

Table of Contents

Introduction.....	1
Educational Outreach Programs	4
OCA Enforcement Programs.....	7
Audit Quality Inspection Program	8
Augmented Workpaper Review Program.....	9
Deficient Filer Enforcement.....	11
Direct Filing Entity	12
Non-filer	13
Late-filer	14
Delinquent Filer Voluntary Compliance Program (DFVC).....	14
Multiple Employer Welfare Arrangements (MEWA)	16
ERISA §502(c)(6) Compliance.....	17
ERISA §502(c)(7) Blackout Notice Compliance.....	18
Enforcement Programs Procedures	20
Initial Case Assignment.....	20
Audit Quality Inspection Program Enforcement Procedures.....	22
On-Site Workpaper Review Program Enforcement Procedures.....	24
Deficient Filer Enforcement Procedures.....	26
Types of Penalties.....	30
Guidelines for Penalty Abatement.....	33
Referrals to the Office of Enforcement.....	35
MEWA Enforcement.....	35
ERISA §502(c)(6) Procedures.....	35
ERISA §502(c)(7) Blackout Notice Procedures.....	36
Non-Filer Enforcement Procedures.....	40
Late-Filer Enforcement Procedures.....	41
Case Closing Procedures.....	42
Delinquent Filer Voluntary Compliance Program Procedures.....	42
Case File Maintenance.....	45
OCA Letter Policy.....	49
Letter Types.....	52
Inquiry Letter.....	52
Notice of Rejection (NOR).....	54
Notice of Satisfactory Filing.....	56
Closing Memo.....	57
Notice of Intent to Assess a Penalty.....	58
Types of Penalties.....	59
Penalty of Perjury Notice.....	60
Notice of Withdrawal.....	62
Notice of Determination.....	63
Reasonable Cause Committee Chart.....	65

The Office of the Chief Accountant

The Employee Benefits Security Administration (EBSA), Department of Labor, is responsible for ensuring that employee benefit plans covered under the reporting and disclosure provisions of the Employee Retirement Income Security Act of 1974 (ERISA) have met applicable requirements. In 1988 the Office of the Chief Accountant (OCA) was established, in part, to enforce the reporting and disclosure provisions of ERISA and to administer an audit program to ensure compliance with the fiduciary requirements of the Federal Employees' Retirement System Act of 1986 (FERSA).

Since 1988, OCA's duties and responsibilities have evolved to comprise the development and implementation of both "front line" compliance assistance activities while maintaining a progressive reporting enforcement program. These strategies have as their goal to improve compliance with ERISA and Department of Labor Reporting and Disclosure Requirements.

OCA has implemented numerous programs aimed at protecting participants of pension and welfare plans through enforcing the timely and accurate filing of the Form 5500 Series Annual Return/Report (Form 5500). The Form 5500 is a detailed annual reporting form that contains extensive information about the plan, its investments and financial activity, and annual operations. Generally, plans are required to file the Form 5500 every year. The Form 5500 is a valuable tool for monitoring the financial health and operations of the plan.

ERISA Section 103(a)(3)(A) and Department of Labor regulation 29 CFR 2520.103 require the administrator of certain employee benefit plan to engage, on behalf of all plan participants, an independent qualified public accountant (IQPA) to conduct an audit of the financial statements and certain required schedules of the plan, in accordance with generally accepted auditing standards (GAAS) to determine whether the financial statements and required schedules are prepared in accordance with generally accepted accounting principles (GAAP) and Department of Labor regulations. The accountant's report is required to be included in the Form 5500 filing for these plans.

ERISA Section 104(a) establishes the requirement to file a Form 5500 within 210 days of the end of the plan year and provides the Department of Labor the authority to reject filings that are deemed to be incomplete. Section 104(b) requires plans to provide participants and beneficiaries with a summary plan description.

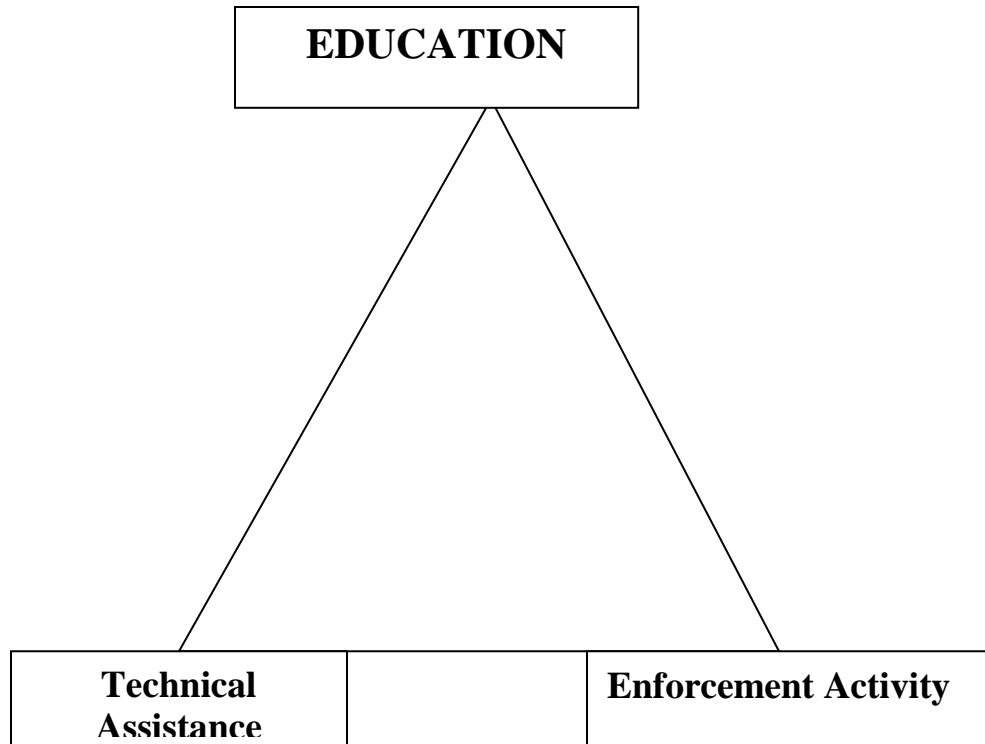
OCA is currently comprised of two Divisions: the Division of Reporting Compliance (DRC) and the Division of Accounting Services (DAS). Both Division review the Form 5500.

The Division of Reporting Compliance (DRC) is charged with reviewing the Form 5500 as a whole for compliance with the reporting and disclosure requirements. DRC is also charged with the responsibility for taking action on plan administrators who have failed

to file (non-filers) or who have failed to timely file (late-filers) their annual Form 5500. DRC is responsible for the administration of EBSA's Delinquent Filer Voluntary Compliance Program (DFVC Program) which has been designed to encourage plan administrators to voluntarily file previously un-filed Form 5500 annual reports and to resolve late filer penalties. Finally, DRC is responsible for ensuring that certain required information is timely provided to plan participants when certain events occur affecting the operations of the plan (e.g., Blackout Notices).

The Division of Accounting Services (DAS) is charged with ensuring that plan audits are performed in accordance with generally accepted auditing standards and that accountant's reports are presented in accordance with established standards of financial accounting and reporting for employee benefit plans and ERISA and Department of Labor reporting and disclosure requirements.

OCA performs its functions by way of a three-pronged approach through education, technical assistance, and enforcement activities to meet its goals.



Education: OCA is actively involved in the education of plan administrators, professional consultants/providers and accountants/auditors. OCA participates in an annual conference sponsored by the American Institute of Certified Public Accountants (AICPA). Over 700 accountants/auditors attend this annual conference. OCA also works with other organizations who conduct other national educational outreach programs aimed at heightening awareness on accounting, auditing, and reporting and disclosure issues impacting employee benefit plans. Finally, OCA works closely with the AICPA, the Financial Accounting Standards Board (FASB), and other entities to update the professional guidance available to practitioners.

Technical Assistance: OCA maintains a “help desk” function that provides a point-of-contact for accountants/auditors and other plan professionals seeking technical assistance on audit, accounting, and reporting and disclosure requirements. Calls to the help desk go to the “EFAST Help Desk” located in Lawrence, Kansas. The EFAST Help Desk has been established, in part, to provide toll-free technical assistance for plan professionals seeking general technical assistance. Live technical assistance is available through this toll-free number Monday thru Friday, from 8:00AM to 8:00PM, Eastern Time, except Federal holidays. The OCA staff receive technical inquiries from the EFAST Help Desk that it cannot answer. In addition, pre-recorded frequently asked questions and voice mail is available 24 hours a day, seven days a week. OCA also responds to technical assistance e-mail inquiries submitted via the internet.

Enforcement Activities: Education and Technical Assistance alone, however, are not sufficient to ensure that plan filings are prepared in accordance with ERISA and Department regulations or that audits are performed in accordance with GAAS. Accordingly, OCA has established a number of enforcement activities.

DRC’s enforcement programs include detailed review of Form 5500s. Deficient Form 5500 filings may result in enforcement action. This enforcement action constitutes rejection of the Form 5500 and, if not remedied timely, a penalty assessed against the plan administrator. DRC’s enforcement programs also include assessment of penalties against plan administrators who fail to file their plan’s Form 5500, who fail to file timely, or who fail to provide required disclosure information to plan participants.

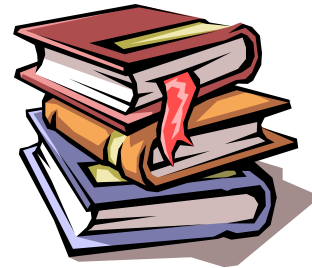
DAS’ enforcement programs include the review of Form 5500s, related audit reports and supporting audit workpapers. Deficient financial statements, auditors’ reports and/or audit workpapers may result in enforcement action. This enforcement action constitutes a rejection of the Form 5500 and, if not remedied timely, a penalty assessed against the plan administrator. In addition, DAS may refer plan auditors to the AICPA or the auditor’s respective State Board of Accountancy for disciplinary action where substandard audit work is performed.

This guide has been developed to set forth the procedures for these enforcement activities and to establish uniform enforcement action documentation requirements to ensure uniformity.

Educational Outreach Programs

One of the main goals of EBSA is to ensure that plan professionals comply with the reporting and disclosure requirements for their plans. In an effort to educate plan professionals on their responsibilities, OCA has established and participates in a number of educational outreach programs. Education is one aspect of the three-pronged approaches used by OCA to enhance the quality of audits of employee benefit plans. Educating IQPAs is a high priority. OCA's educational outreach programs are aimed primarily at plan administrators, plan auditors, and other plan professionals to heighten awareness regarding the reporting and disclosure requirements and accounting and auditing issues impacting employee benefit plans.

Published Materials: OCA participates in the development of various published materials useful to plan administrators, plan professionals, and accountants and auditors of employee benefit plans. Some of this material is published by the Department of Labor itself. Other material is published by other organizations, such as the AICPA, that request the input of OCA.



Internet: EBSA's website contains both general and detailed information that is helpful for plan administrators, plan professionals, accountants and auditors, and plan participants and beneficiaries. EBSA's website can be accessed via the following internet address: <http://www.dol.gov/ebsa>. Additionally, the EFAST.dol.gov website provides information concerning the filing of the Form 5500.

Seminars/Conferences: OCA works primarily with other organizations in presenting seminars targeting plan administrators, plan professionals, and accountants and auditors. In addition, OCA personnel are often asked to speak at events sponsored by outside organizations.



EBSA Outreach Conferences: OCA, in conjunction with the International Foundation of Employee Benefit Plans, has established a nationwide series of Educational Outreach Conferences. These outreach conferences are conducted annually in various cities throughout the United States and focus on the annual reporting and disclosure requirements for employee benefit plans, reporting and disclosure enforcement programs, and legislative changes and developments. These conferences are primarily attended by accountants and auditors and plan administrators.

OCA believes proper education is a key element in helping to ensure understanding of and compliance with employee benefit plan reporting and disclosure requirements.

Technical Assistance

Technical assistance is the second aspect of OCA’s three-pronged approach to ensure compliance with the reporting and disclosure requirements and to enhance the quality of audits of employee benefit plans. EBSA’s outreach efforts are primarily aimed at plan administrators and plan auditors to heighten awareness regarding the reporting and disclosure requirements and accounting and auditing issues impacting employee benefit plans.

The OCA has been delegated the responsibility for providing technical assistance to plan professionals and others regarding the reporting and disclosure requirements and accounting and auditing issues impacting employee benefit plans. The following table presents the most common areas of inquiry:

<i>Areas of Concern</i>	
<i>Accountants and Auditors</i>	<ul style="list-style-type: none"> ● Application of and compliance with generally accepted accounting principles and generally accepted auditing standards ● Areas of audit unique to employee benefit plans ● Reporting and disclosure obligations on supplementary information included in the annual report ● Changes in legislation affecting the audit (e.g., proposal to eliminate the limited-scope audit)
<i>Plan Administrators</i>	<ul style="list-style-type: none"> ● Reporting and disclosure of information in the Form 5500 Annual Report and supplemental schedules and attachments ● Failure to file or failure to file complete and accurate Form 5500s timely ● Compliance with ERISA’s disclosure rules
<i>Plan Participants</i>	<ul style="list-style-type: none"> ● Information about their plans

In 1999, EBSA assumed responsibility for processing the Form 5500/5500-EZ Annual Return/Reports (Forms) on behalf of EBSA, the Internal Revenue Service (IRS) and the Pension Benefit Guaranty Corporation (PBGC). EBSA established a processing system known as EFAST (“ERISA Filing Acceptance System). At that time, EBSA also assumed responsibility for providing a public point-of-contact to answer inquiries from the filing public. In 2010, the EBSA established a new, paperless, internet-based filing requirement, known as EFAST2, and eliminated paper filings effective January 1, 2010.



Under contract with the EBSA, Vangent's Lawrence Call Center, developed and implement the "EFAST Help Desk" to provide assistance to Form filers on general and specific filing requirements and to provide compliance assistance to filers who have difficulty with filing the electronic forms in the EFAST2 System.

The EFAST Help Desk function became operational in November 2000 and is available to the filing public from 8a.m. to 8p.m., Eastern Time, Monday through Friday (except federal holidays). Voice mail and pre-recorded frequently asked questions are available to filers 24 hours a day, seven days a week. Plan filers and professionals can obtain assistance from by EFAST Help Desk by calling 866-463-3278 (866-GO-EFAST). This is a toll-free number.

The EFAST Help Desk function is managed by OCA DAS staff with the assistance from the DRC staff. The EFAST Help Desk strives to answer filer questions in one call without the need for a transfer. In most cases, no transfer is necessary. However, there are circumstances where callers may require a higher level of technical assistance. In these cases, the calls are transferred either to OCA, IRS or PBGC, as appropriate. In 2009, the EFAST Help Desk handled almost 60,000 calls (6,772 of which required a transfer to OCA) In 2010, OCA handled over 15,000 telephone inquiries.

In addition, OCA receives inquiries directly from the public regarding accounting and auditing issues, Form 5500 reporting, or general employee benefit plan issues.

EBSA has also established a method whereby inquiries can be submitted via the DOL website via accessing the following internet address: <http://askebsa.dol.gov/>. These web-based inquiries are forwarded to the appropriate office within EBSA for disposition, some of which are referred to OCA.



Ex. 5, 7(e),6

(One paragraph of text redacted)

OCA Enforcement Programs

OCA's third aspect consists of the OCA enforcement programs to ensure compliance with ERISA's reporting and disclosure requirements.

The Office of the Chief Accountant (OCA) is delegated the responsibility of ensuring that plan administrators completely and accurately comply with the reporting requirements under Title I of ERISA. Failure to file a timely and accurate Form 5500 can be indicative of poor plan management and at-risk participants.

