



WHAT TO EXPECT FROM A HEALTH PLAN INVESTIGATION

**United States Department of Labor
Employee Benefits Security Administration**

Disclaimer

This presentation may contain opinions of the presenter that may not comport with the official views of the U.S. Department of Labor and is meant for educational purposes only.

OUTLINE OF PRESENTATION

- Background on EBSA
- ERISA and fiduciary responsibility
- Types of investigations
- Health Benefits Security Project
- EBSA investigation process
- Correction & VFCP
- Compliance assistance and other resources



THE EMPLOYEE BENEFITS SECURITY ADMINISTRATION (EBSA)

General Organization Overview

EBSA's Mission Statement

The mission of the Employee Benefits Security Administration is to assure the security of the retirement, health and other workplace related benefits of America's workers and their families. We will accomplish this mission by:

- developing effective regulations;
- assisting and educating workers, plan sponsors, fiduciaries and service providers; and
- vigorously enforcing the law.

EBSA ORGANIZATIONAL CHART

Assistant Secretary

**Deputy Assistant Secretary for
Program Operations**

Deputy Assistant Secretary for Policy

**Office of Program Planning
Evaluation and Management**

**Office of Health Plan Standards
and Compliance Assistance**

**Office of Technology and
Information Services**

Office of Enforcement

**Office of Regulations and
Interpretations**

**Office of Outreach Education
& Assistance**

**Office of Policy and
Research**

