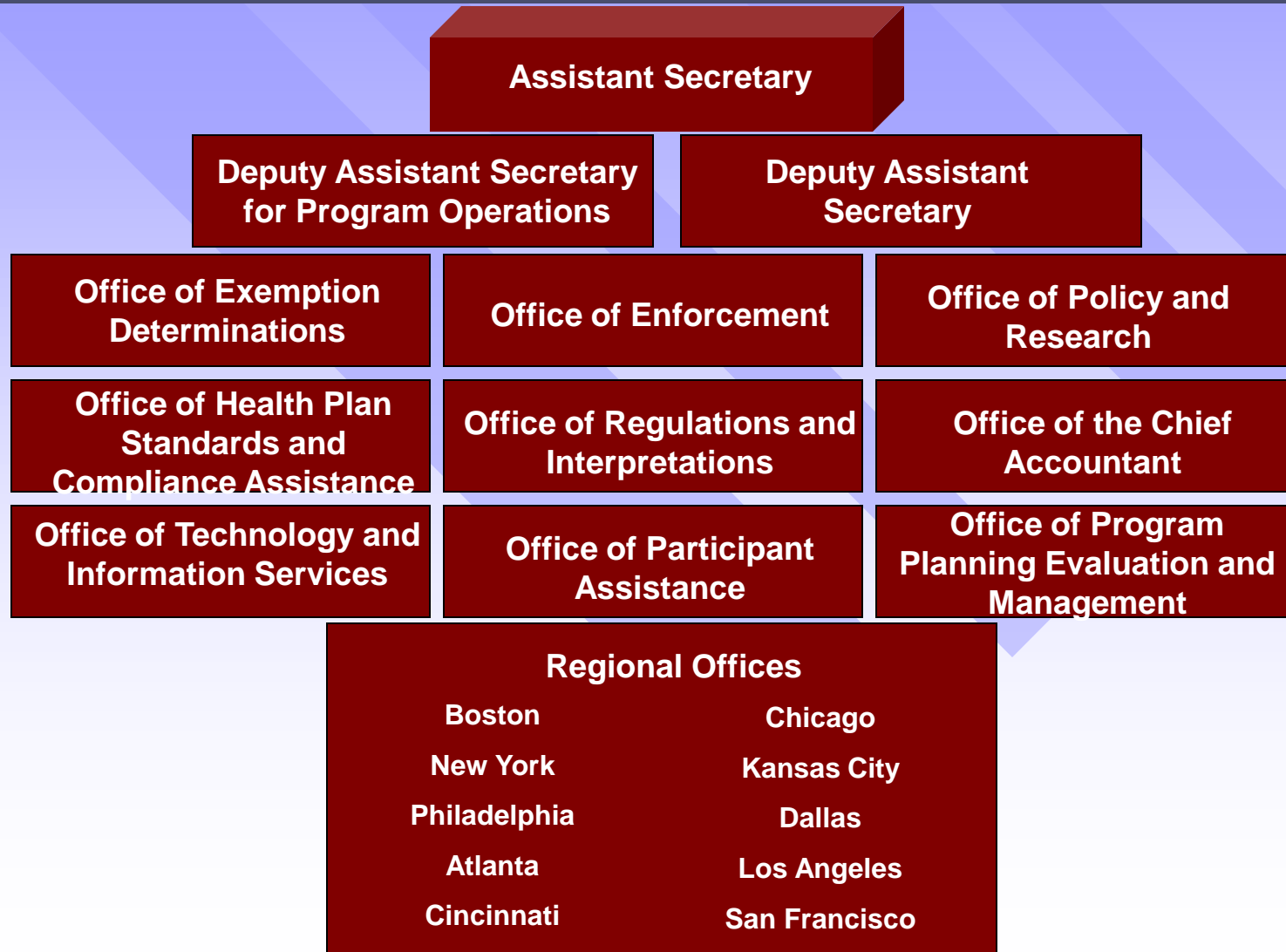


What to Expect from an Employee Benefits Security Administration (EBSA) Investigation

