

PLAN CONSULTANT

SPRING 2024

NOT SO SIMPLE

SOME HINDSIGHT — AND FORESIGHT —
ON THE SECURE 2.0 PROVISIONS EFFECTIVE IN 2024

**EMPOWERING
EXCELLENCE
AT THE WIRC**

**M&AS ALMOST
EVERYDAY: WHY?**

**THE 'PEPS' RALLY:
TO CHEER OR
NOT TO CHEER**



LEARNING FROM FAILURES

How the statistics used in the latest DOL audit quality study can drive a more effective EBP auditor selection process. **By Travis Jack**

REGULATORY FRAMEWORK TO THE MOST RECENT DEPARTMENT OF LABOR AUDIT QUALITY STUDY:

Since its 1974 enactment, the Employee Retirement Income Security Act (ERISA) provides the regulatory framework for private pension and welfare benefit plans including oversight authority. Under ERISA the Secretary of Labor was tasked with primary responsibility for enforcing annual reporting requirements and other fiduciary provisions contained in Title I of ERISA. Specifically, the administrator of an employee benefit plan subject to Part 1 of Title I of ERISA must file an annual report with the Secretary of Labor, generally required to include a Form 5500 and any statements and schedules required to be attached to the Form 5500.

ERISA § 103(a)(3)(A) requires a plan administrator to engage, on behalf of all plan participants, an independent qualified public accountant (“IQPA” or “EBP Auditor”) to conduct an examination of the plan’s financial statements. The Department of Labor has generally waived the audit requirement for qualifying plans that have fewer than 100 participants at the beginning of the plan year. The opinion prepared by the IQPA is to be made a part of the annual report for all plans requiring an audit. In 2023, the DOL revised instructions for determining whether a plan is deemed large and required to undergo an annual audit. The new rules state that for plan years beginning on or after January 1, 2023, only participants with account balances at the beginning of the year will be counted versus prior reporting periods that also included eligible participants.

THE MOST RECENT AUDIT QUALITY STUDY OVERVIEW & FINDINGS:

The OCA’s most recent audit quality assessment focuses on IQPAs’ financial statement audits of employee benefit plans covered under the Employee Retirement Income Security Act (ERISA) for the 2020 filing year. OCA selected a statistically sample of 307 plan audits. The workpaper reviews were conducted between December 2021 and October 2022 and the report was released in November 2023.

OCA’s review found that 30 percent of the audits contained major deficiencies with respect to one or more relevant generally accepted auditing standards requirements.

There are also key data considerations regarding CPA firm demographic factors in the study that are strongly correlated with audit quality:

- Firms that audit 1-2 employee benefit plans have a 70% deficiency rate
- In general CPAs auditing fewer than 25 plans had a significantly higher deficiency rates than those reviewing 25+ plans.
- CPAs auditing fewer than 100 plans had a significantly higher deficiency rate than those reviewing 100+ plans.
- In each of the other strata (1-2, 3-5, 25-99, and 100+ audits), deficiency rates are not significantly different from those in our 2015 study.
- In addition to volume of Employee Benefit Plan (EBP) audits performed membership in the Association of International Certified Professional Accountants (AICPA)’s Employee Benefit Plan Audit Quality Center (EBPAQC) was strongly correlated with audit quality. Approximately 71% (22 of 31) audits performed by non-EBPAQC members were deemed significantly deficient in the most recent DOL study. This number is over 200% higher deficiencies than EBPAQC center members.

We will review how best to harness this data in the EBP Auditor evaluation process to drive better auditor selections and provide a prudent fiduciary process for this often-overlooked service provider selection.

HISTORICAL TRENDLINES OF DEFICIENCY RATES

The problem of audit quality is not new there have been a number of employee benefit plan quality studies ranging from 1989 to the most recent in 2023. The table below illustrates the broad trend of overall deficiencies rates of each study:

Audit Quality Study	1989	1997	2004	2015	2023
Audits With GAAS Deficiencies	23%	19%	33%	39%	30%

TABLE AND DATA OBTAINED FROM THE 2023 DOL AUDIT QUALITY STUDY: <https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/publications/november-2023-audit-quality-study.pdf>



In addition to the overall deficiency results the two most recent studies had statistical sampling methods stratifying deficiency rates based upon the number of EBP audits performed by the firm and the most recent 2023 study also bifurcated plans between “simple” and “complex”. With the simple category consisting of EBSA is treating audits of 401(k) and 403(b) plans as “simple” plan audits because the structure and operations of the plans tends to be less complex than is true of other audits. “Complex” plan audits, for these purposes, includes audits of defined benefit plans, Employee Stock Ownership Plans (ESOPs), and health and welfare plans. (See table below)

Additionally, the 2015 and 2023 studies reveal a number of qualitative factors regarding the population of CPA plan auditors & large plans requiring an audit as a whole. The number of firms performing employee benefit plan audits has decreased substantially from 7,330 to 4,300 while the number of plans required to have an audit increased from 81,162 to 86,863.