**Office of Exemption
Determinations**

**Office of the Chief
Accountant**

**Boston
New York
Philadelphia
Atlanta
Cincinnati**

Regional Offices

**Chicago
Kansas City
Dallas
Los Angeles
San Francisco**

EBSA - STRUCTURE

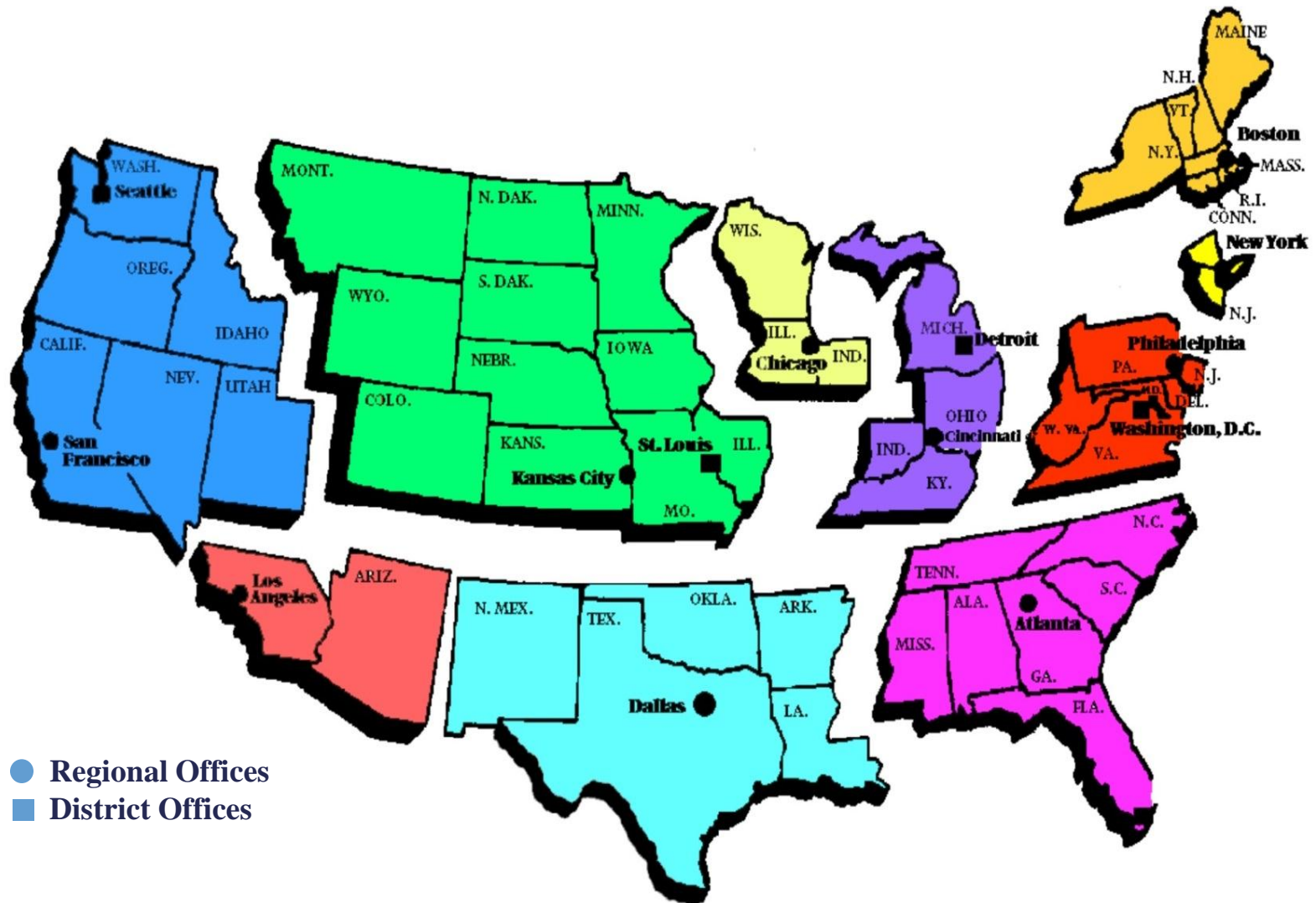
National Office

- Establishes policy and agency protocols
- Oversight of reporting and disclosure requirements
- Drafts regulations and interpretive guidance
- Conducts economic research to determine impact of policy and regulations on regulated community
- Conducts outreach such as the Health Benefits Education Campaign

Regional Offices

- Conduct investigations of ERISA plans
- Provide compliance assistance through Benefit Advisors
- Conduct outreach to plan sponsors and other stakeholders

EBSA FIELD OFFICES



EBSA ENFORCEMENT STRATEGY

Department of Labor Strategic Plan 2014-2018

- This outlines the strategies the Department uses to guide the agency mission

EBSA Strategic Enforcement Plan

- Last published in 2000, the primary purpose is to establish a general framework through which EBSA's enforcement resources may be efficiently and effectively focused to achieve the agency's policy and operational objectives

National Enforcement Projects

- Published annually and publically available at www.dol.gov/ebsa/erisa_enforcement.html



ERISA BASICS FOR GROUP HEALTH PLANS

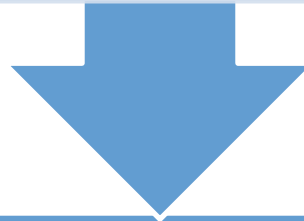
EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA)

Applies to employee benefit plans sponsored by private sector employers and/or unions

