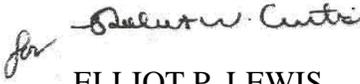


March 24, 2004

MEMORANDUM FOR: ANN L. COMBS
Assistant Secretary
for Employee Benefits Security

FROM:  ELLIOT P. LEWIS
Assistant Inspector General
for Audit

SUBJECT: Audit of EBSA's Participant
and Compliance Assistance Program
Audit Report No. 09-04-001-12-121

The Office of Inspector General (OIG) has completed an audit of the Employee Benefits Security Administration's (EBSA) Participant and Compliance Assistance Program. Our objectives were to determine if EBSA's Participant and Compliance Assistance Program provided information and assistance timely and accurately, and reported performance data, including benefit recoveries, accurately for fiscal year (FY) 2002 (October 1, 2001 through September 30, 2002).

Our tests of nationwide statistically sampled inquiries and benefit recoveries from FY 2002 in eight EBSA regional offices and the National Office disclosed no significant problems. Specifically, we concluded that:

- EBSA provided information and assistance timely and accurately, and
- Reported performance data was reasonably accurate.

While our tests disclosed some instances of non-compliance with program requirements, the instances were not statistically significant. Accordingly, we make no recommendations.

Background

EBSA's Office of Participant Assistance administers the Participant and Compliance Assistance Program (Program). The Office of Participant Assistance's mission is to provide quality service to EBSA's customers through outreach, education, and technical assistance. EBSA provides this technical assistance primarily in response to inquiries, including telephone contacts, letters (from the public, Congress, etc.), emails, and walk-ins. EBSA tracks the results of inquiries through resolution, including benefit recoveries. Two information systems capture data for this performance reporting. One system, the Technical Assistance Information System (TAIS), captures information on all inquiries except written inquiries to the National Office. A separate system, the Correspondence Tracking System (CTS), captures information on written inquiries to the National Office.

EBSA has established specific goals for the Program. These specific Program goals are to respond to 99 percent of telephone and walk-in inquiries by the next business day, and to respond to 90 percent of written inquiries within 30 days. EBSA also establishes a monetary goal each year for benefit recoveries. For 2002, the goal was to achieve \$67 million in benefits.

In FY 2002, the Participant Assistance and Compliance Program cost about \$9.3 million and included 108 staff years. These staff years consisted of 89 benefit advisors, 13 benefit advisor supervisors, and 6 National Office staff personnel. In FY 2002, EBSA staff handled over 192,000 inquiries and recovered \$48 million for participants and beneficiaries through informal resolution of benefit complaints. In FY 2003, EBSA's benefit advisors responded to over 173,500 inquiries and recovered \$82.9 million for participants and beneficiaries.

Scope and Methodology

The audit covered FY 2002 (October 1, 2001, through September 30, 2002). Our methodology included reviewing EBSA Program policies, procedures and performance reports; interviewing EBSA national and regional Program staff; and analyzing and testing EBSA's Program systems, data, and quality control/monitoring activities. Our audit methodology, including statistical and non-statistical sampling approaches, is detailed in the Appendix.

We conducted fieldwork from June 2002 to August 2003. The audit was conducted in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States.

Audit Results

While our tests disclosed some instances of non-compliance with program requirements, the instances were not statistically significant.

TAIS Inquiries Statistical Sample

From our statistical sample of 260 TAIS inquiries at the National Office and the 7 regional offices, we identified 5 telephone inquiries that did not have sufficient documentation for us to determine the nature of the inquiry or the response given (See Exhibit 1).

Using these five inquiries, we statistically projected the number of additional telephone inquiries that could potentially have insufficient documentation. We are 90 percent confident that no fewer than 1,241 inquiries and no more than 8,027 inquiries out of a total population of 192,170 inquiries (telephone, written, walk-in, and e-mail) could potentially have insufficient documentation. These numbers are not statistically significant.

Benefit Recoveries Statistical Sample

From our statistical sample of 316 benefit recoveries at the National office and 5 regional district, we identified:

- 6 where the amount documented for the recovery was incorrect,
- 18 that did not properly confirm the benefit received with the participant, and
- 1 that was not fully documented (See Exhibit 1).

