

Top 8 Questions About ERISA Audits of Retirement Plans



The Employee Retirement Income Security Act (ERISA) establishes rules and standards for health care and retirement plans offered by private businesses in the U.S.

ERISA is designed to protect employees from mismanaged plans and ensure participants understand what they are being offered. It is a broad law that applies to employers regardless of their size. It includes several requirements related to reporting and information disclosures.

The Employee Benefits Security Administration (EBSA) of the Department of Labor (DOL) is responsible for making sure plans are in compliance with ERISA. That oversight can include an audit of your plan. The

focus of an audit is documentation. The DOL wants to make sure you are communicating the benefits of your plan and any related practices to your employees.

Here are some of the top questions employers have about ERISA audits and what to expect.

1. What is an ERISA audit of an employee benefit plan?

ERISA specifies documentation and reporting requirements for retirement plans offered by private businesses. The EBSA is responsible for making sure your plan is meeting those requirements. This includes auditing Form 5500 and verifying that the plan is providing required participant notices and following the terms of the plan document.

2. What triggers an employee benefit plan audit?

Being selected for an ERISA plan audit doesn't mean you have done anything wrong. While there are no published guidelines as to who is selected for an audit or when, the DOL does have internal audit initiatives that must be followed. Some groups are selected at random.

The following events may also trigger an audit:

- Employee complaints
- Form 5500 filing inconsistencies
- Audits of your plan's third-party administrator or accountant

3. How will you be notified of an audit?

A DOL audit can happen at any time. If you are selected for an audit, you will be notified by the EBSA.

This notice will include a list of documents the DOL would like to review, and you will be required to provide copies in a timely manner (usually within 10 days). Some documents may be uploaded to the DOL website; others may have to be provided in paper form. Typically, you will be asked to provide information from the past three to six years.

Be sure to provide the information within the time frame stipulated in your notice. If you do, you may be able to avoid a visit from the DOL. If you fail to provide the requested information, the auditors may come to you to review all the documents.

4. Do you need to worry about fines?

You are responsible for complying with ERISA. If you do not comply, you may be subject to tax liabilities and fines. The DOL estimates that approximately 70% of audits result in a violation that has monetary fines attached, and these fines vary by category. For example, plan administrators that fail to file a Form 5500 can be fined over \$1,000 per day.

5. How can you be sure you are ready for an audit?

Preparing for an audit starts well before you have been selected. Be sure you understand ERISA regulations and what documentation is required. Keep meticulous records, conduct regular audits on your own and review everything with your broker or benefits adviser at least once a year.

Make sure you have the required documents and notices stored where they are easily accessible. And keep copies of your Forms 5500 and summary annual reports from at least the past six years.

6. How do you know if you are required to submit a Form 5500?

If you sponsor a self-funded plan and have more than 100 participants, you are required to file a Form 5500 and include Schedule H. Schedule H consists of four parts: asset and liability, income and expense, accountant's opinion and compliance questions. Each of these parts provides information about the plan's current value and highlights where the plan may have liabilities.

7. What plan documents will you be required to produce?

Under ERISA, you must distribute the following documents to plan participants, including enrolled dependents and COBRA enrollees. The DOL will most likely ask to see copies of your:

- Written plan documents and amendments
- Summary plan description
- Summary of material modifications, if any changes that modify the plan benefits are made
- ERISA fidelity bond
- Distribution forms provided to participants
- List of the plan's investments
- Plan investment policy

- Investment committee meeting minutes

8. What are the most commonly targeted areas in audits?

The DOL can look into any area of your retirement plan. However, they tend to focus on some provisions more than others. These include:

- Timely deposits of participant deferrals
- Plan definitions of compensation
- Prohibited transactions
- Payment of plan-related expenses with plan assets
- Distributions
- Distribution of participant notices
- Employee eligibility

If you have been selected by the DOL for an ERISA audit and need help identifying the documents you must produce, contact your broker or benefits adviser. They can help you prepare and make sure you meet the DOL's expectations.

Even if you aren't being audited, your broker or benefits adviser can help make sure you're prepared in the event you are selected. They can review your plan documents and help you create a compliance calendar to make sure you are meeting all reporting deadlines.

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