

EBSA Update

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*The views expressed are those of the speaker and do not necessarily represent the official position of the
Department of Labor*

Overview

- ◆ Laws and Regulations
- ◆ Industry Developments
- ◆ Technical Guidance
- ◆ Reporting Compliance Efforts
- ◆ Compliance Assistance
- ◆ Voluntary Compliance Programs

Laws and Regulations

DOL Proposed Rule on Investment Advice for 401(k) Plans and IRAs

- ◆ On March 2, 2010, the Department published in the Federal Register a proposed rule under ERISA and parallel provisions of the Internal Revenue Code, relating to the provision of investment advice to participants and beneficiaries in individual account plans, such as 401(k) plans, and beneficiaries of individual retirement accounts.
- ◆ The proposed rule would implement provisions of a statutory prohibited transaction exemption, and would replace guidance contained in a final rule, published in the Federal Register on January 21, 2009, that was withdrawn by the Department pursuant to a Notice published in the Federal Register on November 20, 2009.
- ◆ The proposed regulation allows investment advice to be given under the statutory exemption in two ways. One is through the use of a computer model certified as unbiased. The other way is through an adviser compensated on a "level-fee" basis (i.e., fees do not vary based on investments selected by the participant).
- ◆ Several other requirements also must be satisfied, including disclosure of fees the adviser is to receive. The regulation contains some key safeguards and conditions, including:
 - Requiring that a plan fiduciary (independent of the investment adviser or its affiliates) select the computer model or fee leveling investment advice arrangement.
 - Imposing recordkeeping requirements for investment advisers relying on the exemption for computer model or fee leveling advice arrangements.
 - Requiring that computer models must be certified in advance as unbiased and meeting the exemption's requirements by an independent expert.
 - Establishing qualifications and a selection process for the investment expert who must perform the above certification.

- Clarifying that the fee-leveling requirements do not permit investment advisers (including its employees) to receive compensation from affiliates on the basis of their recommendations.
- Establishing an annual audit of investment advice arrangements, including the requirement that the auditor be independent from the investment advice provider.
- Requiring disclosures by advisers to plan participants.

The proposed regulation and a related fact sheet may be viewed at: www.dol.gov/ebsa.

Final Rule on Multiemployer Pension Plan Information Made Available on Request

- ◆ On March 2, 2010, the Department published in the Federal Register a final rule designed to ensure that workers have greater access to information about the operation and financial health of their multiemployer defined benefit and defined contribution pension plans.
- ◆ The Pension Protection Act (PPA) amended ERISA by adding a new section 101(k) to increase transparency with respect to multiemployer retirement plan operations. Section 101(k) requires the administrator of a multiemployer pension plan, on the written request of any plan participant, beneficiary, employee representative (e.g., union), or any employer that has an obligation to contribute to the plan, to furnish copies of requested financial and actuarial reports of the plan.
- ◆ The documents that are required to be furnished are:
 - Periodic actuarial reports.
 - Quarterly, semi-annual, or annual financial reports.
 - Certain applications filed with the Secretary of the Treasury and related determinations (amortization extensions).
- ◆ A plan administrator must furnish the requested documents within 30 days from the request. The Secretary of Labor may assess a civil penalty against any person of up to \$1,000 a day for each violation by any person of section 101(k).
- ◆ A plan is not required to provide more than one copy of any document during any one 12-month period and may impose a reasonable charge on the requester to cover the cost of copying and mailing a document.
- ◆ The final rule became effective on April 1, 2010.
- ◆ The final rule and a related fact sheet may be viewed at: www.dol.gov/ebsa.

Safe Harbor for Employee Contributions to Small Pension and Welfare Plans

- ◆ On January 14, 2010, the Department issued a final rule to provide greater protection for employee contributions deposited to pension and welfare benefit plans with fewer than

100 participants by proposing a safe harbor period of seven business days following receipt or withholding by employers.

