COMPREHENSIVE COMPLIANCE REVIEW

THE USI ONE ADVANTAGE®

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Compliance Review | Navigating the Complexities

ERISA, ACA, DOL, and state & local regulators may impose a myriad of fines and penalties that could potentially bankrupt an employer.

Potential Penalties for Noncompliance in 2022		An Employer with 500 Employees
180-day delinquent penalty for failing to properly file ERISA Form 5500 Annual Reports	$2,400	**$432,000**
180-days delinquent penalty for failure to furnish an SPD in response to a written request of **one (1) participant**	$110	**$19,800**
Per employee penalty for failing to inform employees of CHIP opportunities	$127	**$63,500**
Per employee penalty for failing to provide Summary of Benefits Coverage (SBC) as required under the ACA	$1,264	**$632,000**
Failure to file and furnish Forms 1094-C/1095-C (2020 Form due in 2021)	$280 ($560 combined)	**$280,000**

- USI's Compliance Review assists employers in identifying and mitigating potential compliance fines and penalties.
  - USI compiles federal notices, disclosures and reporting requirements in a single comprehensive document.
  - Sample templates and explanations of safe harbor practices enable employers to improve adherence to requirements.
  - Training, timely webinars and how-to guides assist employers with a variety of reporting requirements.

ERISA Requirements | Documentation and Disclosure

Health and welfare plans must comply with ERISA provisions, including Plan Document, Summary Plan Description, 5500 filings, to avoid penalties.

I. GENERAL ERISA PROVISIONS

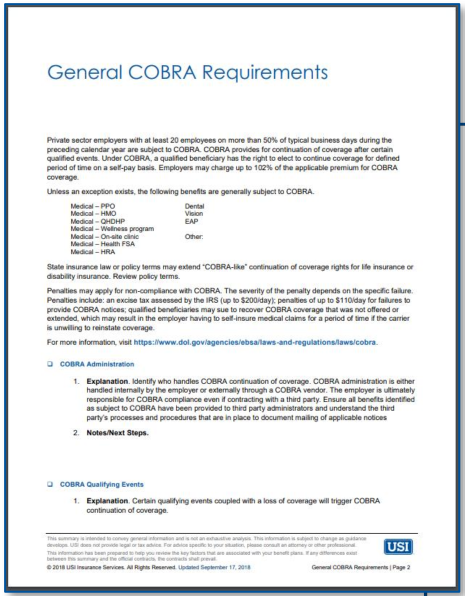
- ✓ PLAN DOCUMENTS
- ✓ SUMMARY PLAN DESCRIPTIONS
- ✓ FORMS 5500
- ✓ EMPLOYEE NOTICES AND DISCLOSURES

- Employers are often missing plan documents and SPDs for ERISA benefits or fail to have appropriate Wrap Documents to support filing a single Form 5500.
- Carrier booklets or contracts do not meet requirements.
- Failure to furnish these documents may result in penalties of $110/day/written request; a failure to file a correct Form 5500, $2,400/day.
- USI's compliance review evaluates employer's adherence to compliance obligations and makes recommendations to close identified gaps.

Additional Requirements | COBRA and HIPAA

Given the direct impact to employees, strict adherence to COBRA and HIPAA requirements is required to avoid potential lawsuits and IRS penalties

USI provides detailed guidance on COBRA and HIPAA requirements



General COBRA Requirements

Private sector employers with at least 20 employees on more than 50% of typical business days during the preceding calendar year are subject to COBRA. COBRA provides for continuation of coverage after certain qualified events. Under COBRA, a qualified beneficiary has the right to elect to continue coverage for defined period of time on a self-pay basis. Employers may charge up to 102% of the applicable premium for COBRA coverage.

Unless an exception exists, the following benefits are generally subject to COBRA.

Medical – PPO	Dental
Medical – HMO	Vision
Medical – QHDHP	EAP
Medical – Wellness program	
Medical – On-site clinic	Other:
Medical – Health FSA	
Medical – HRA	

State insurance law or policy terms may extend "COBRA-like" continuation of coverage rights for life insurance or disability insurance. Review policy terms.

Penalties may apply for non-compliance with COBRA. The severity of the penalty depends on the specific failure. Penalties include: an excise tax assessed by the IRS (up to $200/day); penalties of up to $110/day for failures to provide COBRA notices; qualified beneficiaries may sue to recover COBRA coverage that was not offered or extended, which may result in the employer having to self-insure medical claims for a period of time if the carrier is unwilling to reinstate coverage.

