

U.S. Department of Labor

Office of Inspector General—Office of Audit

**EMPLOYEE BENEFITS SECURITY
ADMINISTRATION**



EBSA COULD IMPROVE ITS USAGE OF FORM 5500 DATA

Date Issued: March 31, 2014
Report Number: 05-14-003-12-121

BRIEFLY...

Highlights of Report Number 05-14-003-12-121, issued to the Assistant Secretary for Employee Benefits Security.

WHY READ THE REPORT

The goal of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) is to protect the interests of participants and their beneficiaries in employee benefit plans. The Employee Benefits Security Administration (EBSA) is responsible for administering ERISA, including the Form 5500 reporting process. The Form 5500 Series is part of ERISA's overall reporting and disclosure framework, intended to ensure that employee benefit plans are operated and managed in accordance with certain prescribed standards and that participants and beneficiaries, as well as regulators, are provided or have access to sufficient information to protect the rights and benefits of participants and beneficiaries.

This report highlights changes EBSA needs to make to improve the 5500 reporting process to better protect plan participants and beneficiaries.

WHY OIG CONDUCTED THE AUDIT

In response to concerns about the effectiveness of the form 5500 reporting process, the OIG conducted a performance audit of EBSA's administration of the Form 5500 to determine if EBSA is effectively overseeing the process.

READ THE FULL REPORT

To view the report, including the scope, methodologies, and full agency response, go to:

<http://www.oig.dol.gov/public/reports/oa/2014/05-14-003-12-121.pdf>

March 2014

EBSA COULD IMPROVE ITS USAGE OF FORM 5500 DATA

WHAT OIG FOUND

The OIG found EBSA's compliance activities related to the Form 5500 generally ensured that plan administrators met ERISA reporting requirements. However, EBSA could improve its compliance activities by supplementing its current targeting strategies with analysis of changing violation patterns and could improve targeting of its investigative activities by increasing access to certain data elements in the Form 5500. We were unable to determine if EBSA effectively addressed all requests for changes, as the Form 5500 change process was not entirely transparent. Finally, system improvements could be made to search functions available for external users.

WHAT OIG RECOMMENDED

The OIG recommended the Assistant Secretary for Employee Benefits Security: (1) Include deficiency trends identified by 5500 data as a component of a multi-pronged approach to determining OCA's case mix, (2) Determine which Form 5500 data items are not currently searchable and add appropriate data fields to the Form 5500 to allow mining of this data, (3) Maintain a log or other form for tracking change proposals for the Form 5500, along with their ultimate disposition, (4) Improve EFAST 2's public search function by making searches more user-friendly and by building logic into the search algorithms.

In response, EBSA generally agreed to incorporate trend analyses into its targeting strategies, and to consider available options for addressing limitations in imaged submissions of financial documents, as part of the "21st Century Initiative." EBSA also agreed to consider steps to generate more standardized documentation of decisions on form change proposals. EBSA explained work is underway to improve Form 5500 search capabilities of the EFAST2 portal. Once EBSA completes internal testing, it will make enhancements available to the public.

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Table of Contents

| | |
|--|----------|
| Inspector General’s Report | 1 |
| Background | 2 |
| Results | 3 |
| Objective 1 — To what extent are EBSA’s compliance activities ensuring that plan administrators meet ERISA reporting requirements?..... | 4 |
| <i>Although EBSA’s compliance activities generally ensured compliance, improvements could be made.</i> | <i>4</i> |
| Objective 2 — To what extent does EBSA use Form 5500 data in its enforcement activities?..... | 6 |
| <i>EBSA used Form 5500 data in its enforcement activities. However, not all important data elements are readily accessible.</i> | |
| Objective 3 — Does EBSA effectively evaluate and address requests for changes to the Form 5500 content and instructions?..... | 7 |
| <i>EBSA’s handling of the change process was difficult to evaluate because the process lacked transparency.....</i> | <i>7</i> |
| Objective 4 — How accessible is data collected on the Form 5500 to external users? | 8 |
| <i>Some Form 5500 data was not readily accessible.</i> | |
| Recommendations | 9 |
| EBSA's Response | 9 |
| Appendices | |
| Appendix A Objectives, Scope, Methodology, and Criteria | 13 |
| Appendix B Acronyms and Abbreviations..... | 15 |
| Appendix C EBSA's Response to Draft Report | 17 |
| Appendix D Acknowledgements | 21 |