Using the errors noted above, we are 95 percent confident that:

- Between 0 and 65 benefit recoveries may have incorrect benefit recovery amounts,
- Between 122 and 218 benefit recoveries may not have been confirmed with the participant, and
- Between 0 and 25 benefit recoveries may not have been fully documented.

These numbers are not statistically significant.

EBSA's Response to the Draft Report

EBSA was pleased with the overall audit results. However, EBSA disagreed that any of the inquiries were not sufficiently documented, since EBSA's policy did not require a detailed explanation for "information only" inquiries. Also, EBSA stated that it had been conservative in estimating recovery amounts, and pointed out that not all recoveries needed to be confirmed with participants. EBSA also identified an inconsistency in the draft report, which we have corrected.

EBSA's entire response is attached as Appendix 2 to this report.

**Details of Statistical Testing
FY 2002 Inquiries and Benefit Recoveries**

INQUIRIES

	Telephone	Written	Walk-In	Total
Sample Size	180	70	10	260
Met Initial Contact Standard	180	70	10	260
Cases Completed Timely ⁽¹⁾	180	70	10	260
Supporting Documentation Complete	175 ⁽²⁾	70	10	255
Benefit Advisor Response Appropriate	175 ⁽²⁾	70	10	255

- (1) To evaluate timeliness, we reviewed the case file and evaluated whether the benefit advisors actions appeared timely in relation to the inquiry.
- (2) Five telephone inquiries did not have sufficient documentation for us to determine the nature of the inquiry or the response given.

BENEFIT RECOVERIES

	Telephone	Written	Walk-in	Total
Sample Size – Total 316⁽¹⁾	236	70	10	316⁽¹⁾
Recovery Properly Confirmed	221 ⁽²⁾	67 ⁽²⁾	10	298
Correct Benefit Recovery Amount	230 ⁽³⁾	70	10	310
Benefit Recovery Properly Documented	235 ⁽⁴⁾	70	10	315

- ⁽¹⁾ Sample from Technical Assistance Information System is 300. Sample from Correspondence Tracking System is 16.
- ⁽²⁾ Of the 316 benefit recoveries tested, 18 were not confirmed directly with the participant. This confirmation is a program requirement. We confirmed all 18 with the participants and found no errors.
- ⁽³⁾ In six cases, we did not agree with the benefit recovery amount that EBSA recorded. In five of the six cases, EBSA did not record medical benefit payments obtained for the participant as benefit recovery amounts. This caused benefit recovery amounts to be understated. In the remaining case, EBSA recorded the entire amount of a pension benefit as a recovery although the participant obtained most of it before EBSA became involved. EBSA agreed and immediately changed the recovery amount.

The amounts for each of these six cases are:

Amount Over (Under) Reported
\$ (600)
(25,000)
(300)
(1,150)
(832)
6,009

- ⁽⁴⁾ In the one case where benefit recovery was not properly documented, the case file did not contain sufficient information for us to determine if the benefit recovery determination and amount were appropriate.

AUDIT METHODOLOGY

Our methodology included reviewing EBSA Program policies, procedures and performance reports; interviewing EBSA national and regional Program staff; and analyzing and testing EBSA's Program systems, data, and quality control/monitoring activities.

To determine if EBSA provided information and assistance timely and accurately, we first identified 184,851 inquiries in the TAIS database for FY 2002. We sorted and reviewed the inquiry database to identify potential duplicate inquiries. We then used a stratified random sampling design with the type of inquiry (telephone, e-mail, written, etc.) as the strata. We selected random samples from all strata using a 95 percent confidence level and a +/- 5 percent sampling precision. This produced 230 sample inquiries for audit.

We then identified an additional 7,319 inquiries in the CTS that EBSA received in 2002. We sampled these inquiries using a simple random sampling design with a 95 percent confidence level and +/- 5 percent sampling precision. This produced an additional 30 inquiries for a total sample size of 260 inquiries.

For each sampled inquiry we obtained the TAIS and CTS information as well as any EBSA file documentation. We examined each inquiry and determined if EBSA met response standards, whether the information provided to the inquirer was accurate, and whether the inquiry case was resolved timely.

We also used this same sample to determine if EBSA reported performance data related to inquiries accurately. We ensured that each inquiry was valid and that there was support for the total reported.

