DOL Audit Playbook

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NETWORK OF ADVISORS

MAYNARDNEXSEN

Presented By
Matthew J. Cannova
Maynard Nexsen, P.C.
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MHPAEA – NQTL CA Regulations Delayed, MHPAEA Enforcement Is Not

- **2024 Regulations expanded/clarified requirements (including "meaningful benefits" standard, outcomes/data-collection requirements, ERISA fiduciary certification)**
  - Enforcement of these specific requirements is delayed
- **MHPAEA and NQTL Comparative Analyses requirements are still in effect**
  - CAA 2021 statutory NQTL comparative-analysis mandate and the 2013 final rule remain in force and enforceable
  - The agencies remain statutorily obligated to request a minimum number of analyses each year and report to Congress
  - MHPAEA remains a DOL Enforcement Priority, including unjustified treatment exclusions, inaccurate provider directories, unreasonable prior-authorization and step-therapy limits, and burdensome claims processes
  - Private MHPAEA causes of action also unaffected by regulation delay

EBSA Enforcement Principles (FAB 2026-01)

- **EBSA announced intent to avoid *regulation through enforcement* (when possible)**
  - EBSA will make efforts to provide clear and advance notice about its interpretation of ERISA and fiduciary responsibilities
  - Provides "gray area" flexibility, but potentially less flexibility when guidance provided
- **Reiterates process over outcome in fiduciary decisions**
  - EBSA should avoid unfairly second-guessing process-based fiduciary judgments
  - Intentional and structured fiduciary process is the best protection
  - Duty of loyalty breach investigations to increase –i.e., where facts support finding that actions were not taken "for the exclusive purpose of providing benefits to participants and their beneficiaries"
- **ERISA Part 7 (group health plan disclosure, claims, adjudication, etc.) remains enforcement priority**

EBSA Enforcement Principles (FAB 2026-01)

- **Structural Changes**
  - Centralized senior-leadership review of significant matters (novel theories, circuit splits, deviations from prior positions)
  - EBSA should avoid common-interest agreements with private plaintiffs' counsel
- **Timeline Targets**
  - Routine investigations targeted for completion within 18 months and complex investigations within 30 months
- **Will it stick..?**
  - FAB 2026-01 is essentially internal policy with no binding effect on future administrations
  - Real effect likely depends on regional-office implementation

DOL Jurisdiction and Enforcement

- The DOL shares jurisdiction with the IRS over most benefit plans
- Statutory jurisdiction includes ERISA, ACA, COBRA, HIPAA Portability, FLSA
- DOL priorities include:
  - Group Health Plans
  - Plan Assets
  - Plan Administration
  - MHPAEA
  - Fiduciary Duties

Focus and Risk Areas

It is important to keep up with NEW requirements and developments, BUT…

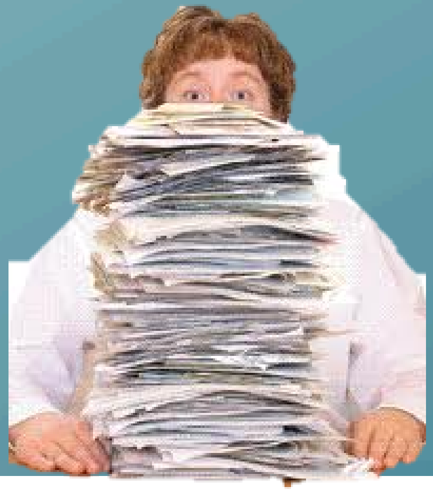
Most compliance issues come from requirements that have long been in place

Reasons for Initiating Investigations

- Participant complaints
- Referrals from other agencies (e.g., IRS, SEC, HHS)
- Enforcement initiatives (National Enforcement Projects)
- Filings:
  - Forms 5500
    - Compensation reported on schedules
  - Forms M-1
  - Tax Filings

Procedure for DOL Investigations

- Initial Letter
  - Document Request or Appointment Letter
- Document Production and On-Site Interviews
- Closing Letter
  - No DOL action to be taken
  - “Voluntary Compliance” notice
  - Litigation letter
- Timeline

