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## Are Quicker DOL Audits on the Horizon? Half of Congress (and All Employers) Hope So

On September 19, 2023, the conservative-led Committee on Education and the Workforce (the “Committee”) sent a letter to the Department of Labor (“DOL”) informing them that they are “conducting oversight” of the Employee Benefits Security Administration’s (“EBSA”) enforcement/audit activities under the Employee Retirement Income Security Act (“ERISA”). The Committee’s letter was in response to “disturbing reports” indicating that EBSA is failing to timely conduct its enforcement “creating unacceptable burdens for plan sponsors and negatively impacting retirement savers, retirees, and their families.” The Committee cited a 2021 report by the Government Accountability Office that found a significant percentage of EBSA investigations opened in 2017 were still pending **four years later**. The Committee requested a list of all open investigations, internal guidelines used to ensure investigations are efficiently conducted, an explanation of the specific steps taken to ensure investigations are closed, and the consequences, if any, imposed on EBSA investigators for failure to efficiently carry out and close cases.

The DOL responded on October 13, 2023 saying that it seeks to “strike the right balance” between speed and effectiveness in its enforcement. Specifically, the DOL noted that while timely closing investigations “within existing resource constraints” is important, it is also important to ensure violations are properly investigated and resolved. The DOL’s comment on resource constraints is particularly noteworthy as EBSA’s funding declined (when accounting for inflation) between 2013 and 2021, while its oversight responsibilities increased. Since 2021, EBSA oversight has continued to widen due to the COVID-19 pandemic and passage of the CARES and SECURE Acts.

The October 13, 2023 response from the DOL was deemed “wholly insufficient” by the Committee who noted the DOL did not provide any of the documents requested in its September 19, 2023 letter. The Committee stated the DOL’s response failed to assuage concerns of plan sponsors that EBSA investigations often lacked purposeful direction. The Committee believes that the DOL’s response further demonstrates the DOL’s “dismissive attitude towards the Committee’s oversight responsibilities.” The Committee sent a follow-up letter to the DOL on November 2, 2023 renewing its document and information requests. In addition, the Committee stated they will be calling for transcribed interviews of three EBSA directors.

It is unclear how much progress will be made given the partisan divides between the Committee and the DOL, but it is notable that the Committee is giving this issue so much attention. We believe it is reasonable to expect quicker resolutions of some DOL audits as a result of the Committee’s public scrutiny of the DOL. Of course, it could also lead to additional DOL audits as the DOL looks to defend its enforcement record.

If you have any questions, please contact a member of Kutak Rock’s [Employee Benefits and Executive Compensation practice group](#).

