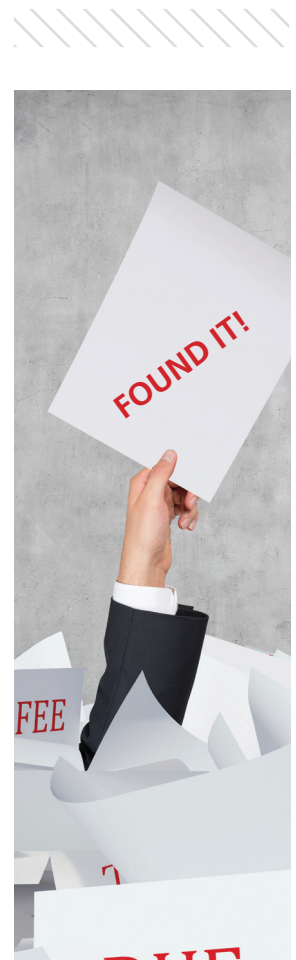
It's important, Martinez said, "to keep a log of each request and the document(s) provided in response to that request. A separate file folder for each request will help organize that task."

When a company is audited, the auditor sent by the DOL will vary in his or her experience of conducting audits. If the person is a novice, then that often means the auditor might ask for more information whereas someone more experienced knows exactly what they want.

Regardless, the audit will almost always take between two to three days of reviewing documents and conducting interviews. However, by being as organized as possible, you can greatly reduce the time an auditor spends in your office. Johnson said that the auditor should be placed in a room that, while not necessarily secluded, is out of the line of traffic so that the auditor can work uninterrupted and limit staff interaction.

The human element is just part of the audit. One of the most important pieces of preparation is a putting a "wrap document" in place if one doesn't already exist. UBA's Chief Compliance Officer, Danielle Capilla, highlighted that the lack of a wrap document can indicate deeper issues with the plan. Conversely, she said, up-to-date and complete wrap documents can indicate the employer's due diligence in administering their plan and staying compliant. A wrap document is a legal document that basically wraps around an insurance carrier's certificate with required ERISA language. This required language is typically not included in the insurance carrier certificate(s).

Caputo also noted that ERISA has two primary requirements, and satisfying this burden falls on the plan administrator (usually this is the employer). The first requirement being that group health plans have a written plan document and the second being that an SPD is provided to all plan participants upon enrollment (and at other various times). A written plan document is what the plan administrator uses to operate the plan.



////// The SPD is what's used to notify plan enrollees of the many plan terms including who is eligible, how it's funded, and what the benefits are. Some employers use a separate plan document and an SPD, while others use a combination approach.

Martinez said that another item that the DOL is apt to be looking for is communications to employees. Because of this, an employer has hopefully kept track of its communications. Johnson said that a company should keep track of everyone they gave a notice to along with the dates; don't just say it was given to "everyone." Be proactive with documents such as ERISA notices and the Summary of Benefits Coverage (SBC) by including them in every new hire packet. Johnson added that in this age of technology where companies are moving communications to an internal intranet, posting on an intranet or company-shared drive is not compliant unless you follow the electronic distribution rules, especially if participants may not have access to a computer as an integral part of their work day (e.g., factory employees). For a comprehensive explanation of the electronic distribution rules, contact your local UBA Partner Firm and request a copy of the compliance document titled "Delivering Participant Materials."

Identify Any Business Problems Beforehand

ERISA has long had notice, disclosure, and reporting requirements. Now, the ACA has added to these requirements. This has triggered the government (specifically the DOL) to scrutinize employer-sponsored health care plans and react to any irregularities or red flags. Once a DOL audit is initiated, however, the audit won't be limited to just ACA information, but a company's entire obligations under ERISA.



While you may think that you're conducting business correctly, the best way to determine if that's true is through a self-audit. By being proactive, this can often reveal any problems with compliance or other governmental issue. Any problems discovered during the self-audit can then be corrected and, if necessary, reported to the appropriate government agency. It's far better to alert the government that you found a problem and are implementing steps to correct it, than if they find a problem and point it out to you. The latter often involves fines and penalties as well as potential mistrust of the organization depending on the severity of the infraction. Some of the steps involved in a self-audit include reviewing the differences between federal and state laws and ensuring that these are being applied correctly to your employees.

