



Learning to Love Compliance

Avoiding Common Pitfalls





COMPLIANCE

5 Common Pitfalls

HOW TO ESCAPE THEM

- 1 Not Knowing What Plans are Covered
- 2 No Plan Document
- 3 Missing Disclosures
- 4 Forgetting about 5500s
- 5 Ignoring HIPAA

A dark red background featuring a spiral-bound notebook with the word "COMPLIANCE" printed on its cover. A black pen lies on the left, and a pair of black-rimmed glasses is positioned at the bottom. The background also includes faint outlines of a line graph and a bar chart on a document.

COMPLIANCE

Pitfall 1

Knowing What Plans Are Covered Under ERISA

Employee Retirement Income Security Act of 1974

Don't be fooled
by the name!
ERISA regulates
pensions and
welfare benefit
plans.



...so why do we care?

If a plan is covered by ERISA → (heavily) regulated: reporting requirements + penalties.

INTRODUCTION TO ERISA

✓ Employee Retirement Income Security Act of 1974

✓ Comprehensive scheme for the administration of employee benefit plans

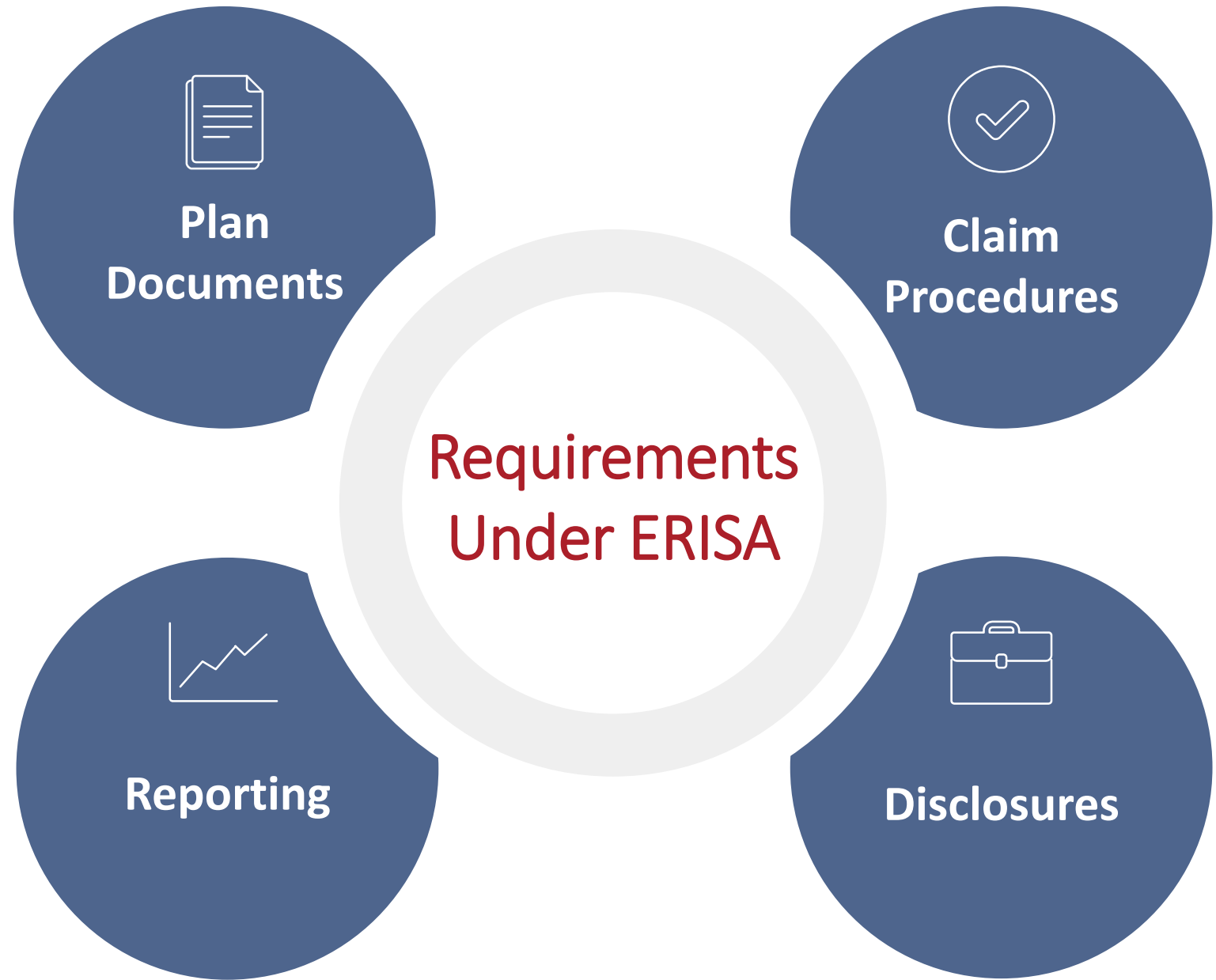
✓ Largely procedural in nature

✓ Many provisions overlap with the Internal Revenue Code

✓ Key differences

- ERISA is administered by the DOL
- ERISA includes a private right of action

✓ The changing compliance landscape





EMPLOYEE BENEFIT PLANS SUBJECT TO ERISA

1. A plan, fund or program
2. Established or maintained by an employer
3. To provide specifically listed benefits, through the purchase of insurance or otherwise
4. To participants and their beneficiaries



VOLUNTARY PLANS



WARNING

VOLUNTARY PLANS ARE A DOL
ENFORCEMENT PRIORITY

- ✓ Employee pay-all-plans can still be subject to ERISA
- ✓ To fall outside of ERISA, must meet DOL safe harbor
 - No employer contribution
 - Voluntary participation
 - Sole function of employer is to permit insurer to publicize and collect premium
- NO “ENDORSEMENT”**
