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Office of Inspector General—Office of Audit

**EMPLOYEE BENEFITS
SECURITY ADMINISTRATION**



RECOVERY ACT: EBSA COULD IMPROVE SOME ASPECTS OF ITS IMPLEMENTATION OF THE COBRA PREMIUM ASSISTANCE PROVISIONS

Date: September 30, 2009
Report: 18-09-003-12-001

BRIEFLY...

Highlights of Report Number 18-09-003-12-001, to the Assistant Secretary for Employee Benefits Security.

WHY READ THE REPORT

Health insurance programs help workers take care of their families' essential medical needs. Until 1986, employer-provided group health coverage was at risk if an employee was fired, changed jobs, or got divorced. That changed with the passage of the Consolidated Omnibus Budget Reconciliation Act (COBRA) in 1986 which gave workers who lost their jobs and health benefits, the right to purchase group health coverage under certain circumstances. An employee and his/her family can retain their group health coverage for up to 18 months by paying group rates.

The President signed the American Recovery and Reinvestment Act of 2009 (ARRA) on February 17, 2009, to, among other things, provide assistance to the unemployed by providing COBRA premium assistance. Eligible individuals pay only 35 percent of their COBRA premiums and the remaining 65 percent is reimbursed to the coverage provider through a tax credit. The premium assistance applies to health coverage beginning on or after February 17, 2009, and lasts for up to 9 months for those eligible due to an involuntary employment termination. ARRA also provides for appeals if premium assistance is denied.

For COBRA covered plans, the Employee Benefits Security Administration is responsible for providing outreach and education and reviewing appeals.

WHY OIG CONDUCTED THE AUDIT

Our overall audit objectives were to answer the following questions:

1. Has EBSA provided outreach related to COBRA premium assistance?
2. Has EBSA established a system to timely review appeals of premium assistance denials?

READ THE FULL REPORT

To view the report, including the scope, methodology, and full agency response, go to:

<http://www.oig.dol.gov/public/reports/oa/2009/18-09-003-12-001.pdf>

September 2009

RECOVERY ACT: EBSA COULD IMPROVE SOME ASPECTS OF ITS IMPLEMENTATION OF THE COBRA PREMIUM ASSISTANCE PROVISIONS

WHAT OIG FOUND

EBSA quickly started numerous outreach activities to implement the COBRA provisions under ARRA. Specifically, EBSA (1) responded to more than 110,000 telephone inquiries related to COBRA premium assistance; (2) created model notices to help plan administrators provide notice about the premium assistance; (3) expanded the EBSA website to include COBRA premium assistance information; (4) disseminated COBRA premium assistance; and (5) expanded enforcement investigations to include ARRA requirements.

However, there are aspects of the outreach program that EBSA could improve. Specifically, three of four DOL-funded One-Stop Centers we visited did not have COBRA premium assistance information available. In addition, EBSA did not use enforcement results to help evaluate outreach efforts. Finally, EBSA had not developed written resource contingency plans to help ensure that it could meet the 15-day deadline for deciding COBRA appeals. In addition, electronic copies of determination letters sent to appellants contained unreliable issuance dates. Finally, EBSA's appeal decision was not stated at the beginning of the determination letters sent to appellants, which could make it difficult to locate.

WHAT OIG RECOMMENDED

We made five recommendations to the Assistant Secretary for Employee Benefits Security related to (1) increasing outreach efforts by improving coordination with Employment and Training Administration (ETA) to ensure ARRA COBRA premium assistance materials are displayed and distributed at all One Stop centers, (2) using feedback from enforcement investigations to help assess outreach efforts, (3) developing a resource contingency plan, (4) improving controls to assure accurate dates are used on applicant determination letters, and (5) redesigning the letters sent to appellants to make the determination easier to locate.

In its response, EBSA provided additional information on the challenges that EBSA faced and the amount of planning and work invested in implementing the new program. EBSA has initiated or planned action on 4 of the 5 recommendations. However, the Assistant Secretary did not agree with the recommendation to develop more detailed resource contingency plans.

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U.S. Department of Labor

Office of Inspector General
Washington, D.C. 20210



September 30, 2009

Assistant Inspector General's Report

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In response to the American Recovery and Reinvestment Act of 2009 (ARRA), the Office of Inspector General (OIG) conducted a performance audit of the Department of Labor (DOL), Employee Benefits Security Administration's (EBSA) implementation of the premium assistance for COBRA benefits provided under ARRA.

ARRA was signed into law by the President on February 17, 2009, to preserve and create jobs, promote economic recovery, and assist those most impacted by the recession. ARRA provides for premium assistance and additional time for election of health benefits continuation under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). COBRA generally applies to employers with more than 20 employees. ARRA, however, extends the premium assistance to employees of employers with less than 20 employees if State law provides continuation coverage similar to COBRA.

The premium assistance applies to workers involuntarily terminated from employment from September 1, 2008, through December 31, 2009. Eligible individuals pay only 35 percent of their COBRA premiums and the Federal Government reimburses the remaining 65 percent to the coverage provider through a payroll tax credit.

Furthermore, ARRA allows an individual whose employer denies premium assistance to appeal that denial to DOL or the Department of Health and Human Services (HHS). DOL handles appeals related to private sector employers with 20 or more employees subject to COBRA. HHS handles appeals for Federal, State, and local governmental employees and appeals related to private sector employers with less than 20 employees subject to State continuation laws. Both DOL and HHS are required to make a determination regarding the individual's eligibility within 15 days after receipt of the individual's completed application.

Within DOL, EBSA has the responsibility to implement the COBRA-related provisions of ARRA.

Our overall audit objectives were to answer the following questions:

1. Has EBSA provided outreach related to COBRA premium assistance?
2. Has EBSA established a system to timely review appeals of premium assistance denials?

The audit included EBSA practices, policies, and procedures to comply with ARRA that were in place or planned as of May 31, 2009, and eligibility appeals received by EBSA through May 29, 2009. It also included visits to One-Stop Centers in July and August 2009.

To accomplish our audit objectives, we obtained an understanding of the ARRA which sets forth EBSA's responsibilities for (1) outreach to educate the employers and individuals about the availability of COBRA Premium Assistance, and (2) expedited reviews of denials of COBRA premium assistance in cases where employees file an appeal when they have been denied COBRA premium assistance under ARRA. We also reviewed EBSA's policies and procedures, memorandums, and other documents implementing EBSA's ARRA responsibilities.