ERISA §104(a)(4) permits the Secretary of Labor to reject any filing that she determines to be incomplete or deficient.

OCA has a number of established enforcement programs to ensure compliance. There are two goals for the OCA enforcement programs. The first goal is to improve the overall quality of the independent audits of employee benefit plans required by ERISA in order to facilitate the protection of plan assets and the related benefits of plan participants and beneficiaries. The second goal is to ensure that plans are in compliance with the reporting and disclosure requirements of ERISA, and that deficient Forms 5500 filings are corrected. Accordingly, OCA strives not only to improve the independent audit process but also to improve the accuracy of plan reporting and disclosure.

OCA's enforcement programs include:

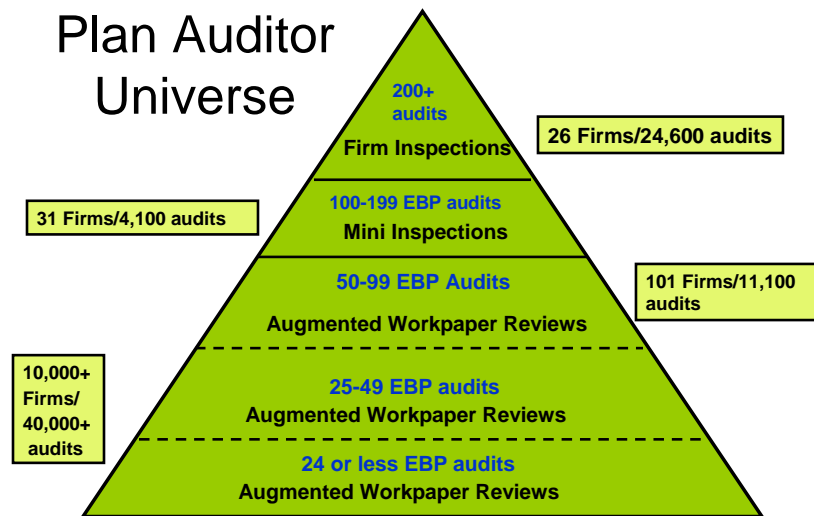
- Audit Quality Inspection Programs
- Augmented Workpaper Review
- On-site Workpaper Review
- Deficient Filer Enforcement
- Non-Filer Enforcement Program
- Late Filer Enforcement Program
- Delinquent Filer Voluntary Compliance Program

OCA's other Delegated Enforcement Programs include:

- Multiple Employer Welfare Arrangements Program
- Section 502(c)(6) Document Compliance Program
- Blackout Notice Provision Program – Section 502(c)(7)
- Section 502(c)(8) – Failure to establish a funding improvement plan
- Section 502(c)(4) – Failure to furnish a withdrawal liability notice

Audit Quality Inspection Programs

One of OCA's greatest challenges is the fact that more than 10,000 CPA firms audit the nation's retirement and health plans.



The Audit Quality Inspection Program represents an expanded inspection of the IQPA over DAS' former traditional on-site audit workpaper reviews. The program consists of two main parts: 1) top-down review of IQPAs' Employee Benefit Plan Audit Practices; and 2) review of a sample of the IQPAs' employee benefit plan audit workpaper engagements.

Due to its limited resources, DAS looks more closely at the IQPAs performing a significant number of benefit plan audits and/or audit the majority of the plan asset population. If there is a problem with one of the IQPAs in this group, a greater percentage of plan assets and plan participants could be affected as compared with IQPAs that are less active in the employee benefit plan sector. Firms that conduct more than 100 employee benefit plan audit engagements or IQPAs that audit a significant amount of plan assets are subject to DAS' Audit Quality Inspection Program.

For IQPAs selected for review as a part of this program, DAS performs an inspection of the IQPA's employee benefit plan audit practices. This inspection includes, among other things, reviewing and documenting whether or not the firm has designated an audit partner who has firm-wide responsibility for the quality of the firm's ERISA employee benefit plan audit practice; whether the firm has an established program to ensure that all personnel assigned to the ERISA employee benefit plan audit engagement personnel possess technical knowledge appropriate to the level of involvement in the audit engagement; whether the firm has established

policies and procedures to ensure compliance with established professional standards; and whether the firm has an internal inspection program that includes a review of its employee benefit plan audit engagements to ensure audit quality and compliance with professional standards and ERISA and Department of Labor rules and regulations for reporting and disclosure for employee benefit plans. These inspections are typically conducted at the firm's national/corporate headquarters.

During the inspection process, DAS obtains a list of all of the firm's employee benefit plan audit clients. From this list, DAS then selects a random number of audit engagements for review of the audit workpapers to assess audit quality and compliance with professional standards and regulatory requirements. The engagements selected for review encompass a range of plan types (defined contribution, defined benefit, health & welfare, ESOPs), audit scope (limited scope & full scope audits) and plan investment risk factors (hard to value assets such as real estate and limited partnerships, non-marketable securities, etc.). If the IQPA maintains multiple offices, DAS selects its sample of plans for review from a number of office locations.

DAS carries out this program two ways, depending upon the number of employee benefit plan audit engagements performed by an IQPA firm.

- Firm-Inspection: For those firms that audit greater than 200 plans, DAS visits the headquarters of the firm and conducts the top-down component of the inspection. In addition, the review of the selected engagements is performed on-site at the firm's offices selected for review.
- Mini Inspections: For those firms that audit between 100 and 200 employee benefit plans, while subject to the same inspection, all parts of the review will be conducted in-house within the DAS office.

The audit engagements selected for review will be the most current audit engagement performed for the employee benefit plan selected.

Augmented Workpaper Review Program

Based on certain targeting criteria, DAS selects a number of employee benefit plan audits for an augmented workpaper review. DAS periodically reviews and reconsiders its methods of targeting plan audits in order to most efficiently accomplish its goals with the resources it has been provided. Generally, however, plans selected for review as a part of the augmented workpaper review program are plan(s) that have been audited by a firm that conducts less than 100 plan audits annually.

Augmented workpaper reviews of Form 5500s include the review of the Form 5500, a review of the related auditor's report for compliance with GAAS, GAAP and the regulatory reporting and disclosure requirements and a review of the underlying audit workpaper documentation prepared by the plan's IQPA in support of the audit opinion

rendered. The workpaper documentation selected for review is determined on a case-by-case basis and may be limited to selected audit areas or all audit areas.

Where a plan has been selected for an augmented workpaper review, a review of the Form 5500 and related auditor's report is performed to determine compliance with GAAS, GAAP and the regulatory reporting and disclosure requirements. The analyst will review the audit report and will make a determination as to which relevant audit areas should be selected for a review. The audit areas selected for review will generally include those areas of audit where it has been historically demonstrated that errors are most likely to exist. These areas of audit include:

- assessment of the risk of fraud,
- investments & investment transactions,
- contributions received & receivable,
- benefit payments,
- participant data,
- plan obligations, and
- party-in-interest/prohibited transactions.

However, workpapers in other audit areas may also be requested if the analyst determines that the augmented workpaper review should include areas of audit in addition to those above. For example, the analyst may determine after a review of the Form 5500 and audit report that conditions exist which call into question whether or not the auditor has conducted a quality audit of the employee benefit plan. In such cases, the analyst may request copies of all of the audit workpapers or may request workpapers in areas in addition to those above.

After the analyst has determined which relevant audit areas will be reviewed, the analyst notifies the plan administrator that the respective plan has been selected for an augmented workpaper review. The DAS analyst will then request that copies of the audit workpapers associated with the relevant audit areas selected for review be provided to DAS.

Audit engagement(s) selected for an augmented workpaper review will be the most current audit engagement(s) performed for the employee benefit plan selected. Augmented workpaper reviews are conducted within DAS' office.

On-Site Workpaper Review Program

Based on certain targeting criteria and/or a review of the Form 5500 and related audit report, DAS may periodically select an employee benefit plan audit for an on-site review of the IQPA's workpapers. DAS periodically reviews and reconsiders its methods of targeting plans in order to most efficiently accomplish its goals with the resources it has been provided.

Where a plan has been selected for an on-site workpaper review, a review of the Form 5500 and related auditor's report is performed to determine compliance with GAAS,

GAAP and the regulatory reporting and disclosure requirements. In addition, the analyst notifies the plan administrator that the respective plan has been selected for an on-site review and a request is made for access to the IQPA's workpapers that were prepared in support of the audit opinion rendered on the plan's financial statements. The DAS analyst then schedules a date and time to review the IQPA's workpapers. The on-site review is typically conducted at the IQPA's office.

Audit engagement(s) selected for an on-site workpaper review will be the most current audit engagement performed for the employee benefit plan selected.

Deficient Filer Enforcement Program

The Deficient Filer Enforcement Program is historically OCA's primary program. The program is conducted primarily through correspondence detailed in 29 CFR §2560.502c-2.

The Form 5500 is a valuable tool used by many organizations to monitor the safety of plans and identify current plan trends. The information is also important to the plan's participants. Without this information, it is difficult to assess the stability of a plan. In order to ensure a plan is being maintained in a responsible manner, the Form 5500 is used to get a reporting of the plan's activities over the previous year.

OCA's primary objective in the deficient filer compliance program is to ensure the information reported on the Form 5500 is complete and compliant with the annual reporting regulatory requirements. This information is stored within the EFAST database, which is then utilized by EBSA, other agencies of the Department of Labor, other Departments and outside groups for the purpose of oversight and monitoring, research, and compilation of statistical data.

Based on certain targeting criteria, OCA selects a number of Form 5500s for desk review. OCA periodically reviews and reconsiders its methods of targeting plan audits in order to most efficiently accomplish its goals with the resources it has been provided. Plans selected for review as part of the Form 5500 desk review enforcement program involve a review of the Form 5500 and/or related auditor's report for compliance with GAAS, GAAP and ERISA and Department of Labor reporting and disclosure requirements. Typical deficiencies that are targeted include missing/deficient audit reports and Schedule of Assets Held. With the advent of the EFAST database, targeting by OCA has become far more detailed and timely. As of 2006, OCA also began targeting on significant changes assets, failure to secure the proper bonding, and hard to value assets.

Cases initiated by DRC consist of a detailed review of the entire filing. Cases initiated by DAS consist mainly of a detailed review of the audit report for compliance with professional standards and reporting and disclosure requirements.

Direct Filing Entity Enforcement Program

Some plans invest in certain trusts, accounts and other investment arrangements that may file information concerning themselves and their relationship with employee benefit plans directly with the DOL. These entities are referred to as “direct filing entities” (DFEs) and include master trust investment accounts (MTIAs), common or collective trusts (CCTs), pooled separate accounts (PSAs), 103-12 investment entities (103-12 IEs) and group insurance arrangements (GIAs). MTIAs and 103-12 IEs must file directly with the DOL for participating plans’ filings to be deemed complete. Although GIAs, CCTs and PSAs are not required to file directly with the DOL, their decision not to file affects the filing requirements and manner in which information is reported by participating plans on their Form 5500s.

DFEs are required to submit their information using the Form 5500 Annual Report. The EFAST system processes and summarizes the data contained in these filings in a standardized manner. With access to this data, OCA has created and implemented a program to ensure that DFEs, and plans that participate in them, meet their reporting and disclosure obligations.

An integral part of EBSA’s mission is to “take regulatory and enforcement actions that will be protective of the interests of the participants and beneficiaries and will encourage the creation and maintenance of plans.” OCA’s DFE Enforcement Program seeks to protect the interests of participants and beneficiaries by:

- scrutinizing DFE Form 5500 Annual Reports to deter and correct violations of relevant statutes;
- ensuring that DFE Form 5500 Annual Reports are filed timely and accurately; and
- ensuring that, where required, audits of DFE entities comply with established professional standards.

Under the DFE Enforcement Program, Form 5500 Annual Reports are reviewed from two different perspectives: (1) Beginning with the DFE Form 5500 Annual Report and ending with the individual Form 5500 Annual Report filings for participating plans and (2) Beginning with the individual Form 5500 Annual Report filings for participating plans and ending with the DFE Form 5500 Annual Report.

For example, a Form 5500 Annual Report is filed for a MTIA. The analyst reviews this filing to ensure that it is timely, accurate and complete. Form 5500s filed for MTIAs must include the employer identification number and plan number of each plan participating in the MTIA on Schedule D, Part II. As a result, OCA is able to compare the MTIA filing to the individual plan filings listed on Schedule D, Part II, to ensure that all the information has been properly reported and disclosed on both the MTIA Form 5500 and the Form 5500s for the individual plans participating in the MTIA.

The reverse analysis can also be performed. For, example, a plan indicates in its Form 5500 filing that it has investments held in a MTIA. Plans with investments in DFEs must include the employer identification number and plan number of each DFE on Schedule D, Part I. As a result, OCA is able to compare the plan filing to the DFE filing listed on Schedule D, Part I, to ensure that all of the information has been properly reported and disclosed on both the plan's filing and the associated DFE filing(s).

Since the Form 5500 filed for a DFE is an integral part of the Form 5500 for each plan participating in the DFE, deficiencies identified in a DFE filing may cause the associated plan filings to be deficient and, therefore, subject to rejection by the DOL. It should be noted that while the DOL cannot "reject" a DFE filing, DFEs reviewed as a part of this program are notified that their deficient DFE filing may result in rejection and possible civil penalties assessed on all of the participating plans' Form 5500 filings unless an acceptable filing is made for the DFE. If the DFE fails to provide a satisfactory Form 5500 filing for the DFE, OCA may proceed with an enforcement action against the plan administrator of the associated plans.

Non-Filer Enforcement Program

One of the primary missions of OCA is to ensure proper reporting and disclosure of plan activities through the Form 5500 annual reporting process. EBSA has long believed that the failure to file an annual report is one the most egregious violations of ERISA. Therefore, one of the OCA's enforcement efforts is to identify plans that have a filing requirement but have not filed and bring them into compliance with ERISA. A plan that is required to file an annual report but has never filed a report is called a "non-filer". A plan is considered to be a "stop-filer" when it has filed in the past but has since stopped filing annual reports.

Without the information on the Form 5500, it is difficult to determine the health of a plan. For this reason, timely filing is of the utmost importance. It is the goal of OCA to achieve timely and accurate filings for all plans. Non-filers, being at the most risk of abuse, receive the highest penalties.

There are various methods used to identify non-filers and stop-filers. Historically, the majority of non-filers were referrals from either the Office of Enforcement or the IRS. A few also came from other sources such as the Division of Technical Assistance & Information.

Stop-filers have been identified through referrals and queries of the EFAST database. The queries compare prior year filings to current year filings and identifies plans that filed in a prior year but did not file in the current year. Filings that indicated the plan was being merged or terminated are excluded from these queries.

Referrals from other offices are reviewed to determine the validity prior to opening and assigning a case to an analyst.

Late Filer Enforcement Program

DRC began the late filer program in the early 1990s after the 1992 Grace Period. During that program, it was discovered that a large number of plans were filing their Form 5500s past the due date which is 7 months after the end of the plan year. Much of the value of the information on the Form 5500 is its timeliness. The goal of the late filer program is to encourage future timely filing.

The penalty for late filers is \$50 per day from the day the filing was due until the day filed without regard to extensions.

Delinquent Filer Voluntary Compliance Program

Introduced in 1995 and revised in 2002, the Delinquent Filer Voluntary Compliance (DFVC) Program is designed to encourage plan administrators to file previously unfiled Form 5500 Series annual reports and to resolve potential late filer penalties.

