

EBSA's Response to Draft Report

U.S. Department of Labor

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



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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.