- ◆ The final rule, unchanged from the proposed rule, amends the participant contribution rules by creating a safe harbor period under which participant contributions to a small plan will be deemed to be made in compliance with the law if those amounts are deposited with the plan within seven business days of receipt or withholding.
- ◆ The Department will not assert a violation regarding participant contributions where such contributions are deposited with small plans within the seven business day safe harbor period.
- ◆ The Department did not expand the safe harbor to cover plans with 100 or more participants due to a lack of information and data sufficient to evaluate current practices of such employers and assess the costs, benefits and risks to participants associated with extending the safe harbor to large plans.
- ◆ The final rule may be viewed at www.dol.gov/ebsa under Final Rules.

Final Rule Civil Penalty Rules for Multiemployer Defined Benefit Pension Plans that Fail to Take Corrective Funding Action under 502(c)(8)

- ◆ On February 26, 2010, the Department published a final rule to assess civil penalties against any plan sponsor of multiemployer defined benefit pension plans that fail to adopt a funding improvement or rehabilitation plan in accordance with section 502(c)(8) of ERISA, as amended by the Pension Protection Act (PPA).
- ◆ The PPA amended ERISA and the Internal Revenue Code to require those plans certified to be in endangered or critical status to adopt a funding improvement plan or a rehabilitation plan within 240 days from the required date of the certification.
- ◆ The PPA also gave the Department authority to assess civil monetary penalties of up to \$1,100 per day against plan sponsors that fail to timely adopt funding improvement or rehabilitation plans. The proposed regulation sets forth the administrative procedures for assessing and contesting such penalties.
- ◆ The proposed regulation may be found at www.dol.gov/ebsa under Proposed Rules.

Final Civil Penalty Rules Under 502(c)(4)

- ◆ On January 2, 2009, the Department published in the Federal Register a final regulation for assessing civil penalties against plan administrators who fail to disclose certain documents to participants, beneficiaries and others as required by the ERISA, as amended by the Pension Protection Act (PPA).
- ◆ The PPA established new disclosure provisions relating to:
 - Funding-based limits on benefit accruals and certain forms of benefit distributions;
 - Plan actuarial and financial reports; withdrawal liability of contributing employers; and

- Participants' rights and obligations under automatic contribution arrangements.
- ◆ The PPA gives the Department authority to assess civil monetary penalties of up to \$1,000 per day against plan administrators for violations of the new disclosure requirements.
- ◆ The final regulation sets forth the administrative procedures for assessing and contesting such penalties and does not address substantive provisions of the new disclosure requirements.
- ◆ The text of the final rule is available at www.dol.gov/ebsa under Final Rules.

Industry Developments

FASB Statement 157 – “Fair Value Measurements”

- ◆ Issued by the FASB on September 15, 2006
- ◆ Recodified by FASB in July 2009. Now known as FASB Accounting Standards Codification (ASC) Topic 820.
- ◆ The Statement defines fair value, establishes a framework for measuring fair value under GAAP, and expands disclosures about fair value measurements. It applies under other accounting pronouncements that require or permit fair value measurements; however, it does not require any new fair value measurements.
- ◆ Topic 820 changes current practice for entities including employee benefit plans. The changes to current practice resulting from the application of this Statement relate to the definition of fair value, the methods used to measure fair value, and the expanded disclosures about fair value measurements.
- ◆ Topic 820 became effective for financial statements issued for fiscal years beginning after November 15, 2007.
- ◆ On October 18, 2008, the FASB issued FSP FAS 157-3, *Determining the Fair Value of a Financial Asset when the Market for that Asset is not Active*. The FSP clarified the application of Topic 820 in a market that is not active and provided an example to illustrate key considerations in determining the fair value of a financial asset when the market for that financial asset is not active.
- ◆ On April 9, 2009, the FASB issued FSP FAS 157-4, *Determining Fair Value when the Volume and Level of Activity for the Asset or Liability have Significantly Decreased and Identifying Transactions that are not Orderly*. This FSP provides guidance for estimating fair value when the volume and level of activity for the asset or liability have significantly decreased. It also provides guidance on identifying circumstances that indicate a transaction is not orderly.

Accounting Standards Update No. 2009-12

- ◆ Issued by the FASB on September 30, 2009 to provide guidance for reporting entities that have investments in certain entities that calculate net asset value (NAV) or an equivalent.
- ◆ The ASU permits, as a practical expedient, the use of NAV as a fair value measurement as long as certain conditions are met.
- ◆ The ASU requires specific disclosures by major category of investment about the attributes of investments within the scope of the amendments.
- ◆ Effective for periods ending after 12/15/09.