- Employer may not receive consideration
- ✓ Is it easier to comply with ERISA?



WHAT ABOUT 125 PLANS?

- Choice between cash or a “qualified benefit”
- Mechanism to pay on a pre-tax basis
- Premium conversion component is not covered by ERISA
 - Health FSAs are subject to ERISA
 - Dependent Care FSAs are not subject to ERISA
- Even though exempt from ERISA, important Internal Revenue Code provisions apply
 - Written plan document requirement
 - Irrevocable election rules



COMPLIANCE

Pitfall 2

Notices and Disclosures

REQUIREMENTS UNDER ERISA

Disclosures

- ✓ Summary Plan Descriptions
- ✓ Summary of Material Modifications
- ✓ Responses to Participant Requests
- ✓ Claims Procedure Notices
- ✓ Summary Annual Reports (> 100)
- ✓ Additional Notices for Group Health Plans



REQUIREMENTS UNDER ERISA GROUP HEALTH PLAN DISCLOSURES

- ✓ Summary of Benefits and Coverage
- ✓ Health Care Reform Notices
 - Choice of PCP/Pediatrician
 - Access to OB/GYN
 - Grandfathered Plan Notice
 - Exchange Notice
- ✓ COBRA Notices
- ✓ HIPAA Special Enrollment Notice
- ✓ Women's Health and Cancer Rights Act
- ✓ Newborns' and Mothers' Health Protection Act
- ✓ Medicare Part D Creditable Coverage Notice

PARTICIPANT DOCUMENT REQUESTS

The Plan Administrator must furnish certain documents upon written request:

- Latest SPD, SMM and Annual Report
- Any bargaining agreement, trust agreement or contract
- Any other “instrument under which the plan is established or operated”

Documents must also be available at plan office

Copies must be provided within 30 days





Disclosure



Penalty*

Summary Plan Description/Plan Document (upon request)	\$152/day (up to \$1,527 per request)
Summary of Benefits and Coverage (SBC) - 60 day advanced notice of plan changes	\$1,128/participant or beneficiary
Summary Annual Report (upon request)	\$152/day