In looking at EBSA's outreach program we examined model eligibility notification letters, training resources, and outreach materials developed by EBSA. We also reviewed the websites of the state workforce agencies in California, Illinois, Kansas, and Washington, and a One-Stop Center in each of these states to determine if information on ARRA's COBRA premium assistance program was available. Finally, we conducted a telephone survey of a sample of large employee organizations (e.g., unions, consumer organizations, and professional associations) to confirm they received and distributed to their members the COBRA premium assistance materials provided by EBSA.

To determine if EBSA processed eligibility appeals in a timely manner and if EBSA's decisions were supported by the available documentation, we examined and tested a random sample of 68 out of the 1,224 appeals that EBSA received through May 29, 2009.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audits to obtain sufficient and appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provided a reasonable basis for our findings and conclusions based on our audit objectives.

RESULTS IN BRIEF

EBSA quickly started outreach activities to implement the COBRA provisions under ARRA. Specifically, EBSA:

- (1) responded to more than 110,000 telephone inquiries related to COBRA premium assistance in the first five months after ARRA passage;
- (2) created model notices within 30 days of ARRA passage to help plan administrators provide notice about the premium assistance to individuals who have a COBRA-qualifying event;
- (3) expanded the EBSA website within three days of ARRA passage to include COBRA premium assistance information;
- (4) disseminated COBRA information related to premium assistance and filing of appeals using methods such as webcasts, State agency websites, and direct mailings to 42 organizations that may have had high numbers of individuals with COBRA-qualifying events; and
- (5) expanded enforcement investigations to include ARRA requirements to notify eligible individuals of COBRA premium assistance availability.

However, there are aspects of the outreach program that EBSA could improve. Specifically, three of four DOL-funded One-Stop Centers we visited did not have COBRA premium assistance information available although the program had been in place for 5 months. In addition, EBSA did not use enforcement results to help evaluate outreach efforts. Since the enactment of ARRA (February 17, 2009), EBSA had initiated 173 investigations of health plans. However, EBSA had not established a means to separately report ARRA violations identified in these investigations or provide this information to EBSA's Office of Participant Assistance (OPA) to assess outreach efforts.

Furthermore, EBSA had designed and implemented a process to provide review of appeals of premium assistance denials. The process was operational the same day (May 21, 2009) Office of Management and Budget approved the forms to be used. As of May 29, 2009, EBSA had received 1,224 appeals. Our review of 68 randomly selected cases identified only one instance in which EBSA had not issued its determination within 15 business days after receipt of the completed application. In this case EBSA had sought and received the applicant's agreement to exceed the 15 days while eligibility issues were resolved.

There are also aspects of the appeals process that EBSA could improve. EBSA had not developed written resource contingency plans to help ensure that it could meet the 15-day deadline for deciding COBRA appeals at potentially increased workload or decreased resource levels. In addition, the copies of determination letters sent to appellants that were captured in EBSA's management information system contained unreliable issuance dates. Finally, EBSA's appeal decision was not stated at the beginning of the determination letters sent to appellants, which could make it difficult to locate.

We made five recommendations to EBSA related to (1) increasing outreach efforts by improving coordination with Employment and Training Administration (ETA) to ensure ARRA COBRA premium assistance materials are displayed and distributed at One-Stop centers, (2) using feedback from enforcement investigations to help assess outreach efforts, (3) developing a resource contingency plan, (4) improving controls to assure accurate dates are used on applicant determination letters, and (5) redesigning the letters sent to appellants to make the determination easier to locate.

EBSA Response

EBSA provided additional information that it believed more fully describe the tremendous challenges it faced and the amount of planning and hard work that resulted in a smooth execution of the new program. EBSA reports it has addressed a number of OIG recommendations. Specifically, EBSA agreed to increase outreach efforts by improving coordination with Employment and Training Administration (ETA) to ensure ARRA COBRA premium assistance materials are displayed and distributed at One-Stop centers; and to use feedback from enforcement investigations to help assess outreach efforts. EBSA also stated it had improved controls to assure accurate dates are used on applicant determination letters, and redesigned the letters sent to appellants to make the determination easier to locate.

EBSA however, disagreed with our recommendation to develop a resource contingency plan and stated it had sufficient, well-documented contingency plans, and had provided managers with the flexibility to deal with unplanned, undesirable events.

OIG Conclusion

We did not intend to minimize the challenge EBSA faced when charged with implementing Recovery Act mandates in short time frames. EBSA's response to the draft report, which is provided in its entirety in Appendix D, outlined the challenges and steps EBSA took to meet this challenge. Regarding resource contingency plans, EBSA did not provide any additional information. We continue to believe more detailed plans regarding possible resource utilization would help better manage unforeseen workload fluctuations. (Recommendation 3).

RESULTS AND FINDINGS

Objective 1 — Has EBSA provided outreach related to COBRA premium assistance?

Finding 1 — EBSA has provided outreach related to COBRA premium assistance but could further improve these efforts.

EBSA quickly started outreach activities to implement the COBRA provisions under ARRA. Specifically, EBSA:

- (1) responded to more than 110,000 telephone inquiries related to COBRA premium assistance in the first 90 days after ARRA passage;
- (2) created model notices within 30 days of ARRA passage to help plan administrators provide notice about the premium assistance to individuals who have a COBRA-qualifying event;
- (3) expanded the EBSA website within three days of ARRA passage to include COBRA premium assistance information;
- (4) disseminated COBRA information related to premium assistance and filing of appeals through methods such as webcasts, State agency websites, and direct mailings to 42 large organizations that may have had high numbers of individuals with COBRA-qualifying events, such as unions, consumer organizations and professional associations; and
- (5) expanded enforcement investigations to include ARRA requirements to notify eligible individuals of COBRA premium assistance availability.

The public has responded to EBSA's outreach. As noted above, EBSA's benefit advisors have handled more than 110,000 telephone inquiries on COBRA premium assistance alone, a 35 percent increase in their workload. More than 4,700 separate groups registered to watch the EBSA webcasts live and more than 5,500 unique viewers have since watched the archived webcast. The EBSA COBRA premium assistance web pages have been viewed by more than 1.7 million visitors since being added to the website.

However, there are aspects of the outreach program that EBSA could improve. Specifically, three of four DOL-funded One-Stop Centers we visited did not have COBRA premium assistance information available although the program had been in place for 5 months. In addition, EBSA did not use enforcement results to help evaluate outreach efforts. Since the enactment of ARRA (February 17, 2009), EBSA had initiated 173 investigations of health plans. However, EBSA had not established a means to separately report ARRA violations identified in these investigations and provide this information to OPA to help assess outreach efforts.

