ERISA Compliance is not an option…
It’s the Law!

Audits are on the Rise for Health and Welfare Plans… Are You Ready?

At any given time, any given employer may be singled out for a civil investigation by the Department of Labor! These audits aim to ensure that employee benefits plans are in compliance.

With all of the attention being given to Healthcare Reform, have you overlooked one area of compliance that’s more important than ever? We’re talking about ERISA compliance. Many employers—and you may be one of them—do not fully understand the Employee Retirement Income Security Act (ERISA), how it impacts business and employees, and the various possible risks it presents.

The upswing in health and welfare plan audits continues, as do the potentially stiff penalties for noncompliance. Savvy Plan Sponsors engage help to resolve problems and guidance to ensure they can pass audits of Plan documents and procedures requirements as mandated by The Employee Retirement Income Security Act of 1974 (ERISA).

The Employee Benefits Security Administration (EBSA), a division of the DOL, is charged with enforcing ERISA compliance. To intensify efforts to police companies, EBSA has recently added 1,003 full-time positions. The result? For 2014 alone they expect to achieve nearly $1.2 billion in fines and penalties.

Excerpts from EBSA 2014 Budget:

1. For FY 2014, EBSA will continue our successful strategy of bringing Plan Sponsors and their benefits plans into compliance with the law using an integrated approach. As a general matter, this strategy is included in the following programs:
   - Vigorous Enforcement;
   - Informative Compliance Assistance;
   - Proactive Regulation;
   - Targeted Research;
   - Strong Consumer Outreach and Education; and
   - Effective Participant Assistance and Excellent Customer Service.

2. To maximize the impact of program resources, EBSA targets its investigative resources towards plans that it believes, based on a variety of factors, appear likely to be in violation of the law. Targeting likely violators, correcting violations, and publicizing our successes will deter bad actors and result in greater compliance with the Employee Retirement Income Security Act (ERISA). EBSA also entered the third year of the Sample Investigation Program (SIP) that will lead to measuring overall compliance with ERISA and the impact of EBSA investigations on the compliance rate.

3. EBSA estimates that during FY 2014, it will achieve $1,172,108,000 in
What are the consequences of IRS Form 5500 noncompliance?

Under ERISA, penalties can be imposed by the DOL for any refusal or failure to file a required IRS Form 5500. Penalties may be assessed for late or un-filed Form 5500s as well as for incomplete or otherwise deficient Form 5500s.

The full EBSA budget can be reviewed at: http://www.dol.gov/dol/budget/2014/PDF/CBJ-2014-V2-01.pdf

The increased scope of the DOL’s group health and welfare plan audits echoes the recent expansion of other DOL investigations and audits of employers (e.g., wage and hour audits, and other areas of labor and employment law compliance).

The typical DOL audit requests a wide variety of plan-related documents and examines compliance with a broad range of issues including HIPAA, the Newborns’ & Mothers’ Health Protection Act, the Women’s Health & Cancer Rights Act, the Mental Health Parity & Addiction Equity Act, and the Genetic Information Nondiscrimination Act. Even more significant is the DOL’s recent focus on compliance with the various Patient Protection & Affordable Care Act (“Affordable Care Act”) requirements. DOL requests related to the Affordable Care Act fall into three primary categories: (1) requests for plans claiming grandfathered status; (2) requests for plans not claiming grandfathered status; and (3) requests for all plans (regardless of grandfathered status).

While the agencies are often willing to work with employers in resolving compliance issues, employers should be cognizant of the stiff penalties associated with non-compliance.

Important Information Regarding Changes to the 2013 Form 5500 Return.

Did you know of this new requirement?

A new requirement is in place for those employers/Plan Sponsors required to file a 2013 Form 5500 Return for their welfare benefits plan(s). This applies to Plan Years ending on or after December 31, 2013.

Per IRS Publication 2013 Instructions for Filing Form 5500

Form M-1 Compliance Information (to be provided by all welfare plans).

All welfare plans must provide an attachment that is clearly labeled at the top of the attachment “Form M-1 Compliance Information.” The attachment must state:

a. If the plan provides welfare benefits, whether the plan was subject to the Form M-1 filing requirements during the plan year;

b. If the plan was subject to the Form M-1 filing requirements, whether the plan is currently in compliance with the Form M-1 filing requirements;

c. Provide the Receipt Confirmation Code for the 2013 Form M-1 annual report. If the plan was not required to file the 2013 Form M-1 annual report, enter the Receipt Confirmation Code for the most recent Form M-1 that was required to be filed under the Form M-1 filing requirements. (Failure to enter a valid Receipt Confirmation Code will subject the Form 5500 filing to rejection as incomplete.)