FASB Statement 161 – “Disclosures about Derivative Instruments and Hedging Activities”

- ◆ Issued by the FASB in March 2008
- ◆ Recodified by FASB in July 2009. Now known as FASB Accounting Standards Codification (ASC) Topic 815-10-50.
- ◆ Changes the disclosure requirements for derivative instruments and hedging activities.
- ◆ Applies to derivative instruments and nonderivative instruments that are designated and qualify as hedging instruments under Topic 815 (formerly SFAS 133) and related hedged items.
- ◆ Entities are required to provide enhanced disclosures about:
 - How and why an entity uses derivative instruments,
 - How derivative instruments and related hedged items are accounted for under Statement 133 and its related interpretations, and
 - How derivative instruments and related hedged items affect an entity's financial position, financial performance, and cash flows.
- ◆ Effective for periods after November 15, 2008

FASB Staff Position AAG INV-1 and SOP 94-4-1

- ◆ In December 2005, the FASB issued FASB Staff Position (FSP) AAG INV-1 and SOP 94-4-1, *Reporting of Fully Benefit-Responsive Investment Contracts Held by Certain Investment Companies Subject to the AICPA Investment Company Guide and Defined-Contribution Health and Welfare and Pension Plans*.
- ◆ The FSP amends the guidance in AICPA SOP 94-4, *Reporting of Investment Contracts Held by Health and Welfare Benefit Plans and Defined-Contribution Pension Plans*, with respect to the definition of fully benefit-responsive and the presentation and disclosure of fully benefit-responsive investment contracts. The FSP also amends SOP 92-6, *Accounting and Reporting by Health and Welfare Benefit Plans*.
- ◆ The FSP redefines the definition of a benefit-responsive investment contract.
- ◆ Under the FSP, fully benefit-responsive investment contracts are reported at fair value under "investments" on the statement of net assets available for benefits.
- ◆ In addition, the difference between the fair value and contract value of all fully benefit-responsive investment contracts are to be presented as a single line item.
- ◆ The FSP may be obtained from the FASB at www.fasb.org.

Technical Guidance

EFAST2 and the 2009 Form 5500

- ◆ Effective January 1, 2010, the Department converted to a total electronic system of online filing for the Forms 5500 and new the Form 5500-SF. Now the all-electronic EFAST2 system allows the public to submit and access filings online at www.efast.dol.gov.
- ◆ The revised EFAST Web site provides filers with a variety of tools and guidance, including the 2009 and 2010 Form 5500 and new Form 5500-SF schedules and instructions, Frequently Asked Questions, user guides, and a tutorial. Filers and preparers can register for an account, complete the required forms and schedules online in multiple sessions, print a copy for their records, and submit it at no cost.
- ◆ Filers may also use EFAST2-approved software to complete and submit their filings. EFAST2-approved software is expected to be easier to use and provide more value-added features than the Government web application. A list of EFAST2-approved software is available at www.efast.dol.gov.
- ◆ Pension and welfare benefit plans required to file an annual return/report regarding their financial conditions, investments and operations each year generally satisfy that requirement by filing the Form 5500 or Form 5500-SF and any required attachments.
- ◆ Filers must submit the 2009 and 2010 annual return/report forms and schedules electronically through EFAST2. Prior year delinquent or amended Form 5500 filings also now must be filed electronically except that timely 2008 plan year filings may still be filed through the original EFAST on paper until October 15, 2010 or electronically through June 30, 2010.
- ◆ Important changes for the 2009 and 2010 forms include:
 - Mandatory electronic filing
 - Introduction of the new, two-page Form 5500-SF for eligible small plan filers
 - Expanded disclosure on Schedule C of indirect service provider compensation
 - Expanded reporting by Code section 403(b) plans
 - Removal of IRS Schedules E and SSA. Information on participants with deferred vested benefits who separated from the service covered by the plan now must be filed directly with the Internal Revenue Service
- ◆ Assistance with the EFAST2 system and the Form 5500 and 5500-SF is available toll-free at (866) 463-3278.