One-Stop Centers Did Not Have Information

Three of the four One-Stop Centers we visited did not have COBRA premium assistance information available. Specifically, these three One-Stop Centers did not have any posters displayed or make information available to clients regarding COBRA premium assistance. Staffs at these One-Stop Centers generally were not aware of the program. While EBSA had distributed the material to the One-Stop Center, there was no mechanism to assure the materials were made available. The lack of any information regarding COBRA premium assistance hinders EBSA's outreach efforts and may impair eligible individual's ability to obtain COBRA premium assistance.

As part of its outreach efforts, EBSA worked with ETA on providing information to workers laid off from their jobs. ETA provides funding under the Workforce Investment Act to State Workforce Agencies to operate more than 3,200 One-Stop Centers across the country. One-Stop Centers are designed to provide a full range of assistance to job seekers, including those recently laid off, under one roof. One-stop Centers serve more than 500,000 people annually.

Based on interaction with EBSA, ETA issued Training and Employment Notice 42-08 to State Workforce Agencies on May 1, 2009. This Notice requested State Workforce Agencies to (1) link their websites to EBSA's COBRA information page, (2) display COBRA premium assistance-related posters in their One-Stop Centers, and (3) make COBRA premium assistance information available to clients. ETA designed these actions to assist workers, employers, and ETA's partners in understanding COBRA premium assistance. Furthermore, EBSA mailed COBRA premium assistance materials directly to each One-Stop Center.

However, State Workforce Agencies did not fully implement the Notice. During July and August 2009, we visited One-Stop Centers in San Francisco, California; Renton, Washington; Chicago, Illinois; and Overland Park, Kansas to determine if COBRA premium assistance materials or other assistance were available. Three of the four One-Stop Centers we visited did not have COBRA premium assistance-related materials readily available and the staff at these centers was generally not aware of the program nor could they tell us where to find information regarding COBRA premium assistance.

These shortcomings occurred primarily because there was no follow-up control in place to monitor the One-Stop Centers and ensure the material was made available. Both ETA and the State Workforce Agencies monitor the One-Stop Centers operations but neither had made provisions to check on the availability of COBRA premium assistance material.

According to EBSA, one of the four One-Stop Centers we visited had not yet received their distribution of COBRA premium assistance flyers, posters and other material from EBSA. EBSA's distribution lasted into July 2009 and these One-Stop Centers were in the later mailings. However, we made second visits to the same One-Stop Centers in

August 2009, after EBSA's distributions were made, and found that only one had improved and had COBRA premium assistance-related material available.

One-Stop Centers are not required to have COBRA premium assistance material available. However, One-Stop Centers are a focal point for workers laid-off from their jobs and could be an excellent partner in EBSA's outreach efforts. One of the intents of the Notice, which ETA issued to State and local agencies, was to raise awareness of the program. It is important to have COBRA premium assistance-related information and materials readily available at One-Stop Centers since they are a major contact point for employers and dislocated workers. While primary notification responsibility lies with the employer, having the information available at One-Stop Centers would help ensure that eligible individuals are fully informed about available assistance.

EBSA officials stated that EBSA discussed this finding with ETA and ETA had agreed to issue a change to the Training and Employment Notice to clarify that the One-Stop Centers should display EBSA's COBRA flyers and materials to inform dislocated or unemployed workers about the new COBRA provisions. ETA also agreed to host a joint webinar with EBSA for the One-Stop staff to enhance outreach and information efforts, and will request that ETA regional office staff, on their regular monitoring visits to local areas, check to determine whether information on the COBRA premium reduction is available. Furthermore, EBSA staff is following up with all the One-Stops to find out if they need additional flyers for distribution.

Enforcement Results

EBSA was not collecting and using information from its enforcement investigations to assess its COBRA premium assistance outreach efforts. EBSA officials did not see any need to separately identify ARRA violations or use this information to assess outreach efforts. Such information, however, could provide valuable feedback to OPA on the effectiveness of EBSA's outreach program.

EBSA's Office of Enforcement (OE) conducts investigations of employee benefit plans, including health plans, as part of its responsibilities under the Employee Retirement Income Security Act of 1974. During these investigations, EBSA examines a plan's compliance with many individual requirements; including the eligibility notification requirements established when COBRA was originally enacted in 1986. The results of each investigation, including any COBRA notice violations, were recorded in EBSA's Enforcement Management System.

In June 2009, OE issued a memorandum to its field offices, informing them of the new COBRA notification requirements related to premium assistance and instructing them to include the new requirements in their health plan investigations. However, OE did not establish a process to separately identify ARRA violations and provide the results related to COBRA premium assistance to OPA.

Since ARRA was implemented, EBSA has initiated 173 investigations of health plans but completed only three of these investigations. None of these three had any notification violations. We could not determine if any of the other 170 open health plan investigations had COBRA notification violations because the information is not recorded until investigations are closed. However, even when the investigations are complete, EBSA will not know if there are any ARRA violations. This is because EBSA has not established a means to separately identify ARRA violations or provide this information to OPA to assess outreach efforts

However, doing so could provide valuable feedback to OPA on the effectiveness of EBSA's outreach and education. For example, if in the 170 health plan investigations noted above, OE found significant non-compliance and furnished this information to OPA as it was found, OPA could potentially identify why certain employers did not comply and, if appropriate, direct some outreach or training to the problem. Conversely, if all 173 investigations showed employer compliance, OPA would have some assurance employers were aware of their responsibilities.

EBSA officials stated that on September 4, 2009, the Director of Enforcement instructed the Regional Directors by memorandum to notify OPA if they find any violations in connection with the requirement to provide ARRA COBRA notices to eligible participants and beneficiaries.

Objective 2 — Has EBSA established a system to timely review denials of COBRA premium assistance?

Finding 2 — EBSA has established a system to timely review denials of COBRA premium assistance but could make some improvements.

EBSA had designed and implemented a process to provide review of appeals of premium assistance denials. As of May 29, 2009, EBSA had received 1,224 appeals. Our review of 68 randomly selected cases identified only one instance in which EBSA had not issued its determination within 15 business days after receipt of the completed application. In this case EBSA had sought and received the applicant's agreement to exceed the 15 days while eligibility issues were resolved.