After a highly successful 1992 grace period program that collected over 40,000 filings during a nine month period, plan administrators who had missed the grace period were apprehensive about filing unfiled or late Form 5500s for fear of significant penalties that could be imposed. With this in mind the original DFVC penalty was structured above the Grace Period amount (\$1,000 per filing) but well below potential late and non-filer penalties. The DFVC program is now an ongoing program with no anticipated end date.

The DFVC program was revised on March 28, 2002. The 2002 revision reduced the “per day” penalty rate and per filing penalties; the created a per plan cap and the created a special class of filers, and it aligned the DFVC filing procedures with the new EFAST system. The DFVC program has been modified recently for the EFAST2 procedures.

In order to participate in the DFVC program, a plan administrator must complete all of the following:

- 1) File a complete electronic filing in EFAST2 (see, Frequently Asked Question Q4 EFAST2 All-Electronic Filing System): <http://www.dol.gov/ebsa/faqs/faq-EFAST2.html>.
 - a. Top Hats and ATPs must mail a statement to the Department, not EFAST.
- 2) Remit payment in accordance with the Department applicable requirement http://www.dol.gov/ebsa/FAQs/faq_DFVC.html. Send in a check for the penalty amount to the post office “lock box” address noted on the DFVC website or pay the penalty amount electronically.

(Top Hat and ATP filers must complete 1a-c, 2a-c, 5a-c, and 6a or b on the 1998 or earlier Form 5500 and line items 1a-b, 2a-c, and 3a-c on the 1999 or later Form 5500. The plan number for Top Hats is 888 and for ATPs is 999.) If filing as a

member of the special class, the plan must write “501(c)(3) organization” at the top of each filing.

The penalties under the DFVC program are:

	Per Filing	Per Plan
Large Form 5500 Filers	\$10/day up to \$2000	\$4,000
Small or Form 5500 C Filers	\$10/day up to \$750	\$1,500
Top Hat Plans	\$750 regardless of the number of plans	
Apprenticeship & Training Plans	\$750 regardless of the number of plans	
Small 501(c)3 Plans	\$10/day up to \$750	\$750

If the Department of Labor has notified a plan of its intent to assess a penalty for the failure to file timely annual report then the plan is no longer eligible for the DFVC program. If the filer receives a notice from the IRS, the administrator remains eligible for the program; however, the IRS is not required to waive their penalties after they have issued a letter.

Incoming Mail and Information

The Department's lockbox agent is responsible for receiving the DFVC submissions and the depositing of the payments and data entry of the records. Once this is completed, the scanned images of the filings are transmitted to the Department of Treasury for viewing. At the same time, the computer record is posted on their website which is then uploading by DRC everyday.

Multiple Employer Welfare Arrangements Program

According to §3(40) a Multiple Employer Welfare Arrangement ("MEWA") is an employee welfare benefit plan, or any other arrangement, that is established or maintained for the purpose of offering or providing welfare plan benefits to employees of two or more employers (including one or more self-employed individuals) or their beneficiaries. However, a MEWA may not be any plan or arrangement which is established or maintained:

- under or pursuant to one or more arrangements which the Secretary of Labor finds to be collective bargaining agreements;
- by a rural electric cooperative; or
- by a rural telephone cooperative association.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) added a new §101(g){h} to ERISA, giving the Secretary of Labor authority to require reporting by MEWAs that are not group health plans. HIPAA also added a new section 502(c)(5) to ERISA, authorizing the Secretary to impose a civil monetary penalty against any person of up to \$1,000 a day from the date of the person's failure to file a report required under section 101(g)(h) of ERISA.

On April 9, 2003 the final rules governing certain reporting requirements under Title I of ERISA for MEWAs and certain other entities that offer or provide coverage for medical care to the employees of two or more employers were published in the Federal Register.

- a. 29 CFR 2520.101-2 generally requires the administrator of a MEWA, and certain other entities, to file a Form M-1, Annual Report for Multiple Employer Welfare Arrangements and Certain Entities Claiming Exception, with the Secretary of Labor for the purpose of determining whether the requirements of certain recent health care laws are being met. The administrator of the MEWA or Entity Claiming Exception (ECE) is required to file the Form M-1 within 90 days of the date the MEWA or ECE is originated. Also, the administrator of the MEWA or ECE is required to file the M-1 for each calendar year during all or part of which the MEWA or ECE offers or provides coverage for medical care. The M-1 is due on March 1st that follows a period to be reported. There is a 60 day automatic extension which may be requested no later than the normal due date for the Form M-1.

- b. 29 CFR 2560.502c-5 implements the Secretary's authority to impose civil penalties under ERISA § 502(c)(5). The penalties may not exceed \$1,100 per day and are assessed against the MEWA or ECE administrator.
- c. 29 CFR 2570 Subpart E establishes procedures for administrative law judge proceedings in connection with §502(c)(5) penalties.

Under §101(g), MEWAs that provide medical benefits are subject to annual reporting requirements (i.e., filing Form M-1, generally by March 1st). A MEWA may or may not be an ERISA-covered employee welfare benefit plan. Under the Department's regulations at §2520.101-2, all MEWAs must file Form M-1; however, the §502(c)(5) civil penalty is enforceable only with respect to non-plan MEWAs. "Plan-MEWAs" are subject to the § civil penalty, for failure to file Form 5500.

Whether a MEWA is an ERISA-covered plan depends on whether the MEWA meets the definition of an employee welfare benefit plan set forth in section 3(1) of ERISA. This definition establishes a two-step test. First, the MEWA must provide welfare benefits, such as medical benefits. Second, the MEWA must be established or maintained by an employer, employee organization or both. DRC refers cases to the Office of Regulations and Interpretations when a determination is needed regarding MEWAs that claim that they are ERISA-covered plans.

There are various sources from which cases are selected and assigned to the analysts. A majority of the non-filers are referrals from the Office of Enforcement. To locate possible non-filers and late filers, a query is run on the ERISA database.

Stop filers are identified through a report run by the Department's targeting system, comparing the most recent year's filing information against the year before that. The report is looking for anybody who filed the first year but not in the second and did not indicate they were terminating the arrangement.

Late filers are identified through a report run by the Department's targeting system, looking for filings that were filed at least 100 days after the original due date. (There is a 60 day automatic extension which may be requested no later than the normal due date for the Form M-1.)

502(c)(6) Compliance Program

ERISA §104(a)(6) states, "The administrator of any employee benefit plan subject to this part shall furnish to the Secretary, upon request, any documents relating to the employee benefit plan, including but not limited to, the latest summary plan description (including any summaries of plan changes not contained in the summary plan description), and the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated."

Effective March 8, 2002, OCA was delegated the authority to assess civil penalties under ERISA §502(c)(6), which states, "If, within 30 days of a request by the Secretary to a plan administrator for documents under §104(a)(6), the plan administrator fails to furnish

the material requested to the Secretary, the Secretary may assess a civil penalty against the plan administrator of up to \$100 a day from the date of such failure (but in no event in excess of \$1,000 per request).”.

DRC’s primary objective is to ensure plan’s are timely responding to participants’ and beneficiaries’ requests for documents. This program assists in obtaining copies of a plan’s Summary Plan Description and other documents as required. A plan administrator’s failure or refusal to provide the requested documents, can result in penalty assessments of up to \$1,000 per document request under ERISA Section 502(c)(6).

These cases are generally received by DRC as referrals from EBSA’s Regional Offices, the Division of Technical Assistance and Inquiries (DTAI), or from plan participants and beneficiaries concerning the failure of plan administrators to provide requested plan information.

If the referral is from an EBSA office, there has generally already been a number of informal attempts to procure the documents prior to referral to DRC.

Blackout Notice – 502(c)(7) Program

In light of the events surrounding the Enron and WorldCom scandals and bankruptcies that resulted in many investors and plan participants losing a significant amount of their retirement savings, Congress enacted the Sarbanes Oxley Act of 2002 (SOA) to enhance corporate governance and disclosure. Section 306(b)(1) of SOA amended section 101 of ERISA adding new subsection (i) and section 306(b)(3) of SOA amended section 502(c) of ERISA by adding new paragraph (7).

The goal of the 502(c)(7) blackout notice enforcement program is to ensure that plan administrators are complying with the blackout notice requirements. These requirements were developed to ensure participants and beneficiaries are properly notified of restrictions to their accounts and afforded time to make informed decisions about their investments.

The blackout notice rules the disclosure requirements of ERISA by requiring plan administrators to notify participants in advance of when access to their plan accounts is being temporarily restricted, thereby affording participants ample time to evaluate and make informed decisions regarding their plan accounts before access to their account is restricted.

Section 101(i) of ERISA requires that plan administrators of individual account plans (except for one-participant retirement plans) provide notice to affected participants and beneficiaries in advance of the commencement of any blackout period. Section 502(c)(7) of ERISA establishes civil penalties for a plan administrator’s failure or refusal to provide timely notice of a blackout to participants and beneficiaries. These blackout notice provisions of ERISA became effective on January 26, 2003 and are applicable to any blackout period commencing on or after that date.

Blackout Notice Requirements:

In general, the term “blackout period” is a temporary suspension, limitation, or restriction (lasting more than three consecutive business days) of plan participants and beneficiaries ability to direct or diversify assets in their accounts, obtain loans from the plan, or obtain distributions from the plan (know as “affected rights”). Plan administrators are required to provide written notice to affected participants and beneficiaries at least 30 days, but not more than 60 days, in advance of the last day such participants and beneficiaries could exercise the affected rights, unless one of the exceptions provided apply.

The contents of the written notice must meet the requirements of Department Regulation section 2520.101-3(b)(1). As per the regulations, the notice shall contain the following:

- i. Reason(s) for the blackout period;
- ii. Description of the specific rights affected;
- iii. Length of the blackout period by reference to either,
 - a. the beginning and ending dates of the blackout period, or
 - b. the calendar week(s) during which the blackout period began and ended. (If calendar week(s) is/are referred to, the notice shall instruct affected P and Bs where during such weeks, they can easily and free of charge find out if and when the blackout period has begun or ended.);
- iv. If investment rights are affected during the blackout period, the notice shall include a statement that Ps & Bs should evaluate the appropriateness of their current investment decisions;
- v. If less than 30 days advance notice was given, the notice must include a statement that Federal law generally requires 30 day advance notice and explanation why such notice could not be provided. (Exceptions to this requirement are noted below.);
- vi. Name, address and phone number of the Plan Administrator or other relevant contact.

On occasions, this 30-day advanced notice does not apply. ERISA section 101(i)(2)(c) allows for two exceptions, noted below, provided a determination of the circumstances is made in writing, signed by a fiduciary of the plan, and the notice is provided as soon as reasonably practicable. The exceptions are:

- i. A deferral of the blackout period would violate the requirements of section 404(A) or (B) of ERISA. This exception allows for the fiduciaries of the plan to determine that it would neither prudent nor in the best interest of the plan and its participants to delay the start of the blackout for the purpose of providing the 30-day advance notice; or
- ii. The inability to provide the 30-day advance notice is due to events that were unforeseen or circumstances beyond the reasonable control of the plan administrator.

A final exception is found in ERISA 101(i)(3) which states if the blackout period applied only to Ps & Bs in connection with their becoming, or ceasing to be, Ps or Bs of the plan

due to a merger, acquisition, divestiture or similar transaction of the plan or plan sponsor the notice must be provided as soon as reasonably practicable.

As per ERISA 101(i)(7)(B), a blackout period does not include a suspension or restriction which:

- i. occurs by reason of the application of the securities laws;
- ii. is a change to the plan which provides for a regularly scheduled suspension disclosed to participants;
- iii. applies to individuals pursuant to a qualified domestic relations order.

502(c)(7) Penalties:

Pursuant to ERISA Section 502(c)(7), the Department has the authority to assess civil penalties of up to \$100 a day for each separate violation against administrators of an plan who failed or refused to provide notice to participants and beneficiaries in accordance with ERISA Section 101(i).

The Department's regulations define "a failure or refusal to provide a notice" as a failure or refusal, in whole or in part, to provide notice of the blackout period to an affected plan participant or beneficiary at the time and in the manner prescribed by Section 101(i) of ERISA. Such a failure or refusal to provide a notice of blackout period with respect to any single participant or beneficiary shall be treated as a separate violation. Therefore the penalty is calculated for each affected participant or beneficiary (i.e. \$100 per day per participant).

For purposes of calculating the penalty assessment, the date of failure or refusal occurs 30 days prior to the last day on which affected participants and beneficiaries could exercise the affected rights and continues through the end of the blackout period.

The Office of the Chief Accountant, with assistance from other members of EBSA, has administratively determined and developed a proposed schedule of penalties, within the 502(c)(7) framework, for blackout notice violations. A worksheet and proposed penalty structure have been developed to aid in penalty calculation.

Enforcement Programs Procedures

Initial Assignment of Cases

Cases are assigned periodically using various methods for targeting as well as from Field Office referrals and other agencies. As described in the Case File Maintenance Section, generally a proper color coded case folder must be created for each case. Before beginning work on a new reporting compliance case, the analyst must check the Global Search System (located on the LAN menu) to see if the Office of



Enforcement or any other EBSA office has a pending enforcement action against the plan or a recently completed action. The search will also identify any previous OCA cases regarding the plan. If it is determined that there are any open investigations or if there is a recently completed case on the subject plan, the analyst should discuss the case with the Division Chief or team leader before taking any further enforcement action. If the case is the result of a referral, the analyst will contact the the contact person to confirm the information provide and obtain further background information. This procedure is necessary to avoid undertaking enforcement actions on plans that are under active investigation or that have recently concluded an enforcement action.

After the case is assigned, the analyst shall print a hard copy of the filing from the ERISA Public Disclosure system or EFAST end user system and perform the first action of processing. The procedures to be followed will be dependent upon what form of enforcement action is to be taken. See the appropriate section of this guide for procedures related to the following enforcement programs:

- Audit Quality Inspection Program procedures
- Augmented Workpaper Reviews procedures
- On-Site Workpaper Reviews procedures
- Deficient Filer Enforcement Program
- Referrals to the Office of Enforcement procedures
- DFE Enforcement Program procedures
- Multiple Employer Welfare Arrangements Program procedures
- 502(c)(6) Compliance Program procedures
- Blackout Notice – 502(c)(7) Program procedures
- Non-Filer Enforcement Program procedures
- Late Filer Enforcement Program procedures
- Case Closing procedures
- Delinquent Filer Voluntary Compliance Program procedures

Document all conversations with plan administrators or other representatives in the case file with sufficient detail. The call log should include the name of the person with whom you spoke, telephone number, relationship to the plan, date of conversation, time of conversation, and the matters discussed.

All enforcement guidance may be found in separate folders, titled by enforcement program, in the OCA Enforcement Manual Folder on the “L” drive. OCA personnel should use the formatted letters, guides, checklists, memorandum, etc., contained on the “L” drive for all enforcement cases. If changes need to be made to these documents, the analyst shall discuss the changes with the supervisor or team leader. The documents contained on the “L” drive must be used as they will ensure consistency in documentation and may also be subject to change. In addition, for DRC Staff, the review copy of letters must have a Signature Block stamp in the top right portion of the first page, opposite the address. The analyst shall initial and date the first line. The date used is the date the case is placed in the review area.

Audit Quality “On-Site and Mini” Inspection Program Enforcement Procedures

The Audit Quality Inspection Program represents an expanded inspection of IQPAs over OCA’s former traditional on-site audit workpaper reviews and “mini” inspections conducted from OCA’s office. The program consists of two main parts: 1) inspections of IQPAs’ Employee Benefit Plan Audit Practices; and 2) on-site reviews of a sample of the IQPAs’ employee benefit plan audit workpapers. IQPA firms selected for the Audit Quality Inspection Program are made by the Chief Accountant and the Chief of the Division of Accounting Services.