Field Assistance Bulletins on Annual Reporting by 403(b) Plans

- ◆ In 2007, EBSA made changes to ERISA's annual reporting rules to, among other things, require that not-for-profit employers with Internal Revenue Code 403(b) retirement plans covered by ERISA comply, starting in 2009, with the same financial reporting rules that apply to 401(k) plans.

- ◆ The Department has issued three field assistance bulletins to provide plan administrators with guidance regarding how to comply with the new reporting requirements for 403(b) plans.
 - On July 24, 2007, the Department issued Field Assistance Bulletin (FAB) 2007-02 to how the IRS regulations governing 403(b) tax-sheltered annuity programs affect the status of such programs under the Department’s safe harbor regulation at 29 C.F.R. § 2510.3-2(f).
 - On July 20, 2009, the Department issued Field Assistance Bulletin (FAB) 2009-02 to provide guidance on transition relief from new requirements for 403(b) Plans for Form 5500 annual reporting of information on certain individual annuity contracts and mutual fund custodial accounts of current and former employees that were entered into before 2009 and for which the employer has no ongoing contribution obligation.
 - ❖ The FAB provides transition relief for plan administrators of 403(b) plans who make a good faith effort to comply with applicable annual reporting requirements for the 2009 plan year.
 - ❖ The FAB allows 403(b) plans to avoid the administrative burden and expense of having to collect and include in their 2009 Form 5500 financial report information on certain individual annuity contracts and mutual fund custodial accounts of current and former employees which were entered into before 2009 and for which the employer has no ongoing contribution obligation.
 - On February 17, 2010, the Department issued Field Assistance Bulletin (FAB) 2010-01 to address questions on the scope of and conditions for the relief provided in FAB 2009-02. This FAB, presented in Q&A format, also addresses questions concerning the scope of the safe harbor regulation at 29 CFR 2510.3-2(f).
- ◆ The Internal Revenue Service (IRS) has issued separate transition relief for 403(b) plans under new final regulations applicable to these types of plans. This FAB complements the IRS transition relief.
- ◆ The FABs may be viewed at the Department’s dedicated Web site for 403(b) plan guidance: www.dol.gov/ebsa/403b.html.

Department of Labor Advisory Opinion on TIAA-CREF Traditional Annuity Contract

- ◆ On March 4, 2010, the Department issued Advisory Opinion 2010-01A in response from TIAA-CREF regarding the reporting of the TIAA “Traditional Annuity” on the Form 5500 Annual Return/Report of Employee Benefit Plan. TIAA-CREF had asked whether the TIAA “Traditional Annuity” is a fully allocated contract for annual reporting purposes within the meaning of 29 C.F.R. § 2520.104-44(b)(2) and the Form 5500 Instructions.

- ◆ It is the Department’s view that the Traditional Annuity is not a fully allocated contract within the meaning of 29 C.F.R. § 2520.104-44(b)(2). From a reporting perspective, the Advisory Opinion will now require the reporting of these contracts (to date, excluded from plan assets) on the schedules H and I of the Form 5500 and subject to the scrutiny of an independent audit.
- ◆ The Department did not believe that it was appropriate to require the plan administrators of those plans that relied in good faith on TIAA-CREF’s guidance to file amended and corrected annual returns/reports. Thus, the Department will not, as a matter of annual reporting enforcement policy, reject a plan’s Form 5500 Annual Return/Report or require an amended Form 5500 Annual Return/Report for 2008 and prior plan years solely for failure to report the TIAA Traditional Annuity on Schedules H or I as an unallocated insurance contract, or for failure to treat the Traditional Annuity as an unallocated insurance contract for purposes of the Schedule A or an IQPA’s audit of the plan.
- ◆ In addition, the Department also will not reject a Form 5500 for 2008 and prior plan years on the basis of a “qualified,” “adverse,” or “disclaimed” IQPA opinion if the reason for such a qualified or adverse opinion or disclaimer of opinion was because the Traditional Annuity was treated as an allocated insurance contract for purposes of the IQPA audit and the plan’s financial statements.
- ◆ For plan years beginning on or after January 1, 2009, however, the Traditional Annuity cannot be treated as an allocated contract within the meaning of 29 C.F.R. § 2520.104-44(b)(2) and the Form 5500 Instructions.

