

U.S. Department of Labor

Assistant Secretary for
Employee Benefits Security Administration
Washington, D.C. 20210



March 31, 2004

MEMORANDUM FOR: ELLIOTT P. LEWIS
Assistant Inspector General for Audit

FROM: ANN L. COMBS
Assistant Secretary *Ann L. Combs*

SUBJECT: Response to the OIG Audit of EBSA's Participant and
Compliance Assistance Program -- Draft Audit Report
No. 09-04-001-12-121

We appreciate the work that was performed by your audit team in conducting the audit of EBSA's Participant and Compliance Assistance Program. We were very pleased that the audit team concluded that: 1) the information and assistance provided by EBSA was timely and accurate; 2) the reported performance data was reasonably accurate; and, 3) only a few instances of non-compliance with program requirements were identified and those instances were deemed *not to be statistically significant*.

We are very proud of our Participant and Compliance Assistance Program and its accomplishments over a relatively short period of time. We are especially proud of the Program's overall positive impact on the customers we serve – participants and beneficiaries who have questions about their benefits or who need assistance in obtaining them, as well as plan sponsors of benefits plans who have questions about their responsibilities.

In addition to the accomplishments you reported in your report for FY 2003 -- *responded to over 173,500 inquiries and recovered \$82.9 million for participants and beneficiaries* -- our Benefits Advisors also referred 1,359 leads to investigators, which resulted in closed enforcement cases with monetary results totaling over \$197 million. This close relationship between the two programs has significantly enhanced our Agency's overall success in improving the security of our nation's employee benefit system.

Although your audit team did not find statistically significant problems with our program, we would like to provide comments on those few instances of non-compliance that you detailed in your draft report.

TAIS Inquiries Statistical Sample Result

From our statistical sample of 260 TAIS inquiries at the National Office and the 7 regional offices, we identified 5 telephone inquiries that did not have sufficient documentation for us to determine the nature of the inquiry or the response given (See Exhibit 1).

*Using these five inquiries, we statistically projected the number of additional telephone inquiries that could potentially have insufficient documentation. We are 90 percent confident that no less than 1,241 inquiries and no more than 8,027 inquiries out of a total population of 192,172 inquiries (telephone, written, walk-in, and e-mail) could potentially have insufficient documentation. **These numbers are not statistically significant** (bold emphasis added).*

Our Response:

EBSA's policy and standard operating procedures do not require Benefits Advisors to record the specific question asked by each inquirer or the detailed answer provided to the inquirer in the notes of our TAIS inquiry tracking system, if the inquiry was an "information only" request made during a telephone inquiry. Detailed documentation is only required in the notes field in support of benefit claims and recoveries obtained on behalf of the inquirer. Of course, with written and electronic inquiries, a file is maintained with copies of the incoming request and written response.

In order to close any inquiry (including "information only" telephone requests) in the TAIS, however, the Benefits Advisors are required to complete the "subject" and "disposition" fields in addition to other mandatory information fields in the tracking system. The TAIS system is designed to prevent closing the record if these fields are not completed. Therefore, it is possible to determine the nature of all inquiries by observing the subject code of each, even if there are not detailed notes in the record. A listing of the extensive subject code selections available in TAIS is attached.

For example, if an individual calls to find out how soon their employer had to notify them of their COBRA eligibility, the subject code in the TAIS record would be "WCN" – Welfare/COBRA/Notice & Election Period. The disposition code in the TAIS record would be "A" – Answered. We believe that this level of information sufficiently explains the nature of the call and is just as informative as reading a narrative summary. In addition these TAIS codes allow the Agency to generate reports on a regular basis, detailing the volume of calls by subject.

Due to the very high volume of calls handled by the Benefits Advisors, the tracking system was developed to collect necessary information about the nature of the inquiries received and the disposition of those inquiries without placing an undue burden on the staff to record exact questions and answers. The time

savings, which result from the use of these subject and disposition codes, enable the Benefits Advisors to spend more valuable and focused time following up on benefit claims and complaints, getting recoveries, and documenting those type of inquiries.

It is therefore EBSA's position that the information contained in the TAIS records is sufficient – even in those “information only” telephone requests in which the actual question and answer is not documented in the notes section.

Benefit Recoveries Statistical Sample Result

From our statistical sample of 316 benefit recoveries at the National office and 5 regional district, we identified:

- *6 where the amount documented for the recovery was incorrect,*
- *18 that did not properly confirm the benefit received with the participant, and*
- *6 that were not fully documented (See Exhibit 1).*

Using the errors noted above, we are 95 percent confident that:

- *Between 0 and 65 benefit recoveries may have incorrect benefit recovery amounts,*
- *Between 122 and 218 benefit recoveries may not have been confirmed with the participant, and*
- *Between 12 and 85 benefit recoveries may not have been fully documented.*

These numbers are not statistically significant (bold emphasis added).

Our Response:

Of the 6 inquiries where the auditors found that the amount documented for the recovery was incorrect, 5 of the 6 recoveries were found to be *understated* because “EBSA did not record medical benefit payments obtained for the participant as benefit recovery amounts.”

The Agency has taken a rather conservative stance with regard to reporting recoveries. In SOP #3-02, for example, we clarify in our policy that when we are successful in securing or extending a person's health coverage through COBRA or other benefit plans, estimated future medical benefit payments, such as costs of future surgeries or medical procedures, now available to the individual since they have coverage, cannot be counted as a benefit recovery since we have no proof that the procedure will be provided or what the actual costs will be. Nor do we allow our Benefits Advisors to contact a participant following the future surgery or procedure to verify the costs in order to report those costs as a recovery. We also do not allow the Benefits Advisors to count the cost of expensive ongoing

medications that may be prescribed and that may now be covered for 18 months or longer after medical benefits are reinstated. We have no proof of the actual costs of the medication nor do we have any proof of how long the participant will continue taking those medications. Premium savings, resulting from an employer paying a part of the participant's premium or cost savings resulting from COBRA versus the cost of an individual conversion policy, are not reported as benefit recoveries. Therefore it may not have been inappropriate for the medical benefits obtained in those 5 examples to have been excluded from the benefit recovery reported.