Assignment of plan(s) and establishment of case files

Upon assignment of plan(s) selected for review as part of the Audit Quality Inspection Program, the analyst shall set up a case file in accordance with the requirements discussed in the Case File Maintenance section of this guide. The analyst shall include in each case file the write-up of the firm’s employee benefit plan practice. The analyst shall also include a complete copy of the workpaper review guide that is to be completed during the on-site workpaper review of the plan selected. The analyst shall update the OCA Case Tracking System to indicate that the workpaper review status is “pending”. The analyst shall also update the OCA Case Tracking System with the IQPA’s name and IQPA’s EIN. Once the analyst has been advised of the workpaper review date, the analyst shall update the OCA Case Tracking System to indicate the workpaper review status as “scheduled” and shall also input the date for the on-site workpaper review.

On-site workpaper review

For each on-site workpaper review, the analyst shall complete the on-site workpaper review checklist for each set of plan workpapers reviewed. The analyst shall sign and date each “conclusion” portion of the checklist to evidence the date the work was performed. The analyst shall also complete the workpaper review audit deficiency chart indicating whether or not audit deficiencies were identified in a particular area of audit.

Audit Quality Inspection Program - On-Site Audit Workpaper Review Memo

For each on-site workpaper review, the analyst shall prepare an on-site audit workpaper review memo. The summary memorandum of the workpaper review shall be in the format prescribed in the Audit Quality Inspection Program manual.

The analyst shall complete each area of the workpaper review memo. Because the memorandum constitutes the primary summary of the on-site review, each area must be well documented. For the “Conclusion” and “Recommendation” sections the analyst shall document the conclusion(s) and recommendation(s) and shall also document the basis for the conclusion(s) and recommendation(s) reached. **No other memo formats are acceptable.**

No Further Action Necessary

If after the preliminary review, the analyst recommends that the case be closed with no further action, the analyst shall prepare a letter to the plan administrator communicating the results of the review. There are two formats, a letter where no deficiencies were identified and a letter where only minor deficiencies were identified. The analyst shall complete the OCA Case Transmittal Form.

In addition, the analyst shall update the OCA Case Tracking System (OCATS) to indicate the date of the workpaper review, shall update the workpaper review status to “complete”, and shall indicate the results of the workpaper review (i.e., either acceptable with no deficiencies or acceptable with minor deficiencies requiring no further action). Finally, the analyst shall verify that the name of the audit firm, IQPA’s EIN, and workpaper review date fields are correct, making any changes if necessary.

Further Action Required

If, after the preliminary review, findings are identified that require follow-up action, the analyst shall prepare a “Statement of Preliminary Findings” letter. The Statement of Preliminary Findings letter shall be sent to the IQPA. The IQPA shall have 10 days from the date of the letter to provide written comments on the findings.

Failure to Respond to Statement of Preliminary Findings

If the IQPA fails to respond to the Statement of Preliminary Findings, the analyst shall proceed with an enforcement action through the issuance of a Notice of Rejection. If the deficiencies warrant referral of the IQPA to the AICPA or State Licensing Board, the analyst shall prepare the referral letter. The analyst shall follow the 502c-2 enforcement procedures detailed in this guide.

The analyst shall complete the OCA/DAS Case Transmittal Form. In addition, the analyst shall update the OCA Case Tracking System (OCATS) to indicate that the workpaper review is “complete” and shall indicate that the workpaper review disclosed deficiencies requiring further action. Finally, the analyst shall verify that the name of the audit firm, IQPA’s EIN, and workpaper review date fields are correct, making any changes if necessary.

IQPA Response to Statement of Preliminary Findings

If the IQPA responds to the Statement of Preliminary Findings, the analyst shall review the IQPA’s response. The analyst shall also prepare a memorandum documenting the IQPA’s response to the Statement of Preliminary Findings and whether or not the preliminary findings have been satisfactorily resolved. The memorandum shall document any recommendations for further enforcement action and whether referral to the AICPA or State Licensing Board is necessary. Because the memorandum constitutes the final summary of the review, each area must be well documented. **No other memo formats are acceptable.**

If in response to the Statement of Preliminary Findings, the IQPA submits additional workpaper documentation, the analyst shall also determine whether or not the workpapers were created at the time of the audit or whether the workpapers were completed in response to the Statement of Preliminary Findings. While workpapers created after issuance of the audit report and submitted in response to the Statement of Preliminary Findings may correct the deficiency(ies) cited, a violation of GAAS may still have existed at the time of issuance of the audit report and may warrant referral of the AICPA or State Licensing Board.

Ex. 7(e)
(one paragraph of text redacted)

If further enforcement action is necessary, the analyst shall follow the 502c-2 enforcement procedures found in this guide. The analyst should also contact the IQPA and advise the IQPA of the enforcement action and, if applicable, that a referral to the AICPA or State Licensing Board will be made. Contact with the IQPA shall be documented in the case file.

The analyst shall complete the OCA Case Transmittal Form. In addition, the analyst shall update the OCA Case Tracking System (OCATS) to indicate that the workpaper review is “complete” and shall indicate that the workpaper review disclosed deficiencies requiring further action. Finally, the analyst shall verify that the name of the audit firm, IQPA’s EIN, and workpaper review date fields are correct, making any changes if necessary.

On-Site Workpaper Review Program Enforcement Procedures:

The On-Site Workpaper Review Program is a traditional workpaper review program established by OCA. Based on certain targeting criteria and/or a review of the Form 5500 and related audit report, OCA randomly selects employee benefit plans for an on-site review of the IQPA’s workpapers. The on-site workpaper review is typically conducted at the IQPA’s office.

Assignment of plan(s) and establishment of case files

Upon assignment of plan(s) selected for review as part of the On-Site Workpaper Review Program, the analyst shall set up a case file in accordance with the requirements discussed in the Case File Maintenance section of this guide. The analyst shall include a complete copy of the workpaper review guide that is to be completed during the on-site workpaper review of the plan selected. The analyst shall update the OCA Case Tracking

System to indicate that the workpaper review status is “pending”. The analyst shall also update the OCA Case Tracking System with the IQPA’s name and IQPA’s EIN.

Request for Access to Workpapers

The analyst shall prepare a letter to the plan administrator requesting access to the IQPA’s audit workpapers for the plan.

Generally, the plan administrator will have the plan’s IQPA contact the analyst to set a date for the on-site workpaper review. When the on-site review date has been established, the analyst shall update the OCA Case Tracking System to indicate the workpaper review status as “scheduled” and shall also input the date for the on-site workpaper review.

Confirmation of On-Site Workpaper Review Date

Once the on-site workpaper review date has been agreed to, the analyst shall send written confirmation of the agreed upon date to the IQPA.

On-site Workpaper Review

For each on-site workpaper review, the analyst shall complete the on-site workpaper review checklist for each set of plan workpapers reviewed. The analyst shall sign and date each “conclusion” portion of the checklist to evidence the date the work was performed. The analyst shall also complete the workpaper review deficiency chart indicating whether or not audit deficiencies were identified in a particular area of audit.

On-Site Audit Workpaper Review Memo

For each on-site workpaper review, the analyst shall prepare an on-site audit workpaper review memo. The summary memorandum of the workpaper review shall be in the format prescribed.

The analyst shall complete each area of the workpaper review memo. Because the memorandum constitutes the primary summary of the on-site review, each area must be well documented. For the “Conclusion” and “Recommendation” sections the analyst shall document the conclusion(s) and recommendation(s) and shall also document the basis for the conclusion(s) and recommendation(s) reached. **No other memo formats are acceptable.**

No Further Enforcement Action Necessary

If the analyst recommends that the case be closed with no further enforcement action, the analyst shall complete the OCA Case Transmittal Form. In addition, the analyst shall update the OCA Case Tracking System (OCATS) to indicate the workpaper review is “complete” and shall indicate the results of the workpaper review (i.e., either acceptable with no deficiencies or acceptable with minor deficiencies requiring no further action).

Finally, the analyst shall verify that the name of the audit firm, IQPA's EIN, and workpaper review date fields are correct, making any changes if necessary.

Further Enforcement Action

If further enforcement action is warranted, the analyst shall follow the 502c-2 enforcement procedures found in this guide. The analyst shall complete the OCA Case Transmittal Form. In addition, the analyst shall update the OCA Case Tracking System (OCATS) to indicate that the workpaper review is "complete" and shall indicate that the workpaper review disclosed deficiencies requiring further action. Finally, the analyst shall verify that the name of the audit firm, IQPA's EIN, and workpaper review date fields are correct, making any changes if necessary.

Deficient Filer Enforcement Procedures:

The Form 5500 Deficient Filer Enforcement Program is OCA's original enforcement program. As part of OCA's Form 5500 Deficient Filer Enforcement Program, OCA selects a number of employee benefit plans to review. The Form 5500 and related auditor's report is reviewed for compliance with ERISA, GAAS, and GAAP and Department of Labor reporting and disclosure requirements.

These enforcement procedures are official enforcement actions taken by the Department of Labor. The objective of these enforcement actions is to attain compliance with ERISA and Department of Labor's reporting and disclosure requirements. Where it is determined that action is required, the first step is the issuance of a Notice of Rejection.

Issuance of a Notice of Rejection

If deficiencies are identified, the analyst shall prepare a Notice of Rejection (NOR) using the Deficient Filer NOR template. The approved NOR template can be found on the OCA common drive ("L" drive). The analyst shall use the format of the NOR located on the common drive as the NOR is subject to change.

The analyst shall sign the NOR. The NOR is time sensitive, requiring a response from the plan administrator within 45 days of the date of the NOR. The analyst **should not date** the NOR. The NOR will be dated by the office support staff at the time that it is mailed. The analyst shall prepare an envelope and a return receipt green card and submit the NOR and case file to the team leader or Division Chief for clearance. (See page 61 for OCA's "General Letter Policy".)

Note: All enforcement letters are mailed certified mail, return receipt requested. It is the analysts' responsibility to prepare the envelope for mailing on all cases. This includes preparing the return receipt green card.

The 45-day period is statutorily established pursuant to Section 104(a)(5) of ERISA. ERISA Section 104(a)(5) provides the plan administrator 45 days to electronically submit

a revised filing satisfactory to the Department of Labor before any further enforcement action and penalty can be undertaken to enforce the filing requirements. **The 45-day period may not be extended**¹. If a filer has legitimate reasons for not being able to respond to a NOR within the 45-day period, then the reasons can be considered in the Reasonable Cause Analysis. Each analyst shall be responsible for tracking their enforcement cases to ensure that responses are timely reviewed and that appropriate follow-up actions are taken.

Response to Notice of Rejection

The plan administrator has 45 days in which to respond to the NOR by providing a filing satisfactory to the DOL. Upon receipt of a response to the NOR, the analyst shall review the response to the NOR to determine whether:



1. the plan administrator has corrected all of the deficiencies cited in the NOR, and
2. the response was received timely, within 45 days of the date of the NOR. OCA policy is to use the postmark date of the response to the NOR as the receipt date.

Response to Notice of Rejection is Timely & Acceptable

If all of the deficiencies cited in the NOR have been satisfactorily corrected and the correction of the deficiencies did not result in new deficiencies and if the response to the NOR was timely received, the analyst shall close the case.

The analyst shall prepare a memo to the file documenting the results of the review and the conclusion for no further action.

The analyst shall also complete the appropriate checklist documenting the review of the response to the NOR.

If the deficiencies cited in the NOR pertained to a review of the IQPA's audit workpapers, the analyst shall include in the memo to the file sections on the findings cited, the plan administrator's response to the NOR, the analyst's evaluation of the response, and the basis for concluding that the response to the NOR corrects the audit deficiency(ies). However, if the plan administrator provides an audit report from a new auditor, before closing the case, the analyst shall review the workpapers of the new auditor. The analyst shall follow the procedures for the augmented workpaper review program beginning at page 30 of this guide for documentation of the review of the workpapers.

¹ The only exception to the 45 day time period is when the 45th day occurs on a weekend day or federal holiday, in which case the 45th day shall be the **next** business day. The postmark date on the filer's response shall be used to determine timeliness of the response to the NOR.

Finally, the analyst shall also prepare a Notice of Satisfactory Filing to be sent to the plan administrator, unless an augmented workpaper review is required to follow-up on a “new” plan auditor (see paragraph above).

*No Response to Notice of Rejection,
Late Response to Notice of Rejection or
Unacceptable Response to Notice of Rejection*

If the plan administrator fails to respond to the Notice of Rejection, the analyst shall verify that the plan has received the correspondence. If a signed, certified mail, return receipt card was returned, the analyst shall proceed with the issuance of a Notice of Intent to Assess a Penalty (NOI). If the certified mail, return receipt card has not been returned, the analyst should verify receipt of the certified mail by using the U.S. Postal Service website at www.usps.gov. If the website indicates that the certified mail was delivered, the analyst shall print confirmation of the delivery for inclusion in the case file. The analyst shall then proceed with the issuance of a NOI.

If there is no confirmation that the NOR was delivered, the analyst will verify the correctness of the address. These attempts (which should include calling the plan and searching for the sponsor on the internet) must be documented in the case file. If the address is correct, the analyst shall consult with the Division Chief for the next appropriate action.

If the plan administrator fails to respond timely to the Notice of Rejection or if the plan administrator does not submit an acceptable response, the analyst shall prepare a Notice of Intent to Assess a Penalty (NOI). If warranted, the analyst shall prepare a memo to the file documenting the results of the review of the information submitted in response to the Notice of Rejection, including the basis for further enforcement action. If the deficiencies cited in the NOR pertained to a review of the IQPA’s audit workpapers, the analyst shall include in the memo to the file sections on the findings cited, the plan administrator’s response to the NOR, the analyst’s evaluation of the response, and the basis for concluding that the response did not correct the audit deficiency(ies).

Issuance of a Notice of Intent to Assess a Penalty

The analyst shall use the Deficient Filer NOI template. The approved NOI template can be found on the OCA’s common drive (“L” drive). The analyst shall use the format of the NOI located on the common drive as the NOI is subject to change.

The analyst **should date** the NOI (unless it is for a non-filer, in which case the NOI is undated) since the penalty amount is calculated from the original due date, without regard to extension of time, until the date of issuance of the NOI. NOIs should only be dated for Mondays². The analyst shall ensure that the date of the NOI allows for sufficient time for the case to clear review and for signature by Ian Dingwall, the Chief Accountant on Thursdays. Failure to allow for sufficient time may result in the analyst having to recalculate the penalty amount and re-date the NOI. As with all letters, the analyst shall

² If Monday is a holiday, date the notice for the Tuesday following the holiday.

prepare an envelope and a return receipt green card and submit the NOI and case file to the team leaders or Division Chief for clearance and signature.

The analyst shall also include in the case file a memo that documents the penalty calculation amount.

Types of Penalties*

- The penalty for a missing or deficient IQPA reports is \$150/day capped at \$50,000.
- The penalty for significant reporting errors such as financial reporting items (e.g., errors on Schedule H, missing Schedule of Assets) is \$100/day capped at \$36,500.
- The penalty for non-critical missing or deficient reporting items is \$10/day capped at \$3,650.

Given a case's facts and circumstances, these penalties rates may be higher.

Note: "Per day" calculations are based on the number of days from the original due date of the filing, without regard to any extension of time, up to the date of the NOI. For example, if the plan year ended on December 31, the Plan has an un-extended filing date of July 31 of the following year. Therefore, the analyst shall use the date of August 1, the day after the original due date, to determine the daily calculation up to, but not including, the date of the NOI. It is possible that the plan administrator may be assessed both types of penalties depending upon the facts and circumstances of the case.