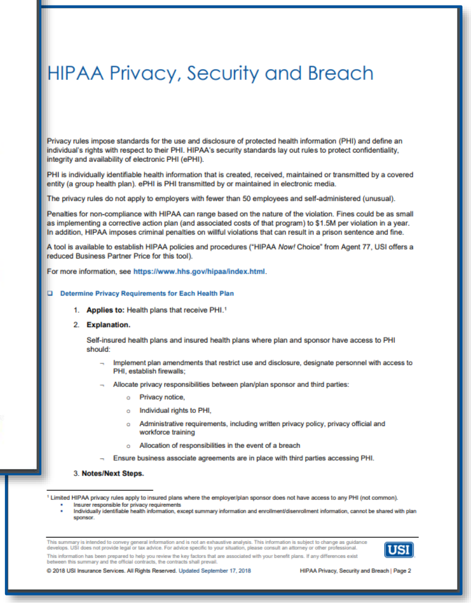
For more information, visit https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra.

❑ **COBRA Administration**

1. **Explanation**. Identify who handles COBRA continuation of coverage. COBRA administration is either handled internally by the employer or externally through a COBRA vendor. The employer is ultimately responsible for COBRA compliance even if contracting with a third party. Ensure all benefits identified as subject to COBRA have been provided to third party administrators and understand the third party's processes and procedures that are in place to document mailing of applicable notices
2. **Notes/Next Steps.**

❑ **COBRA Qualifying Events**

1. **Explanation**. Certain qualifying events coupled with a loss of coverage will trigger COBRA continuation of coverage.



HIPAA Privacy, Security and Breach

Privacy rules impose standards for the use and disclosure of protected health information (PHI) and define an individual's rights with respect to their PHI. HIPAA's security standards lay out rules to protect confidentiality, integrity and availability of electronic PHI (ePHI).

PHI is individually identifiable health information that is created, received, maintained or transmitted by a covered entity (a group health plan). ePHI is PHI transmitted by or maintained in electronic media.

The privacy rules do not apply to employers with fewer than 50 employees and self-administered (unusual).

Penalties for non-compliance with HIPAA can range based on the nature of the violation. Fines could be as small as implementing a corrective action plan (and associated costs of that program) to $1.5M per violation in a year. In addition, HIPAA imposes criminal penalties on willful violations that can result in a prison sentence and fine.

A tool is available to establish HIPAA policies and procedures ("HIPAA *Now!* Choice" from Agent 77, USI offers a reduced Business Partner Price for this tool).

For more information, see https://www.hhs.gov/hipaa/index.html.

❑ **Determine Privacy Requirements for Each Health Plan**

1. **Applies to:** Health plans that receive PHI.[1]
2. **Explanation.**

   Self-insured health plans and insured health plans where plan and sponsor have access to PHI should:

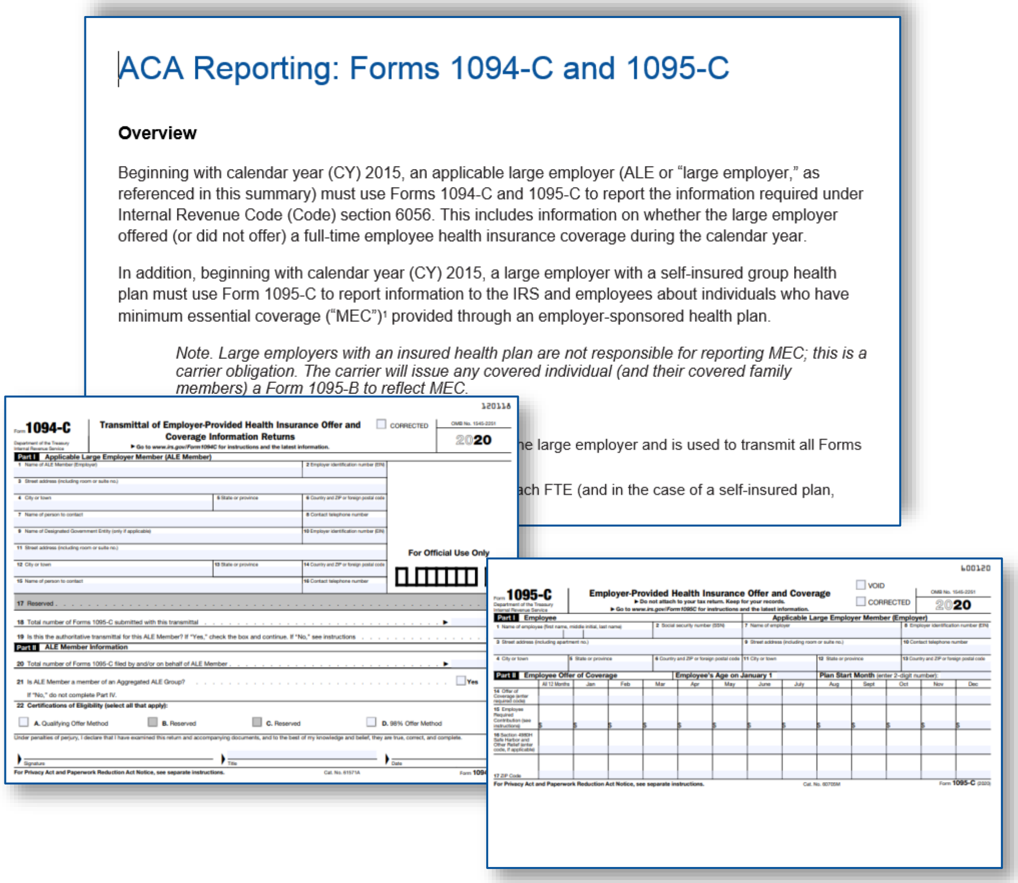
   - Implement plan amendments that restrict use and disclosure, designate personnel with access to PHI, establish firewalls;
   - Allocate privacy responsibilities between plan/plan sponsor and third parties:
     - Privacy notice,
     - Individual rights to PHI,
     - Administrative requirements, including written privacy policy, privacy official and workforce training
     - Allocation of responsibilities in the event of a breach
   - Ensure business associate agreements are in place with third parties accessing PHI.
3. **Notes/Next Steps.**

[1] Limited HIPAA privacy rules apply to insured plans where the employer/plan sponsor does not have access to any PHI (not common).
- Insurer responsible for privacy requirements
- Individually identifiable health information, except summary information and enrollment/disenrollment information, cannot be shared with plan sponsor.

- Penalties for non-compliance with HIPAA can range based on the nature of the violation.
  - Fines range from a corrective action plan (plus associated costs of that program) to **$1.5M per violation in a year.**
  - HIPAA imposes criminal penalties on willful violations that can result in a **prison sentence and fine.**
- Penalties may apply for non-compliance with COBRA and the severity depends on the specific failure.
  - An excise tax assessed by the IRS (**up to $200/day**)
  - Penalties of up to **$110/day** for failures to provide COBRA notices
  - Non-compliance may require the employer to **self-insure medical claims** if the carrier is unwilling to reinstate coverage.

ACA Reporting | Forms 1094-C and 1095-C

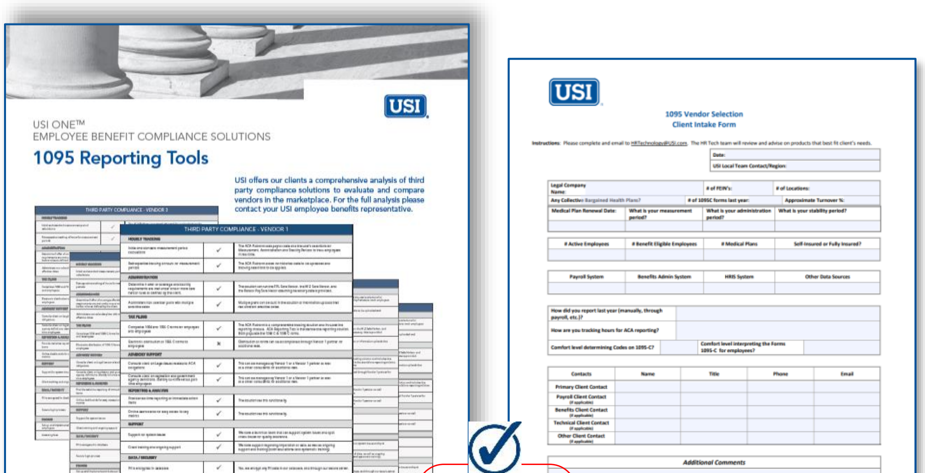
USI's compliance tools and knowledgeable service teams help employers understand and satisfy reporting requirements to the IRS.