Department of Labor Updated Model Notice Packages and COBRA Continuation Coverage Assistance

- ◆ On March 22, 2010, the Department updated model notice packages to enable group health plans and employers to provide notice on the availability of COBRA continuation coverage premium reductions under the American Recovery and Reinvestment Act (the Recovery Act) through March 31.
- ◆ The Temporary Extension Act amended the Recovery Act’s COBRA premium reduction provisions by extending the eligibility period through March 2010 and modifying the definition of assistance-eligible individuals to include individuals who were involuntarily terminated after first losing health coverage related to having their hours of work reduced.
- ◆ The subsidy allows individuals to pay only 35 percent of their COBRA premiums; the remaining 65 percent is reimbursed to the employer through a tax credit.
- ◆ The Department updated two of its existing models and developed several new models to cover various situations faced by dislocated workers and their families. They are:
 - An updated model general notice.
 - A model new election period notice.
 - A model extended election period notice.
 - A model supplemental information notice.

- An updated model alternative notice.
- ◆ The model notice packages are available for download from EBSA's dedicated COBRA Web page at www.dol.gov/cobra. The page also contains an updated fact sheet to help dislocated workers, their families and employers understand the requirements.

Department of Labor's Fee Disclosure Initiatives

The Department has initiated three regulatory initiatives to improve fee disclosure and transparency in a manner that is appropriate and cost-effective for workers and plan fiduciaries. The key elements of the Department's regulatory initiatives to improve plan fee disclosure include:

- ◆ On July 23, 2008, the Department published a proposed rule that will make it easier for workers covered by 401(k)-type plans to make informed retirement savings decisions by providing them with useful summary information, including fee and expense information, for investment options available under their plans.
 - The centerpiece of the proposed regulation is a requirement to provide investment-related information in a comparative chart or similar format. As part of the proposal, the Department has developed a model chart for complying with this requirement, while giving plan fiduciaries the flexibility to design their own charts or comparative formats. The chart is available on the Department's Web site at <http://www.dol.gov/ebsa/modelcomparativechart.doc>.
 - The proposed regulation may be viewed at www.dol.gov/ebsa under Proposed Rules.
- ◆ On December 13, 2007, the Department published a proposed rule that that would require service providers to disclose specific and detailed fee and conflict of interest information when they enter into contracts with plans.
 - The proposal requires that all services furnished to a plan and all compensation, direct and indirect, to be received by the service provider be disclosed in writing. The proposal also requires the disclosure of possible conflicts of interest of the service provider that may affect the performance of plan services.
 - The proposed regulation would enhance disclosure to plan fiduciaries by requiring that contracts between certain service providers and plans provide for specific and detailed information.
 - The proposal requires that all services furnished to a plan and all compensation, direct and indirect, to be received by the service provider be disclosed in writing.
 - The proposal also requires the disclosure of possible conflicts of interest of the service provider that may affect the performance of plan services.
 - In addition, the department is proposing a class exemption to provide relief to plan fiduciaries who enter into deficient contracts with service providers that, unbeknownst to the plan fiduciary, failed to comply with their disclosure obligations.

- ◆ Changes to the Form 5500, finalized on Nov. 16, 2007, expanded the information reported on the Schedule C relating to indirect compensation received by service providers to assist plan fiduciaries in monitoring the reasonableness of compensation paid to providers and any potential conflicts of interest.
 - The Department has released two sets of FAQs in response to questions on the 2009 Form 5500 Schedule C requirements.
 - The FAQs on Schedule C reporting can be found at www.dol.gov/ebsa.

Online Calculator and Electronic Payment Option for DFVCP Filers

- ◆ The Delinquent Filer Voluntary Compliance Program (DFVCP) encourages plan administrators to file already overdue annual reports required under ERISA. Delinquent filers can avoid potentially higher civil penalty assessments by satisfying the program's requirements and voluntarily paying a reduced penalty amount.
- ◆ On October 10, 2007, EBSA launched an interactive calculator, available at askebsa.dol.gov/dfvc, that makes it possible to accurately and simply determine the amount of civil penalties owed under the program by plugging in the type of plan, size of plan and number of filings.
- ◆ On September 22, 2008, the Department initiated a new feature to the interactive calculator that permits employers and plan administrators to electronically pay civil penalties at <http://www.dol.gov/ebsa/calculator/dfvcmain.html>. Users can now accurately and simply calculate the amount of civil penalties and pay those penalties online with a credit or debit card as an alternative to paying by check.