The plan administrator has 35 days³ in which to respond to the NOI by providing a filing satisfactory to the DOL along with a statement of reasonable cause, made under the penalty of perjury, as to why the penalty should not be assessed. **There is no extension of time to the 35 day⁴ period.** The analyst shall track the due dates for cases with NOIs outstanding.

If the plan administrator has not filed its written response by the 25th day, the analyst may contact the plan administrator at the telephone number reported in the Form 5500 Annual Report to confirm that the NOI was received and to remind the plan administrator of the deadline for submitting a statement of reasonable cause. Analysts should document the telephone contact information in the case file. Failure to timely file a statement of

³ NOIs sent via certified mail have a 35 day response period. Generally, NOIs should be sent via certified mail unless an overnight delivery method has been approved by the Division Chief. NOIs sent via overnight mail have a 30 day response period. Analysts sending a NOI via overnight mail shall ensure that the NOI has been properly edited for this 30 day response time period.

⁴ 30 days if NOI was sent via overnight mail or hand delivered.

reasonable cause results in the penalty becoming a final penalty subject to collection proceedings. In addition, failure to respond timely to the NOI results in the plan administrator waiving his/her administrative to contest the penalty before an Administrative Law Judge.

*Failure to Respond or Failure to Respond Timely
to the Notice of Intent to Assess a Penalty*

If the plan administrator fails to respond to the Notice of Intent to Assess a Penalty, **BY THE 45th DAY FOLLOWING THE DATE OF THE NOI**, the analyst shall complete the Final Order Checklist. This checklist summarizes the file documentation demonstrating the plan administrator was properly served with the Notice of Intent to Assess a Penalty. If any procedures appear insufficient, the analyst must prepare a memo to the file describing the issues and deliver the case file to the Division Chief for consideration of next action.

The case file must be reviewed by a division supervisor who then submits the file for closure and referral to OPPEM for collection.

ERISA Section 502(c)-2(i)(3) states that a statement of reasonable cause shall be considered filed:

- (i) upon mailing, if accomplished using United States Postal Service certified mail or Express Mail;
- (ii) upon receipt by delivery service, if accomplished using a “designated private delivery service” within the meaning of 26 U.S.C. 7502(f);
- (iii) upon transmittal, if transmitted in a manner specified in the notice of intent to assess a penalty as a method of transmittal to be accorded such special treatment; or
- (iv) in the case of any other method of filing, upon receipt by the Department at the address provided in the notice of intent to assess a penalty.

The analyst shall consult with the Division Chief on any questions of timeliness of filing a statement of reasonable cause or any questions of interpretation to ERISA Section 502c-2(i)(3).

Where a plan administrator fails to respond or fails to timely provide a proper statement of reasonable cause, the case will then be deemed closed. The analyst shall prepare a closing memo for the file and the final order checklist.

Timely Response to Notice of Intent to Assess a Penalty

Upon a timely receipt of a response to the NOI, the analyst shall review the response to determine whether or not the plan administrator has submitted a satisfactory filing. Analysts should search the EFAST2 database to confirm a satisfactory amended filing was filed. In addition, the analyst shall review the statement of reasonable cause to ensure that it includes the penalty of perjury statement.

If the deficiencies cited in the NOI pertained to a review of the IQPA's audit workpapers, the analyst shall include in the memo: to the file sections on the findings cited; the plan administrator's response to the NOI; the analyst's evaluation of the response; and an explanation for concluding that the response to the NOI corrects the audit deficiency(ies). However, if the plan administrator provides an audit report from a new auditor before closing the case, the analyst shall review the workpapers of the new auditor. The analyst shall follow the procedures for the augmented workpaper review program found in this guide for documentation of the review of the workpapers.

*Statement of Reasonable Cause Not Signed by Plan Administrator or
Statement of Reasonable Cause Not Made Under Penalty of Perjury*

The plan administrator, or an individual who has duly authorized power of attorney, must sign the statement of reasonable cause. The statement of reasonable cause must be accompanied by a declaration that the statement of reasonable cause is made under penalties of perjury as required under 29 CFR § 2560.502c-2(e). If an individual is signing on behalf of the plan administrator under power of attorney, the plan administrator must provide a power of attorney form (e.g. IRS Form 2848) executed by the plan administrator.

If the statement of reasonable cause is not signed by the plan administrator or duly authorized power of attorney or if the statement of reasonable cause does not contain the required penalty of perjury declaration, the analyst shall immediately issue a 10-Day Penalty of Perjury letter addressed to the plan administrator. This notice provides the plan administrator with a final opportunity to provide the DOL with a proper statement of reasonable cause.

If the plan administrator fails to "respond" (i.e., postmarked by the 10th day) to penalty of perjury letter, the NOI becomes a final penalty and the intended penalty amount becomes the civil penalty assessment subject to collection proceedings. In addition, this failure results in the plan administrator waiving his/her administrative rights to contest the penalty or the facts alleged before an Administrative Law Judge. In these cases, the analyst shall prepare a closing file memo and final order checklist. The case will then be deemed closed and will be remitted to the EBSA's Office of Program Planning, Evaluation and Management for collection.

*Properly Filed Statement of Reasonable Cause
Reasonable Cause Analysis*

If a proper and timely filed statement of reasonable cause is received, the analyst shall prepare a reasonable cause analysis chart. The reasonable cause analysis shall include a summary the deficiencies noted, the plan administrator's argument(s) for abating the penalty, whether the filing is in compliance at the date of the reasonable cause analysis, the plan's past and subsequent reporting compliance history, and recommendation(s) as to whether or not the penalty should be abated and in what amount. The Reasonable Cause Committee analysis chart is located on the "L" drive.

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indented lines of text redacted)

After completion of the reasonable cause committee chart, the analyst shall present his or her analysis to the Reasonable Cause Committee (Committee).

Reasonable Cause Committee

The analyst shall complete the Reasonable Cause Committee Analysis chart and transmit it to the RCC coordinator. The analyst shall then arrange to present the case to the Committee and note the Committee's recommended action in the appropriate areas of the RCC Chart. The Chart shall then include be part of the case file. Analysts can discuss the case with his or her supervisor if the analyst disagrees with the Committee's recommendation to determine an appropriate resolution. After the case has been presented to the Committee, the analyst shall prepare a Notice of Determination on Statement of Reasonable Cause (NOD).

Notice of Determination on Statement of Reasonable Cause

The analyst shall prepare the NOD using the Deficient Filer NOD template. The approved NOD templates⁵ can be found on the OCA's common drive ("L" drive). The analyst shall use the format of the NODs located on the common drive as the NODs are subject to change.

⁵ NOD Examples for "No Penalty", "Partial Waiver" and "No Waiver"

The analyst **should not date** the NOD. The NOD will be dated by the office support staff at the time that it is mailed. The analyst shall prepare an envelope and a return receipt green card and submit the NOD and case file to the Division Chief for clearance and signature.

The issuance of the NOD concludes the divisional enforcement process. After the NOD is mailed by the office support staff, the file will be returned to the analyst. The analyst shall maintain the case file until the signed, return receipt green card is received. Upon receipt of the return receipt green card, the analyst shall return the case file to the office support staff for filing in the OCA file room. **Under no circumstances shall a case file with an NOD be filed in the file room until such time as the analyst has confirmed that the plan administrator has received the NOD.**

*Withdrawal Notice for
Notice of Rejection, Notice of Intent to Assess a Penalty, Notice of Determination
Issued in Error (Procedural Error)*

A **withdrawal** Notice for Notices of Rejection, Intent to Assess a Penalty, and/or Determination should be **only** used in instances where a procedural error occurred. You must receive your team leader or supervisor's approval before issuing a withdrawal notice for Notices of Rejection, Intent to Assess a Penalty and/or Determination. In addition, you must document in the case file the procedural error that occurred and the basis for issuance of the withdrawal notice. In all other cases where a satisfactory filing has been received in response to a Notice of Rejection, a Notice of Satisfactory Filing must be used.

The issuance of the withdrawal notice will generally conclude the enforcement process. After the notice is mailed by the office support staff, the file will be filed in the OCA file room.

Procedures for Undeliverable Letters

Undeliverable Letter – Should a letter be returned due to bad address, the analyst will make every effort to locate a current address. Some common methods are using internet search engines, calling the Plan by using the last known telephone number indicated on the Form 5500, and checking subsequent plan year filings. Once all resources have been exhausted, if no forwarding or corrected address can be obtained, the analyst shall prepare a closing memo with the reason for closure as “Undeliverable/Bad Address”.

Procedures to Verify Receipt in Absence of Return Receipt Card

If the certified mail, return receipt card has not been returned, the analyst should first attempt to verify that the notice was received. The analyst can verify receipt of the

certified mail by accessing the U.S. Postal Service website at www.usps.gov. If the website indicates that the certified mail was delivered, the analyst shall print confirmation of the delivery for inclusion in the case file. Upon verification of receipt of the notice, the case is considered closed.

If there is no confirmation that the notice was delivered, the analyst verify the correctness of the address being used as it may be necessary to reissue the notice using the correct address. If the address is correct, the analyst shall consult with the Division Chief or team leader for the next appropriate action.

Referrals to the Office of Enforcement Procedures:

Where it is determined that issues exist warranting referral of a case to the Office of Enforcement, the analyst shall prepare a memo referring the case and shall include in the memo the basis for the referral. The analyst shall also prepare the OE Transmittal Form. The format of the OE referral memo and the OE transmittal Form are maintained on the OCA "L" drive. The referral of a case to OE does not automatically result in the closing of the case. The analyst should consult with their team leader or supervisor.

Multiple Employer Welfare Arrangements Program Procedures

When a case is assigned, the analyst should review the ERISA Public Disclosure System.

An inquiry letter is sent to MEWA administrator when it's determined that they failed to file the Form M-1 or they filed it late.

If no response is received a Notice of Intent to Assess a Penalty is mailed to the MEWA administrator. The letter process is the same as the 502c-2 enforcement programs letter process.

502(c)(6) Compliance Program Procedures:

Upon assignment, the analyst shall review the referral for completeness and shall contact the referring investigator to determine if compliance has since been achieved. Depending on the circumstances of the referral (e.g. the plan sponsor is bankrupt), the case may be closed.

If the case is to be pursued, the analyst shall prepare a Notice to Furnish Documents (NFD). Once a response is received, the analyst shall review the response to ensure accordance with 29 CFR Section 2520.102-3 (contents of summary plan description). If the information is in compliance and timely received, the analyst shall prepare a closure memorandum as well as an EBSA Cover Memorandum to accompany document(s). These documents, after review, are forwarded to the requesting regional office or participant/beneficiary in the case of a direct request.

If the requested documents are not provided within 35 days from the date of the NFD, or the documents are deficient, the analyst shall prepare a Notice of Intent to Assess a Penalty. If a timely response is received, the analyst shall review the response to ensure accordance with 29 CFR Section 2520.102-3 (contents of summary plan description). After review, the analyst shall prepare a Notice of Determination and present the case before the Reasonable Cause Committee in the same manner as other cases.

If, after this process, the information has not been provided, the analyst shall consider a referral to the field for investigation after consultation with the supervisor or team leader.

Blackout Notice – 502(c)(7) Procedures

OCA targets, assigns and receives blackout notice cases from various sources such as:

Referrals from field:

Blackout notice cases may be opened based on a referral from the field offices following the discovery of a possible blackout notice violation during a field investigation.

502(c)(2) case in OCA:

During the course of a 502(c)(2) case in OCA, the analyst may become aware of a blackout that occurred or a situation that would give rise to a possible blackout such as a change in third party service providers for the plan. The case is then referred for possible opening of a blackout notice case.

Form 5500:

OCA can use the blackout notice questions on the Form 5500, Schedule I and Schedule H and Form 5500 S/F to target plans that indicated they experienced a blackout and did not provide the notice.

Blackout Notice cases are assigned a case number ending in “N”, placed in a black file folder and assigned to an analyst.

For cases opened based on referral from field:

The analyst shall review the information provided by the field, if a copy of the notice provided to participants has been supplied, the analyst shall complete the blackout notice review checklist and determine if the alleged violations appear valid and if any exceptions may apply. The analyst may contact the EBSA investigator to discuss the case, the circumstances of the blackout, any possible violations and general information regarding the plan fiduciaries.

If a violation is apparent, the Plan Administrator is issued a 15-day blackout notice inquiry letter. This letter requests the plan administrator provide the Department all the related information and documents regarding the blackout and to explain the circumstances surrounding any possible violations.

For cases opened based on OCA target:

For cases generated by Form 5500 targeting, the analyst shall review and note the areas of the Form 5500 and the IQPA report that are indicators that a blackout period occurred.

The Plan Administrator is issued a 15-day blackout notice inquiry letter. This letter states that the Department believes a blackout period has occurred based on the information in the Form 5500 filing. The Plan Administrator is requested to submit a copy of the notice provided to participants, explain the circumstances surrounding the blackout or to affirm that a blackout period did not occur.

For all blackout cases:

The response to the inquiry letter shall be reviewed by the analyst. If the blackout notice is provided, the blackout notice checklist shall be prepared. (If the blackout notice was provided in the field referral and the checklist has already been prepared, do not complete a second checklist.)

If it appears there was no violation, the case shall then be submitted for closing.

If the analyst determines a violation does exist, the penalty shall be calculated and a notice of intent to assess a penalty (NOI) shall be issued to the plan administrator. Also, if a response to the 15-day inquiry letter is not received, the analyst should prepare an NOI.

The plan administrator must respond to the NOI with a reasonable cause statement. When received, the reasonable cause statement and all supporting documents shall be reviewed by the analyst.

The analyst shall prepare a reasonable cause analysis with recommendations and present the analysis and the case to the supervisor and the Division Chief. Following the presentation to the reasonable cause analysis, a notice of determination (NOD) will be issued to the plan administrator. The case shall be held for a response to the NOD or confirmation of the payment of the penalty assessed. If there is no response to the NOD the case shall be referred to OPPEM for collection of the penalty. If the plan administrator responds contesting the penalty and requests an ALJ hearing, the case follows the normal ALJ case progression.

Proposed 502(c)(7) Penalty Structure⁶

Note: The following structure has been created with the assumption that a preliminary Request for Explanation has been sent to the Plan Administrator.

⁶ Developed January 19, 2005, by an Intra-Agency Working Group. OCA reserves its right to enforce this civil penalty to the full extent authorized.

Non-Provider:

- Base per-day per-participant penalty rate of \$25.
- The base rate is increased by \$50 if there is evidence that the violation was willful or egregious (The degree of willfulness can be determined by the degree of sophistication of the plan sponsor or its service provider. For example, where senior corporate staff imposed a blackout for their own, unlawful financial benefit. These matters will be flushed out in the investigation and our follow-up to the sponsor’s response to our show-cause letter).
- The base rate is increased by \$25 if there is evidence that the violation caused substantial loss to Ps & Bs. This is predicated on a participant’s compliance to the field and demonstration of a resultant large financial loss.
- Abatements from these amounts, including the \$25 base rate, will be made in the reasonable cause phase based on facts and circumstances.
- Days applied to penalty calculations span from 30 days prior to the last day Ps and Bs can exercise their rights through the end of the blackout period.
- NOI penalty for non-provided is capped at \$250,000 and for a late provider is capped at \$100,000

Late-Provider:

- Base rate is determined using a sliding scale depending on the degree of lateness:

Days in advance of the last day participants & beneficiaries can exercise their affected rights

- 29 to 25 days \$ 1
 - 24 to 20 days \$ 5
 - 19 to 15 days \$10
 - 14 to 10 days \$15
 - 9 to 5 days \$20
 - 4 to 1 days \$25 (equivalent to non-provider base rate)
- If there is evidence that the lateness was willful, egregious or caused losses to Ps and Bs, these base rates will be increased by \$50 or \$25, respectively.
 - The above rates are multiplied by the number of affected Ps & Bs and the number of days defined in “Non-Provider” above.
 - Generally where less than 30-day advance notice appears warranted, the notice will not be treated as having been provided late UNLESS the fiduciary fails to

properly certify in writing the reason(s) why 30 day advance notice could not be provided.