- The IRS requires employers to complete and provide Forms 1095-C to full-time employees and file Form 1094-C and all 1095-Cs with the IRS.
- Failure to satisfy these requirements can result in costly penalties:
  - Failure to file a return or an accurate return with the IRS: $280/Form up to $3,392,000 per calendar year.
  - Failure to furnish a Form 1095-C (or correct 1095-C) to employees: $280/Form up to $3,392,000 per calendar year.

ACA Reporting | Vendor Selection

USI account management teams and HR technology experts assist employers in choosing the appropriate method to complete forms.

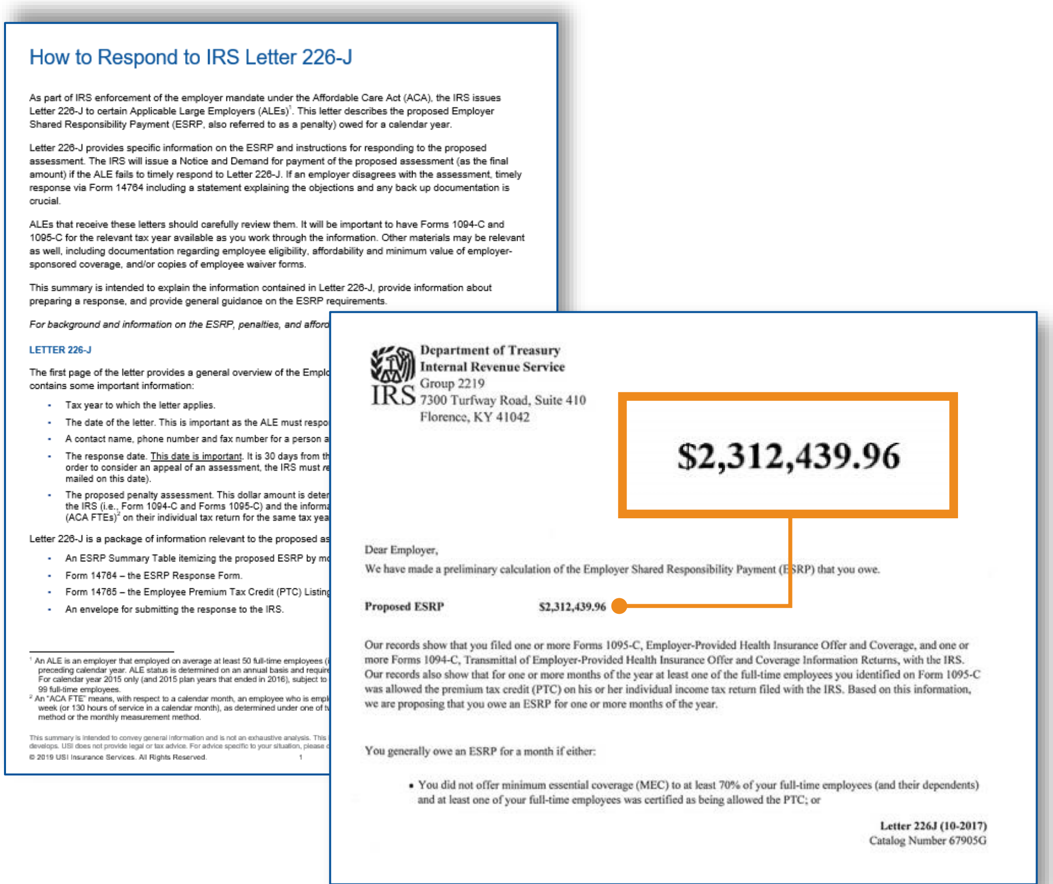


USI	Vendor 2	Vendor 4	Vendor 5	Vendor 6
Target Market Size	50+	100-2500	1000+	1000+
General System & Services Outline				
Variable Hour Tracking	Yes	No	Yes	Yes
1095C Code Assistance	Yes	No	Yes	Yes
Complete the 1095C and 1094C Forms?	Yes	Yes	Yes	Yes
Print and Mail 1095C forms to employees?	Yes	Yes	Yes	Yes
E-file forms to the IRS?	Yes	Yes	Yes	Yes
Affordability Testing	Yes	Yes	Yes	Yes
Estimate IRS Penalties	Yes	No	Yes	Yes
Ability to handle multi-employers/Unions/Control Groups?	Yes	Yes	Yes	Yes
Subsidy Appeals	Yes	No	Yes	Yes, Full Support
Consulting/Legal Support	General guidance provided	General guidance provided	General guidance provided	General guidance provided
HR Administrative Support Hours	Available as Option	9am - 5pm (EST) (Extended hours available)	M-F 7am -7pm (CST)	M-F 8am - 5pm (CST)
Employee Call Center/Support	Yes	No	Yes	Yes
SSAE16 certificate? (Type I or II?)	Mail Fulfillment (Part 2) and Electronic Filing Partners (Part1) Certification	Yes, SOC II	Yes, SOC II	Yes, SOC II

- Reporting solutions vary from simplistic spreadsheets to in-depth database management tools.
- USI assists employers in identifying their needs and matching to third party tools.
- Employers with few hourly workers, low turnover and robust benefit offerings can minimize costs with a streamlined solution.
- Employers with high turnover, variable and seasonal employees and/or less robust benefit plans need a more advanced solution to ensure accurate reporting.

ACA Compliance | Responding to Letters 226-J

The Internal Revenue Service will notify Applicable Large Employers of potential penalty assessments under the Employer Mandate (4980H).



How to Respond to IRS Letter 226-J

As part of IRS enforcement of the employer mandate under the Affordable Care Act (ACA), the IRS issues Letter 226-J to certain Applicable Large Employers (ALEs)[1]. This letter describes the proposed Employer Shared Responsibility Payment (ESRP, also referred to as a penalty) owed for a calendar year.

Letter 226-J provides specific information on the ESRP and instructions for responding to the proposed assessment. The IRS will issue a Notice and Demand for payment of the proposed assessment (as the final amount) if the ALE fails to timely respond to Letter 226-J. If an employer disagrees with the assessment, timely response via Form 14764 including a statement explaining the objections and any back up documentation is crucial.

