



➤ February 19, 2025

Audit-Proof Your Business: Strategies to Avoid a Department of Labor Audit



Before We Begin



We are recording today's webinar



Submit your questions at any time



Please complete the exit survey

➤ Our Presenter: Carolyn McNairy



- is the Vice-President of Strategic Partnerships for TCB.
- Carolyn has been in the employee benefits and administration since 1978, specializing in Employer compliance.
- She has served as Sales Vice-President of Compliance Services and is currently a member of TCB Legislative Compliance Team.
- She has received ECFC's highest award designation of Certified Flexible Compensation Instructor (CFCI).
- Carolyn is a graduate of UTC (University of Tennessee at Chattanooga) where she received her Bachelors degree in Business Administration.

➤ Agenda

- ✓ ERISA Background
- ✓ Refresher
 - Which employers are subject to Health & Welfare Benefit Plan Compliance
 - What are the requirements
- ✓ Health Care Reform's Impact
- ✓ Penalties for non-Compliance
- ✓ Surviving an Audit
- ✓ Why BASIC's ERISA Compliance Solution
- ✓ Q & A

➤ What's the origin of ERISA?

- December 23, 1963
- Studebaker Corporation in South Bend, Indiana, announces the plant is closing...



Sources:
DiFelice v. Aetna U.S. Healthcare, 346 F.3d 442, 454 (3d Cir., 2003)
"The Most Glorious Story of Failure in the Business: The Studebaker-Packard Corporation and the Origins of ERISA" by James A. Wooten

➤ What's the origin of ERISA?

- ✓ Underfunded pension = not enough money to cover vested benefits.
- 11,000 workers affected
- Only 4,100 received a full pension
- 4,000 received 15%
- 2,900 received nothing



➤ ERISA: Employee Retirement Income Security Act



- ✓ Enacted in 1974 and is governed by the U.S Department of Labor and enforced by the Employee Benefits Security Administration (EBSA).
- ✓ EBSA ensures the integrity and compliance of the private employee benefits plan system in the US
- ✓ Mission Statement
 - Assure the security of the retirement, health and other workplace related benefits of America's workers and their families.
 - Accomplished by developing effective regulations; assisting and educating workers, Plan Sponsors, fiduciaries and service providers; and vigorously enforcing the law.

➤ ERISA Defined (1974)

Employee Retirement Income Security Act (ERISA)

Governs the structure of employee benefits Plans:

- ✓ Requires:
 - detailed disclosure to covered individuals (all private sector employers.)
 - detailed reporting to the government (generally, 100 or more participants).
- ✓ Imposes
 - strict fiduciary code of conduct on sponsor/administrators
 - federal mechanism for enforcing rights and duties



➤ What is a “plan” under ERISA?

A Welfare Benefit Plan must be:

- A plan, fund, or program
- Established or maintained by an employer
- Established to provide welfare benefits to participants and beneficiaries



➤ Employers Subject to ERISA

Private-Sector Employers

- Corporations
- Partnerships
- Sole Proprietorships
- Non-Profit Organizations
 - (Unless Exempt under 501a as Governmental entity)

➤ Safe Harbors of Statutory and Regulatory Exemptions

- ✓ Governmental and church Plans are exempt from ERISA
- ✓ Programs maintained solely to comply with state-law requirements for:
 - Plans maintained outside the U.S. for non-aliens
 - Workers compensation
 - Unemployment compensation
 - Disability insurance



➤ Benefits Subject to ERISA

- Health, Dental and/or Vision Insurance or Plans
- Health FSA
- HRA
- AD&D
- GTL
- STD and LTD
- Severance
- Wellness
- EAP
- Group Travel Accident
- Voluntary Benefits



➤ Key ERISA Requirements

- ✓ Plan documents
- ✓ Terms must be followed
- ✓ Strict fiduciary standards
- ✓ Fidelity bond for each person handling funds
- ✓ Summary Plan Description (SPD) to participants
- ✓ Summary of Material Modification (SMM) furnished to participants. (When a Plan is amended within 210 days after end of plan year.)



➤ Required Disclosures: Summaries

✓ Summary Plan Description (SPD) provided:

- Within 90 days of start of coverage.
- Within 120 days of a plan becoming subject to ERISA.

✓ Summary of Material Modification (SMM) provided:

- Within 210 days after plan year end of adopted modification
- When a **MM** within 5 years of the material modification.
- **Has not been a MM** then within 10 years of the last SPD.