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U.S. Department of Labor

Office of Inspector General
Washington, D.C. 20210



March 31, 2014

Inspector General's Report

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U.S. Department of Labor
200 Constitution Avenue NW
Washington, D.C. 20210

The Employee Retirement Income Security Act of 1974 (ERISA) outlines responsibilities for the U.S. Department of Labor (DOL), the Internal Revenue Service of the Department of the Treasury (IRS), and the Pension Benefit Guaranty Corporation (PBGC). DOL, IRS, and the PBGC developed the Form 5500 Series so employee benefit plans could satisfy annual reporting requirements under ERISA and the Internal Revenue Code.

The Form 5500 Series is part of ERISA's overall reporting and disclosure framework, which is intended to assure that employee benefit plans are operated and managed in accordance with certain prescribed standards and that participants, beneficiaries, and regulators are provided or have access to sufficient information to protect the rights and benefits of participants and beneficiaries under employee benefit plans. The Employee Benefits Security Administration (EBSA) is responsible for administering ERISA, and consequently, the Form 5500 reporting process.

To respond to concerns about the effectiveness of the Form 5500 reporting process, we conducted a performance audit of EBSA's administration of the Form 5500 for Plan Years (PY) 2009-2011 and of requests for changes to the form during Fiscal Years (FY) 2010-2012 to answer the following questions:

Is EBSA effectively overseeing the Form 5500 reporting process? Specifically:

1. To what extent are EBSA's compliance activities ensuring that plan administrators meet ERISA reporting requirements?
2. To what extent does EBSA use Form 5500 data in its investigative activities?
3. Does EBSA effectively evaluate and address requests for changes to the Form 5500 content and instructions?
4. How accessible is data collected on the Form 5500 to external users?

Background

The Employee Retirement Income Security Act of 1974 was the culmination of a long line of legislation concerned with the labor and tax aspects of employee benefit plans. Since its enactment, ERISA has been amended to meet the changing retirement and health care needs of employees and their families.

The administration of ERISA is divided among DOL (via EBSA), IRS, and PBGC. Title I, which contains rules for reporting and disclosure, vesting, participation, funding, fiduciary conduct, and civil enforcement, is administered by DOL. Title II of ERISA, which amended the Internal Revenue Code to parallel many of the Title I rules, is administered by the IRS. Title III is concerned with jurisdictional matters and with coordination of enforcement and regulatory activities by DOL and the IRS. Title IV covers the insurance of defined benefit pension plans and is administered by the PBGC.

The goal of Title I of ERISA is to protect the interests of participants and their beneficiaries in employee benefit plans. Among other things, ERISA requires that sponsors of private employee benefit plans provide participants and beneficiaries with adequate information regarding their plans. Also, those individuals who manage plans (and other fiduciaries) must meet certain standards of conduct, derived from the common law of trusts and made applicable (with certain modifications) to all fiduciaries. The law also contains detailed provisions for reporting to the government and disclosure to participants. Furthermore, there are civil enforcement provisions aimed at assuring that plan funds are protected and that participants who qualify receive their benefits.

DOL, IRS, and PBGC jointly developed the Form 5500 Series so employee benefit plans could utilize it to satisfy annual reporting requirements under Title I and Title IV of ERISA and under the Internal Revenue Code. The Form 5500 Series is an important compliance, research, and disclosure tool for DOL, a disclosure document for plan participants and beneficiaries, and a source of information and data for use by other federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies. The Form 5500 Series is part of ERISA's overall reporting and disclosure framework, which is intended to assure that employee benefit plans are operated and managed in accordance with certain prescribed standards and that participants and beneficiaries, as well as regulators, are provided or have access to sufficient information to protect the rights and benefits of participants and beneficiaries under employee benefit plans.

