

U.S. Department of Labor

Office of Inspector General—Office of Audit

REPORT TO THE EMPLOYEE BENEFITS SECURITY ADMINISTRATION



SMALL PENSION PLANS RECEIVING AUDIT WAIVERS NEED MORE FREQUENT REVIEW

Date Issued: March 31, 2015
Report Number: 05-15-002-12-121

BRIEFLY...

Highlights of Report Number 05-15-002-12-121, issued to the Assistant Secretary for Employee Benefits Security.

WHY READ THE REPORT

Independent audits are an important tool in helping to secure the financial health of the nation's pension plans. These annual audits of plan financial statements provide assurance to participants that the plan's assets are actually available to pay benefits.

By law, most pension plans must receive an annual audit. Some small pension plans, however, generally those with fewer than 100 participants, are not required to receive an annual audit. As a result, those plans are at increased risk of fraud and mismanagement.

WHY OIG CONDUCTED THE AUDIT

In order to qualify for a waiver of the audit requirement, small pension plans must satisfy certain conditions. In response to concerns regarding the safety of assets in small pension plans that were not audited, we conducted an audit to determine if EBSA is providing sufficient oversight to small pension plans claiming audit waivers.

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/2015/05-15-002-12-121.pdf>

March 2015

SMALL PENSION PLANS RECEIVING AUDIT WAIVERS NEED MORE FREQUENT REVIEW

WHAT OIG FOUND

The OIG found EBSA did not provide sufficient oversight of small plans claiming the audit waiver. While Small Pension Plan Audit Waiver (SPPAW) regulations have existed since 1976, EBSA performed reviews of plan filings claiming audit waivers only two times: once in Fiscal Year (FY) 2008, and once in 2011. We tested both reviews on a sample basis. We determined EBSA's Office of Chief Accountant (OCA), did not independently confirm numbers reported by the plans, and therefore, did not have sufficient assurance of the accuracy of the amounts reported and the plans' ultimate eligibility for waivers.

This occurred because EBSA did not allocate sufficient resources to regularly conduct comprehensive reviews to confirm compliance with SPPAW regulations. EBSA concluded, based on observations of high levels of compliance from a review it conducted in 2011, that it would pursue SPPAW compliance only on an ad-hoc basis. As a result, it did not include SPPAW compliance in its annual risk assessment process and did not review it on a regular basis.

WHAT OIG RECOMMENDED

We recommended the Assistant Secretary for Employee Benefits Security include SPPAW filers in its annual risk assessment, perform periodic comprehensive reviews of samples of small plans claiming an audit waiver, and perform a review of compliance with ERISA §412 bonding requirements.

The Assistant Secretary for Employee Benefits Security agreed with our recommendations and stated EBSA would include compliance with the SPPAW regulations in their annual risk assessment process and determine compliance by reviewing a sample of plans claiming the waiver. EBSA would also conduct an examination of plans' compliance with ERISA's fiduciary bonding rules.

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U.S. Department of Labor

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Washington, D.C. 20210



March 31, 2015

Inspector General's Report

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for Employee Benefits Security
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The Department of Labor's (DOL) Employee Benefits Security Administration (EBSA) is responsible for administering the Employee Retirement Income Security Act of 1974 (ERISA). The reporting and disclosure provisions of Title I of ERISA require the administrator of an employee benefit plan to file an annual report, which can be satisfied by filing Form 5500, *Annual Return/Report of Employee Benefit Plan*. ERISA also requires plans to be audited by an independent qualified public accountant (IQPA) annually. This annual audit of plan financial statements provides assurance to participants that the plan's assets are actually available to pay benefits. DOL's Small Pension Plan Audit Waiver (SPPAW) regulations, adopted in 1976, allow certain small pension plans (generally those with fewer than 100 participants) to waive the audit requirement.

