



# NEWS AND INFORMATION

for Employers

Fiduciary Plan Governance Edition

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How to Prepare  
for a 401(k) Audit

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Plans




 **NORTHEAST  
BENEFIT SERVICES INC.**

**Larry Kavanaugh, Jr. AIF<sup>®</sup>, CPFA, CLU, ChFC**

950-A Union Rd. Suite 31

Buffalo, NY 14224

 716.674.7200

 [L.Kavanaugh@nebstpa.com](mailto:L.Kavanaugh@nebstpa.com)

 [www.nebstpa.com](http://www.nebstpa.com)



# How to Prepare for a 401(k) Audit



If the DOL comes knocking, is your plan prepared for an audit? Be aware of red flags, how to respond and what documents to have ready.



#DOL #Audit #401k

If the term "audit" makes you uncomfortable, anxious or even scared, you are not alone. Last year, the Department of Labor (DOL) closed 1,122 civil investigations with 754 (67%), resulting in fees, repayments or corrective actions.<sup>1</sup> The agency collected over \$3.12 billion in direct payments to plans, participants and beneficiaries. This represents a whopping 300% increase in just five years.<sup>2</sup>

From this perspective, you might think there is no chance that you're walking out of an audit unscathed. However, the outlook is a little less bleak when you realize that in the US, there are nearly 722,000 retirement plans and only 1,122 escalated to investigation.

So instead of viewing the DOL as the boogey monster or fearing a 401(k) audit, let's take a look at the utility behind audits, identify red flags and establish best practices to help demystify the process.

## What is a 401(k) Audit?

Retirement plan audits are normal; in fact, they happen all the time. Generally speaking, a plan audit is the review of a company's retirement plan with the primary objective of ensuring that it meets guidelines and regulations set by the DOL and IRS. For large companies with over 100 participants, audits are an annual occurrence, but small plans can also be under scrutiny if a red flag is raised.

## What are Audit Red Flags?

The following red flags can prompt the DOL to take a closer look at your retirement plan.

### Employee Complaints

Individual complaints from employees are a frequent source of DOL investigations. From a total of 171,863 inquiries from workers, 357 resulted in the opening of new investigations and more than half of all monetary recoveries relate to benefits of terminated vested participants of defined benefit plans.<sup>3</sup> The simple lesson here is that plan sponsors must establish clear protocols for how participants can communicate questions or complaints about their benefits to the plan sponsor before filing complaints with the DOL. Quick and effective responses are critical.

### DOL Enforcement Priorities

Examinations may also relate to enforcement priorities launched by the DOL. As of this publication, the agency "continues to focus its enforcement resources on areas that have the greatest impact on the protection of plan assets and participants' benefits."<sup>4</sup> Just like the old story about why a robber goes to a bank, this translates to the DOL likely focusing more on large plans because that's where the money is.

<sup>1</sup> Department of Labor. "Fact Sheet. EBSA Restores Over \$3.1 Billion to Employee Benefit Plans, Participants and Beneficiaries." 2020.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Employee Benefits Security Administration. "Enforcement." DOL.gov. Accessed 2021.

## Delinquent Contributions

Delinquent contributions are pursued as part of an ongoing national priority. These are easy pickings for the DOL and a clear violation of the most basic fiduciary standards. No employer should deduct contributions from employees' wages and fail to contribute those deferrals to the plans without fear of significant and swiftly administered reprisals.

Plan sponsors are encouraged to review their Form 5500 and other records to spot trouble points, such as:

- Missed contributions
- Assets not held in trust
- Paying unreasonable compensation to service providers (conduct regular fee benchmarking to avoid this)
- Paying expenses from the plan that are actually expenses of the employer (known as "settlor expenses". These costs include consulting services regarding plan design or plan termination.)

Other areas of interest include lost or missing participants, and, of course, the DOL often accepts referrals from other agencies such as the IRS.