NOT government
plans

NOT church
plans

Other exclusions
may apply

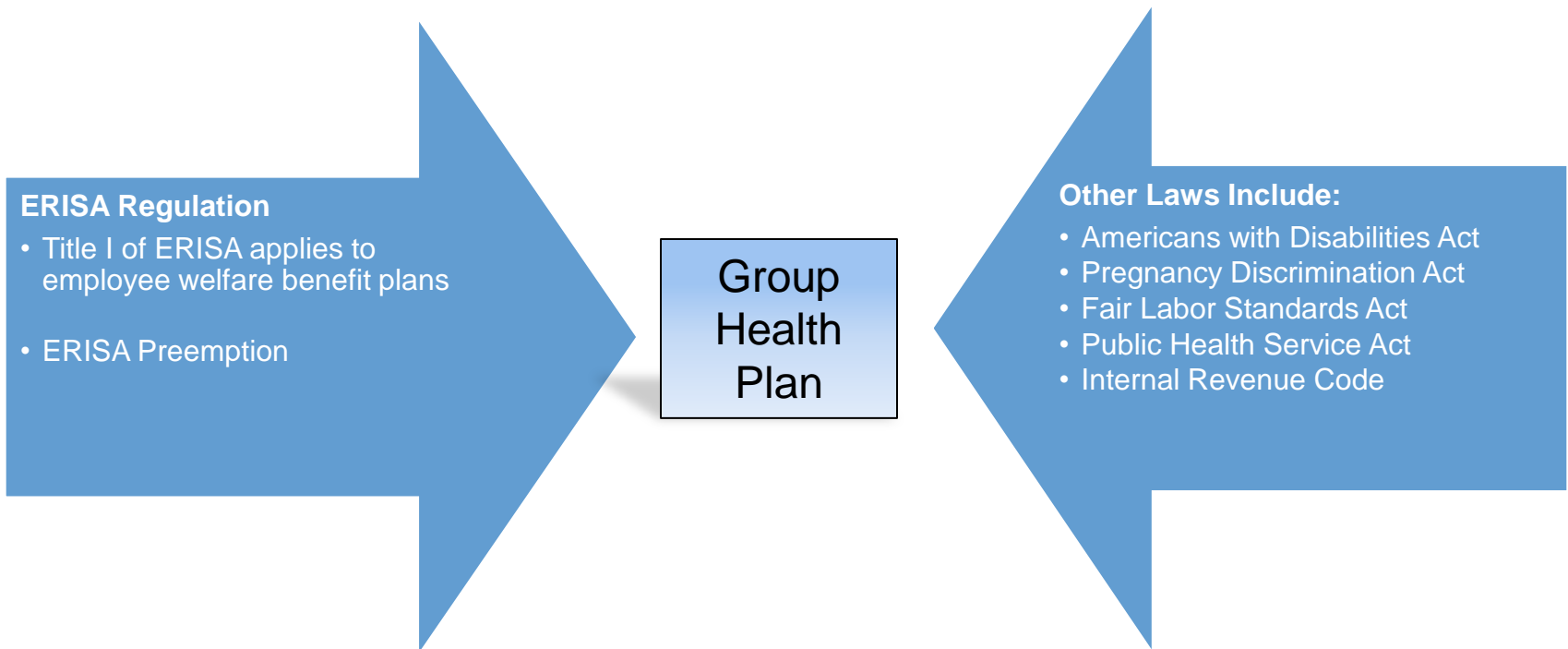


Generally, ERISA allows the plan sponsor to decide whether to offer a plan and allows flexibility in the plan's benefit design.

A Few Basic Things a Group Health Plan Must Have:

- Governing plan document(s) must comply with ERISA
- A Summary Plan Description (SPD) provided to participants and beneficiaries
- Named Fiduciary
- Reasonable claims & appeals procedure
- Fidelity bond (to protect against dishonesty) unless the plan is funded solely by general assets of plan sponsor

REGULATION OF GROUP HEALTH PLANS



HEALTH LAWS INCLUDED IN ERISA PART 7

Consolidated Omnibus Budget Reconciliation Act (COBRA)

Health Insurance Portability and Accountability Act (HIPAA)

Mental Health Parity Act (MHPA)

Newborns' and Mothers' Health Protection Act (Newborns' Act)

Women's Health and Cancer Rights Act (WHCRA)

Genetic Information Nondiscrimination Act (GINA)

Mental Health Parity and Addiction Equity Act (MHPAEA)

Children's Health Insurance Program Reauthorization Act (CHIPRA)

Michelle's Law

Patient Protection and Affordable Care Act (Affordable Care Act)

ENFORCEMENT AND JURISDICTION

Department of Labor

- ERISA

Department of Health
and Human Services

- Public Health Service Act

Department of
Treasury

- Internal Revenue Code

States

- State Insurance Laws

Participants and
Beneficiaries

- Private litigation

ENFORCEMENT AND JURISDICTION

Department of Labor's Enforcement Role

- DOL is responsible for enforcing the requirements of Title I of ERISA with respect to employment-based group health plans

ENFORCEMENT AND JURISDICTION

Role of the States

- States have direct jurisdiction over health insurance issuers that sell products in their state.
- Group health plans frequently purchase health insurance products from licensed health insurance issuers. Generally, these products have been reviewed for compliance by the state insurance department.