DOL also amended the SPPAW regulations in October 2000 to impose additional conditions for small pension plans to be exempt from the annual audit requirement. The purpose of the new conditions was to increase the security of assets in small pension plans by improving disclosure of information to participants and beneficiaries and, in certain instances, requiring enhanced fidelity bonds for persons who handle plan funds. These amendments went into effect beginning in 2001. Additionally, in 2009, DOL created the Form 5500-SF, *Short Form Annual Return/Report of Small Employee Benefit Plan*. One of the eligibility requirements to file the simplified form is to meet the conditions of the SPPAW.

Because of concerns regarding the safety of assets in small pension plans that were not audited, we conducted an audit to answer the following question:

Did EBSA provide sufficient oversight to small pension plans receiving audit waivers under the SPPAW regulations?

EBSA did not provide sufficient oversight of small pension plans claiming the audit waiver because it did not allocate sufficient resources to regularly conduct comprehensive reviews to confirm compliance with SPPAW regulations. EBSA's Office of the Chief Accountant (OCA) concluded, based on observations of high levels of compliance from a review it conducted in 2011, that it would pursue SPPAW and form 5500-SF compliance only on an ad-hoc basis. As a result, it did not include SPPAW compliance in its annual risk assessment process and did not review it on a regular basis.

Our audit work covered small plan filings submitted for Plan Years (PY) 2010 through 2012, was expanded to include additional plan years and focused on OCA, which oversees and enforces ERISA's reporting and disclosure provisions by imposing civil penalties against plan administrators whose annual reports are rejected. We conducted the 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 objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions. Our audit objective, scope, methodology, and criteria are detailed in Appendix A.

RESULTS

Objective — Did EBSA Provide Sufficient Oversight to Small Pension Plans Receiving Audit Waivers?

EBSA did not provide sufficient oversight of small pension plans claiming the audit waiver.

Overall, we found EBSA did not provide sufficient oversight of small plans claiming the audit waiver. While SPPAW regulations have existed since 1976, and the amended regulations were effective the beginning of 2001, EBSA performed reviews of plan filings claiming audit waivers only two times: once in Fiscal Year (FY) 2008, and once in 2011. We tested both reviews on a sample basis. At the time of our audit, EBSA was conducting a third review for which results were not yet available.¹ The review performed in 2008 was more comprehensive because it included tests designed to confirm compliance with all SPPAW requirements.

The 2008 review required plans to provide documentation to support how they met the qualified assets waiver requirement. EBSA used the documentation, such as trust statements, to confirm assets reported by plans in their filings. The 2011 review did not have similar confirmation requirements. As a result, it did not provide EBSA sufficient assurance that plans claiming the SPPAW were qualified for the waiver, and participants and beneficiaries of employee benefit plans were protected from acts of fraud and mismanagement. In order to qualify for an audit waiver, plans must meet all –

¹ EBSA advised us that the 2014 review would be more comprehensive than the 2011 review and include requests for documentation supporting amounts shown on the plans' filings.

not some – SPPAW requirements. Without sufficient oversight, EBSA cannot ensure plans are complying with ERISA regulations and that participants and beneficiaries are protected.

EBSA is responsible for administering and enforcing the reporting and disclosures requirements of Title 1 of ERISA, and designed SPPAW regulations to balance the interest of participants and beneficiaries with the interest of small pension plans. DOL's SPPAW regulations waive the requirement for an independent qualified public accountant's annual examination and report for employee benefit plans with fewer than 100 participants at the beginning of the plan year.

To qualify for an audit waiver:

- Plans must generally have fewer than 100 participants.
- At least 95 percent of the plans' assets must be "qualified assets," defined as "assets held by a bank, insurance company, or an organization registered as a broker-dealer under the Securities and Exchange Act of 1934." In general, assets not considered "qualified" have to be covered by a sufficient bond.
- Plans are generally required to provide enhanced financial reporting disclosures to participants in their Summary Annual Report (SAR). The SAR is intended to provide additional information to participants and beneficiaries to help offset the risks introduced by the audit waiver. As such, SAR disclosures provide some limited form of assurance to participants by increasing the information available to them.