Deficient Notices:

- Deficient notice penalties can be in addition to the late provider penalties. Total penalties for deficient notices provided late will be capped at \$25 per participant per day providing there are no indications that the violations were willful, egregious or caused losses to Ps and Bs. Notwithstanding a willful or egregious failure and/or harm to participants, a sponsor who provided Ps and Bs with a notice both deficient and late will not be penalized more than a sponsor who failed to provide a notice.
- Penalties are calculated using the table of penalties below. The rates are multiplied by the number of affected Ps & Bs and the number of days elapsed since notice was provided to participants (this is different than late and non-provider penalties because it takes into recognition that some form of notice was provided).
- No deficient penalties are calculated if the notice was 26 or more days late. This is consistent with the penalty structure above that deems a notice this late to effectively not having been provided at all.
- The proposed deficient penalty schedule (reflecting the egregiousness of the violations) is as follows:

Failure	Penalty⁷
No statement of beginning and ending dates	\$7.00
Name, address, and telephone number of contact for answering questions about the blackout period was not provided or inadequate.	\$2.00
No description of affected rights.	\$5.00
No description of affected investments.	\$5.00
Failure to instruct participants on how to learn about the actual beginning and ending dates of the blackout period when period is stated as calendar weeks	\$1.00
The statement "evaluate appropriateness of current investment in light of blackout" is either not provided or is inadequate	\$3.00
Updated notice (issued after the length of blackout period is changed from the length indicated in the initial notice) did not adequately explain the reasons for the change	\$1.00

⁷ **Penalty** – All penalty amounts are determined on a per day and per participant basis

Updated notice (issued after the length of blackout period is changed from the length indicated in the initial notice) did not adequately identify all material changes in the information in the prior notice \$2.00

If less than 30 days notice was provided:

Failure to indicate why 30 day notice could not be provided \$2.00

Failure to include a statement that federal law requires 30 days notice \$2.00

Non-Filer Program Enforcement Procedures:

Non-filer cases generally start with the issuance of the NOI. However, depending on the method used to identify the case, there are varying levels of research that must be completed prior to issuance of the letter.

If the case was identified through a referral from the Office of Enforcement (OE), the analyst shall thoroughly review the referral and the attachments to ensure there is a failure to file and enough information was provided to open a case (EIN, plan administrator’s address, etc).

Additionally, the analyst will contact the contact person listed on the OE referral to discuss the case and to determine whether OE has closed its case. If the case is closed, the analyst shall determine how cooperative the plan administrator was and whether the plan was made whole. If the case is open, the analyst shall explain OCA’s process to the investigator to determine if OCA should proceed with the case at this time or wait until OE has resolved their case.

For all cases, the analyst shall complete the Non-Filer Review Form, which includes checking the End User (EFAST), ERISA Public Disclosure (EPDS), the Delinquent Filer Voluntary Compliance (DFVC), and the Interactive Voice Response (IVR) systems to ensure the filing has not yet been received. The Non-Filer Review Form can be found on OCA’s “L” drive. After the research is complete, the analyst shall prepare a Notice of Intent to Assess a Penalty, if warranted. Unlike others, the NOI for a non-filer is dated at the time of mailing by the support staff.

NOI Penalty Calculation

Penalties are calculated at \$300 per day up to a maximum of \$30,000 per year for each year the plan has not filed an annual report. The penalties are cumulative but in most cases are capped at \$180,000. Penalties are generally only assessed for the last three plan years that were not filed.

For Example: XYZ Company has a pension benefit plan that begun on January 1, 2001. It is now January 15, 2005 and there is no record of the plan ever filing. The penalty calculation would be:

Plan Year End	Filing Due Date	Number of Years Late	Penalty Due
Dec. 31, 2001	July 31, 2002	3 ½	\$120,000

Dec. 31, 2002	July 31, 2003	2 ½	\$90,000
Dec. 31, 2003	July 31, 2004	1 ½	\$60,000
Dec. 31, 2004	July 31, 2005	168 days @ \$300 per day (capped at \$30,000)	\$30,000
Total			\$300,000
Penalty to be assessed for 2002, 2003, and 2004			\$180,000

After issuing the NOI, the analyst shall follow the procedures in the same manner as a 502c-2 deficient filer case found in this manual.

When reviewing the reasonable cause statement to determine the amount of abatement, if any, the analyst shall ensure that all requested filings (not just the years penalized) were submitted. The penalty guidelines for abatement are “DFVC x 2”. This means that the abatement amount is the difference between the calculated NOI penalty amount less what would have been paid under the DFVC program, doubled. This amount can be adjusted up or down depending on facts and circumstances.

The DFVC penalties are:	Per Filing	Per Plan
Large Form 5500 Filers	\$10/day up to \$2000	\$4,000
Small Form 5500 Filers	\$10/day up to \$750	\$1,500
Top Hat Plans	\$750 regardless of the number of plans	
Apprenticeship & Training Plans	\$750 regardless of the number of plans	
Small 501(c)3 Plans	\$10/day up to \$750	\$750

Late Filer Program Enforcement Procedures

Upon assignment, the analyst shall print the Form 5500 and establish a case. The analyst shall complete the Late Filer Review Checklist to ensure the filer has not already come into compliance and no other cases are opened on the plan. The Late Filer Review Checklist can be found at on OCA’s “L” drive.

Late filers begin with the Notice of Intent to Assess a Penalty. The penalty is \$50 per day from the day the filing was due until the day filed without regard to extensions.

For Example: Camelot Toys has a profit sharing plan on a calendar plan year. On July 15 Camelot Toys files a Form 5558 - Application for Extension of Time, which gives the plan until October 15 to file. The filing is not made until November 1. This filing is NOT 16 days late (October 16-November 1) but 92 days late (August 1-November 1) and the late filer penalty is \$4,600.

After issuance of the NOI, the analyst shall follow the procedures in the same manner as a 502c-2 deficient filer case.

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Case Closing Procedures

At each stage of the process, the analyst must review the OCA Case Tracking System (OCATS) to ensure that all relevant data fields have been entered and that the entered data is correct. For every case closed, the analyst shall complete the OCATS Checklist verifying that OCATS is complete and accurate prior to submitting the case file to the OCA File Room. Where data has not been properly entered, the analyst shall notify the office support staff so that correction is made. After all corrections to OCATS have been made, the case file shall be filed in the OCA file room.

In some cases, the analyst may be asked to assist in the case as it proceeds through the collection process or through the administrative law judge process. Every analyst is expected to follow these procedures, without exception, unless otherwise approved by the team leaders or Division Chief.

Delinquent Filer Voluntary Compliance Program (DFVC) Procedures

Incoming Mail and Information

The Department's lockbox agent is responsible for receiving the DFVC submissions and the depositing of the payments and data entry of the records. Once this is completed, the scanned images of the filings and payments are transmitted to the Department of Treasury for viewing. At the same time, the computer record is posted on their website which is then uploaded by DRC on a daily basis. The hardcopies are mailed by the lockbox agent to OCA.

A new tracking system is being designed for the DFVC program which, along with the advent of the Electronic Check Processing (ECP) system for viewing submissions, will result in a complete overhaul of the DFVC program procedures. This section will be updated upon completion of the tracking system.

Document Types

The document type is used to identify the type of filing and is also used in the penalty calculations. It is vital that this field be correct. When the lockbox agent is entering the records, they only have access to document types A, B, and C. During the in-house

review, all document type Cs must be changed to a more appropriate document type and all As and Bs must be confirmed.

Below is a detailed list of the document types and their uses.

Code	Label	Explanation
A	Large Plan	Any plan that has 100 or more participants on line 6 (beginning of the year participants) that is not using the 80-120 rule.
B	Small Plan, normal	Any plan that has less than 100 participants on line 6 (BOY participants) OR plans that have 120 or fewer BOY participants and may use the 80-120 rule.
C	Bank, Other	Any filings that are received by the bank that do not fall into one of the above categories. Filings should not remain in this category, but should be moved to an appropriate category upon review.
D	Special Class Filer	Small plan filings that are maintained by a non-profit organization, specifically a 501(c)3, including 403(b)s. If the plan has more than 100 participants at any point during it's delinquency, then it is not a special class filer. If you cannot immediately determine if it is a special class filer, review lines 8a and 8b. If the codes 2L or 2M appear, the plan would qualify provided there are less than 100 BOY participants.
E	No DFVC Requirement	Included in this document type would be EZ filers, small fringe plans, DFEs, and other filings that are not eligible for the DFVC program.
F	Completion Filing	The completion to a previous DFVC filing. Generally this is a check that completes a filing that under paid the penalty.
G	ATP	Apprenticeship and Training Plan, plan number 999
H	Top Hat	Top Hat plan, plan number 888
I	OCA Reviewed, Close	Included in this document type are all filings that do not fall under the above types, but have been reviewed and closed by OCA. A common example is duplicate filings.
J	Further Review	This is for any filings that cannot be assigned to one of the document types above and cannot be closed, such as checks without filings. Filings in this category should be kept to a minimum.

Refunds

When a filing overpays the penalty, the Department will make two attempts to contact the filer for a refund. Both attempts must be “provable”, i.e. must have a fax confirmation or a certified mailing slip. In order to ensure these filings are not overlooked, there is a standard procedure that must be followed.

All refunds are paid electronically. In order to process the refund, the filer must complete the ACH form and mail it back with a cover letter requesting a refund and stating the amount of the refund and the reason for the request (usually overpayment). The ACH form and the refund letter must be mailed so that there is an original signature.

Written Correspondence

If the ACH form cannot be faxed to the filer, or the filer does not request a refund, correspondence must be sent by the analyst. If no fax was sent, a 1st refund letter must be sent. If the filer does not respond to the first letter or the fax, then a 2nd refund letter should be sent. All correspondence is tracked in the Access DFVC letter database, which also prepares the correspondence. Both the 1st and 2nd refund letters are mailed certified, return receipt.

Refunds

When the filer responds with a refund request letter and a completed ACH form, a refund can be processed. Correspondence is sent to the filer informing them that the refund is being prepared and should be deposited within two weeks. Additionally, information is sent to OPPEM directing them to refund the money. At this time the DFVC system must be updated to reflect the refunded amount.

Insufficient Payments

Periodically, filings that have underpaid the penalty are received. This is most common between August and November due to confusion over extensions. When this occurs, the Department must attempt to contact the filer via certified mail.

Identifying Filings Needing Additional Funds

When possible, the analyst shall contact the filer by telephone to inform them of the underpayment. The analyst shall confirm the plan information then explain the reason for the need for additional funds. The analyst shall note the day, phone number, and name of the person spoken to (or message left for). The analyst shall also include any relevant notes on the conversation.

If a completion filing (a DFVC submission that completes a previous submission) is not received within a few weeks, an Insufficient Amount letter must be prepared. This letter is prepared using the insufficient form in the Access DFVC Letter System. The Insufficient letter is sent to the plan administrator and gives the plan 15 days to respond with completion payment. If additional funds are not submitted, the submission is removed from the DFVC program and the plan administrator will receive a Notice of Intent as a late filer. Due to the importance of tracking receipt, this letter must be mailed certified.

Processing Completion Filings

When completing a submission, the filer should never resend the Form 5500. It is best if the filer only sends a check with a cover letter referencing the original filing's DFVC number. When a completion filing is received the funds are matched with the appropriate filing.

Removing Submissions from the DFVC Program

Should a plan not complete their filing, the submission is removed from the DFVC program and assigned as a Late Filer. Depending on the original submission, the entire submission or only parts of it may be removed.

Filings that are removed from DFVC must be entered into OCATS as a late filer and the case number should be noted in the comments field of the DFVC tracking system.

Miscellaneous

1. When using the DFVC program, the filer waives their right to protest the penalty, according to Section 5 of the DFVC Federal Register Notice. Should a statement be submitted, it be neither be read nor considered.
2. The DFVC program does not absolve the filer of other penalties, such as deficient filing penalties. The DFVC program is only for late and non-filer penalties. DFVC filings are entered into the ERISA database and are subject to the same checks that timely filings face.
3. In order for filings to apply to the "per plan" cap, they must all be submitted at the same time. Filings submitted separately will have to start the "per plan" cap over again. If all the filings cannot be submitted in one envelope, the submissions should include a letter explaining the situation and the filings in each envelope. The postmark dates for the envelopes must be within one day of each other.
4. There is no special penalty for large 501(c)3 organizations.

Case File Maintenance

**** Discuss any questions or concerns regarding OCA's General Letter Policy with your supervisor or team leader. ****

A case file must be established for each case opened by DAS and for certain case files opened by DRC (see below). It is imperative that each case file be complete and contains all correspondence and documents that sufficiently document all decisions and actions taken by OCA. The order of these documents has taken on a new level of importance as they are often reviewed by others and the Office of Inspector General. The development of the archival scanning of OCA case files further demands that case files be properly prepared and maintained. Should a case file be incomplete, it may be returned to the analyst for correction.

There should be no post-it notes inside the case file. All notes should be typed or legibly written on a sheet of paper and placed inside the case file.

OCA uses different colored folders for different types of cases. The divider results in the folder consisting of four sections. All documents in each section are to be filed in chronological order, separated by an appropriate color title sheet. Pre-printed color title sheets can be found in the file room. If there is no pre-printed color title sheet, a color title sheet must be prepared and appropriately titled in a font no smaller than 50 point.



Cases assigned to DAS must be

kept in a **yellow** folder.

For DRC, case files are bound the issuance of the Notice of

in colored folders only upon Intent to Assess a Penalty.

Prior to that, DRC case information is kept together in a binder or with binder clips.

Each case assigned to DRC must be kept in the appropriate color case folder as indicated below:

Deficient Case.....	Grey
Late Filer.....	Blue
Non Filer.....	Red
Blackout Notice.....	Black
502(c)6.....	Green

Each case file must contain a case file label. The label must contain the case number, the plan name, and folder number. If there is more than one file for the case, any supplemental files must also contain a case file label. For example:

05-1001D ABC Company 401(k) Pension Plan Folder 1 of 3

The contents of each case file should be constructed as follows:

First Section (left side): All written **external** correspondence generated by OCA is to be kept in this section. This includes the following:

- Inquiry Letters (e.g. requests for Form 5500, workpapers, documents, etc.)*
- Correspondence With IQPAs (e.g. Statement of Preliminary Findings)*
- Notice of Rejection*
- Notice of Intent to Assess a Penalty*
- Notice Requesting Penalty of Perjury Statement*
- Notice of Determination*

- Closing Letters or Withdrawal Letters (not certified)
- Notice of Satisfactory Filing (not certified)
- AICPA/State Board of Accountancy Referrals (not certified)
- Closing Memo
- If necessary – Final Order Checklist

* These notices/letters constitute official enforcement actions and must be sent via certified mail, return receipt requested (or via overnight mail if necessary). The certified receipt and returned receipt green card must be stapled to the lower right corner of page one of the corresponding notice/letter. If OCA does not receive a returned receipt green card, the analyst should track and confirm receipt of the notice/letter via the U.S. Postal Service website at www.usps.com. If received, a copy of the confirmation should be printed and placed behind the corresponding notice/letter in the case file. If receipt of the notice/letter cannot be obtained, the analyst should consult with the Division Chief or Team Leader for the appropriate follow-up action.