To determine if the Program reported performance data related to benefit recoveries accurately, we performed several analyses. First, to examine the accuracy of the 2,732 benefit recoveries recorded in the TAIS database, we used a stratified 2-stage cluster sampling design. We stratified EBSA field offices into three separate strata according to the total benefit amount recovered. Then we randomly selected six offices from these three strata. From each selected office, we randomly sampled 50 recoveries for a sample size of 300 recoveries. This sample design was selected to yield a sampling precision of +/- 5 percent at a 95 percent confidence level.

Additionally, the CTS database included 33 benefit recoveries. To test the accuracy of these benefit recoveries, we selected every other recovery for testing. With these additional 16 benefit recoveries, our total sample size was 316 benefit recoveries.

For each benefit recovery sampled, we reviewed the supporting documentation and determined if the reported recovery met EBSA's criteria for reporting a recovery and whether the amount reported was accurate and supported. Where necessary, we contacted participants and beneficiaries to verify benefit recoveries.

To test our samples, we visited the EBSA National Office in Washington, D.C., and visited or obtained data from the following offices:

Inquiries

Atlanta
Boston
Chicago
Dallas
D.C. – National Office
Kansas City
Philadelphia
San Francisco

Benefit Recoveries

Boston
Dallas
D.C - National Office
Kansas City
Los Angeles
San Francisco

U.S. Department of Labor

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



March 31, 2004

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

FROM: ANN L. COMBS
Assistant Secretary *Ann L. Combs*

SUBJECT: Response to the OIG Audit of EBSA's Participant and
Compliance Assistance Program -- Draft Audit Report
No. 09-04-001-12-121

We appreciate the work that was performed by your audit team in conducting the audit of EBSA's Participant and Compliance Assistance Program. We were very pleased that the audit team concluded that: 1) the information and assistance provided by EBSA was timely and accurate; 2) the reported performance data was reasonably accurate; and, 3) only a few instances of non-compliance with program requirements were identified and those instances were deemed *not to be statistically significant*.

We are very proud of our Participant and Compliance Assistance Program and its accomplishments over a relatively short period of time. We are especially proud of the Program's overall positive impact on the customers we serve – participants and beneficiaries who have questions about their benefits or who need assistance in obtaining them, as well as plan sponsors of benefits plans who have questions about their responsibilities.

In addition to the accomplishments you reported in your report for FY 2003 -- *responded to over 173,500 inquiries and recovered \$82.9 million for participants and beneficiaries* -- our Benefits Advisors also referred 1,359 leads to investigators, which resulted in closed enforcement cases with monetary results totaling over \$197 million. This close relationship between the two programs has significantly enhanced our Agency's overall success in improving the security of our nation's employee benefit system.

Although your audit team did not find statistically significant problems with our program, we would like to provide comments on those few instances of non-compliance that you detailed in your draft report.

TAIS Inquiries Statistical Sample Result

From our statistical sample of 260 TAIS inquiries at the National Office and the 7 regional offices, we identified 5 telephone inquiries that did not have sufficient documentation for us to determine the nature of the inquiry or the response given (See Exhibit 1).

*Using these five inquiries, we statistically projected the number of additional telephone inquiries that could potentially have insufficient documentation. We are 90 percent confident that no less than 1,241 inquiries and no more than 8,027 inquiries out of a total population of 192,172 inquiries (telephone, written, walk-in, and e-mail) could potentially have insufficient documentation. **These numbers are not statistically significant** (bold emphasis added).*

Our Response:

EBSA's policy and standard operating procedures do not require Benefits Advisors to record the specific question asked by each inquirer or the detailed answer provided to the inquirer in the notes of our TAIS inquiry tracking system, if the inquiry was an "information only" request made during a telephone inquiry. Detailed documentation is only required in the notes field in support of benefit claims and recoveries obtained on behalf of the inquirer. Of course, with written and electronic inquiries, a file is maintained with copies of the incoming request and written response.

In order to close any inquiry (including "information only" telephone requests) in the TAIS, however, the Benefits Advisors are required to complete the "subject" and "disposition" fields in addition to other mandatory information fields in the tracking system. The TAIS system is designed to prevent closing the record if these fields are not completed. Therefore, it is possible to determine the nature of all inquiries by observing the subject code of each, even if there are not detailed notes in the record. A listing of the extensive subject code selections available in TAIS is attached.

