

EBSA Response to Draft Report

U.S. Department of Labor

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



DATE: **MAR 31 2015**

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. 05-15-002-12-121

This is in response to the recommendations in your March 19, 2015 audit report regarding the Employee Benefits Security Administration's (EBSA) oversight of compliance with the Small Pension Plan Audit Waiver (SPPAW) rules pursuant to regulation 29 CFR § 2520.104.46.

OIG's RECOMMENDATIONS

1. Include SPPAW filers in its annual risk assessment process to determine how frequently to review a sample of filers.
2. As determined by risk assessment, perform periodic comprehensive reviews of samples of small plans claiming the SPPAW to determine if plans have complied with all mandatory audit waiver requirements.

Compliance with the SPPAW regulation is a safeguard that was adopted to protect against pension plan fraud and provide participants and beneficiaries of small pension plans with more information to monitor their plan and to hold plan fiduciaries accountable. For these reasons, EBSA's Office of the Chief Accountant annually considers compliance with the regulation when developing its annual enforcement plan.

EBSA agrees with your recommendations to continue to include compliance with the SPPAW regulation in our annual risk assessment process and to determine compliance by reviewing samples of small plans claiming the SPPAW. Currently, we have an enforcement initiative in which we are reviewing a sample of small pension plan filers claiming the waiver and determining whether they meet the conditions to both waive the audit requirement and file the simplified Form 5500SF.

Similar to your observations, EBSA has found nothing to suggest wide-spread non-compliance with the SPPAW requirements. These findings corroborate our estimate from Form 5500 data that most small pension plans meet the waiver requirement that at least 95% of the plan assets must be "qualifying plan assets." We therefore assess the risk of non-compliance as low relative to that of other reporting compliance violations, such as the failure to file Form 5500.

3. Perform a review of compliance with §412 bonding requirements.

We also agree with your recommendation to conduct an examination of compliance with ERISA's fiduciary bonding rules. In fact, in FY 2015 EBSA initiated a bonding compliance project to establish a baseline for measuring the level of overall bonding violations and assess the agency's impact on bonding compliance. The project intends to target plan administrators who indicated on the FY 2013 Form 5500 filing that the plan did not have a fidelity bond.