*Penalties indexed annually for inflation



Disclosure



Penalty

Disclosure	Penalty
Health Care Reform Disclosures <ul style="list-style-type: none">- Statement of Grandfathered Status- Patient Protection (PCP/OBGYN Notice)- Rescissions	\$100/day/participant
COBRA Notices	\$100/day/participant (IRS) \$110/day/participant (DOL)
HIPAA Special Enrollment Notice	\$100/day/participant



COMPLIANCE

Pitfall 3

Wrap Documents

WRAP PLAN DOCUMENTS

- Wraparound document that “wraps” around materials provided by the insurance company
- Works with the insurance document to meet ERISA requirements

*“In order for the wrap SPD and the insurance document to work together, the wrap SPD drafter must carefully review the insurer’s description. Fill-in-the-blank wrap SPDs prepared **without review and consideration of what is being wrapped are inherently risky.**”*

-Employee Benefits Institute of America



WRAP PLAN REQUIREMENTS UNDER ERISA

Wrap Plan Document/SPD includes:

- ✓ Summary of Plan Benefits
- ✓ Cost to Participate
- ✓ Making Benefit Elections
- ✓ Changing Benefit Elections
- ✓ Plan Administration
- ✓ Situations that May Affect Benefits
- ✓ ERISA Statement of Rights
- ✓ Plan Demographic Information
- ✓ Required Disclosures



COMPLIANCE

Pitfall 4 Form 5500

FORM 5500 EXEMPTIONS

Small welfare plans – full exemption

- Fewer than 100 covered participants at the beginning of the plan year
- Must be unfunded
- Can accept participant contributions if conditions met

Large welfare plans – partial exemption

- Exempt from providing some of the required information
- If unfunded, insured or a combination
- Financial information (Schedule H) and accountant's opinion

FORM 5500 BASICS

Deadline

- Last day of the 7th month after plan year ends (July 31 for calendar year plans)
- Automatic 2 ½ month extension available

Plan Administrator

- Responsible for signing and filing 5500
- Plan sponsor unless another entity is designated

Electronic Filing

- All Form 5500s must be filed electronically using EFAST2
- May use DOL web application or third party software

FORM 5500 REPORTING

Significant penalties

- Up to \$2,140/day* for missing or incomplete 5500s
- Criminal penalties for willful failures

Exemptions

- Full or partial exemption
- Depend on size and funding method

DELINQUENT FILER PROGRAM



DFVCP

- Delinquent Filer Voluntary Correction Program
- Available if issues not identified by DOL

Correcting Form 5500 failures

- File a completed Form 5500 for the year
- Pay a reduced penalty



Penalties


- \$10/day up to \$2,000 per year (\$4,000 for multiple years)

SUMMARY ANNUAL REPORT (SAR)

- ✓ Plans required to file Form 5500 must provide participants with a summary of the information
- ✓ SAR contents (if reported on 5500):
 - Funding and insurance information
 - Basic financial information
 - Rights to additional information (full annual report)
 - Offer of assistance in non-English language (if required)
- ✓ Must be provided within 9 months of the end of the plan year
 - If extension granted for 5500, within 2 months of extension period

RECORDKEEPING RULES

- ✓ Maintain records documenting information on Form 5500
- ✓ Apply to plans exempt from filing requirements
- ✓ Six years



Compliance



COMPLIANCE

Pitfall 5 **HIPAA**



WHO IS COVERED?

Covered Entities

1. Health Care Providers
2. Health Plans
3. Clearinghouses
4. Medicare Rx Plan Sponsors

Business Associates

WHO IS A BUSINESS ASSOCIATE?