For example, if an individual calls to find out how soon their employer had to notify them of their COBRA eligibility, the subject code in the TAIS record would be "WCN" – Welfare/COBRA/Notice & Election Period. The disposition code in the TAIS record would be "A" – Answered. We believe that this level of information sufficiently explains the nature of the call and is just as informative as reading a narrative summary. In addition these TAIS codes allow the Agency to generate reports on a regular basis, detailing the volume of calls by subject.

Due to the very high volume of calls handled by the Benefits Advisors, the tracking system was developed to collect necessary information about the nature of the inquiries received and the disposition of those inquiries without placing an undue burden on the staff to record exact questions and answers. The time

savings, which result from the use of these subject and disposition codes, enable the Benefits Advisors to spend more valuable and focused time following up on benefit claims and complaints, getting recoveries, and documenting those type of inquiries.

It is therefore EBSA's position that the information contained in the TAIS records is sufficient – even in those “information only” telephone requests in which the actual question and answer is not documented in the notes section.

Benefit Recoveries Statistical Sample Result

From our statistical sample of 316 benefit recoveries at the National office and 5 regional district, we identified:

- *6 where the amount documented for the recovery was incorrect,*
- *18 that did not properly confirm the benefit received with the participant, and*
- *6 that were not fully documented (See Exhibit 1).*

Using the errors noted above, we are 95 percent confident that:

- *Between 0 and 65 benefit recoveries may have incorrect benefit recovery amounts,*
- *Between 122 and 218 benefit recoveries may not have been confirmed with the participant, and*
- *Between 12 and 85 benefit recoveries may not have been fully documented.*

These numbers are not statistically significant (bold emphasis added).

Our Response:

Of the 6 inquiries where the auditors found that the amount documented for the recovery was incorrect, 5 of the 6 recoveries were found to be *understated* because “EBSA did not record medical benefit payments obtained for the participant as benefit recovery amounts.”

The Agency has taken a rather conservative stance with regard to reporting recoveries. In SOP #3-02, for example, we clarify in our policy that when we are successful in securing or extending a person's health coverage through COBRA or other benefit plans, estimated future medical benefit payments, such as costs of future surgeries or medical procedures, now available to the individual since they have coverage, cannot be counted as a benefit recovery since we have no proof that the procedure will be provided or what the actual costs will be. Nor do we allow our Benefits Advisors to contact a participant following the future surgery or procedure to verify the costs in order to report those costs as a recovery. We also do not allow the Benefits Advisors to count the cost of expensive ongoing

medications that may be prescribed and that may now be covered for 18 months or longer after medical benefits are reinstated. We have no proof of the actual costs of the medication nor do we have any proof of how long the participant will continue taking those medications. Premium savings, resulting from an employer paying a part of the participant's premium or cost savings resulting from COBRA versus the cost of an individual conversion policy, are not reported as benefit recoveries. Therefore it may not have been inappropriate for the medical benefits obtained in those 5 examples to have been excluded from the benefit recovery reported.

Of the 18 recoveries reported that were not confirmed directly with the participant, we are pleased that the auditors were able to follow up with the participants during their review and confirm with all 18 participants that the amounts reported by EBSA staff were accurate.

It should also be noted that in accordance with SOP # 3, the Benefits Advisors do not need to confirm receipt of all recoveries with the participant if they receive a copy of the cancelled check or other conclusive documents from the employer or plan administrator, or if the recovery is confirmed by an unbiased 3rd party such as a spouse or parent or the physician if the benefit was for unpaid medical claims.

With regard to the 6 recoveries that were mentioned in the report as "not fully documented", the attached exhibit to the report seems to contradict this finding by referring to the "one case where the benefit recovery was not properly documented." If in fact there was only one recovery not fully documented, the projections in the report that "between 12 and 85 recoveries may not have been fully documented" is incorrect and should be modified.

Thank you for allowing us the opportunity to comment on your draft report. If you have any questions regarding our comments, please feel free to contact me or Sharon Watson at 202-693-8631.

