

5 Most Common DOL Audit **Mistakes**



The U.S. Department of Labor (DOL) has been increasing audits of welfare benefit plans sponsored by companies of every size. The following is a list of some of the most common mistakes employers/plan sponsors make during the audit process.

Mistake 1. No Summary Plan Description (SPD) or Plan Document

No SPD. The DOL typically requests a number of documents as part of its investigative process, one of which is an SPD. *Many employers think a benefits summary or certificate of coverage fulfills the regulatory requirements of an SPD, but, they find out all too quickly during an audit that these documents are inadequate.* An SPD or Wrap SPD must include specific provisions required under ERISA (the federal Employee Retirement Income Security Act) as well as important information about the plan. SPDs must be distributed to all welfare benefit plan participants and must be written in language that can be understood by the typical participant.

No Plan Document. Another DOL audit requirement is that all ERISA-covered benefit plans, including group health plans and other welfare plans, must, by law, be administered in accordance with a written Plan Document. ERISA, HIPAA, and other federal laws require the Plan Document to contain certain specified provisions. *Many employers assume that insurance contracts for fully insured products are written Plan Documents—but they are not.* Insurance companies draft their contracts to comply with state insurance laws and, as a result, the contracts do not contain many of the required or recommended provisions that protect the plan, the employer, and plan fiduciaries.

Mistake 2. Not Communicating Changes to Plan Participants

During a DOL audit, an investigator will want to review whether plan participants were notified of any changes made to a welfare benefit plan, such as carrier changes and adding or eliminating different types of benefits. *Many employers simply do not have the documentation to properly communicate these changes.* Generally, participants must be informed of benefit changes **either** through a Summary of Material Modifications (SMM) **or** a revised SPD.

Mistake 3. Not Informing Plan Participants of Special Enrollment Rights

DOL auditors will also review an employer/plan sponsor's compliance with the federal Health Insurance Portability and Accountability Act's special enrollment notification rules. Under HIPAA, certain events that happen to employees or their dependents trigger a right to "special enroll" in an employer-sponsored group health plan—*this right must be communicated to employees.* Special enrollment generally means that the employee or dependent will have 30 or 60 days from the date of the event to request coverage in the employer's group health plan, **regardless of the open enrollment period.**

Mistake 4. Submitting Required Documentation in a Disorganized Way

The DOL typically begins an audit with a 'DOL Audit Document Request Letter,' which requires the submission of a large number of documents. A common mistake is to send such documents in a disorganized fashion. The best way to respond is to *create a binder with tab headings, indexed in the order the documents were requested and organized chronologically.* (The DOL typically requests documents from the last 3-5 years.)

Mistake 5. Providing Too Much Documentation

Another common mistake is for employers/plan sponsors to provide more documentation than is requested in the hope that this will make a better impression. However, the more information that is provided, the more opportunity the DOL will have to find something wrong. *The most prudent response is to provide only the information requested and provide answers only to the questions asked.*