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## Navigating the Complexity of EBSA Investigations



Members of the House of Representatives recently raised concerns regarding the Department of Labor's EBSA (Employee Benefits Security Administration) investigations into plan sponsors, citing them as lengthy and burdensome, and called for reform. In a Sept. 19 letter to Acting Labor Secretary Julie Su, Rep. Virginia Foxx, chair of the House Committee on Education and the Workforce, and Rep. Bob Good, chair of the Health, Employment, Labor and Pensions Subcommittee, stated: "EBSA is

failing to conduct its enforcement in a timely manner, creating unacceptable burdens for retirement plan sponsors and negatively impacting retirement savers, retirees, and their families."

The lawmakers called into question the DOL's rigorous inquiries, stating the DOL marked limitless document requests and extensive interviews, leading to escalated compliance costs — which have a negative impact on participants. So, what can plan sponsors do to avoid drawing DOL scrutiny — and help promote a more favorable and speedier outcome should they find themselves the target of a probe?

**Proactive compliance.** Regularly update and ensure plan operations follow current regulations and best practices to remediate areas potentially flagged during an investigation. Review pertinent materials such as summary plan descriptions and loan and hardship distribution provision policies. Conduct regular audits to identify compliance issues or potential areas for improvement in the plan's operations, such as plan documents, investments, fees, and additional areas of fiduciary responsibility.

**Detailed documentation.** Maintain thorough and meticulous records of all planned activities, decisions, and rationale. Ensure easily retrievable and presentable information when requests in areas such as plan administration, governance, and fiduciary obligations are made.

**Continuous training.** Ensure relevant parties are well-trained and updated on the latest regulations, investigative processes, and industry best practices to effectively navigate a review. Consider consulting with legal or compliance experts in EBSA investigations to help guide and prepare the plan.

**Risk management.** Implement robust risk mitigation practices to identify, assess, and manage risks scrutinized during an investigation. Respond to any participant complaints in a timely and appropriate manner.

**Cooperation with investigators.** Should your plan be subject to a DOL investigation, establish clear lines of communication, respond to document requests promptly, and timely redress any flagged errors or issues.

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**Feedback and improvement.** After the conclusion of an investigation, gather feedback and insights to improve and strengthen the plan's operations against future EBSA enforcement inquiries.

The call for reform underscores the challenges faced by plan sponsors facing DOL scrutiny and highlights the importance of preparedness and initiative-taking measures. Until investigative policies undergo significant changes, plan sponsors must remain vigilant, agile, and resilient.

Sources:

[https://edworkforce.house.gov/uploadedfiles/09\\_19\\_23\\_letter\\_to\\_dol\\_re\\_ebsa\\_investigations.pdf](https://edworkforce.house.gov/uploadedfiles/09_19_23_letter_to_dol_re_ebsa_investigations.pdf)

<https://www.pionline.com/washington/house-republicans-press-dol-plan-sponsor-investigation-practices>

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