OCA's 2008 Review

In FY 2008, OCA performed a comprehensive test of 161 cases covering filings for PYs 2005 through 2007, to determine if plans claiming the audit waiver were complying with SPPAW requirements. OCA targeted these plans based on its review of the investment information reported on line 3 of Schedule I,² compared to total assets and bonds reported. If non-qualified assets were detected on Schedule 3 and bonds reported were insufficient, this suggested that plans may have been ineligible for SPPAW. OCA sent inquiry letters asking plans to clarify how they were eligible for the audit waiver, or to submit corrected filings. Any plans that were unable to provide this documentation were required to amend their filings to not claim the audit waiver and provide audit reports. Plans that maintained their eligibility provided the required documentation to support investment information reported. Over half (58 percent) of the plans later submitted a corrected filing.

² Form 5500 Schedule I - Financial Information -- Small Plan

OCA's 2011 Review

In FY 2011, OCA conducted a review to determine if small plan filers complied with audit waiver regulations and met the eligibility requirements to file Form 5500-SF for PY 2009. There were 410,586 Form 5500-SF filings in PY 2009. OCA designed a two-phase test for this project, because the SPPAW and Form 5500-SF had similar eligibility criteria.

Given the large volume of small plan filings, phase 1 of OCA's review focused on analytically determining small plans' eligibility to file the Form 5500-SF. For this phase, OCA targeted plans that reported 50 or more participants at the beginning of the year with end-of-year assets of \$15 million or more, and reviewed 413 plan filings. OCA reviewed the assets reported by plans on their 2008 Forms 5500, Schedule I, to determine if any of those assets might have rendered plans ineligible to file form 5500-SF in 2009. OCA determined all but 15 plans met the eligibility requirements to file the Form 5500-SF and consequently met SPPAW requirements.

Phase 2 of OCA's testing was intended to focus on SPPAW eligibility. OCA selected a sample of 98 small plans that filed Form 5500, but did not attach an audit report and did not claim the audit waiver.³ OCA reviewed the number of participants and the types of investments reported by these plans to determine if plans were eligible for the audit waiver, but mistakenly reported they were not claiming the waiver.

The plans targeted in this phase were detected by a systems edit test that was triggered when Schedule I, Line 4k was checked "no," and an IQPA report or explanatory statement was not attached. OCA's assumption in this phase was that the plans incorrectly checked the "no" box, and should have checked the "yes" box because the plans were small and did not attach an audit report. OCA determined all the plans incorrectly answered "no" to the waiver question and were actually eligible to claim the waiver. OCA, however, did not perform any testing procedures to confirm if the SAR disclosures required by the SPPAW were provided to participants and beneficiaries.

OIG Assessment of OCA's 2008 and 2011 Reviews

To assess the 2008 review, we selected a non-statistical sample of 15 cases from OCA's sample of 161 cases. We found the plans in our sample had either provided documentation supporting qualified investments, submitted corrected filings including audit reports and adequate bonds, or were referred to EBSA's enforcement arm for further investigation. Although the 2008 review was more comprehensive than the 2011 review, OCA did not request documentation supporting participant counts or confirmation of SAR disclosures to participants. Moreover, more than half (58 percent) of the plans in EBSA's 2008 sample had to submit amended filings, indicating a relatively low level of compliance with SPPAW requirements. As a result, we conclude

³ Form 5500 Schedule I, question 4K: "Are you claiming a waiver of the annual examination and report of an independent qualified public accountant (IQPA) under 29 CFR 2520.104-46? If "no," attach an IQPA's report or 2520.104-50 statement."

the 2008 review, although more comprehensive than the 2011 review, did not provide EBSA sufficient evidence of high levels of compliance with SPPAW requirements.