If the notice/letter is sent via overnight mail, the analyst shall obtain a confirmation of receipt which must be placed behind the corresponding notice/letter in the case file. Be aware that the response time period may be affected by using overnight delivery.

The “primary” method of delivery for OCA notices should be via the U.S. Postal Service using certified mail, return receipt green card. In certain circumstances, an alternative method of delivery may be required if the primary method of delivery is unsuccessful. Alternative methods of delivery shall be made on a case-by-case basis. For certain DAS case work (i.e., workpaper reviews), FedEx is permitted for inquiry letters and for correspondence with IQPAs.

Second Section (right side): All **internal** administrative documents generated by OCA are to be kept in this section. Documents in this section shall be separated by the appropriate colored title sheet. Documents to be included in this section are:

- General memorandum
- Case Transmittal Forms (OCATS data tracking form)
- Telephone logs (all telephone write-ups should be kept together, in chronological order)
- Memoranda to or from other EBSA offices
- Memoranda to or from other governmental agencies
- Penalty calculations
- Reasonable cause analysis
- Reasonable Cause Committee Chart
- Collection Memo
- ALJ and Federal Court Documents
- DRC Case Notes (For DRC this includes both telephone memorandum and file notes. It is not necessary to place each case note on a separate page. However, all phone notes must contain the name and telephone number of the person, their position/relationship to the plan, and the date and time in addition to notes on the conversation. All notes must

be either typed or written legibly in pen. There is a preferred format for the case notes on the L drive.)

Third Section (left side): The third section includes documents supporting the case review. Documents in this section shall be separated by the appropriate colored title sheet. Documents to be included in this section are:

- DRC Review Checklists (e.g. Form 5500, Late-filer, Blackout, etc.)
- IQPA report review checklist
- Documentation of entrance/exit conference with IQPA
- DAS Summary memorandums of workpaper review (on-site reviews, firm reviews, desk reviews, preliminary findings memo, response to preliminary findings memo)
- DAS Workpaper review checklists and guides
- Other miscellaneous documents or analysis performed as part of the casework.

Fourth Section (right side): The fourth section includes the original Form 5500 filing and any responses to notices/letters issued by OCA. Documents in this section shall be separated by the appropriate colored title sheet. Documents to be included in this section are:

- Original Form 5500 Annual Report
- Response(s) to Inquiry Letter
- Response(s) to Notice of Rejection
- Response(s) to Notice of Intent to Assess a Penalty
- Response(s) to Notice Requesting Penalty of Perjury Statement
- Response(s) to Notice of Determination
- IQPA response to Statement of Preliminary Findings
- Any other information provided by the filer

Supplemental Case Files (“Pendaflex” files): Supplemental case file(s) should be maintained for bulky documents submitted in response to a notice/letter. For example, copies of audit workpapers. The supplemental case file(s) must contain a case file label (see above). In addition, documents contained within the supplemental case file(s) should be appropriately identified.

It is the analyst’s responsibility to ensure the case file is maintained in the correct order and reflects the work performed.

OCA General Letter Policy

****Questions or concerns regarding OCA's General Letter Policy should be directed to your supervisor or team leader.****

In order to ensure consistency in letters issued by OCA, the following procedures must be followed.

- It is the analyst's responsibility to ensure that the case file is maintained in the correct order and reflects the work performed.
- **Support staff will mail out all letters. There are no exceptions.**
- All OCA letters have a standard template and are maintained on the "L" drive. These templates must be used. If a different version of the letter is used, it may result in the case being returned to the analyst. If a change to the standard template letter is required, it must be discussed with and approved by the supervisor or team leader.
- Ensure that the letter is properly addressed to the plan administrator or other party (e.g., CPA firm for certain DAS letters). When preparing a letter addressed to the plan administrator, it must be addressed in the following manner:
 - Plan Administrator
 - Plan Name
 - Street Address of the Plan Administrator (if blank use plan sponsor)
 - City, State, Zip Code of the Plan Administrator (if blank use plan sponsor)
 - Attn: Plan Administrator (if available and legible)
- Ensure that the "RE: " section of the letter contains the appropriate information as applicable: plan name, EIN, PN, case number, penalty amount
- Ensure that your name and complete telephone phone number are included in the letter.
- Proof read all of your letters before submission.
- For DRC, all letters must be submitted for review. A review copy of the letter must be provided and should be a photocopy of the original letter. The review copy will have a Signature Block stamp in the top right portion of the first page, opposite the address. The analyst shall initial and date the first line. The date used is the date the case is placed in the review area.
- Generally, cases are reviewed and mailed daily with the exception of Notices of Intent (NOI) and Determination (NOD) as these notices are signed by the Chief Accountant. Letters signed by the Chief Accountant are generally mailed on Mondays.

- Not all letters or referrals that you prepare will be sent the week that you prepared them. Back logs in supervisory review or administrative support staff may delay the issuance of letters or referrals. Except for NOIs, you should not date any letters or referrals.
- Only NOIs should be dated. Since NOIs are signed by the Chief Accountant, you should allow for sufficient time for your supervisor and the Chief Accountant to review and sign the NOI. Please also take into consideration the schedule of your supervisor and the Chief Accountant (i.e., holidays, vacations, travel) when dating NOIs. Failure to do so may result in your having to recalculate the penalty and prepare another NOI for signature.
- Generally, NOIs and NODs are reviewed by your supervisor by COB on Wednesday, are signed by the Chief Accountant on Thursday, and are mailed on the following Monday. When there is an exception to this (usually due to a holiday) an e-mail will be sent informing the office of the changes.
- After signature, letters and referrals are dated, copied, mailed, and entered into the OCA Case Tracking System by the support staff. Cases that are closed will be filed in the file room, except for cases where an NOD has been issued. In this case the case shall be returned to the analyst who must maintain the case until such time as a signed, return receipt card has been received, at which point it may be filed in the file room.
- Include an addressed envelope for your correspondence, including any “cc” recipients. This includes preparing the green return receipt card. If an envelope and properly prepared green return receipt card are not provided, the case will be returned to you. See the envelope preparation chart on the following page of this guide for helpful hints for preparing the envelope and green return receipt card.
- For letters to be sent overnight delivery (FedEx), please make sure that you provide the support staff with the complete address and telephone number of the recipient for the support staff to prepare the overnight delivery label. Unless otherwise instructed to do so, you should not prepare the overnight delivery label.
- The return receipt, green card must contain the case number and analyst’s initials. If using the desktop label maker the case number and analyst’s initials must be hand written on the green card, not on the label.
- For letters mailed certified mail, return receipt, ensure that the returned, signed, green card is stapled to the appropriate corresponding letter.
- For letters mailed via overnight delivery (FedEx), that the delivery confirmation must be placed behind the appropriate corresponding letter in the case file.

Helpful Hints for Preparing the Envelope and the Green Return Receipt Card

Envelope Preparation

Most letters are mailed certified mail, return receipt requested with the exception of closing letters. It is your responsibility to prepare the envelope for mailing on all your cases. This includes preparing the green card. You have been provided stamps and a label maker to make the process easier.

1. Print two labels with the plan administrator's address.
2. On the Green Card:
 - a. Place the 20 digit number sticker from the green & white Certified Receipt on line 2 (Article Number) of the green return receipt (green card).
 - b. On the back of the green card, use the stamp with the US Department of Labor's address for the return address.
 - c. Place one of the labels on line 1 (Article Addressed to) of the green card.
 - d. If using a heat-generated label from your desktop label maker, write your initials, the case number, and the letter type in this space, but not on the label.
 - e. In box 3 (Service Type) marked the "Certified Mail" box.
3. On the green and white slip, write the case number and letter type being mailed (15 day, NOR, etc) on the "Article Sent To" line.
4. Removing the sticker backing from green and white slip. The sticky part should be folded over the top flap of the envelope, in the middle. The part with the bar code is on the front of the envelope with the white dotted line on the crease between the envelope and flap. Do not remove the non-sticky part of the green and white slip.
5. On the envelope between the address and the "Official Business" line, use the small stamp with EBSA/OCA Suite 400; P460 on it. This is our return address.
6. Put the remaining address label on the front of the envelope.
7. Put the green card in the back of the envelope, between the flap and the envelope.
8. STAMP the front of every envelope for NOI and Full-penalty NOD mailings with the red "URGENT Time Sensitive materials" stamp.

Letter Types

Inquiry Letter

Inquiry Letter Defined:

Regulation. . . .	This letter is not statutory
Which Cases. . .	The Inquiry letter may be used on all case types. There may be specific letters depending on the case type.
Analyst Action Period.	Within 15 days of assignment if a merge file for automatic letter generation has been created. If no such file exists, then 30 days from assignment.
Preceded By. . .	If used, this is generally the first correspondence.
Followed By. . .	Closing memo – If a response is received within the specified response period that satisfies the reason for sending this Letter NOR or NOI (depending on case type) – If no response is received (or the response does not satisfy the stated reason(s) for the Inquiry Letter) Inquiry Follow-up Letter – If the deficiency does not warrant sending a NOR/NOI. See below for further discussion
Response Period	The Inquiry letter may have a response period of 10, 15, or 30 days.
Certified?. . . .	The Inquiry Letter is ALWAYS mailed certified or overnight delivery. The green card or other proof of delivery must be attached to the letter.
Dated?.	The Letter of Inquiry is not dated by the analyst, unless instructed otherwise.
Signed By. . . .	Analyst or Division Chief
Review Block?.	Yes, place it on the top upper left side of the Letter.

As with all letters, the official template is located on the L drive. It is required that this version be used. Usage of different versions may result in the case being returned to the analyst.

The Inquiry letter has a flexible response period of 10, 15, or 30 days. The majority of the time the response period should be 10 days. Generally this letter is used when, after reviewing a filing, clarification or amendment is needed.

When a response is received within the required period, review the materials. If the issues have been resolved and no new issues have surfaced, prepare a closing memo.

If the issues have not been resolved with the response, either prepare a NOR/NOI or an Inquiry Follow-up.

- ◆ The NOR/NOI should be prepared when the outstanding issue is relevant and significant.
- ◆ If the analyst and reviewer feel the outstanding issue is minor, an Inquiry Follow-up letter may be used. This letter informs the plan that the issues remains outstanding and should be resolved; however the Office of the Chief Accountant will take no further action.

As with all letters, the analyst shall prepare an envelope and a return receipt green card and submit the Letter of Inquiry and case file to the respective Team Leader for clearance and signature. Once reviewed by the Team Leader and when found to be appropriate for release, the Team Leader gives the entire case file including the Inquiry Letter to the administrative staff for mailing and the updating of the OCATS system to reflect the current status. After the letter is mailed, the case file will be returned to the analyst.

Notice of Rejection

NOR Defined:

Which Cases. . . .	The NOR is used on deficient filer cases.
Analyst Action Period	If first correspondence: Within 15 days of assignment if a merge file for automatic letter generation has been created. If no such file exists, then 30 days from assignment. If Inquiry was issued: Within 30 days from the receipt of a response or the expiration of the response period, whichever is less.
Preceded By. . . .	The NOR can either be preceded by an Inquiry letter, or be the first correspondence.
Followed By. . . .	A closing memo and Notice of Satisfactory Filing if the issues are resolved. Otherwise, a Notice of Intent to Assess a Penalty.
Response Period	The filer has 45 days from the date of the letter.
Closing Reasons	Administrative, Bankrupt/Terminated, Undeliverable, No Deficiency, Filer Has Demonstrated that the Filing Was Satisfactory, A Filing Was Not Required.
Certified?.	The NOR is ALWAYS mailed certified or overnight delivery. The green card or other proof of delivery must be attached to the letter.
Dated?.	The NOR is not dated by the analyst, unless instructed otherwise.
Signed By.	The analyst
Review Block?. .	Yes

As with all letters, the official template is located on the L drive. It is required that this version be used. Usage of different versions may result in the case being returned to the analyst.

The purpose of issuing the NOR is to notify filers of deficiencies in their annual report filings submitted to the Department and to afford them the opportunity to voluntarily comply with the required rules and regulations. The goal is to receive an acceptable amended annual report filing without advancing to the next level of correspondence, which may result in penalties.

If an Inquiry letter was issued on a Deficient filer case, and a satisfactory response is not received within the required time period, the next step is the issuance of a NOR. The NOR includes all the reporting and disclosure deficiencies noted by the analyst.

The NOR requires a response from the plan administrator within 45 days of the date of the NOR. The 45-day period is statutorily required pursuant to Section 104(a)(5) of ERISA which provides the plan administrator 45 days to submit a revised annual report filing satisfactory to the Department of Labor before any further enforcement action can be taken.

Upon receipt of a response to the NOR, the analyst shall perform a review of the information submitted to determine whether:

1. The plan administrator has corrected all of the deficiencies cited in the NOR and submitted an acceptable amended annual report filing; and
2. The response was received timely, within 45 days of the date of the NOR. It is the policy of OCA to use the postmark date of the response to the NOR as the receipt date.

If all of the deficiencies cited in the NOR have been satisfactorily corrected, the analyst will close the case and prepare a Notice of Satisfactory Filing and a Case Closing Memo.

If the plan administrator fails to respond to the Notice of Rejection within the 45-day period, or fails to provide a revised annual report filing satisfactory to the Department, the analyst will issue a Notice of Intent to Assess a Penalty. This also applies if the filer sends the correction after the 45-day response period but before the NOI has been issued.

Notice of Satisfactory Filing

Notice of Satisfactory Filing (NSF) Defined:

Regulation. . . .	This letter is not statutory.
.	
Which Cases. . .	The NSF is used on deficient cases only.
Analyst Action Period	Within 30 days from the receipt of the correspondence
Preceded By. . .	The NSF is preceded by a Notice of Rejection (NOR).
.	
Followed By. . .	Closing Memo
Response Period	No response is required.
Closing Reasons	Filer filed an amended Form 5500 that satisfied all of the deficiencies listed in the NOR.
Certified?. . . .	The NSF is NOT sent Certified
.	
Dated?.	The NSF is not dated by the analyst. The NSF will be dated by the support staff prior to the NSF being mailed.
Signed By. . . .	The analyst
Review Block?.	Yes
.	

As with all letters, the official template is located on the L drive. It is required that this version be used. Usage of different versions may result in the case being returned to the analyst.

The NSF is a courtesy letter, informing the plan that OCA will be taking no further action on the issues raised in the NOR. In addition to the NSF, a closing memo must be prepared for the case file. Additionally, the analyst shall also include in the case file a memo that documents the receipt of the amended Form 5500 filing and proposed issuance of the NSF.

The analyst shall prepare and sign the letter, prepare an envelope, and prepare a closing memo, then submit the NSF, closing memo, and case file to the Team Leader for clearance. Once reviewed and approved by the Team Leader, the entire case file will be given to the administrative staff for mailing and updating of the OCATS system to reflect current status. The case file will then be filed in the file room.

Closing Memo:

Closing Memo:

Regulation	This is not statutory
Which Cases	Most cases that are closed prior to the issuance of a NOI.
Analyst Action Period	Within 30 days of the assignment of the case or within 30 days of the receipt of a timely response to correspondence.
Followed By	Case closure and filing
Preparer	Analyst

As with all letters and forms, the official template is located on the L drive. It is required that this version be used. Usage of different versions may result in the case being returned to the analyst. The closing memo is used to close most cases prior to the issuance of a Notice of Intent to Assess a Penalty. To prepare the closing memo, complete the top of the form and select the appropriate closing reason. Only one closing reason maybe selected.