EBSA Interactive Web Tools for Workers and Plan Administrators

The Department provides online tools to give workers access to financial information and assist employers in complying with federal employee benefit laws.

- ◆ The Pension Protection Act of 2006 required the Department to post on its Web site actuarial information of pension plans filed with the Form 5500 annual reports. The site, located at <http://www.dol.gov/ebsa/actuarialsearch.html>, provides user-friendly ways for workers and plan officials to search for plan information by such categories as plan name, employer identification number or date.
- ◆ The ERISA Fiduciary Advisor, located at www.dol.gov/elaws/ERISAFiduciary.htm, is designed to help employers and others who provide services to private sector retirement plans understand their responsibilities. The advisor provides an overview of ERISA, including the most common mistakes EBSA finds in its investigations, and provides links to additional information as well as tools to assist plan officials.

Timeliness of Remittance of Participant Contributions Remains an Enforcement Initiative for EBSA

- ◆ The EBSA continues to focus on the timeliness of remittance of participant contributions in contributory employee benefit plans.

- ◆ Participant contributions are plan assets on the earliest date that they can reasonably be segregated from the employer's general assets, but in no event later than (i) for pension plans, the 15th business day of the month following the month in which the participant contributions are withheld or received by the employer and (ii) for welfare plans, 90 days from the date on which such amounts are withheld or received by the employer.
- ◆ Failure to remit or untimely remittance of participant contributions constitutes a prohibited transaction (either a use of plan assets for the benefit of the employer or a prohibited extension of credit), regardless of materiality, and, in certain circumstances, may constitute embezzlement of plan assets. Additionally, such information may be required to be presented in a supplemental schedule attached to the Form 5500 (see conditions described below).
- ◆ Failure to timely remit participant contributions represents a control deficiency that may require a management letter pursuant to Statement on Auditing Standards No. 112, “Communicating Internal Control Related Matters Identified in an Audit.”
- ◆ A series of FAQs provides additional guidance regarding the reporting of delinquent participant contributions may be found at www.dol.gov/ebsa under FAQs.
- ◆ Further information is available through the Department’s Office of Regulations and Interpretations at (202) 693-8500.

Reporting Compliance Efforts

EBSA’s Audit Inspection Program

Overview - Demographics

- ◆ There are nearly 10,000 different independent qualified public accountants who audit more than 80,000 pension and welfare plans.
- ◆ Of the IQPAs who perform employee benefit plan audits:
 - 64 perform more than 100 audits;
 - 7 perform more than 1,000 audits;
 - 7,700 perform 5 or fewer audits; and
 - 4,500 audit only a single plan.

OCA’s Audit Quality Enforcement Initiatives

- ◆ Firm Inspection Program
 - Similar to PCAOB inspections
 - Expansion of OCA’s traditional on-site workpaper reviews
 - Focus on firms with significant employee benefit plan audit practices – more than 200 plan audits

- Detailed reviews of the overall employee benefit plan audit practice of the firms. This includes:
 - ❖ A “Top/Down” component
 - ➔ Management of the Firm’s Employee Benefit Plan Practice
 - ➔ Staff Training & Development
 - ➔ Supervision & Review
 - ➔ Firm Independence
 - ❖ A “Bottom/Up” component
 - ➔ Detailed on-site review of a variety of audit engagements performed throughout the firm
 - ➔ Interviews with members of the engagement team
 - ➔ Determination as to whether the audits were performed in accordance with professional and regulatory standards
 - ➔ Rejection of Form 5500 filings where OCA identifies substandard audit work
 - ➔ Referral of deficient audit work to the AICPA’s Professional Ethics Division or applicable state regulatory authorities
- Results to Date
 - ❖ 22 inspections are complete
 - ❖ 5 inspections planned for fiscal year 2010
- ◆ Firm Mini-Inspection Program
 - Focus is on firms with between 100 and 200 employee benefit plan audit clients
 - Cross between inspection program and the augmented workpaper review program
 - Review is similar in depth to that of the Firm Inspection Program
 - ❖ Use of firm questionnaire
 - ❖ Communication with firm leadership regarding the firm’s benefit plan practice
 - ❖ Review of a sample of benefit plan audits to review
 - To date, OCA has completed mini inspections of 8 firms
 - The results to date have been largely positive
 - Work is performed in-house, similar to the Augmented Workpaper Review Program
- ◆ Augmented Workpaper Review Program

