

Governmental Audits & Investigations of Benefit Plans

Tips to avoid, prepare for and successfully close an audit or investigation

Pillsbury's Governmental Audits & Investigations team advises plan sponsors and fiduciaries in advance and upon receipt of an audit from the DOL or IRS.

Our attorneys have handled numerous retirement and health and welfare plan audits and investigations, navigating unique complexities in responding to DOL and IRS inquiries regarding prohibited transactions, fiduciary prudence, late remittances, cybersecurity/privacy, missing participants, distributions, health care reform, mental health parity and claims administration.

Our team consists of a core group of attorneys who have decades of combined experience regarding governmental audits.

We operate with a level of attention and responsiveness that you might expect from a boutique law firm. But unlike a boutique, as a full-service law firm, we have a wealth of resources that we can deploy as appropriate.

Common Audit Triggers

- A participant complaint to the DOL or IRS
- Form 5500 filings (e.g., Schedule H reporting of late remittances, payments to the plan sponsor and other prohibited transactions)

- Select audits by the DOL and IRS, focusing on each agency's "hot topics," such as:

- [Cybersecurity and data privacy](#)
- [Missing participants](#)
- Nondiscrimination testing
- Required updates to plan documentation and procedures

Minimizing Risk

- Carefully review your Form 5500 filings (including audited financial statements) before they are filed
- Address participant inquiries, complaints and claims on a timely basis and proactively review the issues to avoid such issues being escalated to the government
- Establish and practice robust governance practices, including periodic meetings and training of the fiduciary committee, delegation of settlor duties and documentation of actions and decisions
- Engage in a "mock" audit of your employee benefit programs
- Utilize available correction programs for known operational failures or breaches of fiduciary duty (e.g., the IRS's [Employee Plans Compliance Resolution System](#) and the DOL's [Voluntary Fiduciary Compliance Program](#))
- Develop and implement "best practices" to maintain your plan in full compliance with the law

Pillsbury's Governmental Audits & Investigations team can assist with reviewing your Form 5500 for any potential audit triggers, and then will work with you to resolve those issues before the IRS or DOL initiates an audit. The Governmental Audits & Investigations team can also initiate a "mock audit" of your plans to preemptively review and assist with correcting any potential issues in the case of an audit.

Responding to the Governmental Agency

If you receive an audit or investigation notice from the IRS or DOL, our attorneys will guide you through the following steps:

- Review your plan documents, agreements and policies, and operations to determine if there are matters that can be self-corrected in advance of the government's review
- Prepare, analyze and organize the responses, documents and data that are responsive to the governmental agency (with a focus on confidentiality/privacy, FOIA requests and bates stamping.)
- Prepare your plan representatives for agency interviews with "mock" interviews
- Engage in timely and responsive communication with government agents and investigators

Additional Resources

- [IRS 2022 Data Book](#) (see Table 21)
- [EBSA Restores Over \\$1.4 Billion to Employee Benefit Plans, Participants, and Beneficiaries](#)

ATTORNEY ADVERTISING. Results depend on a number of factors unique to each matter. Prior results do not guarantee a similar outcome.

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