The Form 5500 is the primary source of information for both the federal government and the private sector regarding the operation, funding, assets, and investments of private pension and other employee benefit plans. The information is stored in the ERISA Filing Acceptance System II (EFAST2). EFAST2, an all-electronic system, receives and displays Forms 5500 and 5500-Short Form (SF) Annual Returns/Report and is available on www.efast.dol.gov. Effective January 1, 2010, all Form 5500 Annual Returns/Reports of Employee Benefit Plan and all Form 5500-SF Annual Returns/Reports of small Employee Benefit Plan and any required schedules and attachments must be completed and filed electronically.

To answer our audit objectives, and to respond to concerns about the effectiveness of the Form 5500 reporting process, we only focused on the operations related to Form 5500 in EBSA's Office of the Chief Accountant (OCA), Office of Enforcement (OE), and Office of Regulations and Interpretations (ORI).

OCA enforces reporting requirements for plans and is comprised of three divisions: Division of Accounting Services (DAS), Division of Federal Employees' Retirement Income Security Act of 1986 Compliance (FERSA), and the Division of Reporting and Compliance (DRC). We audited DRC, which is responsible for ensuring the ERISA data base contains timely, complete, and accurate information about the regulated plan community. OCA enforced compliance by targeting deficient Form 5500 filings and initiating cases against plan administrators to correct filing deficiencies.

OE promotes the protection of pension and welfare benefits under ERISA by ensuring a strong and effective national and field office enforcement program through: (1) policy formulation; (2) project identification and program planning; (3) guidance development and implementation; (4) field liaison; (5) field and project evaluation; and (6) investigations to detect and correct violations of Title I of ERISA and related criminal laws. In our audit, we focused on OE investigative activities, which consist of opening cases against plan administrators to detect and correct violations of Title I of ERISA and related criminal laws. These cases cover both national and regional enforcement priorities and OE used a variety of sources, including data derived from Form 5500 filings, to identify plans with potential ERISA violations.

In short, OCA and OE perform two different functions. OCA performs activities intended to ensure compliance with filing requirements, and OE investigates potential violations of ERISA.

ORI is primarily responsible for carrying out EBSA's regulatory agenda and interpretive activities. ORI also plays a major role in the development, analysis, and implementation of pension and health care policy issues by providing technical assistance and support to the Assistant Secretary, external groups, and other offices within EBSA. In addition, ORI coordinates regulatory and interpretive activities with other federal agencies, such as the IRS and the PBGC.

Results

Overall, we found that while EBSA's compliance activities related to the Form 5500 generally ensured plan administrators met ERISA reporting requirements, OCA could improve its compliance activities by supplementing its current targeting strategies with analysis of changing violation patterns, and OE could improve targeting of its investigative activities with improved access to certain data elements in the 5500. We were unable to determine whether EBSA effectively addressed all requests for changes, as the Form 5500 change process was not entirely transparent. Finally, improvements could be made to access and searches performed by external users.

Objective 1 — To what extent are EBSA’s compliance activities ensuring that plan administrators meet ERISA reporting requirements?

Although EBSA’s compliance activities generally ensured compliance, improvements could be made.

ERISA requires pension and welfare plan administrators to file an annual return/report, which can be satisfied by filing the Form 5500. The form is the primary source of information about the operations, funding, and investments of approximately 800,000 retirement and welfare benefit plans and discloses, among other things, the financial condition and operations of their plan. OCA has established numerous programs aimed at protecting participants of pension and welfare plans by enforcing ERISA’s requirements for timely and accurate reporting.

OCA sought to ensure plan administrators met ERISA reporting requirements by reviewing Form 5500 filings on the ERISA database for timeliness, completeness, and accuracy. OCA’s three-pronged compliance program consisted of educational outreach, technical assistance via a help desk function, and an enforcement program, which targeted deficient Form 5500 filings and initiated cases against plan administrators to correct deficiencies. OCA allocates resources to various compliance efforts based on its annual business plan.

While its compliance activities mostly ensured plan administrators met their reporting requirements, we found OCA’s enforcement program did not allocate resources to reflect broad proportion to non-compliance trends. This occurred because OCA did not routinely analyze case results and develop trends of non-compliance to inform the types of deficiencies it targeted.

