

EBSA Response to Draft Report

U.S. Department of Labor

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

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

FROM: PHYLLIS C. BORZI *Phyllis C. Borzi*
Assistant Secretary for Employee Benefits Security

SUBJECT: EBSA Response to OIG Performance Audit
Draft Audit Report Number 09-11-002-12-121

Thank you for the opportunity to comment on the recommendation in your above referenced Audit Report on the Employee Benefits Security Administration's assessment of whether employee participation in retirement plans and average retirement savings are increasing.

OIG's Recommendation: Develop and implement a process to monitor if average investment returns and employee participation in retirement plans increase over time and to take appropriate action if needed and to determine if any modifications to the regulation of Qualified Default Investment Alternatives (QDIA)(29 CFR 2550.404c-5) is warranted.

EBSA believes its existing processes for monitoring retirement plan trends and assessing whether and when its regulations should be amended are effective and appropriately responsive to the Inspector General's (IG's) recommendations. No additional steps are warranted. For example, EBSA recently revised the Form 5500 to collect information on automatic enrollment, as the IG reports. EBSA also routinely produces statistics and carries out research on retirement plan trends, and makes use of statistics and research produced by others as illustrated by EBSA's production and publication of estimates of retirement plan participation and investment returns annually (see <http://www.dol.gov/ebsa/pdf/1975-2007historicaltables.pdf>). These are just some of myriad indicators EBSA follows to monitor and assess retirement plan trends.

As the IG reports, EBSA has no plan to monitor the separate effect of the QDIA regulation on retirement plan investment performance and participation. Isolating the QDIA regulation's effect from the effects of larger forces is infeasible and beyond the scope of the IG's recommendation. The data required to attempt to correlate the regulation's impact on investment returns and employee participation in retirement plans would be cost prohibitive to collect, and no pre-regulation baseline data exists for comparison.

EBSA continually evaluates the effectiveness of its existing regulations and the appropriateness of amendments to them. This evaluation is the basis for EBSA's regulatory agenda, which EBSA publishes semiannually pursuant to Executive Order 12866. The evaluation is informed by retirement plan trends, stakeholder input, experience gained through EBSA's enforcement and participant assistance programs, and various external factors such as legislative and technological developments. Such evaluation recently prompted EBSA to propose amendments to its QDIA regulation (See Federal Register: November 30, 2010 (Volume 75, Number 229), Proposed Rules, Page 73987-73995).

EBSA appreciates this opportunity to explain its processes for monitoring retirement plan trends and assessing whether and when its regulations should be amended.