There were areas in the appeals process that EBSA could improve. EBSA had not developed written resource contingency plans to assure that it could meet the 15-day deadline for deciding COBRA appeals at potentially increased workload or decreased resource levels. In addition, the dates recorded on determination letters in EBSA's system were unreliable. Finally, EBSA did not state its appeal decision at the beginning of the determination letters that it sent to appellants, which makes it difficult to locate.

To further improve tracking and measuring its performance for issuing appeal determinations, EBSA should develop written resource allocation plans; improve the

accuracy of the issuance date recorded on determination letters; and re-design the determination letter sent to appellants.

Contingency Plan

EBSA needs to develop a written resource contingency plan for meeting ARRA appeals processing requirements. Specifically, EBSA should develop more specific resource plans to meet the 15-day requirement for a determination if the COBRA appeals processing workload increases or resources decrease and a backlog occurs. EBSA should decide and identify from where it would obtain needed resources and the effect of reassigning those resources to the COBRA appeals process. If this is not done, EBSA may violate ARRA requirements and/or cause unnecessary disruption in its services to participants.

ARRA requires EBSA to make a determination on each appeal within 15 days after receiving a completed appeal application. EBSA officials informed us that EBSA management committed to devoting whatever resources to COBRA appeals processing was necessary to meet the 15-day requirement. However, EBSA management has not specified where it will obtain these resources.

The processing of appeals has added to EBSA's workload and EBSA will need to continue to devote resources until the premium assistance program ends. To date, most of the resources EBSA has needed for appeals processing has come from its participant assistance staff. According to EBSA, in the first 5 months after ARRA was passed, this staff had responded to more than 110,000 inquiries concerning ARRA in addition to its normal workload. Furthermore, we were informed EBSA had added all of its temporary summer positions and hired 30 additional staff to work in appeals processing.

EBSA informed us that if COBRA appeals processing workload increased even more or a backlog of appeals occurred, it would add more participant assistance or investigative staff to meet the changing COBRA appeals processing workload. However, the participant assistance program and the investigative program could be adversely affected if it became necessary to redirect resources from either program to COBRA appeals processing.

If EBSA has to make this decision, both the participant assistance program and the investigative program could be adversely affected if it were necessary to redirect resources from either to COBRA appeals processing. For example, any shifting of more staff resources from the participant assistance program could cause deterioration in providing participant assistance. Lessening of resources to participant assistance could delay responses to participant requests for help, not only in ARRA but other benefit areas as well. Likewise, a shift of investigative resources from the enforcement program could adversely affect the number of cases opened and completed. This could reduce the amount of plan assets restored to plans or benefits obtained for participants.

To anticipate these issues and enable affected program management to plan for potential impact, EBSA needs to be more specific as to where it will obtain the resources needed should COBRA appeals processing workload require it and prepare a written resource contingency plan.

EBSA officials informed OIG that while no formal written contingency plan document was developed, it had considered contingencies and provided guidance to deal with them. EBSA specifically mentioned its risk mitigation plan, development of a scalable program, and various meetings and documentation, which EBSA believed provided the ability to expand staff as the appeals volume increased. Overall, EBSA stated it had sufficient, well-documented contingency plans and had provided Regional Directors with the flexibility to deal with unplanned, undesirable events.

OIG agrees with EBSA that Regional Directors should be given flexibility in determining what resources would be used to deal with COBRA appeals processing if necessary. However, EBSA officials have not provided OIG with additional information about contingency plans. We continue to believe more detailed plans regarding possible resource utilization would help better manage unforeseen workload fluctuations.

EBSA Needs to Capture Accurate Issuance Dates on Determination Letters Mailed to Appellants

EBSA was not accurately capturing the issuance date of determination letters mailed to appellants in its management information database. While the actual determination date was recorded accurately, the date of the letter informing the appellant of the decision was sometimes missing or dated before the actual determination. This occurred because the system had to be changed for ARRA and controls were not established to ensure the accuracy of the issuance date shown on the filed copy of the determination letter. As a result, EBSA could not demonstrate that appellants were timely notified after final determinations were made.

EBSA modified its existing Technical Assistance Information System (TAIS) to record and process the COBRA premium assistance appeals information. This is the information system EBSA used to record and track participant assistance inquiries under EBSA's participant assistance program. A new module was added to TAIS for the ARRA appeals which recorded and tracked the date each appeal was received, its progress through EBSA, the final determination decision and date, and the notification letters sent to employers and appellants. EBSA also used management reports from TAIS to monitor its compliance with ARRA's requirement to make appeal determinations within 15 days.

While the TAIS system stored copies of the determination letters mailed to appellants, it did not ensure these letters contained accurate issuance dates. Based on the initial determination made by EBSA, the TAIS system electronically created, dated, and stored a determination letter to be mailed to the appellant. However, this appeal decision was not finalized and the determination letter was not mailed to the appellant

until the initial decision had received a secondary review and concurrence within EBSA. The processing time for this secondary review could cause the automatically prepared determination letter to pre-date the actual decision date and/or the actual mailing date. In these cases it was up to EBSA personnel to revise the date shown on the determination letter stored in TAIS.

This was not always being done. In 18 out of 68 (26 percent) randomly selected appeals we reviewed, the determination letter issuance date preceded the actual determination date. Another 10 (15 percent) of the determination letters in our audit sample contained no issuance date. According to EBSA, these errors occurred because staff neglected to revise the date or removed the incorrect date on the electronically stored copy of the letter and hand-stamped the copy that was printed and mailed to the appellant. As a result, although EBSA could show that it was making appeal decisions in a timely manner, it could not show when it actually notified appellants of its decisions nor demonstrate that it was doing so in a timely manner. Notifying appellants of its decisions in a timely manner is important to assure that individuals do not lose or drop coverage because they lack information on their eligibility for premium assistance.

EBSA officials informed OIG that EBSA has modified the TAIS to prevent future date discrepancies. EBSA made the observation that the date information OIG found unreliable was never used in calculating whether EBSA complied with the 15-day requirements.

Appeal Decision Obscured in Letter to Appellants

EBSA's appeal determination is difficult to locate in the letter sent to appellants. As a result, it may be difficult for some appellants to clearly understand EBSA's decision.

In each appeal case, EBSA informs both the employer and the appellant of its decision on the appellant's eligibility for COBRA premium assistance. EBSA sends a letter to each party informing each of its determination.

EBSA's letter to the employer contains EBSA's decision in the second sentence of the letter. For example, a letter granting the assistance states:

Enclosed please find a Determination letter issued by the Department of Labor on behalf of the applicant listed above.

