

Investigations & Enforcement

Form 5500 DOL Investigations

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When you receive a letter from the Department of Labor (“DOL”) letting you know that the plan that you administer is under investigation, it is natural to ask “how did my plan get picked?”

While some investigations are opened based on participant complaints or concerning news reports, many investigations are opened because your plan meets criteria that a current initiative has flagged. This is a lot of words to say that Form 5500 has become an enforcement tool. The most recent initiative based off of Form 5500 information has been the DOL’s terminated-vested participant program. As part of this initiative, the DOL has targeted plans based on readily available information in Form 5500 — mainly defined benefit plans and specifically plans that report a large number of terminated vested participants.

We have also seen Form 5500 trigger investigations related to plan fees and expenses. Schedule C to Form 5500 requires plans to provide information on service providers and the amounts that they are paid.

Finally, an obvious trigger that can lead to investigations related to Form 5500 is when a plan checks the box that they have engaged in a non-exempt prohibited transaction.

With the DOL working to update plan reporting, Form 5500 and other filings are likely to continue to be tools used so that it can better identify targets for its investigatory resources. As your plan puts together its filings, its important to pay attention to what you are reporting so that you can minimize your investigation odds or at least to understand what type of investigation your filings are likely to trigger.