

Accountants: Regulatory Update

Michael E. Auerbach, CPA

Chief Accountant

Employee Benefits Security Administration,

U.S. Department of Labor

Washington, D.C.



70TH ANNUAL **EMPLOYEE BENEFITS** CONFERENCE

The opinions expressed in this presentation are those of the speaker. The International Foundation disclaims responsibility for views expressed and statements made by the program speakers.

International Foundation
OF EMPLOYEE BENEFIT PLANS 

Overview

- Reporting compliance activities
 - Deficient filings
 - Delinquent filings
- Auditor statistics
- Audit quality activities

Reporting Compliance Enforcement Process

- Electronic inquiry letter
- Notice of Rejection
 - 45 days to comply
- Notice of Intent to Assess a Penalty
 - 30 days to respond
- Notice of Determination
 - 30 days to respond
- Final order—Failure to timely respond

Am I a Delinquent or Deficient Filer?

- Deficient filers
 - Made a Form 5500 filing
 - Filing is incomplete or inaccurate
 - Missing IQPA report
 - Improperly completed
 - Amend filing as soon as possible
 - Subject to rejection and further enforcement action
- Delinquent filers
 - A Form 5500 filing has not been made
 - Non-filer
 - Late filer
 - Stop-filer
 - Can use the DFVC program to make the delinquent filing

Deficient Filings

Deficient Filers

- Condition
 - Missing required audit report
 - Form 5500 filing has been made
- How to Resolve
 - Submit required audit report in EFAST
 - Respond timely to enforcement correspondence received from the office of the chief accountant
 - Do not use the DFVC program to resolve deficiency

Deficient Filers

- Condition
 - GAAS and/or GAAP deficiencies in the audit report
- How to Resolve
 - Correct deficiencies in the audit report/submit evidence of additional audit work performed
 - File amended audit report in EFAST (if necessary)
 - Respond timely to enforcement correspondence received from the Office of the Chief Accountant
 - Do not use the DFVC program to resolve deficiency

Deficient Filers

- Condition
 - Inappropriate use of 29 CFR 2520.104.50
 - Can defer audit if plan year seven months or less
- How to Resolve
 - File audit report in EFAST
 - Respond timely to enforcement correspondence received from the Office of the Chief Accountant
 - Do not use the DFVC program to resolve deficiency

Deficient Filers

- Condition
 - Including PII in Form 5500 filing
- How to Resolve
 - Remove PII from Form 5500 filing
 - File amended filing in EFAST
 - Respond timely to enforcement correspondence received from the Office of the Chief Accountant
 - Do not use the DFVC program to resolve deficiency

Deficient Filers

- Condition
 - Improperly reporting delinquent contributions
- How to Resolve
 - Report total amount of delinquent contributions
 - For the year in which contributions were delinquent
 - Subsequent years until violation has been corrected
 - File amended filing in EFAST
 - Respond timely to enforcement correspondence received from the Office of the Chief Accountant
 - Do not use the DFVC program to resolve deficiency

Delinquent Filings

DFVC Program Participation

- Delinquent Filer Voluntary Compliance (DFVC) Program
 - Participation in the program requires two things:
 - Make required Form 5500 filing
 - Pay reduced penalty amount.
 - Failure to do these two things—You are deemed not to be participating in the DFVC Program
 - We send one reminder Inquiry letter
 - Subject to regular late filer and non-filer penalties

Delinquent Filers

- Condition
 - Have not made a timely Form 5500 filing
- How to Resolve
 - Make the required filing in EFAST
 - Use the DFVC program to resolve deficiency

Delinquent Filers

- Condition
 - Have not made a timely Form 5500 filing
 - Enforcement action has started
- How to Resolve
 - Make the required filing in EFAST
 - Respond timely to enforcement correspondence received from the Office of the Chief Accountant
 - Cannot use the DFVC program to resolve deficiency

Delinquent Filers

- Condition
 - “Stop-Filer”—Have not made a timely Form 5500 filing
 - Received an Inquiry Letter from EBSA
- How to Resolve
 - Make the required filing in EFAST
 - Respond timely to enforcement correspondence received from the Office of the Chief Accountant
 - Can use the DFVC program to resolve deficiency

Delinquent Filers

- Condition
 - “Stop-Filer”—Have not made a timely Form 5500 filing
 - Enforcement action has started
- How to Resolve
 - Make the required filing in EFAST
 - Respond timely to enforcement correspondence received from the Office of the Chief Accountant
 - Cannot use the DFVC program to resolve deficiency

