

# **Pension Plan Audits:**

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## **What to Expect When the IRS or DOL Comes Knocking**

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# Agenda

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- ❑ Historical perspective on IRS/DOL ERISA enforcement
  - ❑ DOL enforcement initiatives
  - ❑ IRS enforcement initiatives
  - ❑ Plan audit response
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# Department of Labor

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# *ERISA Civil Violations*

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- Failing to operate the plan for exclusive benefit of participants
  - Using plan assets to benefit related parties
  - Failing to properly value plan assets
  - Failing to follow plan terms
  - Failure to properly select and monitor service providers
  - Taking adverse action against participants for exercising rights
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# ERISA Criminal Provisions

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- Theft or embezzlement
  - False statements or concealment
  - Offer, acceptance or solicitation to influence operations
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# Criminal prosecution depends on

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- ❑ Egregiousness and magnitude
  - ❑ Likelihood of incarceration (as a deterrent and as a punishment)
  - ❑ Whether the case involves a previous violator
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# Recent results for 401(k)s

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- ❑ 449 civil cases closed (393 corrections)
  - ❑ 13 criminal cases (8 indictments)
  - ❑ Collections of \$20,643,476
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# Aggressive Enforcement Projects

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- ❑ Late remittance of Employee contributions
  - ❑ Rapid ERISA Action Team (REACT) for bankruptcies
  - ❑ ESOPs
  - ❑ Consultant/Advisor compensation
  - ❑ Voluntary Fiduciary Correction Program (VFCP)
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# Enforcement (continued)

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- Participant complaints
  - Non-filer enforcement
  - Late-filer program (DFVC)
  
  - Desk reviews of Form 5500 filings
  - On-site reviews of audit workpapers
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# DOL Audit Quality Enforcement Initiative

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□ 70,000 Form 5500 audits



2,000 – 3,000 desk reviews

50 – 75 on-site workpaper reviews

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# New Approach

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WHY?

No measurable improvement.





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Who?

Office of the Chief Accountant  
(EBSA)

# When?

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Beginning April, 2005



# EBSA's audit inspection program

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10,000 CPA's audit 73,000 Plans

6 perform >1,000 audits (65% of  
plan assets)

42 perform >100 audits

8,200 perform < 5 audits

4,800 perform only 1 audit

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# Approach?

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- Large firms: Review ERISA practice and individual audits
  
  - Small firms: Target plans with over \$10M in assets
    - Ask client for Form 5500, auditors' report and selected WP's
    - Expand WP review as needed
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# Findings?

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- Firm-wide reviews
- Individual audit engagements
  - Preliminary findings to CPA firm
  - CPA firm response
  - Final conclusion to CPA firm and to client







Actions?

Reject 5500 filing

Refer to AICPA Professional  
Ethics Division/State Boards of  
Accountancy

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# Internal Revenue Service

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# “Critical Few” Priorities

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- ❑ Expand compliance contacts
  - ❑ Research & Analysis
  - ❑ Focused examinations
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# Expand Compliance Contacts

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- Abusive schemes
    - S Corp ESOPs
    - 412(i) plans (excessive ins. deductions)
  - Increase returns examined
  - New projects (risk-based targeted exams)
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# Research and Analysis

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- ❑ Data Analysis Unit (external)
  - ❑ Employee Plans Compliance Unit (internal)
  
  - ❑ LESE (Learn, Educate, Self-Correct and Enforce)
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# FY 2007 Work Plan Operating Priorities

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# Operating Priorities

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- Detect and deter abusive tax schemes
  - Coordinate with DOL and PBGC on pension funding
  - Implement Pension Protection Act of 2006 (technical guidance and D letters for cash balance conversions)
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# Priorities (continued)

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- ❑ Focused Examination Concept
  - ❑ Market Segments
  - ❑ Reduce backlog in compliance submissions
  - ❑ Provide plain language guidance to participants and sponsors
  - ❑ Staggered D letter process
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# Market Segments 2006

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- Wholesale (PS, MPP, 401(k))
  - Retail (MPP)
  - Manufacturing (PS)
  - Finance and Insurance (PS, 401(k))
  - Construction (PS)
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# Market Segments 2007

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- ❑ Accom. & Food Service (PS, 401(k))
  - ❑ Manufacturing (401(k))
  - ❑ Health Care/Social Assist. (401(k))
  - ❑ Prof., Science, Tech. (401(k))
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# Focused Examinations

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- ❑ Identify productive issues
  - ❑ Pre-audit assessment
  - ❑ Initial interview
  - ❑ Internal controls
  - ❑ Examine key issues
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# Plan Audit Response

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- Obtain professional advice (original POA)
  - Respond timely to the initial request
  - Determine why the Plan was selected
  - Provide a single contact
  - Cooperate with data requests
    - Requested documentation and records
    - Timing
  - Organize data as requested
  - Avoid providing confusing/conflicting information
  - Be honest
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QUESTIONS ?????

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