Any entity that:
Creates, Receives,
Maintains or
Transmits
PHI

Service Providers,
Brokers,
Consultants,
Accountants and
Lawyers

Subcontractors:
Any business
associate of a
business associate

HIPAA

*Knock, knock!
Who's there?
HIPAA!
HIPAA who?
I can't tell you that.*



If you sponsor a self-insured health plan, you are responsible for its HIPAA compliance (even if you use a TPA.) **Do you have?**

- HIPAA Privacy & Security Policies and Procedures
- Training for your workforce
- Business Associate Agreements



Reason for Violation



Penalty Range

Reason for Violation	Penalty Range
Unknown cause	\$100 - \$50,000
Reasonable cause and not willful neglect	\$1,000 - \$50,000
Willful neglect (corrected within 30 days)	\$10,000 - \$50,000
Willful neglect (not corrected within 30 days)	At least \$50,000

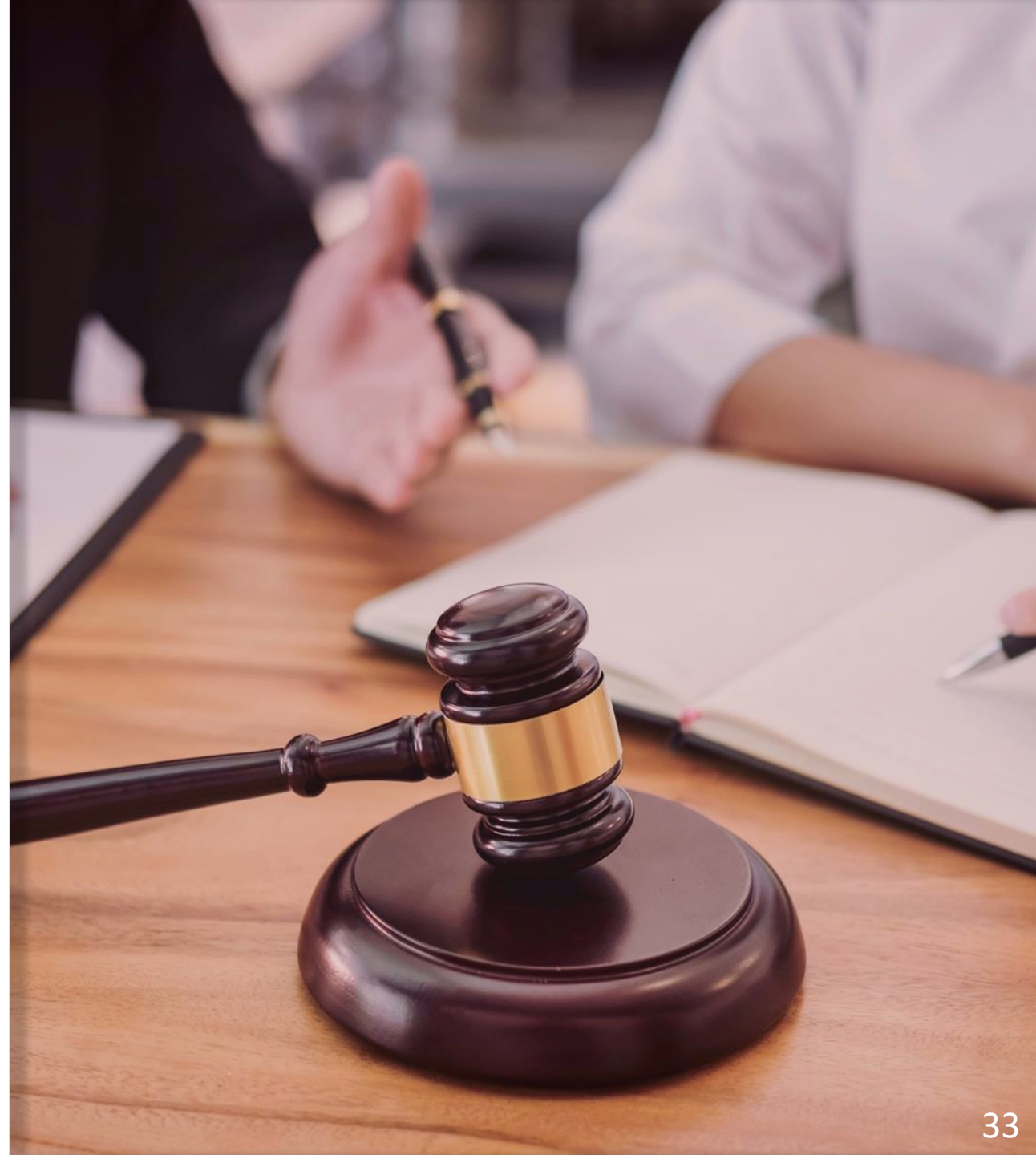


One Last Thing...
DOL Audits!!!

NEVER IGNORE
CORRESPONDENCE FROM
THE DOL

ERISA ENFORCEMENT

- DOL enforces ERISA Title I
- Primary enforcement responsibility held by EBSA
- ERISA violations can be costly for employers
 - DOL investigations
 - DOL enforcement actions
 - DOL penalties
 - Employee lawsuits





ATTACHMENT A

COPIES OF ITEMS IDENTIFIED BELOW
SHOULD BE SUBMITTED AS INDICATED IN THE COVER LETTER

1. Plan document.
2. Summary Plan Description (SPD), including any changes in Plan benefits and entitlement to benefits.
3. All contracts with insurance companies for the provision of health benefits.
4. If self-insured, all contracts for claims processing, administrative services, and reinsurance.
5. Documents which describe the responsibilities of both the employer and employees with respect to the payment of the costs associated with the purchase and maintenance of health and welfare benefits.
6. In accordance with the Health Insurance Portability and Accountability Act of 1996, please provide the following records:
 - a. A copy of the Plan's rules for eligibility to enroll under the terms of the Plan (including continued eligibility).