OCA reviews about 4,000 filings each year and chooses the mix of cases (a filing that is reviewed by OCA is a “case”) based on a variety of factors, such as data analytics and priorities set by its annual business plan. Based on an analysis of typical deficiencies prepared by OCA for PYs 2009 - 2011, we found the types of deficiencies varied widely over time. The table below illustrates the contrast between the estimated occurrence rates of various types of deficiencies and the mix of cases opened by OCA. We also reviewed a randomly selected sample of 171 enforcement cases drawn from PYs 2009- 2011 (see OCA Case Mix columns in the following table) to identify the types of deficiencies noted by OCA.

Deficiency Rate and Case Mix Table

| Type of Deficiency | Estimated Deficiency Rate 2009 | OCA Case Mix 2009 | Estimated Deficiency Rate 2010 | OCA Case Mix 2010 | Estimated Deficiency Rate 2011 | OCA Case Mix 2011 |
|-----------------------------|-----------------------------------|----------------------|-----------------------------------|----------------------|-----------------------------------|----------------------|
| Errors & Missing Signatures | 62% | 16% | 55% | 0% | 24% | 0% |
| Missing IQPA Report | 5% | 40% | 5% | 54% | 9% | 50% |
| Missing Schedule C | 7% | 10% | 7% | 16% | 7% | 10% |
| Missing Schedule H & I | 2% | 6% | 1% | 1% | 2% | 0% |
| Late Filings | 24% | 6% | 32% | 14% | 58% | 20% |
| Other ¹ | - | 22% | - | 15% | | 20% |
| Total | 100% | 100% | 100% | 100% | 100% | 100% |

When we compared OCA's case mix to trends in deficiencies found in Form 5500 filings, we found two things. First, OCA's case mix was not informed by annual deficiency rates when it should have generally reflected the current environment. For example, if statistics indicated that many forms were being filed without including an Independent Qualified Public Accountants (IQPA) report, OCA should have devoted more resources to targeting plans that were filing without IQPA reports. Moreover, OCA should probably have increased outreach and education efforts aimed at better informing the Form 5500 community about the need to include an IQPA report with every filing. To illustrate this point, in PY 2009, IQPA reports were missing in only 5 percent of filings that had deficiencies,² but in OCA's case mix, missing IQPA cases represented 40 percent of total cases. In PY 2011, IQPA reports were missing in only about 9 percent of filings that had errors, but OCA's case mix resulted in 50 percent of cases targeting missing IQPA reports. These statistics indicate that OCA was allocating far more resources to the missing IQPA issue. Second, the fact that OCA's case mix did not appear to follow changing deficiency trends indicates that OCA was not using trend data to influence its allocation of resources. In PY 2009, "errors and missing signatures" were present in 62 percent of the filing population at issue (see footnote 2). By PY 2011, only 24 percent of filings demonstrated this issue, a reduction of 61 percent. By contrast, OCA's case mix over the same period reflected a reduction of 100 percent.

As a result, EBSA may not be focusing its efforts to best utilize limited resources to identify poor plan management and protect participants. Although a perfect alignment of resources and deficiency trends is not practical, we would expect to see a periodic adjustment of enforcement priorities influenced by changing non-compliance trends.

¹ Represented non-typical deficiencies not captured in the analysis, i.e. such as Short Form Eligibility, IRS certification, etc.

² "Filings with deficiencies" denotes initial Form 5500 which were flagged by the system as possibly having some type of error or violation.

Objective 2 — To what extent does EBSA use Form 5500 data in its enforcement activities?

EBSA used Form 5500 data in its enforcement activities. However, not all important data elements are readily accessible.

The Form 5500 as a Source of Enforcement Targets

EBSA used Form 5500 data to target plans for investigation; however, improved access to certain data elements could improve its targeting efforts.