Delinquent Filers

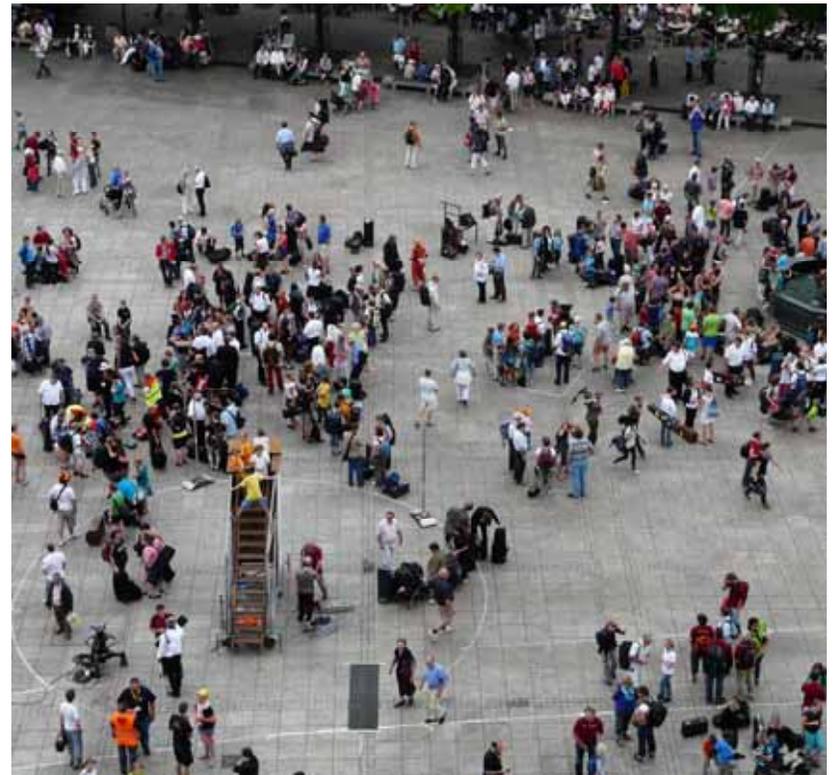
- Condition
 - Have not properly applied to the DFVC Program
 - EBSA letter notifying you of deficiency
- How to Resolve
 - Use the DFVC program to resolve deficiency
 - Make the required filing in EFAST
 - Pay the proper reduced penalty amount

Auditor Statistics

Audit Universe

(Based on 2022 Form 5500)

- 88,605 Plan audits
- 3,402 CPA firms performing audits
- \$10.15 trillion in plan assets subject to audit
- 167.62 million participants



Auditor Universe

(2022 Form 5500 Database)

| Strata | Plans Audited | Assets Audited | Participants Audited | Number of CPA Firms |
|---------------|---------------|------------------|----------------------|---------------------|
| 1-2 Plans | 1,487 | \$23.50 B | .710 M | 1,103 |
| 3-5 Plans | 2,706 | \$59.67 B | 1.96 M | 692 |
| 6-24 Plans | 12,538 | \$386.37 B | 9.08 M | 1,053 |
| 25-99 Plans | 19,992 | \$836.83 B | 17.30 M | 420 |
| 100-749 Plans | 27,632 | \$5.42 T | 85.89 M | 118 |
| 749+ Plans | 24,250 | \$3.41 T | 52.65 M | 16 |
| Total | 88,605 | \$10.15 T | 167.62 M | 3,402 |

Auditor Universe

(2022 vs. 2021 Form 5500 Database)

| Strata | Number of CPA Firms 2022 | Number of CPA Firms 2021 | Increase (Decrease) |
|---------------|--------------------------|--------------------------|---------------------|
| 1-2 Plans | 1,103 | 1,396 | 293 |
| 3-5 Plans | 692 | 758 | 66 |
| 6-24 Plans | 1,053 | 1,094 | 41 |
| 25-99 Plans | 420 | 420 | - |
| 100-749 Plans | 118 | 120 | 2 |
| 749+ Plans | 16 | 16 | - |
| Total | 3,402 | 3,804 | 402 |