ENFORCEMENT AND JURISDICTION

Department of Health and Human Service's Role

- Generally, the states enforce state laws that place requirements on issuers. These provisions of these state laws must be at least as protective as ERISA part 7 and the Public Health Service Act (PHSA).
- However, if HHS determines that a state has failed to “substantially enforce” its parallel laws, HHS can directly enforce the PHSA with respect to health issuers in that state.
- HHS may also be invited in by the state to enforce in that state

ENFORCEMENT AND JURISDICTION

Department of Treasury's Enforcement Role

- Treasury enforces most of the requirements of the ERISA health laws through parallel Internal Revenue Code provisions.
- Treasury may impose an excise tax on plans or employers that fail to comply with these health laws

ENFORCEMENT AND JURISDICTION

○ **Participants and beneficiaries**

- ERISA 502(a) - Participants and beneficiaries also have a private right of action to enforce their rights against plans and issuers

ERISA REPORTING AND DISCLOSURE FOR GROUP HEALTH PLANS

Reporting Requirements

- Certain group health plans must file the Annual Report (Form 5500)

Disclosure Requirements include:

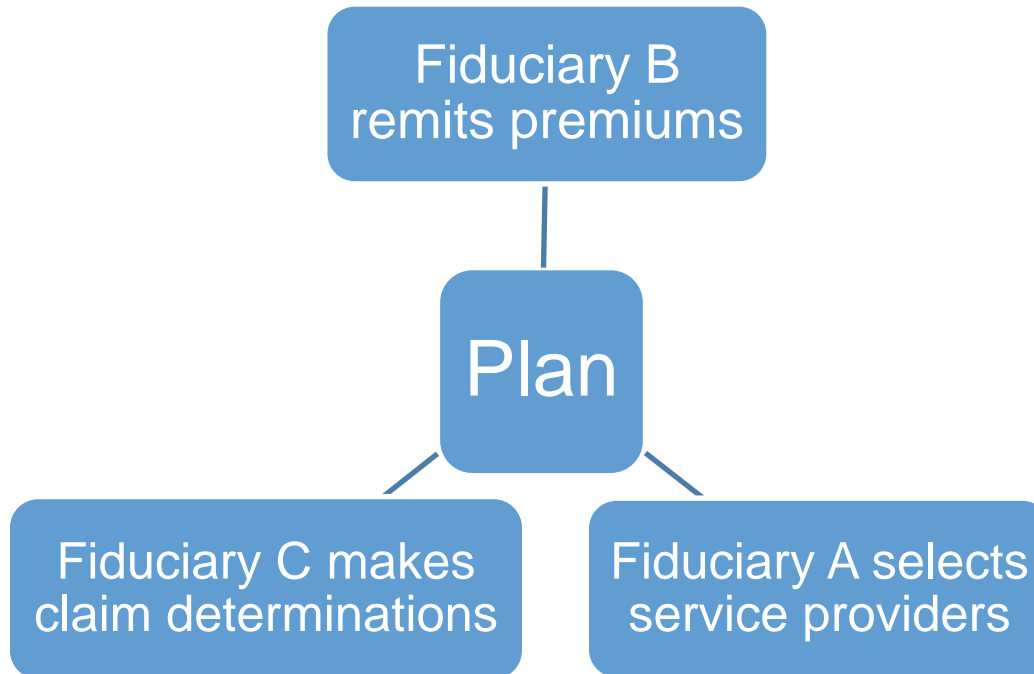
- Summary Plan Description (SPD)
- Summary of material modifications (SMM)
- Summary of Benefits and Coverage (SBC)
- Adverse Benefit Determinations and other disclosures as required by ERISA 503 claims procedure rules
- Various notices to comply with the health laws of ERISA part 7
- COBRA notices