✓ Summary Annual Report (SAR) provided:

- Within 9 months after the close of the plan year.



➤ ACA and ERISA SPD

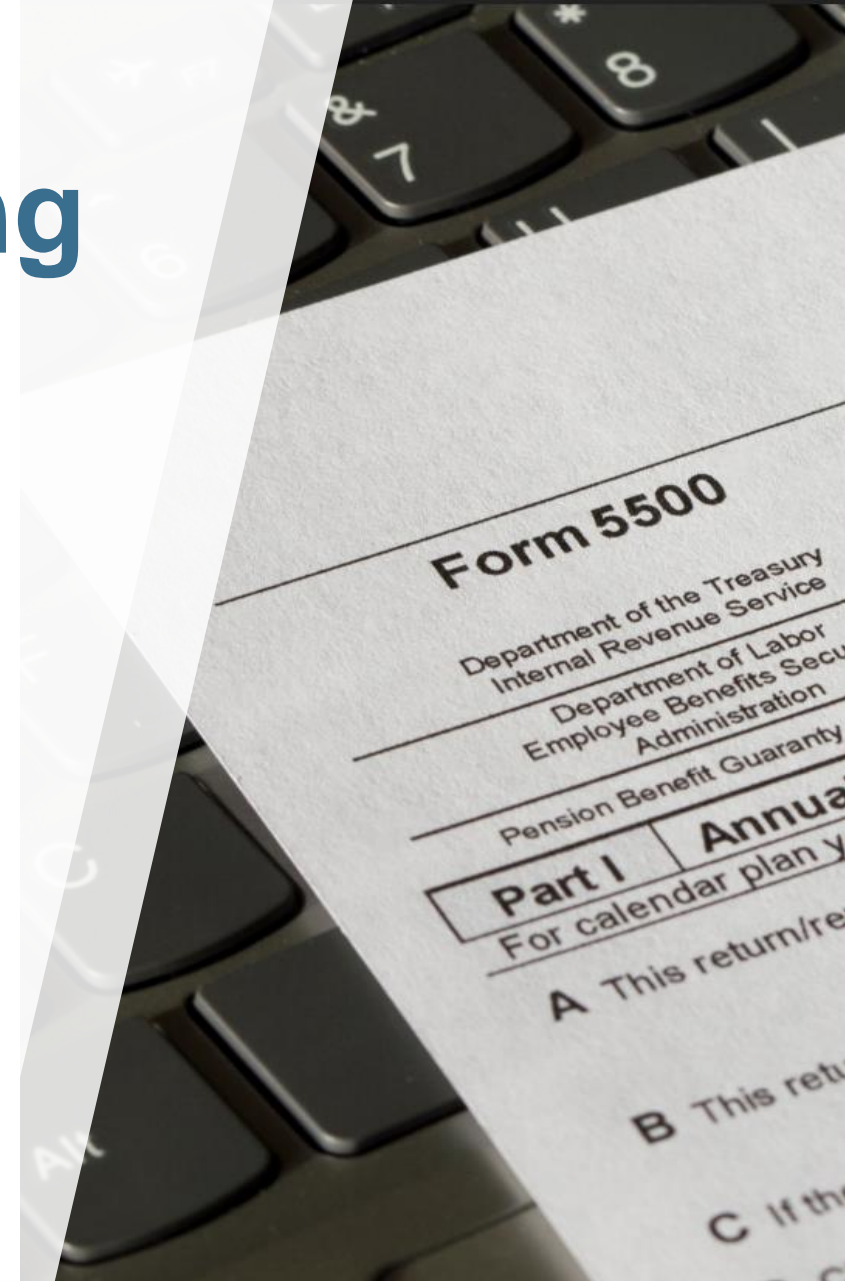
- ✓ ALEs track employee and health coverage information
- ✓ Penalties apply to employers with 50+ FTEs
- ✓ Hours are tracked either monthly or during a measurement period
- ✓ The measurement period is a time set by the employer
- ✓ Employers must advise employees and include in ERISA SPD



➤ Annual Form 5500 Reporting

Filing Form 5500 with DOL

- ERISA Plan Administrators report each Plan Year (Unless exempted (small unfunded plans))
- Reporting applies to each ERISA Plan of an employer
- Penalty of up to **\$2,670 per day** for a late 5500 filing
- The DOL has a delinquent filer voluntary compliance program (DFVC program) which caps penalties.