Attachment

tais/cts subject entries

Effective FY 1999

PENSION

PF Fiduciary

- PFA* *Administrative Charges*
- PFC Participant Contributions (PPP)
- PFI* *Investment of Funds*
- PFO* *Other*
- PFT* *Prohibited Transactions*

PD Reporting & Disclosure

- PDP Participant Rights
- PDR Reporting Requirements

PJ J & S Spousal Benefit

- PJE Ex-Spouse Rights
- PJS Surviving Spouse Benefit
- PJT* *Third Parties*

PB Benefits (PP)

- PBE* *Early Retirement*
- PBD* *Disability*
- PBL Distributions/Lump Sum Payments (PPL)
- PBO* *Other*
- PBT Terminations/determinations (PPT)
- PBV Vesting/Participation (PPV)
- PBW* *Loans/Hardship Withdrawals*

PI Benefit Information (PB)

- PIB Benefit entitlement (PBB)
- PIC Can't locate plan (PBC)
- PIO* *Other*
- PIS Social Security Notice (PBS)

PN Non-Covered Plans

PE Pre-ERISA

PM Miscellaneous

- PMB Bankruptcy
- PME ESOPs
- PMG PBGC
- PML Legislation/Current Issues
- PMO Other
- PMP Portability/Reciprocity
- PMT 3001 (PM3) - not an option for CTS

WELFARE

WF Fiduciary

- WFA Administrative Charges*
- WFI Paid Premiums/Insurance Cancelled (WPI & WRP)*
- WFS Self-Insured, No Funds (WPS & WRS)*

WD Reporting & Disclosure

- WDR Reporting requirements*
- WDP Participants rights*

WB Health Benefits

- WBB Benefit Limitations (WPB)*
- WBC Coordination of Benefits (WPC)*
- WBD Payments*
- WBE Eligibility*
- WBO Other*
- WBR HMO Restrictions*
- WBT Third Party Inquiries (WPT)*

WR Retiree Health Insurance

- WRC Benefit reduction (WRN)*
- WRI Increased premiums (WRI)*

WC COBRA

- WHB COBRA/Qualified Beneficiary*
- WCD COBRA/Disability Extension*
- WCE Eligibility/ Independent Elections*
- WCF Change in Family Status*
- WCH Region Specific HMOs*
- WCI Conversion to Individual Coverage*
- WCM Medicare*
- WCN Notice & Election Period*
- WCO Other general information*
- WCP Premium Levels*
- WCS Successor Plans/Employers*
- WCT Timely payment of premiums*
- WCU Under 20 employees*

WH HIPAA

- WHE Special Enrollment Rights*
- WHG Group to Individual Policy*
- WHH Mental Health Parity*
- WHM MSAs*
- WHN Newborn & Mothers Protections*
- WHO Other*
- WHP Pre-existing Condition (Formerly WPP)*
- WHS Certificate of Coverage/Employee Documentation*
- WHU Discrimination/Health Status*

WN Non-Covered Plans

WO Other Welfare Plans

WOD Disability

WOL Life

WOM Cafeteria Plans

WOS Severance Pay

WOV Vacation

WM Miscellaneous

WML Legislation/Current Issues

WMO Other

tais disposition codes

Transferred/referred

Other PWBA National

Public Disclosure **TNP**

DTAI/OPS **TNT**

OE **TNE**

ORI **TNR**

OED **TND**

OCA **TNA**

OPR **TNL**

Not Mentioned **TNN**

Other PWBA Regional

Atlanta **TRA**

Boston **TRB**

Chicago, **TRC**

Dallas **TRD**

Detroit **TRR**

Cincinnati **TRI**

Kansas City **TRK**

Miami **TRM**

New York **TRN**

Los Angeles **TRL**

Philadelphia **TRP**

St. Louis **TRS**

San Francisco **TRF**

Seattle **TRT**

Washington **TRW**

IRS **TI**

PBGC **TP**

Other DOL (OLMS, ESA, MSHA, etc) **TD**

Other non-DOL (SSA, OPM, etc.) **TO**

Publication(s) sent **P**

Answered **A**

Further Action Required **F**

Returned Call/Left Message **R**

Waiting for call back **W**