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Department of Labor Releases ERISA Plan Enforcement Statistics for 2021

January 12, 2022

The U.S. Department of Labor has released a [fact sheet](#) summarizing the enforcement results obtained by its Employee Benefits Security Administration (“EBSA”) division during the 2021 fiscal year. EBSA is responsible for enforcing the Employee Retirement Income Security Act of 1974 (“ERISA”).

The fact sheet focuses on the more than \$2.4 billion EBSA recovered on behalf of ERISA plans, participants, and beneficiaries. Plan fiduciaries should note that \$1.95 billion was recovered from civil enforcement actions. Recoveries from informal complaints and compliance assistance programs are also highlighted. These enforcement statistics suggest that there are steps all plan fiduciaries should take in 2022 to identify plan administration issues that could otherwise lead to enforcement actions.

[EBSA Civil Enforcement and Recovery Statistics](#)

EBSA closed 1,072 civil investigations in 2021, 741 (69%) of which resulted in monetary recoveries for plans or other corrective action. The overwhelming majority of EBSA’s monetary recoveries involved benefit payments due to terminated vested participants in defined benefit plans: EBSA recovered \$1.548 billion on behalf of 16,024 such participants and only \$398 million combined via its other civil enforcement investigations.

EBSA also obtained 449 non-monetary corrections and injunctive relief orders in 2021, including reforms of plan procedures (124), orders barring individuals from acting as fiduciaries (34), court appointment of independent fiduciaries (16), and removal of fiduciaries (6). EBSA relies heavily on voluntary compliance measures to correct identified ERISA violations—only 70 cases were referred to the Solicitor of Labor for litigation.

[Compliance Assistance Programs](#)

EBSA’s Voluntary Fiduciary Correction Program (“VFCP”) encourages self-correction of ERISA violations. In 2021, EBSA received 1,201 applications for the VFCP. EBSA reports that this program allowed it to restore \$34 million to plans.

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EBSA Criminal Enforcement Statistics

During 2021, EBSA opened 188 criminal investigations, 118 (63%) of which involved health plans. In addition, EBSA issued 72 indictments to plan officials, corporate officers, or plan service providers, 39 of which involved health plans and 16 of which stemmed from EBSA's Contributory Plans Criminal Project, which investigates delinquent employee contributions owed to retirement and health plans. As a result of its investigations, EBSA obtained 38 guilty pleas or convictions, recovered almost \$4 million for plans or participants, and served 41 notice letters barring convicted individuals from serving as plan fiduciaries or service providers.

Informal Complaints

EBSA received nearly 176,000 inquiries from individuals seeking assistance with employee benefit plan issues. Based on these inquiries, EBSA recovered almost \$500 million through informal resolution of these complaints. EBSA also opened 251 enforcement investigations related to the inquiries, often because the inquiries revealed an ERISA violation or because EBSA received multiple complaints pertaining to a particular plan or service provider.

What Steps Should Plan Fiduciaries Take To Avoid an EBSA Enforcement Action?

While EBSA oversees all ERISA plans, the statistics above indicate that EBSA's primary activity in 2021 was civil enforcement, oriented around locating missing participants in retirement plans. EBSA investigations are often triggered by complaints regarding the same plans or providers, especially when the complaints involve multiple plans, providers that serve multiple plans, or an unresponsive plan sponsor. This aligns with EBSA's stated national enforcement priority of investigating professional fiduciaries and service providers with responsibility over large amounts of plan assets.

EBSA investigations have a high success rate and are best avoided. Therefore, we recommend that fiduciaries take the following steps to mitigate the risks of an EBSA investigation:

- Implement or update a missing participant policy and administrative practices for defined benefit and defined contribution plans, to accord with [recent DOL and EBSA guidance](#).
- Implement and follow a compliance calendar, which provides for regular review of service providers, administrative processes, and plan responsibility allocations.
- Investigate and respond fully, promptly, and fairly to participant questions or concerns, which will reduce the chances that a participant will call the EBSA hotline and initiate an EBSA inquiry.
- Self-report and self-correct (via the VFCP process) any identified issues before an investigation occurs, to control the process of correction and minimize the costs of any required corrective action.

If you have any remaining questions about mitigating EBSA enforcement risks, please contact one of the members of the [Kutak Rock Employee Benefits Practice Group](#).