PENALTIES

Increases and Adjustments

➤ 2025: Increased Fines & Penalties

The Department of Labor published in the Federal Register on June 30, 2016. It made an interim final rule to adjust for inflation the civil monetary penalties and final rule January 12, 2017 enforceable by the Department of Labor.

The DOL reserved the right to increase these penalties each year prior to January 15. Did they?

Subject to change each January.

Adjustment effective January 15, 2025 as published in Federal Registry.



Highlights: Penalty Adjustments: 2020 - 2024

ERISA Penalty Statute	Description of ERISA Violations	Effective Jan. 15, 2022	Effective Jan. 15, 2023	Effective Jan. 15, 2024	Effective Jan. 15, 2025
ERISA § 502(c)(2)	Failure or refusal to file <u>annual report</u> (Form 5500)	\$2,400/day	\$2,586/day	\$2,670/day	\$2,739/day
ERISA § 502(c)(6)	Failure to furnish <u>information requested</u> : <ul style="list-style-type: none"> by employee: by (DOL): 	\$110/day \$171/day \$1,713/request	\$110/day \$184/day \$1,846/request	\$110/day \$190/day \$1,906/request	\$110/day \$195/day \$1,956/request
ERISA § 502(c)(9)(A)	Failure to <u>inform employees of CHIP coverage</u>	\$127/day	\$137/day	\$141/day	\$145/day each recipient
ERISA § 715	Failure to <u>provide Summary of Benefits</u>	\$1,264/failure	\$1,362/failure	\$1,406/failure	\$1,443/failure each employee
Section 502(c)(4)	Per day: failure to disclose documents requested	\$1899/day	\$2046/day	\$2112	\$2167 each recipient

➤ Other Disclosures: Participants and Beneficiaries

✓ Furnish within 30 days of request:

- Copy of latest SPD and SMM
- Latest annual report
- Any terminated report
- Bargaining agreement
- Trust agreement
- Any contract

✓ Penalties:

- Penalties of \$110 per day for each day after the deadline



➤ Examples of Penalties

Failure to comply with ERISA's requirements can be quite costly

Examples: Government Penalties for Non-Compliance:

- 1) **\$86,500** - Failure to File Complete and Accurate **Form 5500**
- 2) **\$241,000** - Failure to Provide **SPD to Participant**
- 3) **\$10,780** - Failure to Provide **SPD to Participant**
- 4) **\$13,750** - Failure to Provide **SPD to Participant**
- 5) **\$8,910** - Statutory penalties failure to and delay in **providing SPD**



➤ Reporting and Excise Taxes For Health Plan Non-Compliance

Return of Certain Excise Taxes Under Chapter 43 of the Internal Revenue Code:

- IRS final regulations require employers to self-report violations of these rules and pay related excise taxes.
- Must report health plan compliance failures annually on IRS Form 8928.
- Violations COBRA, HIPAA, GINA, WHCRA, MHPAEA, Newborn & Mothers ACT, etc., can result in excise taxes of \$100 per day per individual affected.





SURVIVING AN AUDIT

➤ DOL ERISA Enforcement

How EBSA Determines Whom to Investigate

- Participant complaints
- 5500 targeting
- Specific national office initiatives (randomly)
- News stories and press tips