OE is responsible for conducting investigative activities to detect and correct violations of Title I of ERISA and related criminal laws. EBSA has established five national enforcement projects, each representing issues of national importance. EBSA's regional offices assessed current enforcement activities, trends, and areas of noncompliance within the region to identify regional enforcement projects informed by the national guidance. OE used a variety of sources to target its investigations, among them information it gained from Form 5500 filings. We found approximately one-third of the investigation cases opened during FYs 2010-2012 were sourced from Form 5500 filing data. As a result, we concluded that Form 5500 data is a major source for detecting potential ERISA violations in EBSA's investigative program. However, a prior OIG audit report³ found that the notes to financial statements, which include significant information about plan investments, cannot be queried in an automated way.

In addition to the Form 5500, other sources of the information to open cases included referrals, leads, and spin-offs from other cases. Based on our review of cases opened by a sample of four EBSA regions during FY 2010-2012, we determined the use of Form 5500 data varied by region and by year.

As noted in the prior OIG report, in order to search for information included in the financial statements and notes attached to the Form 5500, users have to download a PDF attachment and manually review the information. The system has no ability to read the PDF attachment and convert the information to an element that can be queried. For example, certain plans have to report level 1 through 3 investments⁴ on their financial statements. In order to determine which investments qualify as levels 2 and 3 – an important source of enforcement information – investigators would have to manually open and read the financial statements attached to each Form 5500 and then manually tabulate the amounts contained in the notes to the financial statements. This may hamper EBSA's ability to fully mine the database in an automated fashion. EBSA should determine which information reported in the notes to plan financial statements are of highest value and add appropriate data elements to the Form 5500.

³ Report No. 09-13-001-12-121 - "EBSA Needs to Provide Additional Oversight to ERISA Plans Holding Hard –To Value Alternative Investments," issued September 30, 2013.

⁴ Financial Accounting Standards Board's framework for measuring fair value, and provides a fair value hierarchy for ranking investments into three levels, level 1 being the most easily valued and level 3 being the most difficult.

Objective 3 — Does EBSA effectively evaluate and address requests for changes to the Form 5500 content and instructions?

EBSA’s handling of the change process was difficult to evaluate because the process lacked transparency.

The administration of ERISA is divided among DOL, IRS, and PBGC. A working group composed of these agencies was established to facilitate the process of making form and instruction changes to the Form 5500 Series. Each agency has its own legal authorities and responsibilities over Form 5500 reporting and has an equal opportunity to submit proposals for changes. DOL, through EBSA, coordinates regulatory and interpretive activities with other federal agencies. EBSA works with the IRS and PBGC and takes the lead for change proposals involving the Form 5500.

The major factors the working group considers when making changes to the Form 5500 are: (1) a substantive need for change; (2) impact on DOL’s Electronic Filing Acceptance System II (EFAST2) and potential costs related to changes; and (3) time and effort for the individual agency to obtain required OMB approvals, which are different for each of the three agencies, depending on the nature of the change.

The working group uses an informal approach to documenting its decision-making process for change proposals. The group does not maintain a log of current proposals, their current status, and final disposition, which would be a key accountability tool. Changes to the Form 5500 can be likened to a project. As defined by the Project Management Institute, a project is a temporary group activity designed to produce a unique product, service, or result.⁵ Tools such as a change log can be useful in order to properly monitor and control the processes involved in a project. This key accountability tool would capture the nature of the change requested and then continue to provide a chronological listing of actions undertaken, personnel involved, and potentially many more details depending on the needs of the project team.

During FY2010-2012, 13 changes were proposed and 7 were adopted. The changes made during FYs 2010-2012 were minor or changes pursuant to new laws and did not incur any additional costs. We requested documentation supporting the evaluations of the 6 proposals that were not adopted to understand the basis of EBSA’s decisions. EBSA stated it did not maintain a record of its evaluations and justifications when the proposals were not adopted. EBSA provided a large number of emails representing discussions within the group as support for its deliberations. These emails, however, did not adequately demonstrate EBSA’s evaluation or clearly justify its decisions for not adopting the change requests. As a result, we were unable to determine if EBSA adequately evaluated and addressed change proposals that fell under its jurisdiction.

⁵ <http://www.pmi.org/About-Us/About-Us-What-is-Project-Management.aspx>

Objective 4 — How accessible is data collected on the Form 5500 to external users?

Some Form 5500 data was not readily accessible.