Of the 18 recoveries reported that were not confirmed directly with the participant, we are pleased that the auditors were able to follow up with the participants during their review and confirm with all 18 participants that the amounts reported by EBSA staff were accurate.

It should also be noted that in accordance with SOP # 3, the Benefits Advisors do not need to confirm receipt of all recoveries with the participant if they receive a copy of the cancelled check or other conclusive documents from the employer or plan administrator, or if the recovery is confirmed by an unbiased 3rd party such as a spouse or parent or the physician if the benefit was for unpaid medical claims.

With regard to the 6 recoveries that were mentioned in the report as "not fully documented", the attached exhibit to the report seems to contradict this finding by referring to the "one case where the benefit recovery was not properly documented." If in fact there was only one recovery not fully documented, the projections in the report that "between 12 and 85 recoveries may not have been fully documented" is incorrect and should be modified.

Thank you for allowing us the opportunity to comment on your draft report. If you have any questions regarding our comments, please feel free to contact me or Sharon Watson at 202-693-8631.

Attachment

tais/cts subject entries

Effective FY 1999

PENSION

PF Fiduciary

- PFA* *Administrative Charges*
- PFC Participant Contributions (PPP)
- PFI* *Investment of Funds*
- PFO* *Other*
- PFT* *Prohibited Transactions*

PD Reporting & Disclosure

- PDP Participant Rights
- PDR Reporting Requirements

PJ J & S Spousal Benefit

- PJE Ex-Spouse Rights
- PJS Surviving Spouse Benefit
- PJT* *Third Parties*

PB Benefits (PP)

- PBE* *Early Retirement*
- PBD* *Disability*
- PBL Distributions/Lump Sum Payments (PPL)
- PBO* *Other*
- PBT Terminations/determinations (PPT)
- PBV Vesting/Participation (PPV)
- PBW* *Loans/Hardship Withdrawals*

PI Benefit Information (PB)

- PIB Benefit entitlement (PBB)
- PIC Can't locate plan (PBC)
- PIO* *Other*
- PIS Social Security Notice (PBS)

PN Non-Covered Plans

PE Pre-ERISA

PM Miscellaneous

- PMB Bankruptcy
- PME ESOPs
- PMG PBGC
- PML Legislation/Current Issues
- PMO Other
- PMP Portability/Reciprocity
- PMT 3001 (PM3) - not an option for CTS

WELFARE

WF Fiduciary

- WFA Administrative Charges*
- WFI Paid Premiums/Insurance Cancelled (WPI & WRP)*
- WFS Self-Insured, No Funds (WPS & WRS)*

WD Reporting & Disclosure

- WDR Reporting requirements*
- WDP Participants rights*

WB Health Benefits

- WBB Benefit Limitations (WPB)*
- WBC Coordination of Benefits (WPC)*
- WBD Payments*
- WBE Eligibility*
- WBO Other*
- WBR HMO Restrictions*
- WBT Third Party Inquiries (WPT)*

WR Retiree Health Insurance

- WRC Benefit reduction (WRN)*
- WRI Increased premiums (WRI)*

WC COBRA

- WHB COBRA/Qualified Beneficiary*
- WCD COBRA/Disability Extension*
- WCE Eligibility/ Independent Elections*
- WCF Change in Family Status*
- WCH Region Specific HMOs*
- WCI Conversion to Individual Coverage*
- WCM Medicare*
- WCN Notice & Election Period*
- WCO Other general information*
- WCP Premium Levels*
- WCS Successor Plans/Employers*
- WCT Timely payment of premiums*
- WCU Under 20 employees*

WH HIPAA

- WHE Special Enrollment Rights*
- WHG Group to Individual Policy*
- WHH Mental Health Parity*
- WHM MSAs*
- WHN Newborn & Mothers Protections*
- WHO Other*
- WHP Pre-existing Condition (Formerly WPP)*
- WHS Certificate of Coverage/Employee Documentation*
- WHU Discrimination/Health Status*

WN Non-Covered Plans

WO Other Welfare Plans

WOD Disability

WOL Life

WOM Cafeteria Plans

WOS Severance Pay

WOV Vacation

WM Miscellaneous

WML Legislation/Current Issues

WMO Other

tais disposition codes

Transferred/referred

Other PWBA National

Public Disclosure **TNP**

DTAI/OPS **TNT**

OE **TNE**

ORI **TNR**

OED **TND**

OCA **TNA**

OPR **TNL**

Not Mentioned **TNN**

Other PWBA Regional

Atlanta **TRA**

Boston **TRB**

Chicago, **TRC**

Dallas **TRD**

Detroit **TRR**

Cincinnati **TRI**

Kansas City **TRK**

Miami **TRM**

New york **TRN**

Los Angeles **TRL**

Philadelphia **TRP**

St. Louis **TRS**

San Francisco **TRF**

Seattle **TRT**

Washington **TRW**

IRS **TI**

PBGC **TP**

Other DOL (OLMS, ESA, MSHA, etc) **TD**

Other non-DOL (SSA, OPM, etc.) **TO**

Publication(s) sent **P**

Answered **A**

Further Action Required **F**

Returned Call/Left Message **R**

Waiting for call back **W**