➤ Enforcement and Jurisdiction

Department of Labor

- ERISA

Department of Health
and Human Services

- Public Health Service Act

Department of
Treasury

- Internal Revenue Code

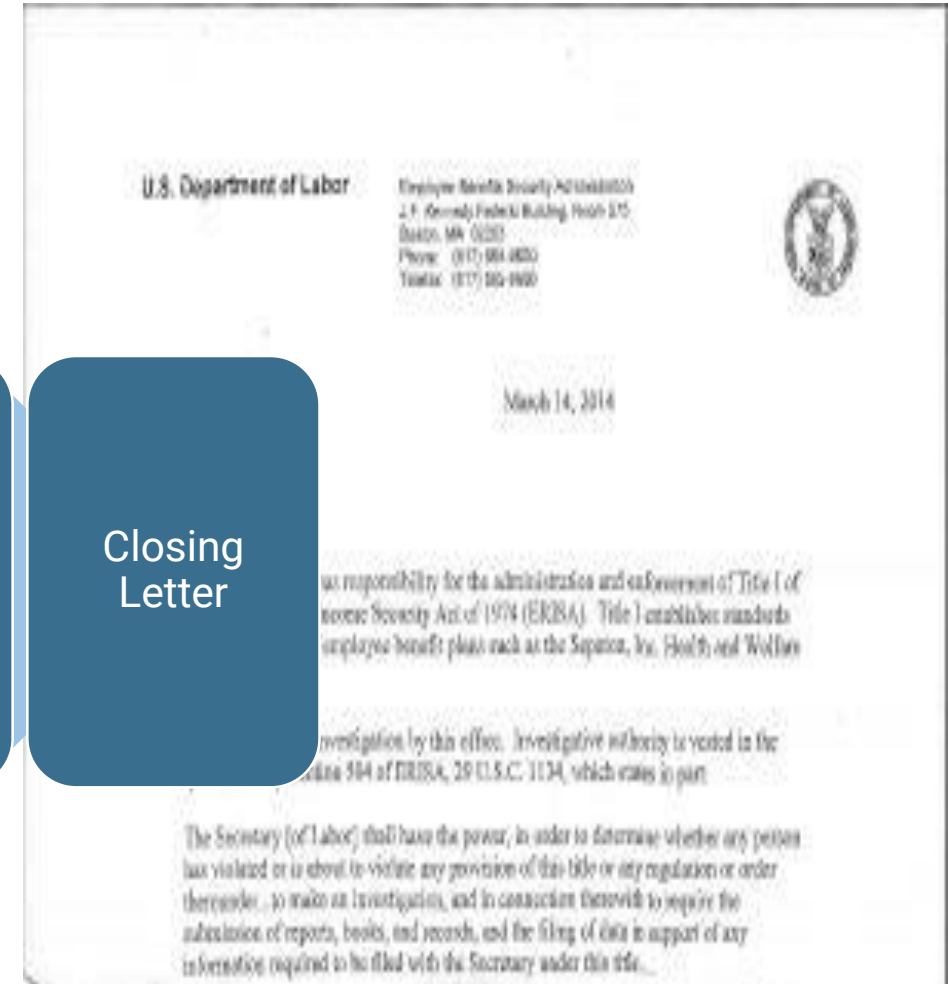
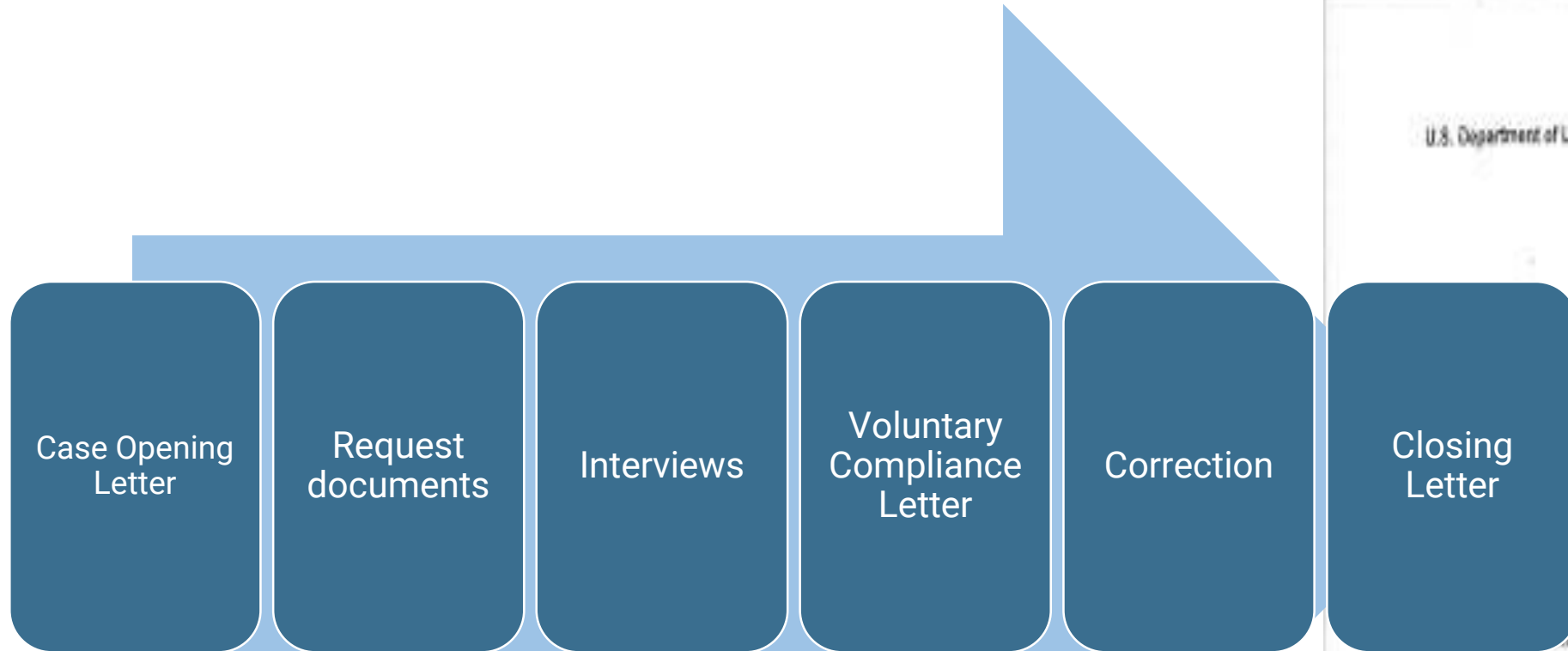
States

