

EBSA Response to Draft Report

U.S. Department of Labor

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



DATE: **SEP 29 2014**

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

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

SUBJECT: EBSA Response to OIG Performance Audit  
Report No. 05-14-005-12-121

This is in response to the recommendations in your September, 2014 audit report regarding the Employee Benefits Security Administration's (EBSA) oversight of employee benefit plans electing limited scope audits under ERISA section 103(a)(3)(C) and the 29 CFR § 2520.103.8 for assets held by a bank or similar institution or insurance carrier which is regulated and supervised and subject to period examination by a State or Federal Agency.

Your current Audit Report reiterates several conclusions contained in earlier audit reports you have issued in this area with which we generally agree. To simplify our response, I refer you, and others that may read your report, to our earlier responses that you kindly included in your earlier reports.

**OIG's RECOMMENDATIONS**

A. Recommendation for Legislative Action

Your first recommendation was that EBSA should continue to seek statutory amendments of ERISA to repeal the limited scope audit exemption in ERISA section 103(a)(3)(C), and provide EBSA with direct oversight authority over plan auditors. This same recommendation was made in your September 2012 audit report (No. 09-12-002-12-121) regarding EBSA's oversight of annual financial audits of employee benefit plans under ERISA. As you know, historically, the Department has advocated for statutory amendments to ERISA that would repeal the limited scope audit exemption and provide EBSA with more effective regulatory authority over ERISA plan auditors. Congress, however, has not enacted any legislation in this area. We appreciate the OIG's continued attention to this issue, and we will continue to use the OIG reports on this topic to advocate for legislative change.

B. Recommendations for Administrative Action

You made the following recommendations for regulatory and interpretive actions that EBSA should take with respect to limited scope audits:

2. Work within its existing authority to mitigate the risks created by the limited-scope audit provision.

3. Provide additional formal guidance to plan administrators to identify and adequately support the fair value of plan assets.
4. Establish a timetable to evaluate the feasibility of ERISA Advisory Council recommendations on limited scope audits.
5. Collaborate with federal and state regulators to determine the level of examination and supervision they exercise for ERISA plans assets certified and held by custodians by:
  - a. Establishing memoranda of understanding with, at minimum, federal regulators to share information on regulatory and examination practices and evaluating those practices; and
  - b. Obtaining access to reports of examination by federal and state regulators to evaluate audit assurances and identify areas of concern for ERISA plan assets held and certified by qualified custodians.
6. Determine whether EBSA can issue guidance on the level or form of supervision and examination by federal and state regulators needed to provide appropriate assurances for ERISA assets held in trust.

As we noted in response to earlier audit reports, a more comprehensive legislative solution is needed to address the problems at the heart of your report. We also believe there are interpretive and regulatory steps that we can take with respect to your above recommendations. In fact, in response to your September 2012 and September 2013 audit reports on EBSA oversight of ERISA plan audits and plans holding hard-to-value alternative investments, EBSA formed an inter-office task group to evaluate recommendations we have received in this area from your office and from the ERISA Advisory Council. We advised you of that task group in our February 2014 report on open OIG recommendations. The inter-office task group is comprised of staff from EBSA's Office of Regulations and Interpretations and Office of the Chief Accountant. I have directed them, to include your most recent recommendations in the evaluation they are conducting. The current target is for the task group to identify options for possible interpretive and regulatory actions by the end of this year. Before taking formal action, I will certainly seek the views of your staff regarding any interpretive or regulatory steps that we propose to take.