According to the information provided, the Department of Labor has determined that the applicant is **ELIGIBLE** for the ARRA COBRA premium assistance.

The letter to the appellant was more confusing. The letter began with four paragraphs that explained ARRA and the eligibility criteria for premium assistance. EBSA's actual appeal decision was contained in the fifth paragraph, twelfth sentence. In most cases, this placed EBSA's decision at the bottom on the first page or, as in many cases, the

second page. Although the decision was capitalized and bolded, as in the employer's letter, the location of EBSA's stated decision in appellant letters could make this key information more difficult to locate than if it was provided earlier in the letter.

EBSA officials did not believe that recipients of its letters had any difficulty in locating the determination as the letters included the required statement of eligibility in bold type. However, EBSA stated it had revised the letters to reflect the opinion of the auditors by amending the subject line to indicate the determination made.

Recommendations

We recommend that the Assistant Secretary of the EBSA direct staff to do the following:

1. Coordinate with ETA to include COBRA premium assistance information availability in both its and State Workforce Agency's monitoring to ensure One-Stop Centers have COBRA premium assistance information available to workers.
2. Use feedback from enforcement investigations to help assess outreach efforts.
3. Develop a written contingency plan with more specific resource plans for meeting the 15-day requirement.
4. Establish controls to ensure that dates on determination letters received by applicants match the determination dates in the TAIS.
5. Revise its current version of the final determination letter by moving up the notification of its decision to the beginning of appellants' letters to make it easier for appellants to locate.



Elliot P. Lewis
Assistant inspector General
for Audit

Appendices

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Background

ARRA was signed into law by the President on February 17, 2009, to preserve and create jobs, promote economic recovery, and assist those most impacted by the recession. Division B, Title III of ARRA provides for premium assistance and additional time for election of health benefits continuation under COBRA.

COBRA gives workers and their families who lose their health benefits the right to continue health benefits at group health rates. The coverage is continued by their group health plan for limited periods of time under certain circumstances such as voluntary or involuntary job loss, reduction in the hours worked, transition between jobs, death, divorce, and other life events. Under COBRA, workers and their families must generally pay the full premium and may pay an additional two percent for administrative costs.

Under ARRA, eligible individuals pay only 35 percent of their COBRA premiums and the remaining 65 percent is reimbursed to the coverage provider through a tax credit. The premium assistance applies to periods of health coverage beginning on or after February 17, 2009, and lasts for up to 9 months for those eligible for COBRA during the period beginning September 1, 2008, and ending December 31, 2009. The COBRA eligibility must be due to an involuntary termination of employment that occurred during that period.

ARRA requires the Secretary of Labor in consultation with the Secretary of the Treasury and the Secretary of HHS to provide outreach. This outreach is to consist of public education and enrollment assistance relating to COBRA premium assistance provided under ARRA. Such outreach is to target employers, group health administrators, public assistance programs, States, insurers, and other entities as determined appropriate.

Within the DOL, EBSA has the responsibility to implement the COBRA-related provisions of ARRA.

Under ARRA, eligibility for COBRA premium assistance is initially determined by the employer. ARRA allows an individual whose employer denies premium assistance to appeal that denial to EBSA or HHS. EBSA handles appeals related to private sector employers with 20 or more employees. HHS handles appeals for Federal, State, and local governmental employees and appeals related to private sector employers with less than 20 employees subject to State continuation laws.

When EBSA receives an appeal, EBSA obtains information from the employer and the individual, reviews the appeal and information obtained, and makes a determination on the individual's eligibility. EBSA is required to make this determination within 15 days after receipt of the individual's completed application.

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Objective, Scope, Methodology, and Criteria

Objective

Our overall audit objectives were to answer the following questions:

1. Has EBSA provided outreach related to COBRA premium assistance?
2. Has EBSA established a system to timely review appeals of premium assistance denials?

Scope

The audit covered EBSA practices, policies, and procedures — in place or planned as of May 31, 2009 — to comply with ARRA.

We examined EBSA’s outreach program related to ARRA, including model eligibility notifications to employers and public education and enrollment assistance to eligible individuals and employers. We conducted interviews with EBSA officials from the Office of Health Plan Standards and Compliance Assistance, OPA, and OE to gain an understanding and the status of the ARRA efforts. We reviewed the model notices and training and outreach materials. We visited one One-Stop Center in each of the following States — California, Illinois, Kansas, and Washington to determine if ARRA-related materials were available. We also reviewed the websites of these States for ARRA-related material. We conducted a telephone survey of selected organizations to determine the usefulness of COBRA premium assistance materials distributed by EBSA.

We examined EBSA’s COBRA appeals process developed to comply with ARRA. We conducted interviews with EBSA officials from OPA and obtained policies and procedures and observed appeals processing. We examined and tested a random sample of 68 out of 1,224 of EBSA’s COBRA appeals received through May 29, 2009, to determine if EBSA processed the appeals in a timely manner and if EBSA’s decision was supported by the documentation.

We conducted our fieldwork at EBSA’s headquarters in Washington, D.C. We also visited One-Stop Centers in San Francisco, California; Renton, Washington; Chicago, Illinois; and Overland Park, Kansas.

Methodology

To accomplish our audit objectives, we obtained an understanding of the ARRA, which sets forth EBSA’s responsibilities for (1) outreach to educate the employers and individuals about the availability of COBRA Premium Assistance, and (2) expedited reviews of denials of COBRA premium assistance in cases where employees file an

appeal when they have been denied COBRA premium assistance under ARRA. We also reviewed EBSA's policies and procedures, memorandums, and other documents implementing EBSA's ARRA responsibilities.

We reviewed Model Notices and other outreach and training materials developed by EBSA to inform the public about the COBRA Premium Assistance available under ARRA.

We interviewed EBSA officials from the Office of Health Plan Standards and Compliance Assistance, OPA, and OE to obtain an understanding of the educational and outreach program for COBRA premium assistance under ARRA and coordination of outreach and education responsibilities with HHS and Treasury.

We reviewed and assessed internal controls used by EBSA for outreach related to the COBRA premium assistance available under ARRA, and for the review of appeals of COBRA premium assistance denials.

To achieve our objectives we relied on computer-generated data contained in EBSA's TAIS system. We assessed controls and conducted tests of the data. Based on these tests, we considered the data to be materially accurate for purposes of meeting our audit objectives.

We judgmentally selected and conducted a phone survey of 7 of 42 Employee Benefit Organizations to whom EBSA has distributed COBRA premium assistance information to determine if the information was useful and if the organization made the information available to individual members.