Auditor Universe—Multiemployer Audits (2022 Form 5500 Database)

| Strata | Plans Audited | Assets Audited | Participants Audited | Number of CPA Firms |
|---------------|---------------|------------------|----------------------|---------------------|
| 1-2 Plans | 188 | \$18.07B | 1.20 M | 144 |
| 3-5 Plans | 214 | \$36.36B | 0.684 | 54 |
| 6-24 Plans | 960 | \$167.11B | 4.85 M | 84 |
| 25-99 Plans | 1,231 | \$151.76B | 3.75 M | 31 |
| 100-749 Plans | 1,654 | \$660.47B | 14.97 M | 8 |
| 749+ Plans | - | - | - | - |
| Total | 4,247 | \$1.033 T | 25.48 M | 321 |

Audit Quality Statistics

2023 Audit Quality Study

- Shrinking plan auditor population
- Improvement in audit quality since 2015 study
- Audit quality correlates to size of benefit plan practice
- Peer review not a good indicator of audit quality
- Fewer audits with multiple deficiencies

2023 Audit Quality Study Results

| Strata | 2023 Quality Study Audits Reviewed | 2023 Quality Study Audits With Deficiencies |
|--------------|------------------------------------|---|
| 1-2 Plans | 20 | 70.0% |
| 3-5 Plans | 22 | 51.7% |
| 6-24 Plans | 54 | 50.1% |
| 25-99 Plans | 74 | 38.0% |
| 100+ Plans | 137 | 18.6% |
| Total | 307 | 30% |

2023 Audit Quality Study Results

Comparison of Audit Quality Results 2015 and 2023 Audit Quality Studies

| Strata | Form Year 2020 | Form Year 2011 |
|---------------|----------------|----------------|
| 1-2 Plans | 70.0% | 75.8% |
| 3-5 Plans | 51.7% | 68.4% |
| 6-24 Plans | 50.1% | 67.4% |
| 25-99 Plans | 38.0% | 41.5% |
| 100-749 Plans | 18.6% | 12.0% |
| 750+ Plans | 17.0% | 12.0% |
| Total | 30% | 39% |

2023 Audit Quality Study

Deficient Audit Areas

| Strata | Participant Data | Contributions | Benefit Payments | Internal Controls | Investments | Planning |
|--------------|------------------|---------------|------------------|-------------------|-------------|-----------|
| 1-2 | 9 | 8 | 9 | 8 | 6 | 8 |
| 3-5 | 5 | 4 | 3 | 1 | 3 | 1 |
| 6-24 | 8 | 12 | 10 | 4 | 0 | 4 |
| 25-99 | 12 | 15 | 6 | 4 | 2 | 4 |
| 100+ | 14 | 8 | 1 | 1 | 0 | 1 |
| Total | 48 | 47 | 29 | 18 | 11 | 18 |

105 audits with Unacceptable–Major deficiencies

Audit Quality—Multiemployer Plans

Multiemployer Plan Audits 2016-2024

| Strata | Unacceptable— Major | Five or More Deficiencies | Percentage |
|---------------|------------------------|------------------------------|------------|
| 1-2 Plans | 4 | 3 | 75% |
| 3-5 Plans | 6 | 3 | 50% |
| 6-24 Plans | 7 | 3 | 43% |
| 25-99 Plans | 8 | 6 | 75% |
| 100-749 Plans | 5 | 1 | 20% |
| 750+ Plans | 0 | 0 | 0% |
| Total | 30 | 16 | |

Resources

- EBSA Office of the Chief Accountant
202-693-8360
 - For questions about Form 5500 components or audit requirements/issues
- EBSA Office of Regulations and Interpretations
202-693-8500
 - For questions about ERISA reporting, filing or other regulatory requirements
- EBSA regional offices
 - [Regional Offices | U.S. Department of Labor \(dol.gov\)](https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/regional-offices)
 - For questions about operational issues, VFCP

<https://www.dol.gov/agencies/ebsa/about-ebsa/about-us/regional-offices>

Resources

- EBSA Website: <http://www.dol.gov/ebsa>
 - For DOL publications, FAQs, copies of the Form 5500, instructions and related schedules
- DOL EFAST Help Center
1-866-463-3278 (1-866-GOEFAST)
 - For questions regarding the Form 5500 or related schedules

Key Takeaways

- Pay attention to enforcement correspondence
- **Respond timely to all deadlines**
- Contact us if you have any questions
 - Analyst listed on the enforcement letter
 - General office number (202) 693-8360

Your Feedback
Is Important.
Please Scan
This QR Code.

Session Evaluation