EBSA provides online public access to filing data and information through its EFAST2 portal, which was designed to allow public and authorized government users to query, view, download, and print public portions of filings. Based on our review of the system's search abilities, we determined the search function worked best for well-informed users. Searches in which users did not have complete company or plan information were less successful.

Search Functionality Could Be Improved

Based on our review of the system's search abilities, we determined the search function worked best for well-informed users. For example, the search easily retrieved data when the user entered the plan's Federal Employer Identification Number (FEIN) or spelled the name of the plan exactly as noted on plan documents. However, there were instances when the system would not locate a plan filing when incomplete company or plan information was used. For example, we were unable to retrieve plan documents using short acronyms because the search engine required a minimum of four characters to perform a search. The search tool did not incorporate commonly used search features. For example, the system searched for all characters typed by the user and did not remove extra spaces when searching for the plan.

Finally, the system did not appear to search for terms entered in a variety of combinations. For example, the search term "International Business Inc." returned no results, even though those three terms appear in many filings on the website, as we determined by searching for the words "International Business." By contrast, internet search engines generally return results for searches that include any of the words searched.

Although EBSA provided a 42 page manual to help guide users through the search process, only 3 of those pages are devoted to entering search terms and they consist only of screen shots and information that does not provide useful guidance on how to conduct searches beyond what is already apparent on the screen. As a result of these limitations, plan participants may find it challenging to retrieve plan documents by performing moderately-informed casual searches. EBSA has a telephone customer service line to assist users. However, improving the search engine would assist many more users.

EBSA is currently in the early stages of its "21st Century Initiative," which consists of streamlining the Form 5500 reporting process, including possible architectural and data element changes to the Form 5500 Series and streamlining the tri-agency process for periodic changes to the form.

Recommendations

We recommend the Assistant Secretary for Employee Benefits Security:

1. Include deficiency trends identified by 5500 data as a component of a multi-pronged approach to determining OCA's case mix.
2. Determine which Form 5500 data items are not currently searchable and add appropriate data fields to the Form 5500 to allow mining of this data.
3. Maintain a log or other form for tracking change proposals for the Form 5500, along with their ultimate disposition.
4. Improve EFAST 2's public search function by making searches more user-friendly and by building logic into the search algorithms.

EBSA'S Response

In response, the Assistant Secretary for Employee Benefits Security generally agreed with the audit results. EBSA stated now that several years of EFAST2 data are available, OCA is in a better position to incorporate trend analyses into its targeting strategies. EBSA also agreed there are limitations inherent in image submissions of financial statements as part of the Form 5500 package, and that available options for this problem are being studied as part of the "21st Century Initiative." EBSA also agreed to consider steps that would generate more standardized documentation of decisions on EBSA's form change proposals, but disagreed that they take the lead for change proposals involving the Form 5500. In regard to search limitations, EBSA is fully aware of the limited Form 5500 search capabilities of the EFAST2 portal, has been working to improve these capabilities, and will make enhancements available to the public once internal testing is completed.

EBSA generally concurs with OIG's recommendations, and as a result, we made no changes to the recommendations.

We appreciate the cooperation and courtesies that EBSA personnel extended to the Office of Inspector General during this audit. OIG personnel who made major contributions to this report are listed in Appendix E.



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Assistant Inspector General
for Audit

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Appendices

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Objectives, Scope, Methodology, and Criteria

Objectives

Our audit objectives were to answer the following questions

Is EBSA effectively overseeing the Form 5500 reporting process?

1. To what extent are EBSA’s compliance activities ensuring that plan administrators meet ERISA reporting requirements?
2. To what extent does EBSA use Form 5500 data in its investigative activities?
3. Does EBSA effectively evaluate and address requests for changes to the Form 5500 content and instructions?
4. How accessible is data collected on the Form 5500 to external users?

Scope

The scope of the audit covered Form 5500s submitted for PYs 2009-2011 and requested form changes during FYs 2010- 2012

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Methodology

We only focused on the operations related to Form 5500 in OCA, OE, and ORI.

For OCA, we reviewed its FYs 2010-2012 Business Plans and compliance cases. We also interviewed key OCA staff, reviewed the EFAST Edit Test Manual, and retrieved Form 5500 filings from the EFAST website.