ALEs that receive these letters should carefully review them. It will be important to have Forms 1094-C and 1095-C for the relevant tax year available as you work through the information. Other materials may be relevant as well, including documentation regarding employee eligibility, affordability and minimum value of employer-sponsored coverage, and/or copies of employee waiver forms.

This summary is intended to explain the information contained in Letter 226-J, provide information about preparing a response, and provide general guidance on the ESRP requirements.

For background and information on the ESRP, penalties, and afford

LETTER 226-J

The first page of the letter provides a general overview of the Emplo contains some important information:

- Tax year to which the letter applies.
- The date of the letter. This is important as the ALE must respo
- A contact name, phone number and fax number for a person a
- The response date. This date is important. It is 30 days from th order to consider an appeal of an assessment, the IRS must *re* mailed on this date).
- The proposed penalty assessment. This dollar amount is deter the IRS (i.e., Form 1094-C and Forms 1095-C) and the informa (ACA FTEs)[2] on their individual tax return for the same tax yea

Letter 226-J is a package of information relevant to the proposed as

- An ESRP Summary Table itemizing the proposed ESRP by mo
- Form 14764 – the ESRP Response Form.
- Form 14765 – the Employee Premium Tax Credit (PTC) Listing
- An envelope for submitting the response to the IRS.

[1] An ALE is an employer that employed on average at least 50 full-time employees (preceding calendar year. ALE status is determined on an annual basis and require For calendar year 2015 only (and 2015 plan years that ended in 2016), subject to 99 full-time employees.

[2] An "ACA FTE" means, with respect to a calendar month, an employee who is empl week (or 130 hours of service in a calendar month), as determined under one of t method or the monthly measurement method.

This summary is intended to convey general information and is not an exhaustive analysis. This develops. USI does not provide legal or tax advice. For advice specific to your situation, please

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Department of Treasury
Internal Revenue Service
Group 2219
7300 Turfway Road, Suite 410
Florence, KY 41042

$2,312,439.96

Dear Employer,

We have made a preliminary calculation of the Employer Shared Responsibility Payment (ESRP) that you owe.

Proposed ESRP $2,312,439.96

Our records show that you filed one or more Forms 1095-C, Employer-Provided Health Insurance Offer and Coverage, and one or more Forms 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns, with the IRS. Our records also show that for one or more months of the year at least one of the full-time employees you identified on Form 1095-C was allowed the premium tax credit (PTC) on his or her individual income tax return filed with the IRS. Based on this information, we are proposing that you owe an ESRP for one or more months of the year.