## A Knock at the Door

If you happen to receive a notice from the DOL about an audit or an investigation, your response should be the same:

- Take a deep breath.
- Put your team together and choose a qualified primary contact person.
- Strongly consider engaging ERISA counsel. Expert help may avoid missteps and provide an intermediary for difficult conversations.
- Consider requesting an extension of time to respond. Many initial deadlines can be short for complex exams. Extensions, if reasonable, are routinely granted.

- Review all documents prior to production. Be ready to report any issues found.
- Deliver documents in neat and organized fashion.
- Prepare employees for interviews. Treat it like a deposition. Caution them to take their time, thoughtfully consider their responses and ask for clarification of any questions they do not understand.
- Always be truthful and respectful.

## What Documents are Typically Requested?

The sheer volume of documents requested may at first seem overwhelming, but the requests will be for documents you should have readily available in your files. They include:

- Plan document, Investment Policy Statement, plan records of fees/expenses
- Form 5500, Summary Plan Description (SPD), Summary Material Modification (SMM), participant fee disclosures and benefit statements
- Service provider contracts and fee disclosures
- Participant claims and benefits data
- Bonding and fiduciary liability insurance
- Fiduciary committee charters, committee meeting minutes and other records
- Organizational documents about your company and organizational charts
- More recently, cybersecurity practices

## Stay Prepared

Whether you are subject to a routine audit or a red flag prompts an investigation, it is important to remember that fiduciary vigilance is key. The best preparation is to follow sound operational procedures every day and don't fall behind.

# Do ESGs Fit Into Our Retirement Plan?



Employee professional and financial values are evolving, and ESG funds are beginning to represent them in the market. Will they become part of your fiduciary consideration?



#ESGInvesting  
#Values  
#Sustainability

## *The value—driven workplace and its implications for retirement plans*

Your workplace may be evolving in many facets, from remote options to new generations coming into the workforce. These changes reflect those of the larger social climate and, in turn, employee priorities, values and expectations. Many professional and financial decisions are being influenced by these trends, as 53% of consumers are now **value—driven**.<sup>1</sup>

Some of the progressing values represent environmental, social and governance factors, known collectively as ESGs. These factors correspond to an array of investments that reflect a company's interest in sustainability efforts; they can be offered to employees as part of their 401(k) lineup. ESG funds are becoming increasingly present, with nearly \$20 billion in annual flows during 2020.<sup>2</sup>

- **Environmental:** greenhouse gas (GHG) emissions, climate change, renewable energy, energy efficiency, waste management, etc.
- **Social:** human rights, labor standards, workplace health and safety, employee relations, diversity, consumer protection, etc.
- **Governance:** board structure, size, diversity, skills and independence

Companies frequently look to display their devotion to the environment around them and in the workplace, ranging from efforts like Diversity, Equity and Inclusion (DEI) within the workforce to issues regarding climate change.

Efforts that reflect a company's commitments, like ESG investments and sustainable purposes, can project not only a positive brand image but also continually work to align company goals with investments and employer loyalties with employee values.

## **Four Types of Involvement**

Now, don't feel like you need to adjust your investment lineup right this moment. As a fiduciary, you have a duty to act in the best interest of the plan and its participants. ESG funds can also be considered at different levels of involvement. Before diving into sustainable investing, decide on which, if any, of the four approaches your investment lineup might want to take.<sup>3</sup>

**ESG Integration** is the most conservative option for firms entering the landscape. This approach considers ESG factors along with others when creating investment profiles, with the primary goal of achieving promising returns.

<sup>1</sup> New York Life Investments. "Sustainable Investing for a Sustainable Business Presentation." 2019.

<sup>2</sup> Hale, Jon. "Sustainable Funds U.S. Landscape Report." Morningstar Direct, 10 Feb. 2021.

<sup>3</sup> New York Life Investments. "New York Life Investments Guide to ESG Investing." 2020.