Based on proximity to OIG offices and staff, from more than 3,200 One-Stop Centers, we judgmentally selected and visited one One-Stop Center in each of the following cities — San Francisco, CA; Renton, WA; Chicago, IL; and Overland Park, KS, to determine if COBRA premium assistance materials were available. We also reviewed these States' workforce agency websites for availability of information about the COBRA premium assistance under ARRA.

We reviewed a statistically valid random sample of appeals processed to determine if EBSA processed these requests in a timely manner and to determine if EBSA's decision to overturn or sustain the employers' denials of employees' requests for COBRA premium assistance available under ARRA was supported by the documentation.

The statistical sampling universe was defined as appeals EBSA received through May 29, 2009. We used a random sampling method with stratified design to provide effective coverage of the appeals and to obtain precise estimates of the characteristics tested. Each appeal was tested for multiple characteristics as discrete variables. An explanation of the audit test results and relevance of the tests to the audit's objectives is provided in the body of the audit report. We used 95 percent confidence limits.

We stratified the universe of 1,224 appeals by type of filing (electronic, mail, fax, or other), and selected a random sample of 68 appeals among the strata. Our sample test results were not projected since no errors were found.

A performance audit includes an understanding of internal controls considered significant to the audit objectives and testing compliance with significant laws, regulations, and other requirements. Our work on internal controls included obtaining and reviewing policies and procedures and interviewing key personnel. We gained an understanding of EBSA's processes relative to our audit objectives and documented a description of the controls. Our testing of internal controls focused only on the controls related to our objectives of assessing compliance with significant laws, regulations, and policies and procedures. We did not intend to form an opinion on the adequacy of internal controls overall, and we do not render such an opinion.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audits to obtain sufficient and appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provided a reasonable basis for our findings and conclusions based on our audit objectives.

Criteria

We used the following criteria to accomplish our audit:

- America Recovery and Reinvestment Act of 2009
- Consolidated Omnibus Budget Reconciliation Act of 1985
- Internal Revenue Service Notice 2009-27
- Training and Employment Notice 42-08

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Appendix C

Acronyms and Abbreviations

ARRA	American Recovery and Reinvestment Act of 2009
DOL	Department of Labor
EBSA	Employee Benefits Security Administration
ETA	Employment and Training Administration
COBRA	Consolidated Omnibus Budget Reconciliation Act of 1985
OIG	Office of Inspector General
HHS	Department of Health and Human Services
OE	Office of Enforcement
OPA	Office of Participant Assistance
TAIS Technical	Assistance Information System

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Auditee Response

U.S. Department of Labor

Employee Benefits Security Administration
Washington, D.C. 20210



September 25, 2009

Elliot P. Lewis
Assistant Inspector General for Audit
Office of the Inspector General
U.S. Department of Labor
200 Constitution Ave.
Washington, DC 20210

Re: Draft Audit Report No. 18-09-003-12-001

Dear Mr. Lewis:

Thank you for the opportunity to comment on your Audit Report on the Employee Benefits Security Administration's (EBSA's or the Agency's) implementation of the COBRA premium assistance provisions in the American Recovery and Reinvestment Act of 2009 (Recovery Act). While we believe EBSA's program has been highly successful, we recognize that process improvements can be made to enhance customer service delivery.

In January 2009, the Employee Benefits Security Administration of the U.S. Department of Labor began preparing for what was to become one of the most important provisions of the Recovery Act. While there were many elements of the Recovery Act that provided institutional relief and support for organizations, the health premium subsidy provision was a crucial component that provided direct support to individuals and their families by helping them keep their health care benefits that might otherwise been unaffordable because of job loss.

The Act required the Secretary of Labor to:

- create model notices within 30 days after the enactment of the Recovery Act for plans and other entities to use to notify participants about the new COBRA subsidy provisions;
- provide for the expedited review of denials of premium assistance and complete the determinations within 15 business days;
- conduct public outreach and enrollment assistance targeted to eligible participants, employers, group health plan administrators, states, insurers, and other entities, including providing information about premium reduction and enrollment on the agency's website; and,
- issue any regulations that are necessary or appropriate to carry out the provisions.

The Secretary delegated these responsibilities to EBSA.

EBSA recognized the importance of this legislation for individuals as well as business organizations, and worked vigorously to ensure that a nationwide functional program would be in effect immediately following the passage of the law. EBSA designed the program from the ground up, including the issuance of model notices in conjunction with the Internal Revenue Service (IRS) and the Department of Health and Human Services (HHS) and the development of a dedicated website to provide updated information to workers, employers and health plan administrators. EBSA created a fully functional system that proved its design objectives by accommodating, to date, over 1.7 million web visits, 130,000 COBRA inquiries and over 9,300 appeals, delivering responses to appeals within the 15 day target period over 99.996 percent of the time.

The data and the continuing responses to our customers, including individuals and plan sponsors, suggest that, by any measure, the program we developed has been overwhelmingly successful.

We believe the draft audit report conducted by your office on EBSA's implementation of this new program did not fully describe the tremendous challenges that the Agency faced and the amount of planning and hard work that resulted in a smooth execution of the new program and the successful result. For example, the report understates the outreach that was conducted and the effort required to develop a new paperless operating system for processing and tracking the appeals, and the new requirements and operating procedures for our staff.

I have summarized the work required by EBSA and the results which should, in our opinion, be more clearly highlighted as part of the OIG report as it documents the Department's determination to support American workers during this period of economic crisis.

EBSA developed four model notices in conjunction with the IRS and HHS for use by plan sponsors to notify their employees of the new COBRA subsidy provisions. These notices were cleared by the agencies and OMB, published in the Federal Register and posted on EBSA's website within the 30 day statutory requirement.

To implement the statute, EBSA was required to develop an entirely new program to process the appeals in a very short timeframe. While EBSA's Benefits Advisors located in offices across the country were accustomed to handling approximately 170,000 inquiries for assistance from participants each year and resolving complaints through informal benefit dispute resolution, no formal adjudication process or deadlines for formal determinations existed within EBSA prior to the enactment of the Recovery Act and the implementation of this new program. Further, the Recovery Act provided the Agency only fifteen days to issue these determinations that provided both the complainant and the plan sponsor due process, and which were legally binding decisions that could be appealed only through the Courts.