- State Insurance Laws

Participants and
Beneficiaries

- Private litigation

General Process for Civil Plan Investigations



DOL: Notice of Penalty



FINANCIAL PENALTY

Dear Plan Administrator:

The U.S. Department of Labor intends to assess a civil penalty of \$60,000 against you as Plan Administrator for the [REDACTED] Health & Welfare Plan's failure to file the Plan's Plan Year 2021 Form 5500 annual report filing.

The accrued penalty of \$30,000 is calculated at the rate of \$300 per day beginning the day after the original due date, and ending on the date of this Notice (up to a maximum of \$30,000 per annum) as follows:

Plan Year 2021 \$30,000 x 2 years = \$60,000

Although the Department intends to assess penalties for the above referenced plan year, you also may be required to file a satisfactory annual report for the 2022 Plan Year to avoid further penalties.

You could be subject to additional civil penalties up to \$2,586 per day until you file an annual report satisfactory to the Department.¹

P E N A L T Y

Dear Plan Administrator:

The U.S. Department of Labor intends to assess a civil penalty of \$30,000 against you as Plan Administrator for the [REDACTED] Inc. Employee Benefit Plan's failure to file the Plan's 2021 Form 5500 annual report filing(s).

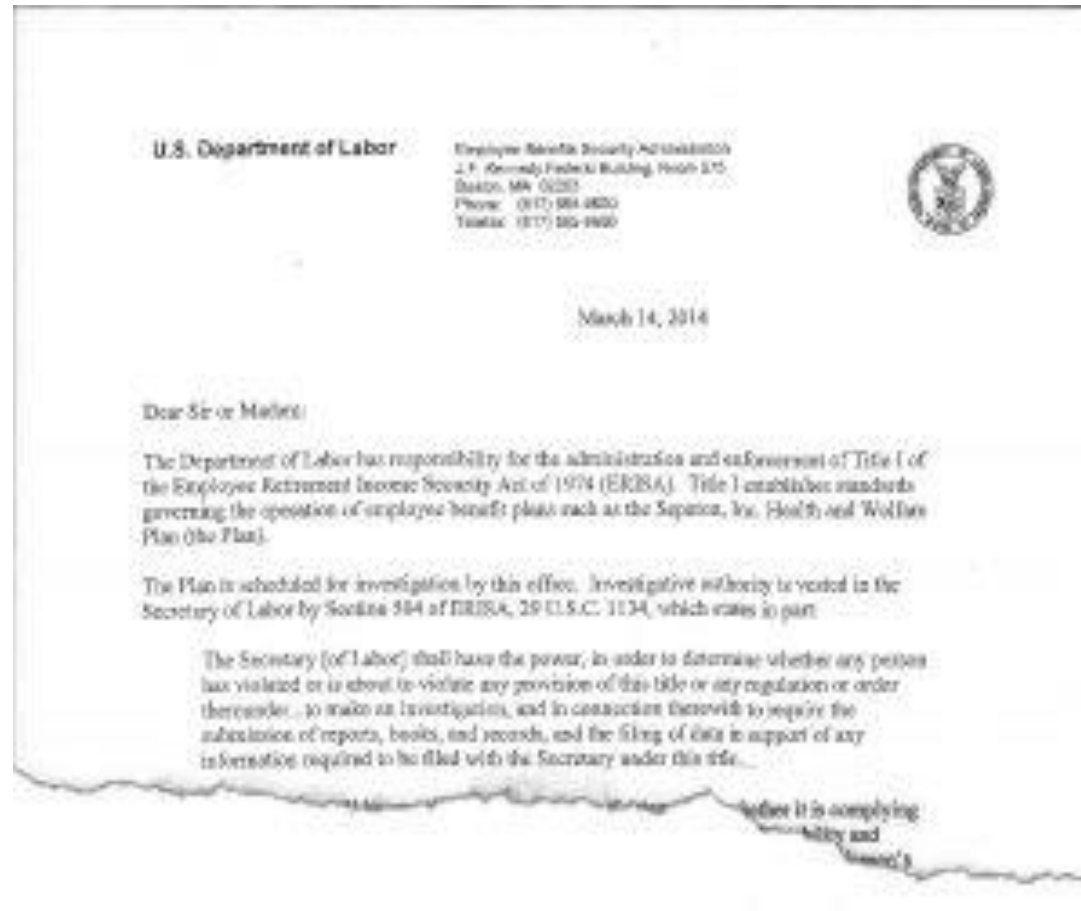
While you responded to our inquiry, you provided a copy of the 2021 Form 5500 for the 401(k) plan rather than the health and welfare plan.

