

34TH ANNUAL ISCEBS
Employee Benefits

Symposium

Be Prepared When the DOL Comes Knocking

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International Society
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Agenda



DOL ENFORCEMENT AUTHORITY

INVESTIGATION TRIGGERS

THE INVESTIGATION PROCESS

QUESTIONS ?



DOL ENFORCEMENT AUTHORITY

Who Oversees Benefit Plans?



Employee Retirement Income Security Act (ERISA)

Title I

Title I contains rules for reporting and disclosure, vesting, participation, funding, fiduciary conduct and civil enforcement. This is administered by the DOL.

Title II

Title II mirrors much of Title I for the Internal Revenue Code and is administered by the IRS.

Title III

Title III is concerned with jurisdictional matters and with coordination of enforcement and regulatory activities by the DOL and the IRS.

Title IV

Title IV covers the insurance of defined benefit pension plans and is administered by the PBGC.

Audit vs. Investigation vs. Examination

A DOL **examination** may be referred to as:

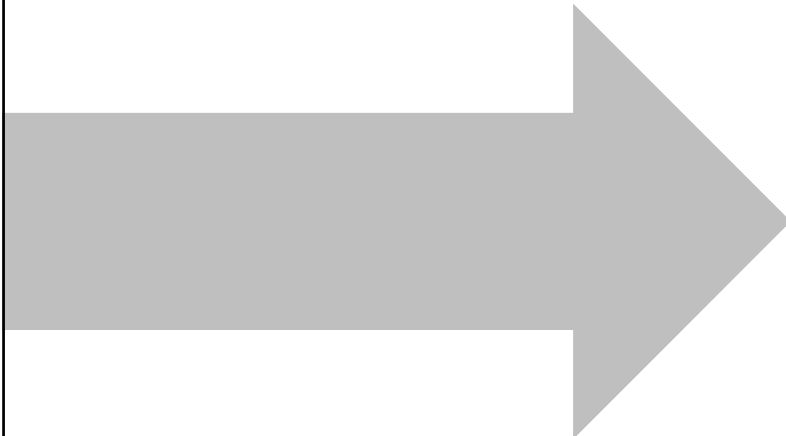
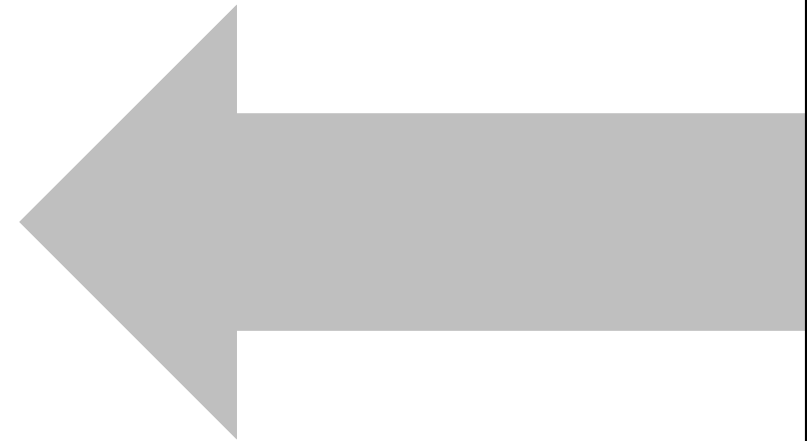
- Audit or Investigation

Your **investigator** or auditor may have a different expertise:

- JD, CPA or MBA

2014 DOL Stats

\$183 Million Budget
1000 Personnel, 400 Investigators
700,000 retirement plans
2.5 Million welfare plans
\$27 Trillion in assets



3,928 Civil Cases Closed
107 Civil Litigation
365 Criminal Cases
\$599.7 Million in results
213,664 Inquiries
64.7% Success Rate

Who Does the DOL Go After?



Fiduciaries arise from your actions, not your job title:

- Exercising discretionary authority or control over the management of the plan's assets
- Some delegated fiduciary responsibility
- Someone who renders investment advice for a fee—ERISA Sect. 3(21)
- Someone designated as a discretionary investment manager—ERISA Sect. 3(38)
- Designated fiduciaries—Named Plan Administrator/Trustee/Committees

Understand Your ERISA Fiduciary Duties

1. Act solely in the interest of plan participants
2. Prudent expert
3. Diversify plan investments
4. Follow the terms of the plan
5. Pay only reasonable and necessary expenses
6. Select and monitor service providers



Personal Liability of Fiduciaries

ERISA §409

- A fiduciary who breaches any of his responsibilities, obligations or duties shall be personally liable to restore any losses to the plan
- Most commonly used for employers out of business, bankruptcy, or “deep pockets”