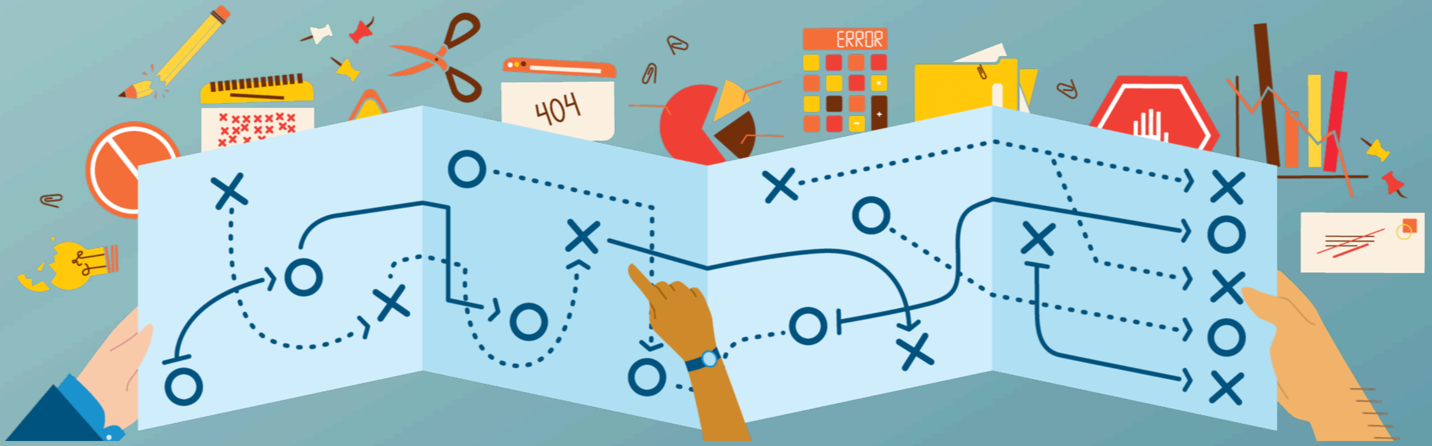


Audit Best Practices

- With good processes, DOL audits and investigations are a lot easier…
  - We want to avoid "I don't know."
- Choose one point person to serve as liaison
- Inform DOL of your ERISA counsel
- Prepare personnel for on-site interviews
- Negotiate scope of document request (e.g., limit to sampling of client documents)
- Perform legal review of subpoenaed and any other requested materials before delivery to DOL
- Best Practices Before: Fiduciary Training & Self-Audit

Managing Compliance with PROCESSES

- **Fiduciary Governance Structure for Plan Decisions**
- **Monitoring Service Providers**
- **Compliance Tools & Processes**
- **Plan Document Compliance (*Playbook*)**
- **Plan Administration Policies (*Plays*)**
- **DOL Audit Response Protocol**



Managing Compliance with PROCESSES

- **Fiduciary Compliance**
  - ERISA Fiduciary Training
  - Plan Governance Structure – Benefits Committee
  - Regular Review & Self-Audit
  - Rely on Experts
  - Processes & Documentation are KEY
- **Monitoring Service Providers**
  - Review Service Provider Performance
  - Review Agreements
  - Review Compensation
  - Periodic RFPs (at least every three years)

Managing Compliance Concerns - Fiduciary/Benefits Committee Meetings

- **Periodic Fiduciary/Benefits Committee Meetings**
  - Quarterly + As Needed
  - Annual “All Hands” Meeting
  - Include Consultants + Legal
- **Keep meeting minutes**
  - Do not necessarily have to be formal
  - Agenda + Materials Reviewed
- **Compliance Review**
  - Compliance Current Events Update
  - Tailored Compliance Review
    - Review Compliance Calendar
- **Service Provider Inventory & Review**

Managing Compliance Concerns - Compliance Tools

- **Organized System for Maintaining Plan Documents and Materials**
- **Plan Inventory**
- **Vendor Inventory**
- **Plan Administration Policies**
  - Vendor Review and Monitoring Policy
  - MHPAEA Review Policy
  - HIPAA Compliance Program
  - Plan Expense Policies

- **Compliance Review**
  - Compliance Current Events (General) Update
  - Tailored Compliance Review
    - Timelines & Checklists
    - *Compliance Calendar*

Managing Compliance Concerns - Organized System for Plan Documents and Materials

- **What would you do if the DOL or a Participant requested a copy of their ERISA plan materials?**
  - Plan Documents, SPDs
  - MHPAEA Comparative Analyses
  - Would we have to scramble to produce within 14-30 days?
- **Organized Maintenance of Plan Documents and Materials**
  - Official Plan Documents
    - Final or “Draft”?
    - Executed?
  - Employers should use technology and recordkeeping systems that work for THEM
- **Recordkeeping – Generally Six Years**
- **Plan Documents = Playbook**

Reinforcing Importance of Established Fiduciary Processes

- **Settlor Decisions vs. Fiduciary Decisions**
  - Fiduciary Processes
  - Monitoring “Settlor Decisions”
  - Disclosures
- **Fiduciary Governance Structure for Plan Decisions**
- **Monitoring Service Providers**
- **Compliance Tools & Processes**
- **Plan Document Compliance (*Playbook*)**
  - Organized System for Maintaining Plan Documents and Materials
- **Plan Administration Policies (*Plays*)**
- **DOL Audit Response Protocol**

Reinforcing Importance of Established Fiduciary Processes

- Understand what expenses can be paid from plan assets.
  - Begin with general assumption that paying anyone for plan services is a prohibited transaction.
- Maintain records of decisions to ensure consistency in applying plan terms to participants and beneficiaries
- Seek expert assistance when needed
  - Brokers, Consultants
  - Attorneys
  - Actuaries
- Generally understand plan terms and operation, including:
  - Eligibility for participation
  - Vesting, withdrawal, distributions, loans
  - Participant communications and disclosures

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