To assess OCA's phase 1 results for the 2011 review, we selected a statistical sample of 61 of the 413 plans targeted by OCA to assess the sufficiency of the testing procedures it employed. We determined OCA's review was insufficient for the following three reasons:

1. OCA did not, at least on a sample basis, compare the assets reported on the 2009 filings to any external sources, such as trust statements, to confirm the values that were reported by plans. Comparing the assets reported on filings to an external source would have provided independent assurances that the assets reported were accurate.
2. OCA did not, at least on a sample basis, independently confirm the number of participants reported by plans. As with assets, comparing the number of participants to an external source would have provided independent assurances that the numbers of participants reported were accurate.
3. OCA did not perform any testing to determine if SAR disclosures required for the SPPAW were provided to participants and beneficiaries. SAR disclosure requirements were designed to increase the security of assets in small pension plans by conditioning the waiver on enhanced disclosure of information to participants and beneficiaries.

By relying solely on the amounts reported by plans on the Forms 5500-SF without confirmations, OCA did not have independent assurance of the accuracy of the amounts reported, and consequently, whether plans were truly eligible for an audit waiver. Reviewing the numbers reported by the plans themselves provided no real verification of those numbers. In effect, OCA accepted the numbers reported by the plans without performing any testing to determine if they were accurate.

In our review of OCA's phase 2 results, we selected a statistical sample of 20 of the 98 plan filings targeted by OCA to assess the testing procedures it employed.

We determined OCA did not independently confirm the numbers reported by the plans, and therefore, did not have sufficient assurance of the accuracy of the numbers reported and the ultimate eligibility for the waiver. OCA only targeted the 98 Form 5500 filers that responded "no" to the audit waiver question and triggered the edit test, but excluded 160,452 filers who actually claimed the audit waiver. The following table lists SPPAW eligibility criteria which had not been confirmed by OCA during its 2011 review.

SPPAW Eligibility reported by plans, but not confirmed by OCA in FY 2011

SPPAW Criteria	Phase 1 Form 5500 SF Eligibility	Phase 2 SPPAW Eligibility
Number Participants*	N	N
Qualified Assets	N	N
SAR Disclosures	N	N

* Generally fewer than 100 participants at the beginning of plan year.

OIG's Review

In addition to the tests we performed on EBSA's reviews, we selected a statistical sample of 132 plans claiming the audit waiver for PYs 2010 to 2012. We requested financial documentation supporting amounts reported on Forms 5500-SF directly from plan administrators for the plans in our sample. Of the 132 plans sampled, 84 provided documentation. Of the 84 plans that provided documentation, we confirmed 78 were eligible to claim the audit waiver. In addition, we confirmed 78 of the 84 plans provided participants and beneficiaries with required SAR disclosures.

Based on our sample results, we concluded compliance with SPPAW requirements was high. However, during our review of plan documents, we noted a total of 13 (15 percent) of the plans in our sample either failed to report a fidelity bond or reported an insufficient bond amount. While the bonding issues we identified were not a violation of SPPAW requirements, bonding is required by ERISA §412. Every administrator, officer, and employee of any employee benefit plan subject to ERISA who handles funds or other plan property must be bonded. The bond provides protection to the plan against loss through acts of fraud or mismanagement on the part of these individuals. The amount of the bond is generally at least 10 percent of the amount of funds handled, with a minimum bond amount of \$1,000 and maximum of \$500,000. We did not identify the reason(s) for the lack of compliance with bonding requirements, and plan to address this topic in a future audit project.

Although as a whole, we found a high degree of compliance with SPPAW requirements, EBSA should make a consistent effort to ensure small plans claiming the audit waiver are eligible and in compliance with all conditions of the SPPAW regulations. This will better ensure participants and beneficiaries are protected from potential acts of fraud and mismanagement.

Recommendations

We recommend the Assistant Secretary for Employee Benefits Security:

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

EBSA's Response

The Assistant Secretary for Employee Benefits Security agreed with our recommendations to include compliance with the SPPAW regulations in EBSA's annual risk assessment process by reviewing a sample of plans claiming the waiver to determine if plans meet the conditions to waive the audit requirement and to file the simplified Form 5500 SF and to take enforcement action against plans accordingly. EBSA also agreed to conduct an examination of plans compliance with ERISA's fiduciary bonding rules and plans to initiate a project to improve compliance with bonding requirements. EBSA's response to our draft report is included in its entirety in Appendix C.