- Focuses on auditors with less significant employee benefit plan audit practices
- Based on a review of the IQPA report, OCA will request copies of workpapers in selected audit areas
 - ◆ Benefit payments
 - ◆ Investments
 - ◆ Prohibited transactions
 - ◆ Plan obligations
 - ◆ Participant data
 - ◆ Contributions
- Where deficient work is identified, OCA may expand review and/or consider other engagements for review
- Rejection of Form 5500 filings where OCA identifies substandard audit work
- Referral of deficient audit work to the AICPA's Professional Ethics Division or applicable state regulatory authorities
- Results from the Augmented Workpaper Reviews (through January 2010)
 - ❖ Number of Workpaper Review Cases Resolved – 1,847
 - ➔ 1,264 acceptable (68%)
 - ➔ 583 have one or more GAAS insufficiencies (32%)
 - ➔ Documentation is a HUGE problem
 - ➔ SAS 103 – Effective for 2006 audits
 - ❖ Audit Quality Center Member?
 - ➔ 1,847 Total Cases Completed
 - ➔ 1,1,77 Non-EBPAQC members
 - ◆ 751 acceptable audits (64%)
 - ◆ 426 audits with insufficiencies (36%)
 - ➔ 670 EBPAQC members
 - ◆ 513 acceptable audits (77%)
 - ◆ 157 audits with insufficiencies (23%)
- Audit areas reviewed and most common deficiencies
 - ➔ Planning and supervision
 - ◆ Failure to perform SAS 99 work
 - ◆ No or insufficient audit programs
 - ➔ Investments
 - ◆ No evidence of work performed

- ◆ Failure to test end of year values
- ◆ Failure to test investment transactions
- ◆ Overreliance on SAS 70 reports
- ➔ Contributions
 - ◆ No work performed
 - ◆ Insufficient work re: contributing employers
 - ◆ Failure to test payroll internal controls
 - ◆ Failure to test elective deferrals
- ➔ Benefit payments
 - ◆ No work performed
 - ◆ Failure to test eligibility to receive benefits
 - ◆ No audit program
- ➔ Participant data
 - ◆ No work performed
 - ◆ Insufficient testing of payroll data
 - ◆ Failure to test eligibility, forfeitures, allocations
- ➔ Prohibited transactions
 - ◆ No work performed
 - ◆ Inadequate work performed (area deemed to be N/A)

EBSA's Reporting Compliance Program

- ◆ Deficient Filer Initiatives – EBSA continues its aggressive reporting compliance program to ensure that plan administrators comply with ERISA's reporting and disclosure requirements.
 - EBSA will target plans who possess certain high-risk characteristics, such as:
 - ❖ Plans with heavy concentrations in hard-to-value assets;
 - ❖ ESOPs and Stock Bonus Plans;
 - ❖ Plans who participate in 103-12 IEs and hedge funds;
 - ❖ Plans with high employee contribution receivables at year-end; and
 - ❖ Plans receiving adverse/qualified/disclaimer reports.
- ◆ Late Filer and Non-Filer Initiatives

- EBSA continues working with the IRS to actively identify and target both late filers and non-filers. The following penalties may be assessed against late filers or non-filers:
 - ❖ *Late filers* may be assessed \$50 per day, per plan, for the period for which they failed to timely file;
 - ❖ *Non-filers* may be assessed a penalty of \$300 per day, per plan, with the penalty continuing to accrue up to \$30,000 per year for each plan year until a filing is submitted.

Compliance Assistance

Field Assistance Bulletins

- ◆ Field Assistance Bulletins publicize technical guidance and ensure that the law is applied consistently across the various regions. They also will provide the regulated community with an important source of information about the agency's views on technical applications of ERISA. All FABs will be posted on EBSA's Web site and be available to the public.
- ◆ In the course of audits and investigations by EBSA field enforcement staff, difficult legal issues often arise. In an effort to provide the regional office staff with prompt guidance, EBSA has developed a new vehicle for communicating technical guidance from the national office.
- ◆ FABs are available at www.dol.gov/ebsa under Compliance Assistance.