For full instructions for filing 5500s, go to http://www.dol.gov/ebsa/5500main.html

A welfare benefits plan’s failure to attach a statement indicating whether it is subject to the Form M-1 filing requirements, and if so, whether they are currently in compliance with such requirements and failure to provide a valid Receipt Confirmation Code, will subject the Form 5500 filing to rejection as incomplete and civil penalties may be assessed pursuant.
TASC’s ERISAEdge provides an easy solution for employers. By performing all key areas of documentation and SPD disclosure requirements per ERISA, ERISAEdge ensures complete compliance with the law in these areas.

ERISAEdge Services:

- **Document Preparation:**
  - Plan Document and Summary Plan Description (SPD) known as a wrap Plan or mega-wrap Plan.
  - IRS 5500 Form and associated Schedules A or C, if necessary.
  - Summary Annual Report (SAR).
  - Summary of Material Modification (SMM), if necessary.
  - Required ERISA and Healthcare Reform Notices for eligible employees (if elected).
- Guarantees compliance with all ERISA disclosure and reporting requirements; ensures ERISA Plan is current with all regulation changes.
- Monitors the ERISA Plan and the associated employee benefits to ensure timely disclosure of Plan changes to employees.
- Monitors legislative and regulatory changes, ensuring the Plan is up-to-date. Automatically provides Clients with amendments due to regulatory updates. Clients need not be concerned with regulations and deadlines.
- Provides online storage of Plan document(s); maintains required records for the mandated amount of time.
- Provides instruction regarding required on-site record keeping.
- Provides detailed instructions for disclosure procedures to Participants.
- Assists in the event that employee benefits plans are reviewed by the DOL.
- Technical and customer service assistance.
- PCORI services.
- Hold Harmless Agreement.
- Bi-annual Client newsletter.

Employees can be awarded a maximum of $110 per day if an employer fails to provide written requested ERISA materials (e.g., the Plan Document, Summary Plan Description/SPD, and other Plan-related documentation). Examples:


An employer can face fines of up to $1,100/day for each IRS Form 5500 that it files late. The penalty is $110/day for late delivery of an SPD, SMM, and SAR to a Participant. These penalties apply to each Plan; they are cumulative and not subject to a statute of limitations. As an example, an employer with three separate Plans (life, medical, and dental) files its Form 5500s just sixty days late. Per the maximum penalty, resulting fines can total up to $198,000! Additionally, failure to comply with ERISA can expose an employer to unnecessary, time consuming, and expensive employee lawsuits.

**Typical misnomers...**

**ERISA compliance is for large employers only.**
False! If you offer group sponsored benefits (health, dental, vision, wellness, EAP, etc.), you are subject to ERISA. Yes, even if you have as few as one employee.

**My health carrier has me covered.**
False! Your insurance carrier typically provides a Certificate of Coverage (COC) only. While extensive, this document includes only some of the necessary information for ERISA disclosure, and does not house all other sponsored benefits ERISA requirements. Additionally, insurance carriers are required to adhere to State laws and regulations only, while ERISA is a Federal Law.

**I won’t get audited.**
False! With the increase in government staffing and all the attention focused on compliance, you are more likely than ever to be audited. Over ¼ of the audits ERISAEdge sees are for employers with fewer than 50 employees.
The following is excerpted from an actual Intent to Audit Request Letter from the DOL. If you as a Plan Sponsor received this letter, could you pass this audit request? Why chance it? Don’t be caught unprepared!

Dear Sir or Madam:

...The [This] Plan is scheduled for investigation by this office... We have found in the past that submission of relevant documents to our office prior to the inception of an on-site field investigation can lessen the time subsequently spent with, and the administrative burden placed on, plan and corporate officials and may eliminate the need for an on-site visit entirely. To that end, we ask that you submit to this office, within ten business days of your receipt of this letter, the documentation listed on the enclosed Attachment A...

To review the letter in its entirety and the aforementioned “Attachment A,” go to http://groupclientnews.files.wordpress.com/2014/02/original-message-email-audit-request.pdf

Inadequate responses to these requests may lead to additional inquiries from the DOL, including requests for additional documents, interviews, information, site visits, and investigations. DOL enforcement actions and lawsuits by individual participants and beneficiaries may result. Various penalties may be imposed by the DOL and/or the IRS for failure to implement certain ACA-related coverage mandates.

Why risk it? Savvy Plan Sponsors do what’s necessary to ensure they can prove Plan compliance. In particular, several specific steps are vital to ensure that compliance can be proven and that such audits go as smoothly as possible.