We appreciate the cooperation and courtesies EBSA personnel extended to the OIG during this audit. OIG personnel who made major contributions to this report are listed in Appendix D.



Elliot P. Lewis
Assistant Inspector General
for Audit

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Appendices

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Appendix A

Objective, Scope, Methodology, and Criteria

Objective

The OIG conducted this performance audit to answer the following question:

Did EBSA provide sufficient oversight to the small pension plans receiving audit waivers under the SPPAW regulations?

Scope

Our audit work covered small plan filings submitted for PYs 2010 through 2012, and was expanded to include additional plan years. All audit work was conducted at EBSA's national offices in Washington, DC.

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 the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Methodology

To accomplish our audit objectives we: (1) reviewed Federal laws and regulations and EBSA policies related to small plan audit waiver requirements; (2) interviewed EBSA Headquarters officials; and (3) reviewed information provided by EBSA and small plans.

To determine if EBSA's testing was sufficient, we: (1) reviewed EBSA's methodology in conducting its 2008 and 2011 reviews; and (2) tested, on a sample basis, cases that EBSA had selected for those reviews to validate EBSA's results. Sample results were not projected to the universe.

To determine if small plans were eligible to claim the audit waiver, we used the information provided by the plans to: (1) compare the amount of assets invested in a financial institution to the plan's total beginning-of-year assets; (2) compare the fidelity bond amount to the plan's total beginning-of-year assets; and (3) identify if the plan included all additional disclosures in their SAR (if applicable).

To determine the reliability of EBSA's data, we: (1) identified specific data elements from ERISA Filing Acceptance System II (EFAST2) that were critical to supporting our audit analyses; (2) obtained data for all small plan filings submitted for PYs 2010 through 2012; (3) developed and completed steps to assess the completeness and accuracy (i.e., reliability) of the data; (4) traced data elements (i.e., Employer Identification Number, plan name, calendar/fiscal beginning and ending dates,

participant count and total assets) to source documents (i.e., Forms 5500 and 5500-SF, financial statements; and (5) followed up with EBSA to clarify the meaning of the data and address discrepancies identified. We determined the data was sufficiently reliable for our testing purposes. For the OCA testing performed in 2008 and 2011 we reviewed the listing of cases for duplicates and confirmed fields contained appropriate information.

In planning and performing our audit, we considered EBSA's internal controls that were relevant to our audit objective by obtaining an understanding of those controls and assessing control risk for the purposes of achieving our objective. The objective of our audit was not to provide assurance on the internal controls. Therefore, we did not express an opinion on the internal controls as a whole. Our consideration of EBSA's internal controls relevant to our audit objective would not necessarily disclose all matters that might be reportable conditions. Because of the inherent limitations on internal controls, noncompliance may nevertheless occur and not be detected.

Criteria

We used the following criteria to accomplish our audit:

- Employee Retirement Income Security Act of 1974, Title I
- Pension Protection Act of 2006, Title V, Sec. 503(c)
- Title 29 Code of Federal Regulations, Parts 2520 and 2580.412
- Field Assistance Bulletin No. 2008-04 (November 25, 2008)

Appendix B

Acronyms and Abbreviations

DOL	Department of Labor
EBSA	Employee Benefits Security Administration
ERISA	Employee Retirement Income Security Act of 1974
Form 5500	Annual Return/Report of Employee Benefit Plan
Form 5500-SF	Annual Return/Report of Small Employee Benefit Plan
FY	Fiscal Year
IQPA	Independent Qualified Public Accountant
OCA	Office of the Chief Accountant
OIG	Office of Inspector General
PY	Plan Year
SAR	Summary Annual Report
SPPAW	Small Pension Plans Audit Waiver

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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.

Appendix D

Acknowledgements

Key contributors to this report were Nicholas Christopher (Audit Director), Charmaine Thorne (Audit Manager), Kathleen Mitomi, and Badara Kamara.

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