

Alliant Retirement Services Group

DOL Investigations of Retirement Plans

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Agenda

- Triggers of an investigation
- What the DOL looks for
- Investigation Process
- Handling an Investigation



Triggers of a DOL Investigation

Common Factors

- Participant complaints (very common)
- Form 5500 reports that raise questions
- Bankruptcy or unfavorable media coverage
- Referrals from other agencies, particularly the IRS



What the DOL looks for

Examples of violations the DOL looks for:

- Untimely deposits of employee deferrals (very common)
- Improper payment or allocation of expenses
- Failures to follow plan's Investment Policy Statement
- Self-dealing by employer or other fiduciaries



Investigation Process

- Initial letter from DOL
 - Informs plan sponsor that an investigation will be conducted at the sponsor's offices on a specific date
- Letter will also include a document request and interviews with key plan personnel



Investigation Process

- DOL generally requests an enormous number of documents
- Examples (quoting from actual DOL letters):
 - “Minutes of any committee, subcommittee, or administrative group responsible for plan activities, service provider selection, or investment of plan assets”
 - “Service provider contracts (insurance contract agreements, investment manager agreements, third party administrator contracts, actuaries, attorneys, and accountants) in effect during the period under review”

Continued...



Investigation Process

Typically, there are three stages to an investigation:

- Fact-Finding: Documents turned over and interviews conducted
- Review: Analysis and initial findings by Investigator
- Findings/Negotiation: DOL issues initial findings letter and requests voluntary correction
 - This requires a response and action



Handling an Investigation

Initial Steps:

- Request an extension if necessary
- Clarify the scope of the document request
 - ERISA counsel can assist with this negotiation
- Deal with ambiguities in requests
- Inform key personnel of the investigation and designate a knowledgeable contact person
 - Informing the staff
- Deal with in-office interviews



Handling an Investigation

Initial steps (cont.):

- Review the document request with legal counsel, who can help decipher what issues the DOL is focusing on
 - Counsel can help negotiate a narrower scope
- Review all documents before turning them over
 - To identify potential violations
 - Redact as appropriate



Handling an Investigation

Survival Tips

- Work with ERISA counsel to go over likely questions and responses before interviews take place
- If any violations are uncovered, self-correct them before the investigator finds them
- Expect delays and remain patient
- After you receive the DOL's "findings/voluntary compliance" letter:
 - Review, with ERISA counsel, the findings for factual and legal accuracy
 - If you uncover what you believe is an error, raise it in a constructive and respectful manner

Continued...



Handling an Investigation

Survival Tips (cont.)

- Defend your rights
- *But* try to resolve issues voluntarily and avoid litigation or a formal settlement agreement
 - These result in statutory penalties and other costs
- ERISA counsel can assist with differentiating between good arguments and those the DOL will likely reject
- Furnish the Investigator with “proof of correction”



FAQs

Q: Are there circumstances in which I should refuse to turn something over to the DOL?

A: Generally, no

- Protect privileged documents (though privilege is limited)
- Redact documents as appropriate



FAQs

Q: What if I find a problem that can't be fixed before turning over documents to the DOL?

A: Recommended approach

- *Always* fix problems you uncover before turning over documents and then disclose to the agent
- If you can't fix before, start the process and disclose the steps you are taking



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