Because this was an extremely important program for the thousands of workers who experienced job loss, the Agency had to deal with record breaking inquiry volume beginning in February 2009. By the end of March 2009, the number of calls received

regarding the new COBRA subsidy had reached over 2,000 per day – on top of the already heavy call volume. (For example, total per day inquiry volume on April 28, 2009 was 3,005, compared to 834 on April 28, 2008.)

Given the lack of any historical data, there was significant uncertainty about the volume of COBRA denials and appeals that would be submitted to EBSA for review and determination. Adding to the challenges, while EBSA was charged with conducting outreach, developing and issuing model notices, and designing and implementing the appeal process, the IRS was responsible for issuing guidance and interpretation of the eligibility provisions as well as establishing the process by which employers would be reimbursed for payment of the subsidies through their payroll tax submissions. HHS was charged with development of a similar appeals process for individuals denied the subsidy by plans sponsored by the government and non-profit organizations. Close coordination among the agencies was absolutely essential.

EBSA succeeded, however, because of early planning, close collaboration among our program offices and with other agencies, and an efficient program design utilizing our trained Benefits Advisors and information technology (IT) system to track and monitor the handling of the appeals.

The broad program design included an ambitious outreach initiative, a procurement action for intake of applications, preliminary processing of the applications in the national office, factual development, documentation, and analysis by field office Benefits Advisors, and recommended determinations based on the record by a designated team of technical experts. The design involved developing budget estimates and requests, initiating procurement actions for intake and IT development, designing an application form that could be completed on-line and that would integrate with our existing IT case management system modified to handle the application process, creating determination letters for a range of case outcomes, recruiting, hiring and training temporary staff, and training existing staff on the provisions of the new COBRA program, due process requirements, and the detailed procedures to be followed. EBSA developed and continuously refined step-by-step procedures to ensure transparency, consistency, adherence to the intake contract, and quality.

The IT enhancement allows for totally paperless processing of a fully documented record that moves seamlessly across the nation from intake to the field office, and on toward a final technical review and issuance of determination. The system supports extensive queuing, timeliness and quality monitoring, and reporting features. This system design was critical to the swift development and handling of a complete legal record by individuals with differing responsibilities in many different geographic locations.

EBSA staff recruited and hired 15 summer students in the national office and 25 temporary Benefits Advisors in the field offices to handle the increased inquiry volume and process the appeals. Hiring began as soon as the ARRA budget was approved and funds were made available to us. Training was provided on the new COBRA technical provisions and appeal process for all new hires, field office executive staff, Benefits Advisors across the country, and affected program office staffs (approximately 300 in total). Twenty additional temporary Benefits Advisor positions were added in the field on June 16, 2009 and training was provided.

Once funding decisions were made, the procurement process was completed; a contractor was selected to operate the intake unit and work began on the development of the efile system to electronically accept applications for review, and to modify the TAIS system - the inquiry case tracking system expanded to manage and track appeals. OMB approved the application form on May 20 and EBSA began accepting and processing applications on May 21, 2009.

As noted earlier, EBSA handled a very significant volume of general inquiries on COBRA, roughly tripling typical inquiry volume during March through June. In total, during FY 2009, the Benefits Advisors have handled over 335,000 inquiries (130,000 related to COBRA) to date. Over 9,300 appeals have been processed and determinations issued. Only 36, or less than 1/2 of 1 percent, of those determinations were issued after 15 business days.

The following are EBSA's responses to the five findings & recommendations in the report:

Recommendation # 1: Coordinate with ETA to include ARRA COBRA premium assistance information availability in both its and State Workforce Agency's monitoring to ensure all local One-Stop Centers have COBRA premium assistance information available to workers. The audit report specifically focuses on EBSA's use of the One-Stops to disseminate information about the program. This was only one element of EBSA's comprehensive outreach strategy.

The Agency developed four model notices in conjunction with the IRS and HHS. The notices were cleared by OMB and issued within the 30 day statutory requirement. A dedicated COBRA/ARRA website was launched on February 20, three days after the enactment of ARRA, and has hosted over 1.7 million visitors. The website has a section devoted to participants and one to plan sponsors and their service providers; over 40,000 individuals subscribed to the page to be alerted as new guidance, FAQs, the model notices, the application form and other materials were made available. Two COBRA/ARRA compliance webcasts were held by EBSA in conjunction with the IRS on March 24 and April 6, 2009; over 10,000 individuals participated live or accessed the archive version on our website. In addition, our field offices conducted 40 compliance workshops, made 69 presentations in their regions and conducted 33 webinar briefings for the district staff in 194 Congressional offices across the country who come in contact with thousands of individuals seeking information or help with COBRA. The Office of Congressional and Intergovernmental Affairs sent a blast email to all Congressional offices when the application form was available. Our Health Benefits Compliance Seminars were revamped to include a session on the new COBRA requirements, reaching hundreds of human resource managers and service providers. Benefits Advisors participated in 273 Rapid Response sessions with the states, reaching 9,610 workers facing job loss, by going on-site at significant plant closures or at companies experiencing large lay-offs, to explain COBRA, HIPAA and the new subsidy program to thousands of affected workers. EBSA's English & Spanish Dislocated Worker and COBRA publications were revised to include a section on the new subsidy. A new video on COBRA and the subsidy was developed in both English and Spanish and placed on the Agency's website.

We are very appreciative of the Employment and Training Administration's (ETA's) willingness to work with us to distribute flyers and information on the new COBRA subsidy through the One-Stop Centers. Their issuance of a Training and Employment Notice (TEN) was the first time a formal notification was issued by ETA related to an EBSA program. Following the OIG's visit to the One-Stop sites in July, EBSA staff phoned the contact person in each of the offices to find out if they had received the mailings. We were able to talk to someone in each of the One-Stops at that time and confirm that they had either received the package or that the address that the package was sent to was correct. For one of the One-Stops, given the logistics of the center, they requested we send a second package which we did right away. The One-Stop in Washington had not received the package because they were part of our later mailing (with 3,000 packages, we had to do them in several mailings). We did follow up to make sure that the One-Stop Centers had received the mailings. In late August, the IG followed up to note that the One-Stop in Overland Park, Kansas did not have the materials. We followed up and talked directly to the person identified to receive the mailing, Erich Ulmer, who confirmed that he had received the original mailing and wanted to order additional copies of the fact sheet, application and flyers in English and Spanish. EBSA has been calling the One-Stops from the mailing list to make sure the packages have been received, update addresses/contact people if needed, and ask if additional materials are needed.