 - b. A sample of the certification provided to those employees who have lost health care coverage since January 1, 2008 or to be provided to those who may lose health care coverage under this plan in the future, which certifies creditable coverage earned under this plan;
 - c. A copy of the record or log of all Certificates of Creditable Coverage for individuals who lost coverage under the Plan or requested certificates;
 - d. A copy of the written procedure for individuals to request and receive certificates;
 - e. A sample general notice of preexisting condition informing individuals of the exclusion period, the terms of the exclusion period, and the right of individuals to demonstrate creditable coverage (and any applicable waiting or affiliation periods) to reduce the preexisting condition exclusion period, or proof that the plan does not impose a preexisting condition exclusion;
 - f. Copies of individual notices of preexisting condition exclusion issued to certain individuals per the regulations (including any lists or logs an administrator may keep of issued notices), or proof that the Plan does not impose a preexisting condition exclusion;
15. If the Plan is **NOT claiming** grandfathered health plan status under section 1251 of the Affordable Care Act, please also provide the following records:
 - a. A copy of the choice of provider notice informing participants of the right to designate any participating primary care provider, physician specializing in pediatrics in the case of a child, or health care professional specializing in obstetric or gynecology in the case of women, and a list of participants who received the disclosure notice.
 - b. If the Plan provides any benefits with respect to emergency services in an emergency department of a hospital, please provide copies of documents relating to such emergency services for each plan year on or after September 23, 2010.