**Exclusionary Investing** entails the exclusion of certain companies or sectors that do not reflect a company's sustainability values. An example would be not investing in the tobacco industry, as many have done in response to health concerns and the related environmental impact.

**Inclusionary Investing** focuses on actively seeking out ESG—centered entities to invest in as opposed to rejecting certain companies or sectors.

**Impact Investing** is the most engaged strategy, where a company dedicates its investing practices to achieving a positive difference in an environmental or social arena in addition to producing returns for its employees.

## What Do You Believe In?

To get an idea of what sustainable topics you, your firm and your employees may resonate with and consider investing in, the United Nations Sustainable Development Goals (SDGs) can help.<sup>4</sup> These goals “address the global challenges [the world] face[s], including poverty, inequality, climate change, environmental degradation, peace and justice”, and are the focus of many ESG funds.<sup>5</sup>

Examples of the SDGs:

- Good health and well being
- Gender equality
- Affordable and clean energy
- Decent work and economic growth
- Sustainable cities and communities
- Climate action

Identifying your firm's values and objectives can help reveal the best ways to align with those of current and future employees and learn how they want their benefit packages to be structured.

## Looking to the Future

As new generations enter the workforce, they expect diverse and sustainable portfolios. More than 85% of all investors now express interest in ESG investments, specifically those addressing global warming and climate change.<sup>6</sup> This percentage increases with each younger generation — the future of the American workforce. Sustainability, the impact of plastic on the oceans and data fraud and theft are also top considerations for consumers interested in ESG fund investment.<sup>7</sup>

ESG funds may be a promising element of 401(k) investment lineups for plans, employers and employees in the coming years. Consider if and how they represent your firm and its employees, but more importantly, how they may or may not fulfill your fiduciary duty to act in the best interest of your plan and its participants.

As ESGs become more readily available and your company continues to evolve, we are here to help by discussing your options and identifying efforts that may help align your company with future goals and employee values.

<sup>4</sup> United Nations. “The 17 Goals | Sustainable Development.” United Nations. 2015.

<sup>5</sup> United Nations. “Take Action for the Sustainable Development Goals – United Nations Sustainable Development.” United Nations. 2015.

<sup>6</sup> New York Life Investments. “Sustainable Investing for a Sustainable Business Presentation.” 2019.

<sup>7</sup> Ibid.



# Diversity, Equity and Inclusion and Their Impact on Retirement Plans



Your workforce is diverse and unique — how does your retirement plan reflect DEI efforts?



#DEI #401k  
#FinancialWellness

Today's workforce spans a variety of abilities, skills, experiences and cultural backgrounds that bring exceptional value. It is beneficial to understand and recognize these differences to achieve exceptional results. This remains true when offering, communicating and promoting your company's retirement plan.

## Raising Awareness

Thankfully, your retirement plan is no stranger to reporting. From participation rates, deferral percentages, asset allocation mixes, benchmarking analysis, investment reviews and other slice and dice metrics, retirement plan information is often shared based on your plan's specific numbers and peer group comparison.

However, those calculations seldom include the lens of Diversity, Equity and Inclusion (DEI). Now all that is changing.

## Expanding the Scope

Nearly two—thirds of plan sponsors have noticed an increased demand for retirement plans to align with DEI efforts.<sup>1</sup> So, now is a good time for employers and retirement plan committee members to revisit and re—evaluate how their 401(k) plans align with the workplace climate.

Four primary areas to review your workplace retirement plan DEI may include:

- **Participant cohorts:** Participants save and accumulate assets differently. Take a look at your company's demographics to spot under savers (participation, deferral, asset allocation, etc.). Then implement a targeted strategy to help all groups take advantage of the opportunities offered by your plan.
- **Committee composition:** To foster a deeper understanding of your employees' savings experience, reassess and consider expanding the retirement plan committee to include a representative structure that mirrors your workforce, potentially bringing greater insights that enhance retirement savings.