A Fiduciary is any person:

- Named as a plan fiduciary in plan documents -or- who:
 - Exercises discretionary authority or control over plan management - or -
 - Exercises authority or control over plan assets - or -
 - Provides investment advice for compensation (direct or indirect)

PLAN FIDUCIARIES

- Plans can have multiple fiduciaries
- Fiduciaries can be named or functional



A Fiduciary must:

- Act “solely in interest” of participants & beneficiaries
- Discharge duties prudently with care, skill and diligence
- Diversify plan investments
- Follow terms of governing documents (to the extent they are consistent with ERISA)

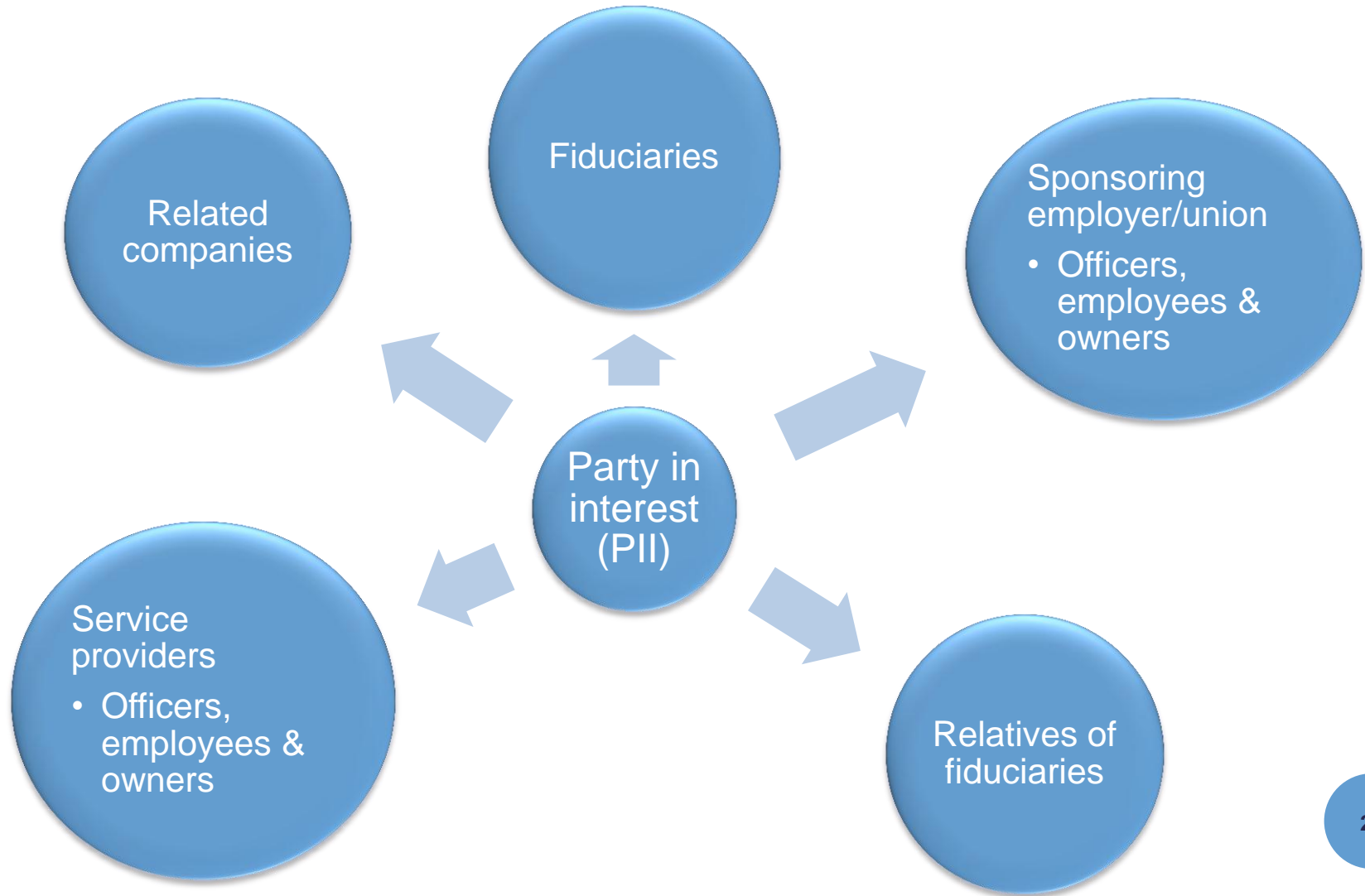
Fiduciary must NOT:

- act in own self interest
- act on behalf of a party with adverse interests
- accept “anything of value” from those doing business w/ the Plan (e.g. kickbacks)

Fiduciaries must NOT cause the Plan to engage in a prohibited transaction such as:

- Sale or exchange of plan assets with party in interest (PII)
- Extension of loan or credit to PII
- Contract for goods, services or facilities with PII
- Transfer plan assets to a PII for their use or benefit

PARTIES IN INTEREST



Fiduciaries can be held *personally liable* for losses resulting from a fiduciary breach



For example: Fiduciary A can also be held *personally liable* for losses resulting from a breach by Fiduciary B

if A's failure(s) allowed B to breach

if A knowingly participated in or knowingly concealed B's breach

if A knows about B's breach and fails to make reasonable efforts to correct B's breach

Penalties may be imposed for a breach of fiduciary duty

- ERISA Sec. 502(l) imposes 20% penalty on the amount paid pursuant to a court order or settlement agreement
- IRS can impose excise tax on prohibited transactions
- IRS can impose excise tax under IRC Sec. 4980D for failure to meet certain group health plan requirements
- Numerous other penalties for R&D failures

Some fiduciary breaches may also constitute criminal violations of ERISA, other federal law, or state law.

- Examples include:
 - Accepting kickbacks
 - Filing fraudulent claims
 - Stealing premiums or contributions



TYPES OF INVESTIGATIONS

Investigations may be civil or criminal in nature and may focus on:

- The Plan
- The Plan Sponsor
- A Service provider
- An Individual

Sources for Targeted Investigations

- Participant complaints
- Form 5500 Reviews
- Referrals from:
 - Other agencies
 - State insurance departments
 - Advocacy groups
- Media
- Private litigation



NATIONAL HEALTH BENEFITS SECURITY PROJECT

Health Benefits Security Project (HBSP)

- Established October 2012
- Comprehensive national project to review health plans for ERISA compliance including all applicable health laws
- Includes a broad range of investigative issues such as:
 - Compliance with ERISA provisions such as the health laws included in part 7
 - Unpaid or improperly processed benefit claims
 - Excessive service provider fees
 - Systemic denial of promised benefits
 - Criminal misconduct by plan fiduciaries or medical providers