You generally owe an ESRP for a month if either:

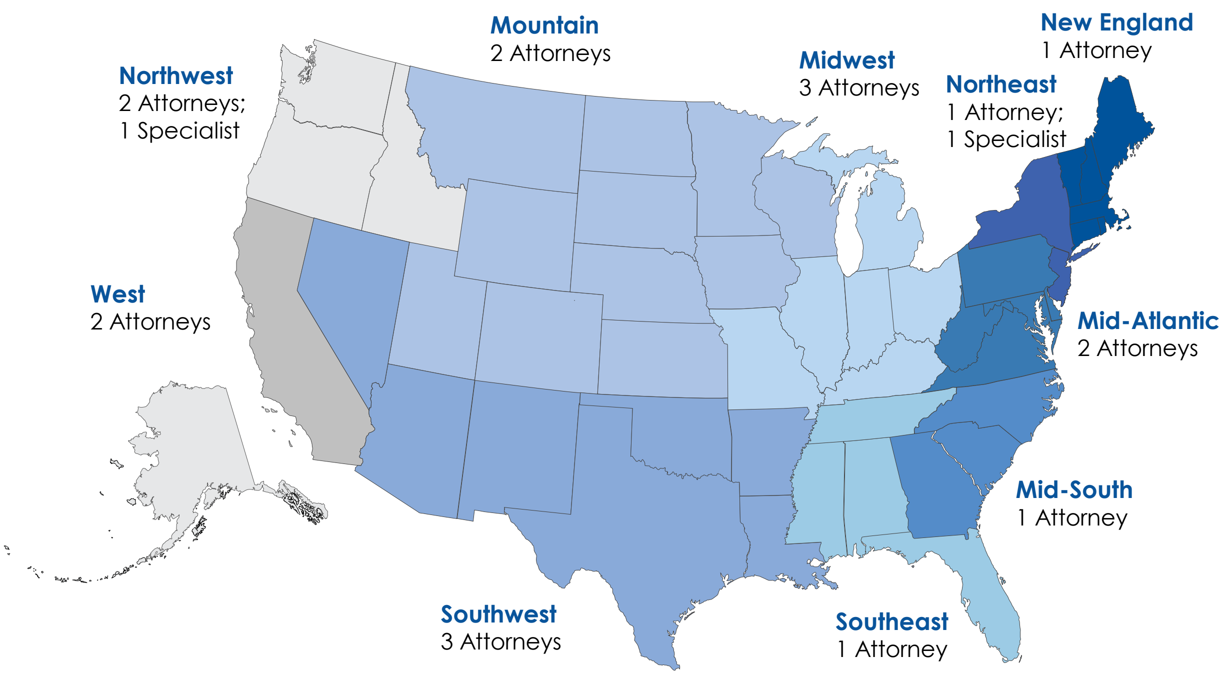
- You did not offer minimum essential coverage (MEC) to at least 70% of your full-time employees (and their dependents) and at least one of your full-time employees was certified as being allowed the PTC; or

Letter 226J (10-2017)
Catalog Number 67905G

- An employer may receive a 226-J notice when a full-time employee receives a subsidy in the Marketplace and the employer failed to file the appropriate 1095-C reporting.
- These letters are lengthy and can be complicated to understand.
- USI's compliance and account management teams have assisted with thousands of employers' 226-J notices, reflecting large potential penalty assessments (over $10 million dollars in one case) and have identified reporting errors that reduce or eliminate erroneous proposed penalties.
- USI's compliance team provides tools to help employers respond to these letters in a timely manner.

USI's EB Compliance Team

USI's EB Compliance Team is a locally based, nationally networked group of benefit attorneys and specialists that provide clients with a wide range of compliance services.



- One of the largest ERISA practices in the United States.
- Embedded within the team to facilitate ease of access for clients.
- Compliance services are included in the USI standard offering:
  - Health and welfare plan compliance education
  - Health Care Reform (ACA) impact analysis tools
  - Ongoing articles, workshops and seminars
  - Compliance guides, templates and sample documents
  - Assistance with notice and disclosure requirements

- For USI clients, compliance services are an integral part of the service offering.
- Upon engagement with each new client, USI will conduct a compliance checklist review, including but not limited to:
  - 5500 filing
  - SPD documents
  - Required notices
  - ACA filings
  - HIPAA notices and practices