<sup>1</sup> Willis Towers Watson. "Moving the needle on defined contribution plans." Willis Towers Watson. 27 May 2021.

- **Investment offering:** Consult with us for a review of your investment menu and discuss how a DEI strategy could be reflected throughout your retirement plan's investment offerings.
- **Holistic mindset:** For the majority of Americans, the workplace retirement plan is their primary savings and accumulation vehicle for retirement. Employers and committee members should address the current financial state of plan participants to ensure the diverse needs of their workplace are being addressed. Boosting the financial wellbeing of plan participants can drive the improvement of plan outcomes and allow all demographic groups to better engage with the benefits offered to them.

## Financial Wellness

DEI is an essential part of a financial wellness program. A financial wellness program's purpose is to help employees improve their overall financial situation. The best way to do this is by gaining an understanding of the differences that may exist between diversity groups (e.g. age, race, ethnicity, gender, physical abilities, sexual orientation, etc.), followed by viewing plan data to identify cohorts that could benefit from receiving additional resources. Sponsors can also use the data presented to look at demographic groups and see if they have different engagement levels in the plan.

One idea to address participation gaps is auto—enrollment. It is agnostic across all employees; it has been found that when auto—enrollment is implemented with Black, Latinx and White Americans, the participation rate remains 80% across the board.<sup>2</sup> Interestingly, when given the same auto—enrollment default, everyone saves the same when they have access. This is one example of how employers can address a coverage issue and, if applicable, address a racial disparity within 401(k) plan participation.

## Financial Education

Diversity can extend not only to different cultural groups but varying generations as well. As such, employers should offer financial education resources that appeal to the different learning preferences (and languages) of each cohort along with best way to communicate with them about retirement, all while working to improve experiences through effective DEI.

As the lifestyles and stages of employees evolve, so do their financial needs and priorities. For a retirement program to be successful, employers should take these changes into consideration.

One size doesn't fit all. Plan sponsors should seek to employ a mix of communications — utilizing brochures, emails, videos, infographics, blog articles and online calculators — to get the message out to different demographics within the plan.

## Next Steps

To get started with your DEI strategy, consider these best practices:

- **Know your employees:** Seek to understand their differing demographics and assess participant behaviors from multiple perspectives.
- **Talk with your service providers:** Set up a meeting to learn what resources are readily available (e.g. financial wellness programs, plan data, different language options, etc.).
- **Communicate with purpose:** Your communications should highlight your retirement plan as a valuable benefit. Help your diverse workforce understand why it is important to save and how your company is helping to promote retirement preparedness.

Using DEI to guide plan decisions can help ensure your company's retirement plan is working to positively impact the different cohorts of your employees. DEI used wisely can increase the retirement engagement

<sup>2</sup> American Retirement Association. "Building on Bipartisan Retirement Legislation: How Can Congress Help?" 28 July 2021.



## ABOUT US

At Northeast Benefits, our mission is to provide knowledge and expertise to employers sponsoring plans governed by ERISA and to help those employers create plans that attract and retain the personnel they need to be successful.

We are committed to having a knowledgeable, experienced administrative staff that you have direct access to. The experience of our staff simply cannot be equaled by a large, impersonal 800 number. You will always have an experienced staff person answering your important questions.

What it all boils down to is that we care – we have a genuine concern for clients' needs. We take pride in our professional responsibility and in the values we share with them.

In an age of automation and impersonal business interactions, Northeast Benefit Services, Inc. provides personal service and individual attention to each of our clients.



**Larry Kavanaugh, Jr. AIF<sup>®</sup>, CPFA, CLU, ChFC**

950-A Union Rd. Suite 31

Buffalo, NY 14224

📞 716.674.7200

✉️ [L.Kavanaugh@nebstpa.com](mailto:L.Kavanaugh@nebstpa.com)

🌐 [www.nebstpa.com](http://www.nebstpa.com)

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