STEEP PENALTY FOR GETTING IT WRONG:

ERISA assigns responsibility to the Plan Sponsor and Plan administrators to ensure that plan financial statements are properly audited in accordance with generally accepted auditing standards (GAAS). Hiring a plan auditor is defined as is considered a key fiduciary function. As such plan administrators should use the same care and prudence in hiring a plan auditor that they use when hiring any individual or entity that provides services to the plan. As with all key fiduciary functions here is potential liability: Fiduciaries who do not follow the basic standards of conduct may be personally liable to restore any losses to the plan. There is a significant amount of risk to plan administrators associated with the audits of their ERISA

plans. Oftentimes plan administrators are unaware of the importance of this responsibility and potential liability. The DOL studies of audit quality have historically identified significant deficiencies in plan audits. The penalties for such audit failures can be substantial. In recent years, the DOL Employee Benefits Security Administration (EBSA) has significantly stepped up its enforcement of the audit requirement for employee benefit plans. *The DOL has the right to reject plan filings and assess penalties of up to \$2,586 per day, without limit, on plan administrators for deficient filings. Because an incomplete, inadequate, or untimely audit report may result in a rejection of your filing and penalties being assessed against you as the plan administrator, selection of an experienced and reliable auditor is very important.* Plan administrators should make the selection of the plan auditor a priority (and documentation of the process) and exercise due care during every phase of the auditor selection process. With 30% of the population of submissions filed deemed to have a major deficiencies based on the most recent quality study and extrapolation of the sample results, EBSA estimates that 30 percent of the audits (nearly 1 of every 3 audits) contained “Unacceptable-major” deficiencies with respect to one or more relevant GAAS requirements, putting \$927.6 billion dollars and 11.7 million plan participants and beneficiaries at risk. Fortunately, you can leverage the data contained within the audit quality study to sidestep this pervasive risk.

LEVERAGING DATA TO IMPROVE THE EMPLOYEE BENEFIT PLAN AUDITOR SELECTION PROCESS AND DRIVE MORE EFFECTIVE RFPs FOR CLIENTS

A link to a blank RFP template is included within the article to assist you in taking charge of the auditor selection

Audit Deficiency Comparison – Form Year 2020 v. 2021

Strata	Form Year 2020		Form Year 2021	
	Audits Reviewed	Audits with Deficiencies	Audits Reviewed	Audits with Deficiencies
1-2 Plans	20	70.0%	95	75.8%
3-5 Plans	23	51.2%	95	68.4%
6-24 Plans	54	50.1%	95	67.4%
25-99 Plans	74	38.0%	65	41.5%
100+ Plans	137	17.0%	50	12.0%
Total	308	30%	400	39%

TABLE AND DATA OBTAINED FROM THE 2023 DOL AUDIT QUALITY STUDY: <https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/publications/november-2023-audit-quality-study.pdf>



and driving additional value for your clients in the process. The data from the study and additional data from both the publications from the Department of Labor and AICPA have been included in the links. The key data and how to review it is included in the reference material.

- Number of employee benefit plan audits performed by the Firm
- Number of the specific Employee Benefit Plan type audited by the firm
- Firm Membership in the AICPA employee benefit plan audit quality center
- Number of Employee Benefit Plan Specific CPE performed by the Audit Partner or Director signing the report
- Number of Employee Benefit Plan Specific CPE performed by manager or primary point of contact for the EBP audit.
- Percent of the firms audit practice dedicated to EBP audits as a percentage of total audits performed.

PLANNING OPPORTUNITIES TO OPTIMIZE YOUR VALUE BY VETTING EBP AUDITORS FOR YOUR CLIENTS:

There is a number of advantages of taking charge of driving the vetting process:

- If you are a service provider, you have the opportunity to assess not only auditor knowledge and likelihood to deliver a quality audit but also conduct the audit efficiently. This will allow you to also inquire and review the possible time impact of the audit on the client and other plan service providers required to complete the audit
- You can help reduce the overall possible liability for clients from the EBP auditor selection and ramifications of a possible substandard or deficient audit of the Plan thus adding value and deepening the client relationship.
- By driving the selection and interview process you create the possibility of building relationships with EBP auditors that can be an often over looked referral source. **PC**