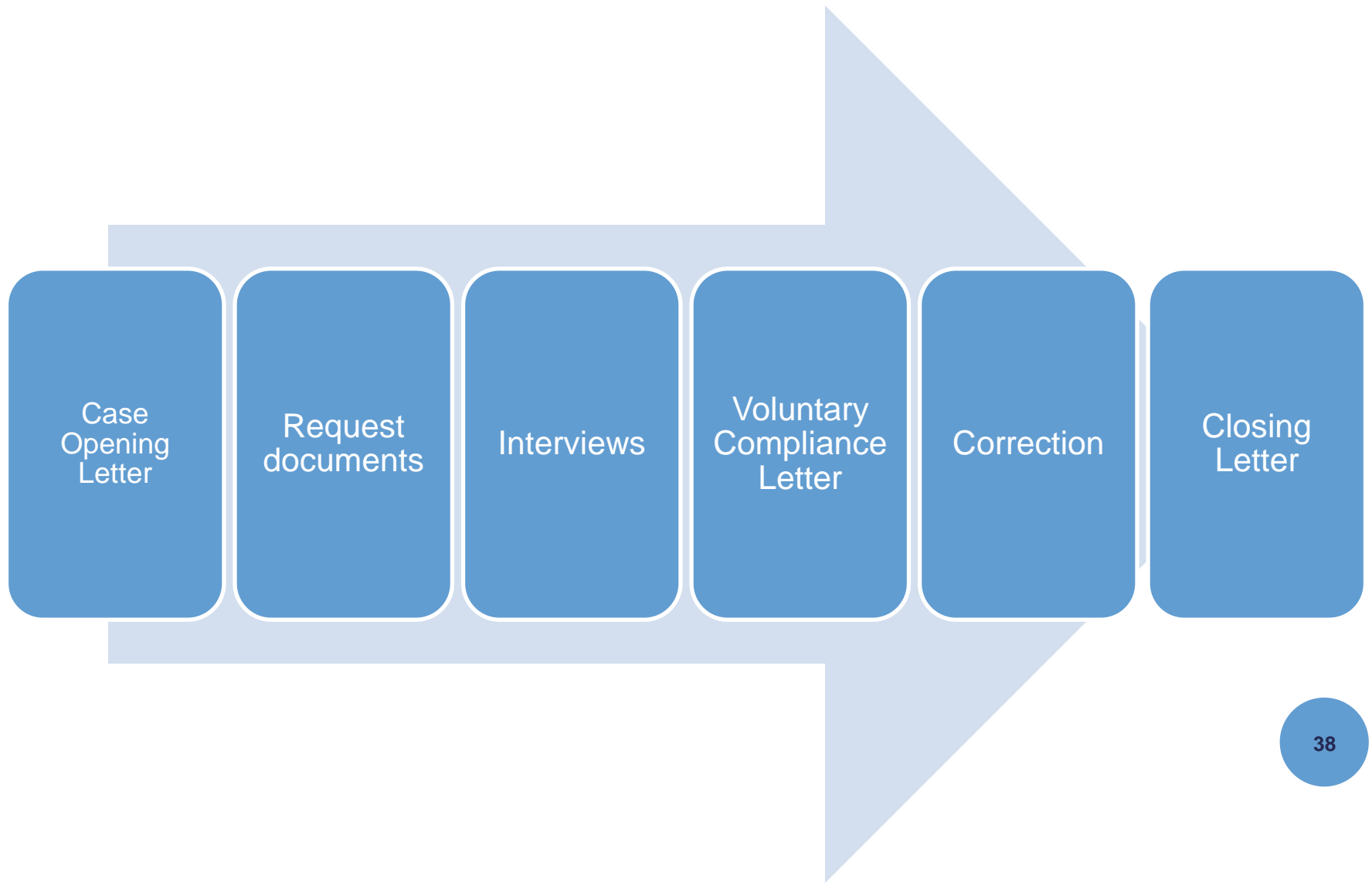
Examples of Group Health Plan Violations

- Failure to provide benefits in accordance with plan terms
- Improper or arbitrary claims adjudication
- Failure to follow the DOL claims procedure rules
- Failure to forward employee premiums to the insurance provider
- Failure to provide mental health benefits in parity with medical/surgical benefits in accordance with mental health parity rules
- Failure to provide required notices



INVESTIGATIVE PROCESS

GENERAL PROCESS FOR CIVIL PLAN INVESTIGATIONS



INITIAL INVESTIGATIVE STEPS

Determine basic operations of health plan

- Insured/self-insured?
- Service providers
- Contributions/premiums
- Claims process and benefit payments
- Compliance with Part 7 of ERISA



Document review

- Ensure all requested documents have been made available
- Arrange for access to any additional documents required
- Arrange for additional interviews