We interviewed staff to determine how the Form 5500 was used in EBSA’s enforcement program and activities. We analyzed Program Operating Plans to determine if national and regional projects changed from year to year. We analyzed four sampled regions to determine the number of cases opened during the period FYs 2010–2012. For ORI, we interviewed officials from ORI, IRS, and PBGC to obtain an understanding of the process followed by the tri-agency working group relative to the proposals for changes to the Form 5500. We reviewed ORI’s procedures and protocols to understand the

rulemaking process and requested from ORI all proposals submitted for changes during FYs 2010-2012. We also requested a list of proposals and associated documentation from IRS and PBGC to determine if ORI performed analyses of information gained from stakeholders.

We also performed searches for Form 5500 filings on EFAST2 to determine the accessibility of Form 5500 data to plan participants.

In planning and performing our audit, we considered EBSA's internal controls that were relevant to our audit objectives. We confirmed our understanding of these controls through interviews and through obtaining and reviewing studies, policies, procedures, and enforcement actions. Our consideration of internal controls relevant to our audit objective would not necessarily disclose all matters that might be significant deficiencies. Because of inherent limitations in internal controls, misstatements or noncompliance may nevertheless occur and not be detected.

Criteria

- Employee Retirement and Security Act of 1974
- OMB A-123 Management's Responsibility for Internal Control
- GAO Standards for Internal Controls
- Department of Labor Manual Series 1 Chapter 400 – DOL Records Management Program

Appendix B

Acronyms and Abbreviations

| | |
|--------|---|
| AICPA | American Institute of Certified Public Accountants |
| DOL | Department of Labor |
| EBSA | Employee Benefits Security Administration |
| EDS | ERISA Data Systems |
| EFAST2 | Electronic Filing Acceptance System II |
| ERISA | Employee Retirement Income Security Act of 1974 |
| FERSA | EBSA's Division of Federal Employees Retirement Income Security |
| FY | Fiscal Year |
| GAO | Government Accountability Office |
| IQPA | Independent Qualified Public Accountant |
| IRS | Internal Revenue Service |
| OCA | EBSA's Office of Chief Accountant |
| OE | EBSA's Office of Enforcement |
| OIG | Office of Inspector General |
| OMB | Office of Management and Budget |
| ORI | EBSA's Office of Regulations and Interpretations |
| PBGC | Pension Benefit Guaranty Corporation |
| PY | Plan Year |

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EBSA's Response to Draft Report

U.S. Department of Labor

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



DATE: MAR 26 2014

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

FROM: PHYLLIS C. BORZI *Judith Mares for Phyllis Borzi*
Assistant Secretary of Labor for Employee Benefits
Security

SUBJECT: EBSA Response to OIG Performance Audit
Report No. 05-14-003-12-121

This will respond to the recommendations in your March, 2014 draft audit report regarding the Employee Benefits Security Administration's (EBSA) Form 5500 and whether EBSA is effectively overseeing the Form 5500 reporting process.

OIG's RECOMMENDATIONS

Recommendation 1: Include deficiency trends identified by 5500 data as a component of a multi-pronged approach to determining OCA's case mix.

We agree with this recommendation. Now that several years of EFAST2 data are available, the Office of the Chief Accountant (OCA) is in a better position to incorporate trend analyses into its targeting strategies and program performance assessments. However, while we recognize that trends are important, our targeting must primarily be risk-based and thus weighted toward the degree of potential loss to plan participants and beneficiaries. For example, audits of plans performed by independent qualified public accountants (IQPA) are one of ERISA's principal requirements that protect the assets and financial integrity of employee benefit plans.¹ Our case selections have focused on plans that failed to have compliant and timely audits because these plans risk not detecting or revealing: 1) assets that were not properly accounted for, 2) past-due contributions still owing from the employers, and 3) fiduciary violations such as misappropriation of plan assets.