Types of Plans the DOL Audits

Single
Employer and
Multi-Employer

Defined Benefit
and Defined
Contribution

Self Funded
and
Fully Insured

Major Medical
and
Ancillary

403b

Apprenticeship



INVESTIGATION TRIGGERS

Audit Triggers



- Participant Complaint
- Annual Report Form 5500 Red Flags and Questions
- Service Provider Referral
- DOL Targeting Initiatives

Participant Complaints

The DOL Complaint Process

- Complaints are vetted
- Anonymity is preserved
- In 2014, the DOL received:
 - 213,664 inquiries
 - informally resolving \$356.2 M
 - causing 687 investigations

Common Participant Complaints

Money Missing
From My Account

SSA Notice of My
Potential Benefit

My Employer
Won't
Provide "XX"
Information

My Employer
Hasn't Processed
My Distribution



How the DOL Uses the 5500

The ERISA Data System



Annual Report Red Flags

Non-Qualified Plan Investments, Part I-3(a)-(e):

- Partnership/joint venture interests
- Employer real property
- Real estate
- Employer Securities
- Investment loans
- Tangible personal property

Other Lines:

- Participant contribution receivables
- Expenses
- Losses

Compliance Questions—Schedules H and I

Part IV	Compliance Questions		Yes	No	Amount
4	CCTs and PSAs do not complete Part IV. MTIAs, 103-12 IEs, and GIAs do not complete 4a, 4e, 4f, 4g, 4h, 4k, 4m, 4n, or 5. 103-12 IEs also do not complete 4j and 4l. MTIAs also do not complete 4l. During the plan year:				
	a Was there a failure to transmit to the plan any participant contributions within the time period described in 29 CFR 2510.3-102? Continue to answer "Yes" for any prior year failures until fully corrected. (See instructions and DOL's Voluntary Fiduciary Correction Program.).....	4a			
	b Were any loans by the plan or fixed income obligations due the plan in default as of the close of the plan year or classified during the year as uncollectible? Disregard participant loans secured by participant's account balance. (Attach Schedule G (Form 5500) Part I if "Yes" is checked.).....	4b			
	c Were any leases to which the plan was a party in default or classified during the year as uncollectible? (Attach Schedule G (Form 5500) Part II if "Yes" is checked.)	4c			
	d Were there any nonexempt transactions with any party-in-interest? (Do not include transactions reported on line 4a. Attach Schedule G (Form 5500) Part III if "Yes" is checked.).....	4d			
	e Was this plan covered by a fidelity bond?.....	4e			
	f Did the plan have a loss, whether or not reimbursed by the plan's fidelity bond, that was caused by fraud or dishonesty?	4f			
	g Did the plan hold any assets whose current value was neither readily determinable on an established market nor set by an independent third party appraiser?	4g			
	h Did the plan receive any noncash contributions whose value was neither readily determinable on an established market nor set by an independent third party appraiser?	4h			
	i Did the plan have assets held for investment? (Attach schedule(s) of assets if "Yes" is checked, and see instructions for format requirements.).....	4i			

Service Provider Referrals



Co-Fiduciary Liability ERISA §405

- Knowing participation or knowing concealment
- By failing to comply with your own duties, you enable a another fiduciary to commit a breach
- No reasonable steps taken to remedy situation
- DOL FAB 2004-003

DOL Targeting Initiatives

Fiduciary Service Provider Compensation Project	Health Benefit Security Project	REACT	ESOP Enforcement Project
VFCP	Contributory Plans Criminal Project	Abandoned Plans	Apprenticeship Plans
Major Case Squad	Consultant/Advisor Project (CAP)	VFCP/DFVCP	Settlor Fees



THE INVESTIGATION PROCESS

Potential Penalties

Civil penalty for fiduciary breach—20% of the amount recovered

The DOL may waive the penalty for financial hardship or acting in good faith

Only issue penalties for:

- Civil litigation
- Formal settlements
- Repeat offenders
- Egregious situations

IRS Coordination

The DOL and IRS have a Congressional mandate under 29 USC 1136 (ERISA Section 506), to work together. Their existing Memorandum of Understanding.

DOL Refers To The IRS:

- All cases
- Emphasis on prohibited transactions (PTs)
- Special rules for PTs of \$20,000 or more
- Referrals send to the Employee Plans Classification Department
- The IRS is looking for qualification issues and excise taxes

What's in Store for DOL Enforcement in 2015-2016?



- Service Provider Compensation
- Fee Disclosure Enforcement
- Target Date Fund Selection
- Fair Market Value of Assets
- Annuity Selection
- Brokerage Accounts
- Health Plan Compliance Review
- ESOPs
- Bankrupt Sponsors
- Conflicts of Interest Proposal

Your Homework—6 Things

**Document Your
Fee Analysis**

**Formalize
Service
Provider
Selection**

**Institute
Formal Plan
Governance**

**Fiduciary
Training**

**Recordkeeper
Oversight**

**Examine Your
Funds**

QUESTIONS?