Administrative	The case is being closed at the recommendation of a team leader or supervisor.
Bankrupt/Terminated	It is discovered that the plan is either in bankruptcy or in the process of termination. Prior to closing, proper research must be conducted and noted in the file.
Undeliverable	Our correspondence is returned after numerous attempts. Document all attempts and research conducted.
Filer has demonstrated the filing was satisfactory	The filer has submitted information to OCA indicating there was no deficiency and the filing was correct as originally filed .
Corrected filing received	The filer has submitted a filing that corrects the deficiencies and no further deficiencies are identified. This reason cannot be used for Non-filer or Late filer cases.
No deficiencies	NO correspondence has been issued by OCA and the filing is deemed to be satisfactory. This occurs during the initial review.
OE Referral	The case is referred to OE and the sole closing reason is the referral. Comments must indicate the reason for the referral.
Filing not required for this plan	It is discovered that a filing was not needed. Comments must indicate the reason a filing is not required.

Notice of Intent to Assess a Penalty

NOI Defined:

Regulation.	Regulation §2560.502c-2(c) states: Prior to the assessment of any penalty under section , the Department shall provide to the administrator of the plan a written notice indicating the Department’s intent to assess a penalty under section , the amount of such penalty, the period to which the penalty applies, and the reason(s) for the penalty.
Which Cases.	The NOI is used on all case types
Analyst Action Period.	Within 30 days of receipt of a timely response to the NOR, within 30 days of the NOR target date, or within 30 days of case assignment.
Preceded By.	On deficient filer cases, the NOI is preceded by a Notice of Rejection. On late filers, non-filers, and DFVC filings the NOI may be the first correspondence.
Followed By.	If a response is received under penalties of perjury, prepare a reasonable cause analysis and the Notice of Determination. If no response is received (see “Penalty of Perjury Notice” section for handling responses not signed under Penalties of Perjury) refer the case to collections.
Response Period	The filer has 35 days from the date of the letter if mailed certified. If the letter is mailed overnight delivery, or other method, the response period is 30 days.
Closing Reasons	Administrative, Failure to respond timely to NOI, NOD issued, Withdraw and close NOI
Certified?.	The NOI is ALWAYS mailed certified or overnight delivery. The green card or other proof of delivery must be attached to the letter.
Dated?.	The NOI is always dated by the analyst, unless it is a Non-filer case which should not be dated.
Signed By.	Ian Dingwall, Chief Accountant
Review Block?.	Yes

As with all letters, the official template is located on the L drive. It is required that this version be used. Usage of different versions may result in the case being returned to the analyst.

Unless the case is a non-filer, the analyst **should date** the NOI since the penalty amount is calculated from the original due date, without regard to extension of time, until the date

of issuance of the NOI. NOIs are dated for Mondays. The analyst shall ensure that the date of the NOI allows for sufficient time for the case to clear supervisory review and for signature. Failure to allow for sufficient time may result in the analyst having to prepare a new NOI. The analyst shall prepare an envelope and a return receipt green card and submit the NOI and case file to their team leader for clearance and signature.

Types of Penalties

Deficient Filing Penalties

- Missing or deficient IQPA reports – \$150/day capped at \$50,000.
- Missing or deficient information (financial or other significant items) \$100/day capped at \$36,500.
- Missing or deficient non-critical information – \$10/day capped at \$3,650.

Late Filing Penalties

- \$50/day from the original due date (without regard to extension) to the filing date. There is no cap.

Non-Filing Penalties

- \$300/day from the original due date (without regard to extension) to the filing date.
- The penalty is capped at \$30,000 per year of delinquency and per filing. For further details, see the Non-filer section of this handbook.

OCA reserves its right to enforce this civil penalty to the full extent authorized.

The plan administrator has 35 days to respond to the NOI by providing a filing satisfactory to the DOL along with a statement of reasonable cause, made under the penalty of perjury, as to why the penalty should not be assessed. (If the NOI is mailed other than certified, the plan administrator has 30 days to respond.) **There is no extension of time to the response period.**

If the plan administrator has not responded by the 25th day, the analyst may contact the plan administrator or representative at the number reported on the Form 5500 Annual Report to remind him or her of the response deadline. As with all calls, **this conversation must be documented in the case file.** Failure to timely file a statement of reasonable cause results in the penalty becoming a final penalty subject to collection proceedings. In addition, failure to respond timely to the NOI results in the plan administrator waiving his/her administrative appeal rights before an Administrative Law Judge.

Penalty of Perjury Notice

POP Defined:

Regulation.	This letter is not statutory.
Which Cases.	All cases where a response to the NOI was received, but it was not signed under penalties of perjury as required in §2560.502c-2(e).
Analyst Action Period.	Within 3 business days of the receipt of the NOI response.
.	
Preceded By.	The Notice of Intent to Assess a Penalty
.	
Followed By.	If a response, under penalties of perjury is received, the case proceeds to the NOD. Otherwise, the penalty becomes final.
Response Period	The filer has 10 days from the date of the letter to respond with a statement of reasonable cause under penalties of perjury.
Closing Reason	Failure to Respond Timely to the NOI
Certified?.	The POP is ALWAYS mailed certified or overnight delivery. The green card or other proof of delivery must be attached to the letter.
.	
Dated?.	By the support staff
Signed By.	Analyst
Review Block?.	Yes
.	

As with all letters, the official template is located on the L drive. It is required that this version be used. Usage of different versions may result in the case being returned to the analyst.

Due to the importance of the penalty of perjury statement, the analyst **must** review the response to the NOI immediately upon receipt. If a statement is not included, the analyst will immediately prepare a POP letter and immediately present it for review. **The POP letter will be mailed within THREE business days of receipt of the response to the NOI.** It is the analyst's responsibility to ensure the POP is reviewed and mailed within three business days.

The POP's 10 day response period may extend beyond the NOI's 35 day response period or the collection deadline of 45 days. In this situation, if an acceptable response to the POP is received, the analyst action period is not changed and remains 30 days from the receipt of the original NOI response.

If a response to the POP is not received within 10 days, the OPPEM collection memo must be completed within 3 days of the expiration of POP time or on the 45th day after

the issuance of the NOI, whichever is later. Note on the OPPEM memo that the delay in referral, if any, is due to attempting to obtain a signature under penalties of perjury.

Withdrawal Letter

Withdrawal Letter Defined:

Regulation. . . .	This letter is not statutory
.	
Which Cases. . .	All case types.
Analyst Action Period.	30 days from the assignment of the case to the issuance of the first correspondence or case closure.
.	
Preceded By. . .	The NOI or the NOR
.	
Followed By. . .	The Withdraw is the final action on the case
Response Period	No response is required
Certified?. . . .	The Withdrawal is NOT certified
.	
Dated?.	The Withdraw is not dated by the analyst.
Signed By. . . .	Analyst if withdrawing an NOR; Chief Accountant if withdrawing the NOI
Review Block?.	Yes
.	

As with all letters, the official template is located on the L drive. It is required that this version be used. Usage of different versions may result in the case being returned to the analyst.

The purpose of the withdrawal letter is to rescind a Notice of Rejection (NOR) or Notice of Intent to Assess a Penalty (NOI). It notifies the filer that the Department intends to take no further action in regard to the issues discussed in the preceding correspondence.

Withdrawals are issued if it has been determined that the filing was satisfactory prior to the date of the previous correspondence. Such determination is generally made based upon information submitted by the filer in response to the correspondence.

There may be circumstances where an NOR or NOI must be re-issued, thereby superseding a previously issued NOR or NOI. Be certain to use the NOR or NOI templates on the L drive that contain the appropriate “re-issue” language.

Notice of Determination of Reasonable Cause

Withdrawal Letter Defined:

Regulation. . . .	This letter is not statutory
.	
Which Cases. . .	All case types.
Analyst Action Period.	30 days from the assignment of the case to the issuance of the first correspondence or case closure.
.	
Preceded By. . .	The NOI or the NOR
.	
Followed By. . .	The Withdraw is the final action on the case
Response Period	No response is required
Certified?. . . .	The Withdrawal is NOT certified
.	
Dated?.	The Withdraw is not dated by the analyst.
Signed By. . . .	Analyst if withdrawing an NOR; Chief Accountant if withdrawing the NOI
Review Block?.	Yes
.	

As with all letters, the official template is located on the L drive. It is required that this version be used. Usage of different versions may result in the case being returned to the analyst.

The purpose of the withdrawal letter is to rescind a Notice of Rejection (NOR) or Notice of Intent to Assess a Penalty (NOI). It notifies the filer that the Department intends to take no further action in regard to the issues discussed in the preceding correspondence.

Withdrawals are issued if it has been determined that the filing was satisfactory prior to the date of the previous correspondence. Such determination is generally made based upon information submitted by the filer in response to the correspondence.

There may be circumstances where an NOR or NOI must be re-issued, thereby superseding a previously issued NOR or NOI. Be certain to use the NOR or NOI templates on the L drive that contain the appropriate “re-issue” language.

Notice of Determination of Reasonable Cause

Reasonable Cause Committee (RCC) Defined:

Regulation.	Making a determination of the Reasonable Cause Statement is statutory. The advisory role of the reasonable cause committee is a part of the determination process
Which Cases.	All cases that have responded to the NOI with a reasonable cause statement under penalties of perjury.
Preceded By	The issuance of a Notice of Intent to Assess a Penalty and the receipt of a reasonable cause statement, under penalties of perjury, from the plan
Followed By	Notice of Determination
Preparer	Analyst

In addition to reviewing suggested penalty assessments, the current RCC makes recommendations for future action on cases brought before it to insure consistency among cases with similar facts.

The RCC is now composed of four OCA staff persons – the two members in DRC, a staff member from DAS, and the Chief Accountant’s Senior Technical Advisor.

Generally, the Committee meets weekly, usually Tuesday or Wednesday mornings. However, the scheduling of the meeting is based on the volume of cases to be presented. At least 24-hours prior to a meeting, an e-mail is sent to all staff members alerting them of the date and time of the next meeting. Staff members who wish to present a case must complete the RCC Analysis form e-mail it to the RCC coordinator. This Analysis Chart shall include the analyst’s analysis.

Technically, the Committee is an advisory board – its findings are recommendations for the division chief and chief accountant. If the analyst disagrees with the Committee’s recommendations, he or she may discuss the case with his or her supervisor and, in turn, with the Division Chief or chief accountant.

After the RCC makes its recommendations, the analyst must revise the RCC Analysis Chart for the case file, and then prepare the Notice of Determination.

Reasonable Cause Committee, Chart

Reasonable Cause Committee Chart:

Regulation	This is not statutory, however it is required
Which Cases	All cases for which an NOD is prepared
Preceded By	The issuance of a Notice of Intent to Assess a Penalty and the receipt of a reasonable cause statement, under penalties of perjury, from the plan.
Followed By	Notice of Determination
Prepared By	Analyst

As with all letters and forms, the official template is located on the L drive. It is required that this version be used. Usage of different versions may result in the case being returned to the analyst. When saving this document, it must be renamed and the 'Save as Type' must be changed from '.dot' to '.doc' for document.

The RC Chart is used to summarize the facts about the case prior to presenting it to the Reasonable Cause Committee. After meeting with the RCC, this chart must be updated to reflect the committee's recommendation. The chart is then retained in the case file.

The Chart is a template form that allows for entry only in shaded areas. To navigate the chart, use the tab key or the arrow keys to move between fields. (The shading does not print on the final document.) Use of the Enter key will create a new line within that field.

When completing this chart, **do not** retype the statements from the Plan Administrator's reasonable cause statement. The 'Other Considerations' field should indicate an additional information that was discovered through conversations, research, or other sources that may be pertinent to the case, such as bankruptcy or a previous bad actor.

The 'Analyst Recommendation' field should include the analyst's recommended penalty and the reason for that amount.

The Chart must be e-mailed to the RCC coordinator no later than the close of business the day prior to the RCC meeting. Following the RCC meeting, update the 'Final Penalty Amount' and the 'RCC Comments and Recommendations' fields and retain in the case file.

OCA REFERRAL FORM to the Office of Enforcement

OCA REFERRAL TO The Office of Enforcement (OE) Defined:

Regulation.	This form is not statutory.
Prepared by. . . .	The Analyst
Which Cases. . .	All cases where there are issues that should be handled by OE.
Preceded By. . .	The referral can be made at any point in the life of the case.
Followed By. . .	OE keeping OCA updated on the progress of the referral.
Response Period	There is no set time period for OE to respond to OCA about the referral.
Dated?.	The referral is not dated by the analyst
Signed By.	Analyst
Review Block?.	Yes

As with forms and letters to be used by the analysts, the official template is located on the L drive. It is required that this version be used. Usage of different versions may result in the case being returned to the analyst.

The referral from OCA to OE is prepared by the analyst, listing themselves as the contact person. The subject of the referral is the name of the case. Briefly explain the reasons OCA is referring the case in the indicated area, such as the one of the following:

- late remittance of contributions to the Plan, even if corrected,
- failure to transfer contributions to the Plan, even if corrected,
- fiduciary violations such as prohibited transactions,
- bankruptcy and/or orphaned plan, and
- hard to value assets especially when information on valuation of these assets are either extremely brief, or are non-existent or where the valuation of these assets is not currently dated.

Typically the case should be processed, within OCA, for closing once the case is referred to OE. However, the case should remain open if OE's actions may result in the need for an amended filing. Also, if a NOI or NOD is pending, the case must be kept open until the pending OCA issue(s) are resolved.

Custodial Care of Case Files

Custody and control of case files are the responsibility of the individual analyst from the date the case is assigned until the date the case is closed. Cases should not be filed within the file room until such time as the case is closed.

In the case where a Notice of Determination has been issued, the case is not deemed closed until such time as the analyst receives the certified mail, returned receipt green card or has obtained other evidence that the Notice of Determination has been received. If the analyst does not receive/obtain evidence of receipt of the Notice of Determination, the analyst shall consult with the Division Chief or team leaders for the appropriate follow-up action.

Once a case file has been closed, the case file will be filed in the OCA file room. Anyone who needs to retrieve a case file from the file room should complete a file location holding card.



The completed holding card should be placed in the retrieved file's location. The individual removing the case file should indicate on the holding card their name and the date that they removed the case file. Upon return of the case file, the individual shall remove the holding card.

The individual removing the case file is primarily responsible for the custody and control of the case file until it is returned to the file room. Therefore, if the case file is removed for another EBSA individual, the analyst is responsible for the case file until it is returned to the file room.

At no time shall an original case file be given to another office (e.g., Solicitor's Office). Copies of file documentation will be provided instead.

OCA has instituted these procedures so that proper custody and control of casefiles is maintained at all times.

Acronyms

AICPA	American Institute of Certified Public Accountants
CCT	Common Collective Trust
CFR	Code of Federal Regulations
CPA	Certified Public Accountant
DAS	Division of Accounting Services
DFE	Direct Filing Entity
DFVC	Delinquent Filer Voluntary Compliance Program
DRC	Division of Reporting Compliance
DOL	Department of Labor
EBSA	Employee Benefits Security Administration
EDS	EFAST Database System
EFAST	Electronic Filing Acceptance System
ERISA	Employee Retirement Income Security Act
ESOP	Employee Stock Ownership Plan
FASB	Financial Accounting Standards Board
FERSA	Federal Employees' Retirement System Act
GAAP	Generally Accepted Accounting Principles
GAAS	Generally Accepted Auditing Standards
IQPA	Independent Qualified Public Accountant
IRC	Internal Revenue Code
IRS	Internal Revenue Service
MTIA	Master Trust Investment Account
OCA	Office of the Chief Accountant
OCATS	OCA Case Tracking System
OE	Office of Enforcement
OPPEM	Office of Program, Planning, Evaluation & Management
PBGC	Pension Benefit Guarantee Corporation
PSA	Pooled Separate Account
SAS	Statement on Auditing Standards
103-12IE	103-12 Investment Entity