The accrued penalty of \$30,000 is calculated at the rate of \$300 per day beginning the day after the original due date(s), and ending on the date of this Notice (up to a maximum of \$30,000 per annum) as follows:

Plan Year 2021 \$30,000 x 1 year = \$30,000

You could be subject to additional civil penalties up to \$2,586 per day until you file an annual report satisfactory to the Department.¹

➤ The DOL is Coming



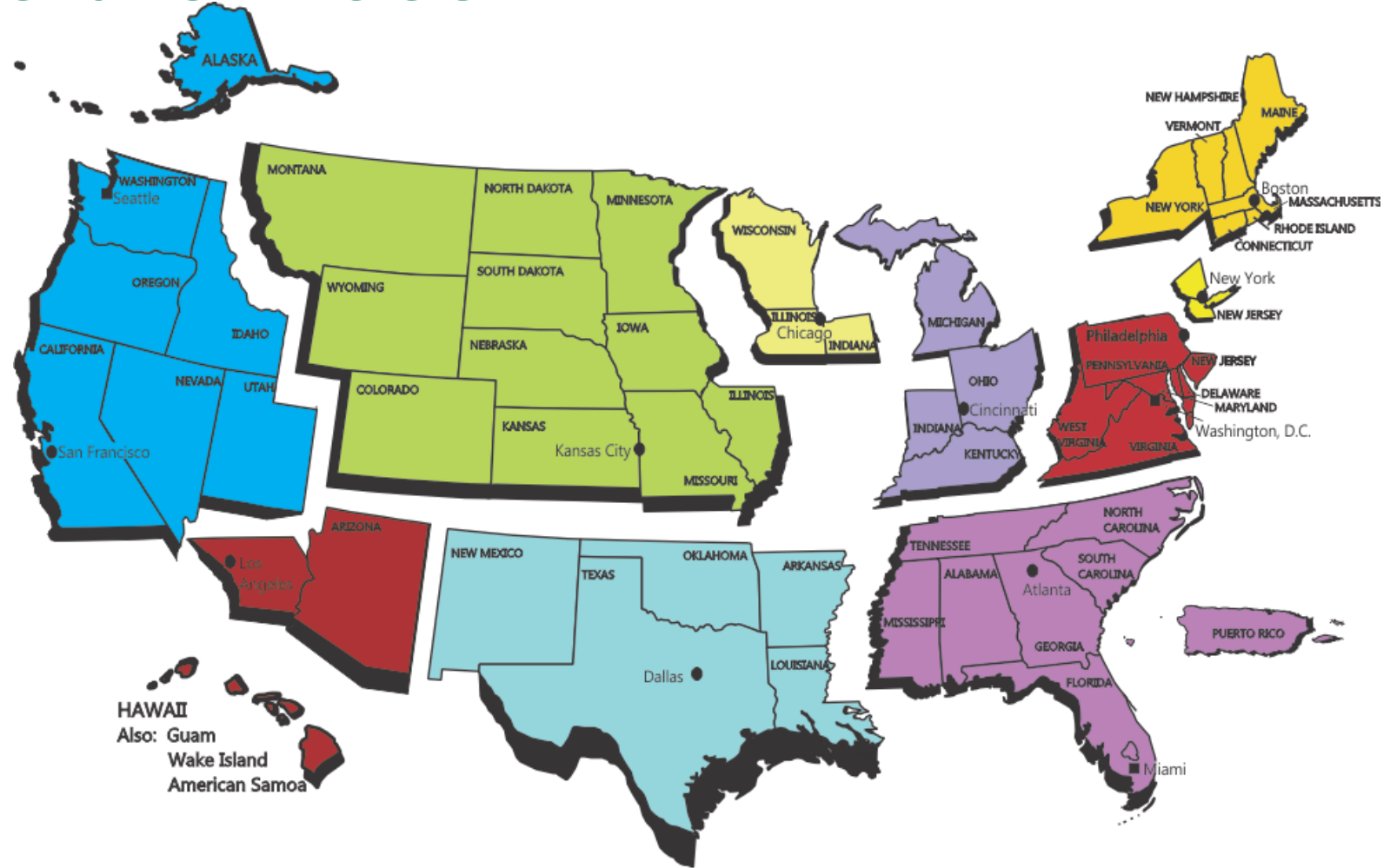
➤ Are you in Compliance?