¹ CHANGES ARE STILL NEEDED IN THE ERISA AUDIT PROCESS TO INCREASE PROTECTIONS FOR EMPLOYEE BENEFIT PLAN PARTICIPANTS; September 28, 2012; OIG Report Number: 09-12-002-12-121

EBSA NEEDS TO PROVIDE ADDITIONAL GUIDANCE AND OVERSIGHT TO ERISA PLANS HOLDING HARD-TO-VALUE ALTERNATIVE INVESTMENTS; September 30, 2013; OIG Report Number: 09-13-001-12-121

Starting in 2013, OCA analyzes the ERISA database monthly for developing patterns of critical reporting violations. This enables OCA to quickly adjust its enforcement initiatives as necessary. OCA recognizes the benefits of using trend analyses as one of several tools to ensure the level of compliance with ERISA's reporting rules and regulations and will consider trends as a part of its annual planning of enforcement, outreach, and voluntary compliance strategies. OCA also leverages EFAST2's automated edit check processes, multiple education and outreach programs, a robust voluntary compliance program, and the resources of other Federal agencies as strategies to improve compliance with ERISA's reporting and disclosure rules.

Recommendation 2: Determine which Form 5500 data items are not currently searchable and add appropriate data fields to the Form 5500 to allow mining of this data.

We agree with this recommendation. EBSA is aware of the limitations inherent in image submissions of financial statements as part of the Form 5500 package. We note that all images submitted with the Form 5500 are currently subjected to Optical Character Recognition (OCR) processes. These processes allow some search capabilities, but OCR accuracy is highly dependent on the quality of the submitted image (which EBSA cannot control). Available options for this problem are being studied as part of the "21st Century Initiative" to improve the Form 5500 and the reporting process.

Recommendation 3: Maintain a log or other form for tracking change proposals for the Form 5500, along with their ultimate disposition. Improve EFAST 2's public search function by making searches more user-friendly and by building logic into the search algorithms.

We appreciate the OIG's interest in identifying ways to improve the Form 5500 change development process, and we agree to consider steps that EBSA could implement that would generate more standardized documentation of decisions on EBSA form change proposals. EBSA, Treasury/IRS, and PBGC coordinate as appropriate on regulatory and interpretive activities related to the development and publication of the Form 5500 in part because one of the principal goals behind developing and maintaining the Form 5500 as a three-agency form is to minimize filer burden by avoiding duplicative reporting requirements with the three agencies. EBSA does not, however, "take the lead for change proposals involving the Form 5500," as stated by the OIG. Rather, each agency has an equal, but distinct role in the annual forms development from a regulatory/information collection perspective based on the different legal, jurisdictional, enforcement, and budget considerations that affect what changes each agency suggests, and how and when the changes might be implemented. Each agency also does its own internal legal and policy review, and the Form 5500 working group does not have a role beyond making recommendations in the agency's respective internal decision-making on proposed change items.

With regard to the time period of the OIG's audit, FYs 2010-2012, the OIG notes that 13 changes were proposed, of which 7 were adopted and 6 were not, and expressed concern that EBSA did not maintain a special log of its evaluations and justifications when the IRS and PBGC proposals were not adopted. It is important to note that none of the 6 form changes that were the subject of the OIG report were EBSA proposals. EBSA did not have the authority to decide what changes the IRS or PBGC would pursue or to require the other agencies to provide to EBSA documentation of their internal decision-making processes. Nonetheless, we will share the OIG report and our response, including our agreement to consider more standardized documentation of EBSA decisions, with the IRS and PBGC.

EBSA is fully aware of the limited Form 5500 search capabilities of the EFAST2 portal. We have been working to improve these capabilities and already developed an enhanced search application which is in production for internal users. We intend to make these enhancements available to the public once internal testing is completed. In addition to providing much superior search capabilities, the new application will be faster and more intuitive. It will also include an on-line Help facility. Among the new features are: 1) partial and full text searching of many more fields; 2) ability to search in a given geographic range; and, 3) the ability to specify search criteria based on certain filer characteristics. EBSA is now analyzing the best solutions for scaling-up the application for public access.

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Appendix D

Acknowledgements

Key contributors to this report were: Nicholas Christopher (Audit Director), Charmaine Thorne (Audit Manager), Renata Hobbs, Steve Chiang, Angela Stewart, and Jennifer Roberts.

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