Basic Health Plan Documents

- Plan document / SPD / Certificate of Coverage
- Summary of Benefits and Coverage (SBC)
- Service provider contracts
- Premium or contribution schedules
- Documents related to plan finances
- Documents related to claims
- Participant notices required by ERISA
- Other documents related to ERISA compliance

Subpoenas

- ERISA grants DOL (EBSA) the power to “enter such places, inspect such books and records and question such persons ... as deemed necessary”
- DOL (EBSA) has the authority to issue subpoenas requiring the production of documents or testimony

Findings and Follow-Up

- Speak with plan sponsor and service providers to clarify plan terms to determine if violations of the health laws or other systemic problems exist
- Determine the most appropriate action to take to correct the problem
- Work with service provider (if applicable) to make global corrections for all affected plan clients

Voluntary Compliance Letter

- Identifies problems
- Offers chance to discuss corrective action
- If corrective action is not taken, potential referral to the Solicitor's Office

Closing Letter

- Identifies problems & corrective actions taken
- Indicates the case is closed



CORRECTION & VOLUNTARY FIDUCIARY COMPLIANCE PROGRAM

Corrections Pre-Investigation

- EBSA encourages self-correction
- Fiduciaries should regularly review operations
- Health Law Self-Compliance Tool
- Upon detection, take corrective action(s)
- Correction guidance is in VFCP documentation
- Call EBSA for compliance assistance

Correction During Investigation

- Often, potential problems become clear during the investigation
- If problem is identified, work with EBSA to make corrections
- Correction guidance may be available
- Proof of correction and number of participants affected is required

Depending on the circumstances, appropriate corrective action may include:

- Settlement agreement
- Notification to P's and B's of the correction
- Implementation of new internal controls
- Re-adjudication of claims
- Paying unpaid claims
- Payment of Plan's administrative costs and expenses
- Interest
- Disgorgement of profits or surcharge
- Penalties
- Removal of fiduciaries
- Removal of service providers
- Appointment of independent fiduciary

Criminal Referrals

- Theft or embezzlement
- Health care fraud
- Kickbacks or bribes
- False statements to investigators
- Willful failures to file or false filings

Voluntary Fiduciary Correction Program (VFCP)

- “Self-help” program
- Correction methods specified in regulations
- Submit complete applications to Regional Office
- EBSA issues “No Action” letter
- Some transactions eligible for excise tax relief



COMPLIANCE RESOURCES

Health Plan Compliance Resources

- EBSA website (health plans):
http://www.dol.gov/ebsa/compliance_assistance.html#section2
- Health Benefits Laws Self Compliance Tools:
<http://www.dol.gov/ebsa/healthlawschecksheets.html>
- Health and Human Services
www.hhs.gov/healthcare

Compliance Assistance

- EBSA main site www.dol.gov/EBSA
- EBSA health reform page www.dol.gov/ebsa/healthreform
- EFAST2 website: www.efast.dol.gov
- Technical Assistance and Publications: askebsa.dol.gov or 1-866-444-3272
- EFAST2 Hotline (Toll-free): 1-866-GO EFAST (1-866-463-3278)
- Form M-1 Filings: <http://www.askebsa.dol.gov/mewa/> or call the Form M-1 Help Desk at 202-693-8360

Compliance Assistance

- Office of Health Plan Standards & Compliance Assistance (202) 693 – 8335
- Office of Chief Accountant (202) 693-8360
- Office of Regulations & Interpretations (202) 693-8500
- Office of Exemptions & Determinations (202) 693-8540

Publications

- Understanding Your Fiduciary Responsibilities under a Group Health Plan
- Reporting and Disclosure Guide for Employee Benefit Plans
- An Employer's Guide to Health Benefits under COBRA

Outreach Events

- Health Benefit Education Campaign two-day seminar
- Webcasts
- Regional workshops



**SUBSCRIBE TO THE EBSA WEBSITE
FOR RECEIVE ALERTS ON NEW
GUIDANCE AND EVENTS**

www.dol.gov/ebsa