Nothing Else Matters

A DOL audit is so significant that once a company is embroiled in the audit process that should be their top priority. The DOL can select any manner of what they term “corrective actions” to make a company adhere to applicable laws and regulations. UBA and its Partners cannot stress enough the importance of being prepared.

Detail All Strategies That Can Be Used To Combat the Issues

Perhaps more agonizing than receiving that audit letter in the first place is seeing the DOL auditor on a daily basis. The sooner he or she leaves, the greater the chance that you’ll come out of an audit unscathed. The longer an auditor lingers — reviewing documents and conducting interviews — the greater the chance that he or she will uncover something, no matter how trivial it may seem to you. A plethora of strategies are available to an employer to make the process as successful as possible. These are the aforementioned mock interviews, document binders, and self-audits. Something not previously touched on is to continually ensure that you are taking care of your employees. Employees who are happy and enthusiastic about their employer will transmit that attitude to the auditor, which could potentially affect the way the auditor views the organization. Because each case is individually different, other potential strategies should be discussed with your broker or attorney.



Potential Return on Investment

The Most Important Points to Take Away and Remember

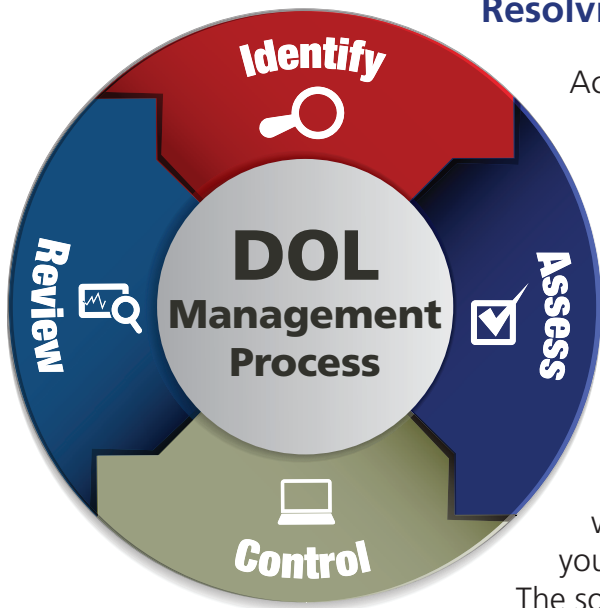
1. A DOL audit will likely happen
2. It's best to be prepared for that eventuality

There is definite value in being prepared for a DOL audit. Any organization can do nothing and keep their fingers crossed that an audit will never happen. While the cheapest option, it's not the smartest. By first ensuring that you're compliant and then preparing as thoroughly as possible for an audit, you should be able to affect the amount of time an auditor spends with your company, thereby reducing the downtime of pulling employees away from their normal duties in order to focus on the urgency and immediacy of the audit being conducted. Furthermore, by maintaining this information, an organization can be reasonably sure that they won't owe any back wages, fines, penalties, or unforeseen attorney fees. Besides peace of mind, this confidence through due diligence can help preserve a company's resources.

What You Should Start Now if You Haven't Already

Integrate a self-audit as quickly as possible into your organization's day-to-day tasks. The appropriate personnel should create a game plan on the best way to not only get ready for the audit, but also what steps should be taken once the audit process has started.

Resolving Any Issues the DOL Finds



According to Johnson, a DOL audit is considered open until you receive a closure letter from them. Otherwise, the DOL can continue asking questions and requesting documents. Martinez adds that if recommendations are made by the DOL, it's better to be cooperative and fix the issue rather than fight it.

Adhere to These Strategies and Be Prepared to Act Fast

Those who fail to plan, plan to fail and nowhere is this more evident than in a DOL audit. By reviewing the strategies in this white paper, and discussing all options with a qualified advisor, you and your organization will be ready for that letter in the mail. The sooner these strategies are implemented, the better.

By planning ahead, conducting a self-audit, educating appropriate staff, and resolving any issues, an employer should be able to face a DOL audit with absolute confidence. This white paper was written to help employers prepare for a DOL audit. For additional resources and guidance, please contact your local UBA Partner Firm.

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<http://www.dol.gov/ebsa/pdf/cagappa.pdf>

<http://www.dol.gov/ebsa/pdf/part7-1.pdf>

<http://www.dol.gov/ebsa/pdf/part7-2.pdf>

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