- Keep good records
- Stay on top of requirements
- Maintain Fidelity Bond
- File 5500, if applicable



➤ EBSA Field Offices

- Regional Offices
- District Offices



DATA ENFORCEMENT



HOME

SEARCH

DATA CATALOG

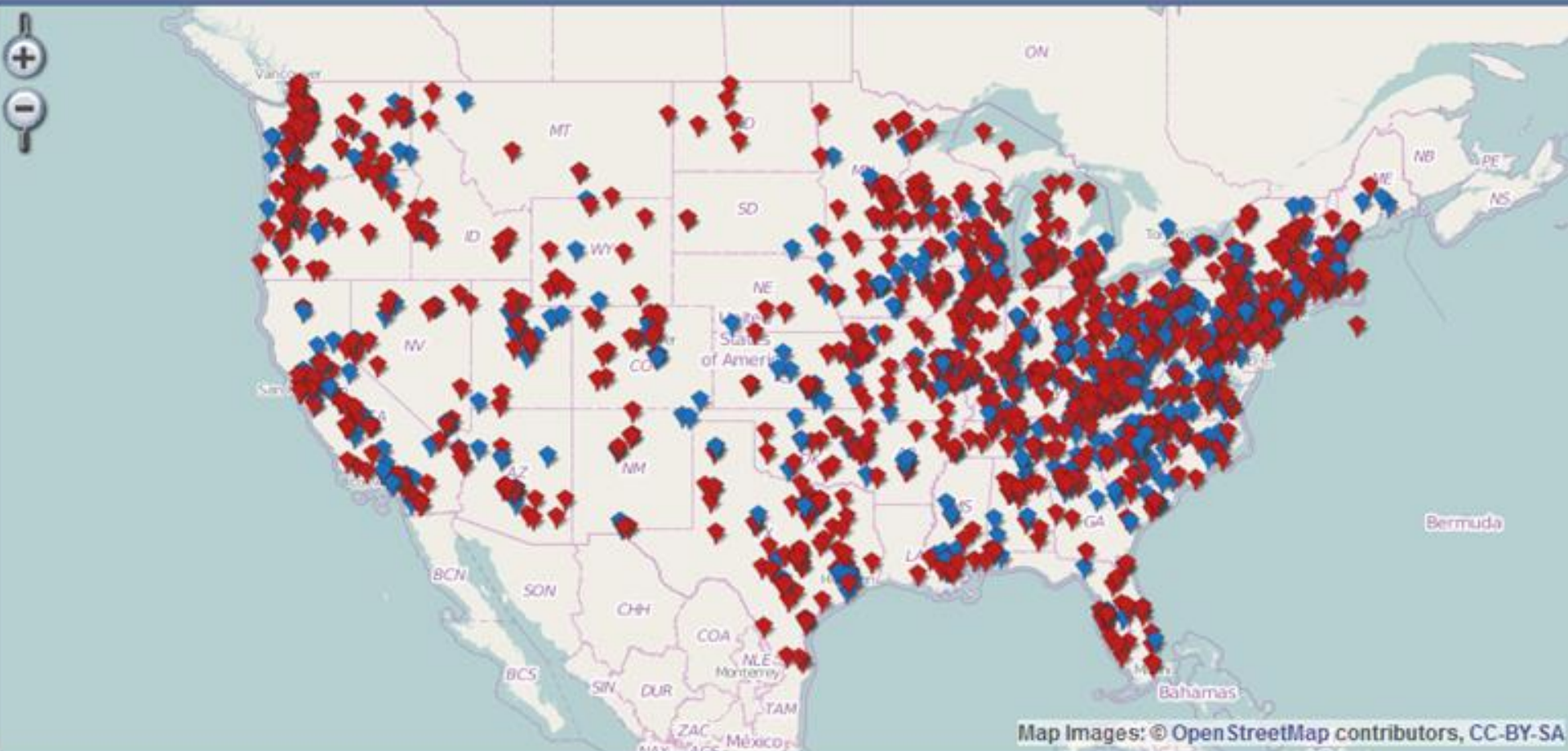
LABS

AGENCY TOOLS

FAQ

WHAT'S NEW

CENSUS DATA



AGENCIES & VIEWS

BASIC'S COMPLIANCE SOLUTION

➤ ERISA Essentials Is the Solution

- Prepare the ERISA SPD for Clients
- Mega-Wrap or Wrap Document
- Plan Document and SPD
- IRS Form 5500 and Schedules
- Full PCORI Services Included
- Summary Material Modification
- Summary Annual Report
- ERISA and Health Care Reform Notices
- Record-Keeping Assistance
 - Document retention requirements
 - Guidance on document access and employee rights
- Technical and Customer Service Support
- ERISA Administrative Manual
- Guaranteed Compliance
 - Monitor legislative & regulatory changes

Why BASIC ?

ERISA Compliance – The Es'
Employer Value Propositions

- + Experience
- + Exposure
- + Expertise
- + Education

Why BASIC?

➤ Experience

- Industry expert: 45+ years of experience
- Lasting presence: 90+ years of combined experience and sustainability
- VP of Compliance: 45+ years
- In-house Legal Council
- DOL audit assistance



Why BASIC?

➤ Exposure

- Audit Assistance
- Sustainable growth
- SSAE 16



Why BASIC?

➤ Education

- Monitors regulatory environment
- Conducts free webinars
- LASTLY - your Local BASIC RSD



BASIC ERISA Checklist

Request in the Exit Survey


BECOMPLIANT™

Benefit Plan Compliance Checklist

ERISA *by BASIC*

	YES	NO
Do you maintain copies of plan documents at the principal office of the plan administrator for examination by participants and beneficiaries?		
Do you have written company policies that govern the operation of your plan (i.e., eligibility, contributions, terminations, COBRA, leaves, etc.)?		
Do you have at least one fiduciary (a person or entity—the plan administrator) named in the written plan as having control over its operations?		