Guidance on Fiduciary Duties in Response to Abuses Involving the Madoff Investment Firm

- ◆ On February 5, 2009, the Department announced guidance on the duties of employee benefit plan fiduciaries in light of alleged abuses involving Bernard L. Madoff Investment Securities LLC.
- ◆ The guidance is intended to assist fiduciaries, investment managers and other investment service providers to plans who believe they may have exposure to losses on investments with entities related to the Madoff firm. The guidance also provides steps that can be taken to assess and protect the interests of plans, participants and beneficiaries under ERISA.
- ◆ The guidance is available at www.dol.gov/ebsa under Compliance Assistance.

Fiduciary Education and Training

- ◆ One of the cornerstones of the Department's mission is the commitment to providing employers and service providers with clear and easy-to-access information on how to comply with federal employment laws.

- ◆ The Department’s fiduciary education initiatives include nationwide educational seminars, webcasts, and Department-issued publications.
- ◆ Further information regarding publications and the dates and locations of upcoming educational programs may be found at www.dol.gov/ebsa under Compliance Assistance.

Voluntary Compliance Programs

EBSA is committed to protecting the benefits of participants and beneficiaries. To assist plan administrators who discover problems in their plans, EBSA has always encouraged filers to amend their filings. EBSA has also developed specific voluntary compliance programs. The goal of these programs is for plans to self-correct without fear of significant penalties.

Delinquent Filer Voluntary Compliance Program

- ◆ The Delinquent Filer Voluntary Compliance Program (DFVCP) encourages voluntary compliance with ERISAs annual reporting requirements and gives delinquent plan administrators a way to avoid higher civil penalty assessments by satisfying the program’s requirements and voluntarily paying a reduced penalty.
- ◆ The Department’s Web site (www.dol.gov/ebsa under Compliance Assistance) provides a host of guidance on the program, including:
 - A fact sheet;
 - A penalty calculator and online payment tool;
 - FAQs; and
 - The Federal Register Notice covering the program.

DOL Voluntary Fiduciary Correction Program

- ◆ The Voluntary Fiduciary Correction Program (VFCP) encourages voluntary compliance by self-correcting violations of the law. The program also helps plan officials understand the law and gives immediate relief from payment of excise taxes under a class exemption.
- ◆ The Department’s Web site (www.dol.gov/ebsa under Compliance Assistance) provides the following guidance relating to the program:
 - A fact sheet;
 - An online calculator;
 - FAQs;
 - The Federal Register Notice covering the program;
 - The Class Exemption Amendment;
 - Class Exemption FAQs;
 - A model application form;
 - A checklist to be used by plan administrators entering the program; and

- A sample no-action letter.

Abandoned Plan Program

- ◆ The Abandoned Plan Program facilitates the termination of, and distribution of benefits from, individual account pension plans that have been abandoned by their sponsoring employers. The program was established pursuant to three final regulations and a related class exemption and is administered by EBSA national and regional offices.
- ◆ Guidance and tools relating to the program may be found at www.dol.gov/ebsa under Compliance Assistance.

For Further Information

- ◆ Visit the Department's Web site at www.dol.gov/ebsa.
- ◆ The following are telephone contacts at EBSA:
 - (866) 463-3278 EFAST Help Desk/Form 5500 Issues
 - (202) 693-8360 DFVCP
 - (202) 693-8360 ERISA Related Accounting/Auditing Issues
 - (202) 693-8523 ERISA Plan Coverage Issues
 - (202) 693-8500 Interpretative Reporting and Disclosure Questions
 - (202) 693-8360 Public Outreach Programs/MEWA Registration
 - (866) 444-3272 General Public Information
- ◆ The public may call (866) 444-3272 to request one of EBSA's free brochures in the following broad categories:
 - Pension and Retirement Savings;
 - Employee and Pension Plan Participants;
 - Employers and Pension Plan Officials;
 - Health Benefits Information; and
 - About EBSA.