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Compliance Brief

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DOL Requires Disclosure of Audio Recordings under ERISA Claims Procedure

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Read time: 2 minutes

The Department of Labor (DOL) recently issued [Information Letter 06-14-2021](#) in which the DOL opined that audio recordings of a conversation between a participant and plan representative, and transcripts of the recordings, are subject to disclosure during the claims adjudication process under ERISA Section 503. The DOL's position is not surprising based upon the transparency theme that has dominated recent legislation. Typically, when a participant appeals an adverse benefit determination, copies of documents related to the decision-making process are requested by the claimant in order to identify any possible errors in the plan's review of the appeal. The facts presented in the Information Letter, however, involved whether recordings made for quality insurance purposes, and not plan related purposes, were subject to disclosure as well.

The DOL stated that the ERISA claims procedures "afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim." Further, the rules require that claimants be provided with copies of all documents, records, and other information relevant to the claimant's claim for benefits. Under DOL Reg. 2560.503-1(m)(8), a document, record, or other information is relevant to a claimant's claim, in part, if: (1) relied upon in making the benefit determination; or (2) submitted, considered, or generated in the course of making the benefit determination, without regard to whether such document, record, or other information was relied upon in making the benefit determination. The DOL pointed out that it is immaterial whether information was not created, maintained, or relied upon for claim administration purposes. The existence of a recording, even though created for quality assurance purposes, must accordingly be disclosed.



Recommendation

A claimant's right to receive an audio recording or transcript of the recording could result in the availability of compelling information that could be used by a participant in an attempt to overturn an adverse benefit determination. Accordingly, plan sponsors are encouraged to have information in the plan document and summary plan description which provides that the plan provisions cannot be amended by oral statements and can only be amended in writing, and to clearly identify those individuals authorized to interpret the plan.

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