- g. A copy of the necessary criteria for an individual without a certificate of creditable coverage to demonstrate creditable coverage by alternative means;
- h. Records of claims denied due to the imposition of the preexisting condition exclusion (as well as the Plan's determination and reconsideration of creditable coverage, if applicable), or proof that the Plan does not impose a preexisting condition exclusion;
- i. A copy of the written procedures that provide special enrollment rights to individuals who lose other coverage and to individuals who acquire a new dependent, if they request enrollment within 30 days of the loss of coverage, marriage, birth, adoption, or placement for adoption, including any lists or logs an administrator may keep of issued notices; and
- j. A copy of the written appeal procedures established by the Plan.
7. A copy of the Plan's rules regarding coverage of medical/surgical and mental health benefits, including information as to any aggregate lifetime dollar limits and annual dollar limits.
8. The Plan's Newborns' Act notice (this should appear in the plan's SPD), including lists or logs of notices an administrator may keep of issued notices.
9. A copy of the Plan's rules regarding pre-authorization for a hospital length of stay in connection with childbirth.
10. A sample of the written description of benefits mandated by WHCRA required to be provided to participants and beneficiaries upon enrollment.
11. A sample of the written description of benefits mandated by WHCRA required to be provided to participants and beneficiaries annually.
12. Materials describing any wellness programs or disease management programs offered by the plan. If the program offers a reward based on an individual's ability to meet a standard related to a health factor, the plan should also include its wellness program disclosure statement regarding the availability of a reasonable alternative.
13. If the Plan is claiming or has claimed grandfathered health plan status within the meaning of section 1251 of the Affordable Care Act, please provide the following records:
 - a. A copy of the grandfathered health plan status disclosure statement that was required to be included in plan materials provided to participants and beneficiaries describing the benefits provided under the Plan.
 - b. Records documenting the terms of the Plan in effect on March 23, 2010 and any other documents necessary to verify, explain or clarify status as a grandfathered health plan. This may include documentation relating to the

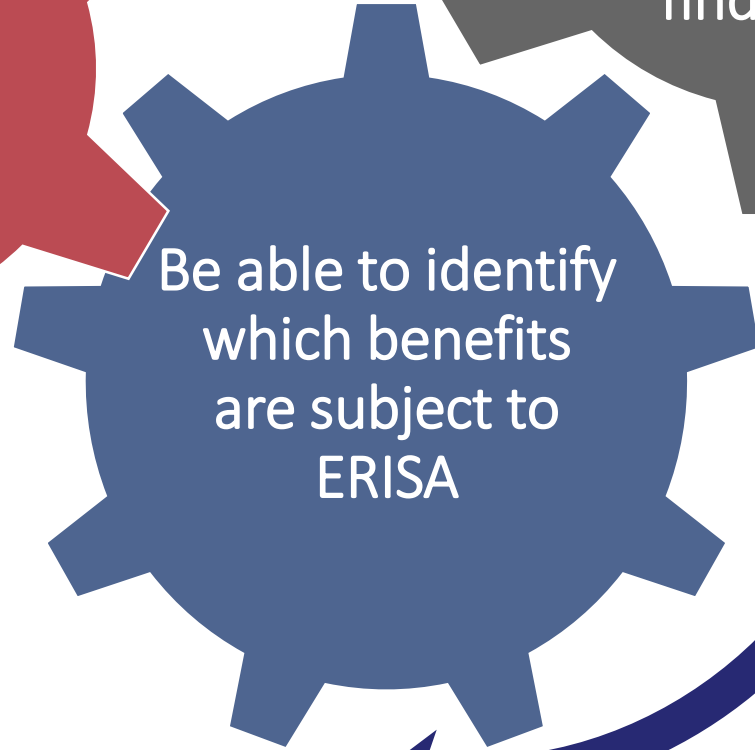
DOL AUDIT PROCESS

- ✓ Initial document request and response
- ✓ On-site review
- ✓ Interviews with plan officials
- ✓ EBSA identification of violations (or closing letter if no violations found)
- ✓ Voluntary compliance and/or settlement agreement
- ✓ Closing conference
- ✓ Closing letter

***AGAIN, NEVER IGNORE CORRESPONDENCE
FROM THE DOL***

I ACTUALLY
DON'T MIND
COMPLIANCE...

WHAT'S NEXT?



I ACTUALLY
DON'T MIND
COMPLIANCE...

WHAT'S NEXT?



THANK YOU

Jennifer Berman, J.D.
CEO and Co-Founder
MZQ Consulting, LLC
443.948.6800

acaquestions@mzqconsulting.com



I ♥
being
compliant