Does your plan include written procedures for making benefit claims and appealing denied claims, and are you complying with those procedures?		
Have you determined what requirements will apply to your plan under the health care reform laws including Non-Discrimination rules, W-2 reporting?		
Does the plan pay participant benefits on time and in the correct amounts?		
Have you determined what amendments you should make to the plan document to stay in compliance with the Patient Protection and Affordable Care Act (PPACA) and the Health Care and Education Reconciliation Act?		
Have you determined whether or not your plan will qualify for grandfathered status under the health care reform regulations and what additional requirements apply if the plan does not retain grandfathered status?		
Have you documented the selection and monitoring processes for service providers, including how you review a provider's policies, procedures, and performance?		
Do you have a written contract with your service providers that specifies the fees paid to them for administration of the plan?		
Do you have a Business Associate Agreement in place with Providers, Third Party Administrators and Vendors who have access to Protected Health Information?		

**Did you check "NO" to any of these questions? If so, you may be in violation with the ERISA requirements enforced by The U.S. Department of Labor.
Let BASIC help you!**

 For more information about any of our services or to speak with a sales consultant call 800.444.1922 x 3 or visit basiconline.com.
• BASIC COBRA • BASIC FSA • BASIC FMLA

Before Q&A



Slides are available in the Handouts section



Receive an email tomorrow with the recording



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QUESTIONS



THANK YOU

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www.basiconline.com/webinar



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