We have discussed this finding with ETA and they have agreed to issue a change to the TEN to clarify that the One-Stop Centers should display EBSA's COBRA/ARRA flyers and materials to inform dislocated or unemployed workers about the new COBRA provisions. They have also agreed to host a joint webinar with EBSA for the One-Stop staff to enhance outreach and information efforts, and will request that ETA regional office staff, on their regular monitoring visits to local areas, check to determine whether information on the COBRA premium reduction is available. EBSA staff is following up with all the One-Stops to find out if they need additional flyers for distribution.

Recommendation # 2: Use feedback from enforcement investigations to help assess outreach efforts. As the report explains EBSA's Office of Enforcement issued a memorandum in June 2009 to EBSA's field offices instructing them to include a review of the new COBRA notice requirements in their health plan investigations. If COBRA notice violations are found during the investigation, the investigator is instructed to handle the corrective action. Any COBRA violation found by an investigator is entered into the Enforcement Management System (EMS), the enforcement case tracking system. If there are COBRA Notice violations found after April 18, they are considered COBRA/ARRA violations. There are currently no entries in that field for the 170 open health investigations; however these fields in EMS are generally not completed until after the investigation is complete. On September 4, 2009, the Director of Enforcement instructed the Regional Directors by memorandum to notify OPA if they find any violations in connection with the requirement to provide ARRA COBRA notices to eligible participants and beneficiaries. To date there have been no findings. Based on the IG auditors' conclusions, the lack of violations found would indicate that EBSA's outreach has been a success and that non-compliance is not a problem.

Recommendation # 3: Develop a contingency plan with more specific resource plans for meeting the 15-day requirement in case of system failure, overflow applications

and other undesirable events. The report states EBSA needs to develop a written resource contingency plan for meeting ARRA appeals processing requirements. It recommends that EBSA should develop a more specific resource plan to meet the 15-day requirement for a determination if the COBRA appeals processing workload increases or resources decrease and a backlog occurs. EBSA should decide and identify from where it would obtain needed resources and the effect of reassigning those resources to the COBRA appeals process. If this is not done, EBSA may violate ARRA requirements and/or cause unnecessary disruption in its services to participants.

While no formal written contingency plan document was developed by EBSA, we have considered contingencies and provided guidance to deal with them. On April 9, EBSA developed and submitted to the Department a five page risk mitigation plan that anticipated potential problems and provided steps the Agency would take to mitigate the problems should they occur. One of the risks identified in this plan was missing the 15 day statutory deadline if EBSA received an overwhelming number of appeals that exceeded capacity. To mitigate that risk EBSA developed a scalable program to process from 5,000 to 10,000 applications a month. The Department recognized that there was no way to accurately predict the volume of appeals and set aside reserve funds that could be utilized by EBSA to increase staff in the event the volume exceeded our estimates.

In early May 2009, EBSA's Deputy Assistant Secretary for Program Operations convened a meeting with the Executive Staff and Regional Directors to discuss, among other topics, the implementation of COBRA/ARRA. A discussion memo was prepared for that meeting including such topics as the increased inquiry volume, the anticipated volume of subsidy appeals, staff morale and well-being, performance standards issues for Benefits Advisors and Investigators, and work priorities.

In follow-up to the decisions made at that meeting, the Director of the Office of Participant Assistance sent a memorandum to the Regional Directors on May 14, 2009 outlining expectations for handling the ARRA workload. The letter stated that the Regional Directors should adjust their allocation of personnel and other resources as necessary to meet the demand created by the COBRA premium reduction program, giving highest priority attention to resolving the COBRA appeals and responding to inquiries. EBSA allowed the Directors the flexibility to reassign investigators and other staff to handle this workload which was considered a top priority of the Agency.

This flexibility provided the ability to expand staff devoted to the program as the volume increased. We understand the dynamic nature of this ever changing process, and we are managing the process vigorously with our customers in mind. Accordingly, we believe that EBSA has sufficiently well documented contingency plans and has provided managers with the flexibility to deal with unplanned, undesirable events.

Recommendation # 4: Improve controls over TAIS determination dates to ensure that determination dates in the TAIS match with the dates on determination letter received by applicants. The auditors found that the actual determination date was recorded accurately, however the date of the letter informing the appellant of the decision was sometimes missing or dated before the actual determination.

This problem occurred because we designed the system to automatically generate the determination letters. The letters were originally generated with the date the Benefits Advisor submitted them for supervisory review. We have since corrected the problem in TAIS so that the date on the letter updates when the letter has been reviewed and finalized and the status in TAIS is changed to "Letter Mailed/Faxed." Prior to July the date of the letter had to be adjusted manually to properly reflect the date the letter was mailed. This was not always done.

The auditors recognized that this problem did not impact the calculation of the number of days for processing the appeal. The day counts have never been calculated based on the dates that appear on the letters. There is a Correspondence Sent Tracking Grid in TAIS that is used for the letter tracking. The date entered into that field is the date the letter is signed and mailed. EBSA's policy has always been that the final determination /review completed date in TAIS is the date the letter was mailed. The OIG's final audit report should make that finding clear.

Recommendation # 5: Revise the current version of the final determination letter by moving up the notification of its decision to the beginning of the appellant's letter to make it easier for the appellants to locate. The auditors found that EBSA's appeal decision was obscure and difficult to locate in the determination letters as the decision was contained in the fifth paragraph, twelfth sentence.

We do not believe that recipients of our letters have had any difficulty in locating the determination as the letters included the required statement of eligibility in bold type. However, we have now revised the letters to reflect the opinion of the auditors by amending the subject line to indicate the determination made. We note that there has not been a single complaint from any participant indicating difficulty finding our determination in the letter; just from participants who are unhappy with the determination.

In short, we are pleased that you found only minor issues during your audit. Although no program can be perfectly implemented, we are very proud of our response to EBSA's new Recovery Act responsibilities. Implementation of these provisions has presented some unique challenges for us, but we never lost sight of the fact that our work is very important for ordinary people facing difficult financial circumstances. We are disappointed that this audit report fails to acknowledge that significant achievement and instead focuses on relatively minor criticisms.

Again, we appreciate the opportunity to provide our comments to the draft report and hope they will be helpful to you in developing a final document.

Respectfully,



Phyllis C. Borzi
Assistant Secretary

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Appendix E

Acknowledgements

Key contributors to this report were Charles Allberry (Audit Director), Ralph McClane, Steve Chiang, Richard Bryan, Tim Kerschen, Mark Wood and Mary Lou Casazza.

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