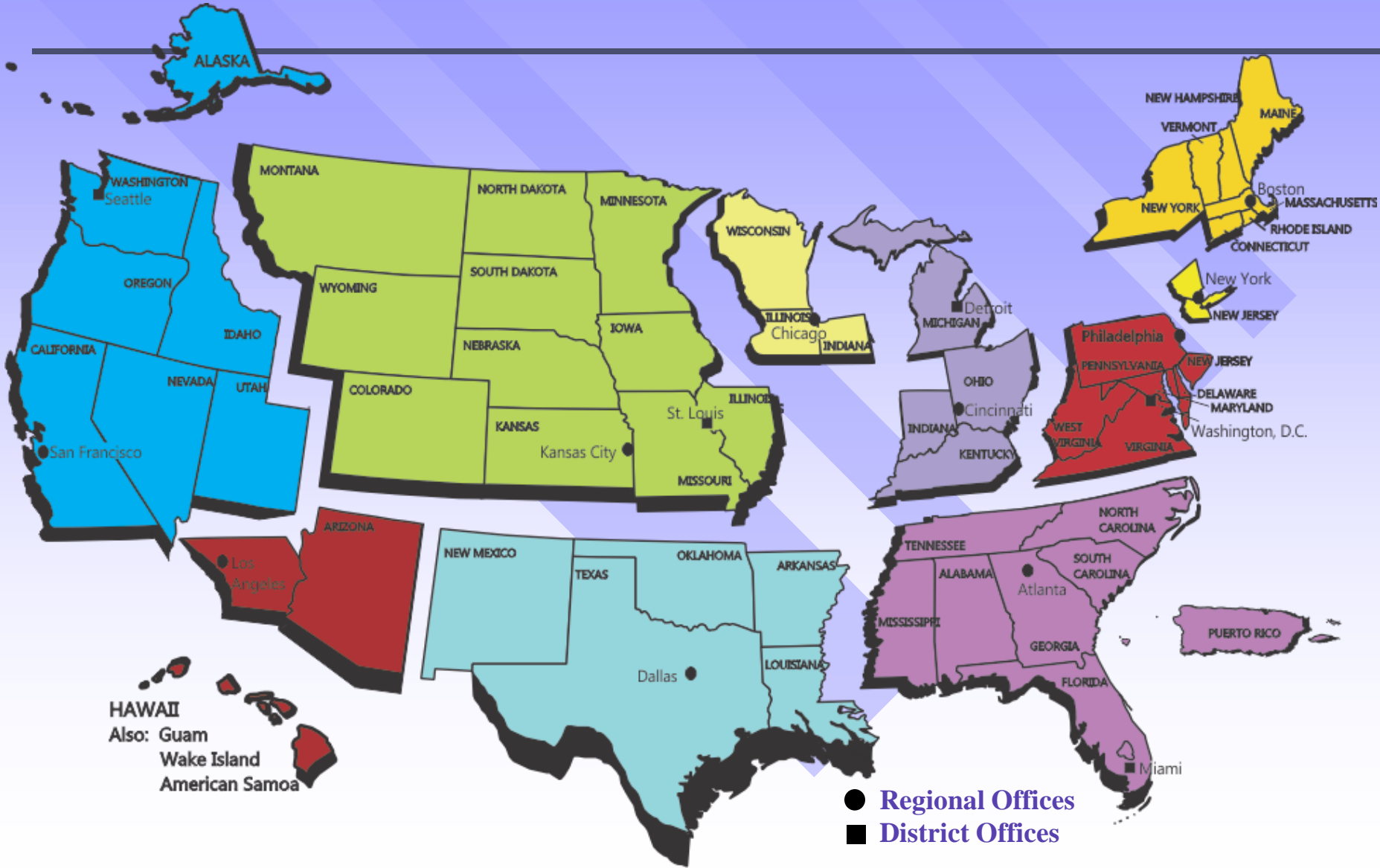
September 22, 2016

Carla D. Gatling
Investigator

EBSA Organizational Chart



EBSA Field Offices



EBSA - Structure

Field Offices

- 10 Regional Offices
- Conduct Investigations
- Provide Compliance Assistance

EBSA's Mission Statement

The Employee Benefits Security Administration protects the security of the retirement, health and other workplace related benefits of American workers and their families. Our Agency accomplishes this by:

- developing effective regulations
- assisting and educating workers, plan sponsors, fiduciaries and service providers
- vigorously enforcing the law

EBSA Enforcement Strategy

- Strategic Enforcement Plan (STEP)
 - Describes basic enforcement strategy
 - Last published in 2000
- Program Operating Plan (POP Guidance)
 - Changes annually
- Each Regional Office creates its own POP

Sources of Cases

- Participant complaints
- Form 5500 Reviews
- Referrals from other agencies
- Media
- Other

Types of Investigations

- Civil
 - Plan
 - Service Provider
- Criminal
 - Plan
 - Service Provider
 - Employer
 - Individual

Issues/Areas of Review in Civil Cases

- Review of Plan Assets
 - Prudence, Prohibited Transactions, Self Dealing
- Reporting and Disclosure
- Bonding
- General Plan Operations
- In accordance with Plan Document
- Remittance of Employee Contributions

Civil Plan Investigations

- Start with phone call from Investigator / Auditor
- Followed by confirmation letter
 - » Date & time of visit
 - » Plan(s) to be reviewed
 - » Records / documents needed
 - Varies depending on issue

Onsite Investigative Work

- Interviews with key personnel and plan fiduciaries

- Basic operations / services
 - » Contributions
 - » Benefit payments
 - » Expenses
 - » Investments

- Identification of
 - » Service providers
 - » Record-keeper(s)

Onsite Investigative Work

- Record Review

Basic Documents

- Plan Document/ Trust Agreement
- Form 5500 filings (past 3 years)
- SPD
- SAR for last year
- Fidelity Bond
- Fiduciary Insurance Policy
- Trustee Statements (past 3 years) (asset records)
- Service Provider Contracts
- Meeting Minutes
- Benefit Statements
- Asset records
- Payroll/contribution records

Investigative Emphasis

Reporting Requirements

- » Annual Report (Form 5500)

New Health Care Provisions

- » Affordable Care Act

Investigative Emphasis

Disclosure Requirements

- Summary Plan Descriptions (SPDs)
- Summary of Material Modifications (SMM)
- Summary Annual Reports (SARs)
- “Blackout” Notices
- COBRA Notices / HIPAA Certificates & more
- Provide documents on request
- Participant Benefit Statements
 - » Field Assistance Bulletin 2006-03
 - » Field Assistance Bulletin 2007-03

Investigative Emphasis

Bonding

- 10% of Funds Handled – not less than \$1,000 nor more than \$500,000 (\$1,000,000 for plans with employer securities)
- No deductible
- Plan should be named as insured
- Discovery Period of no less than one year after termination or cancellation of bond is required
- See FAB 2008-04

Investigative Emphasis

Fiduciary must

- Act “solely in interest” of Ps & Bs
- Discharge his / her / its duties prudently
(care, skill, prudence and diligence)
- Diversify plan investments
- Follow terms of governing documents
(to the extent consistent with ERISA)

Investigative Emphasis

Fiduciary must NOT

- act in his / her / its own self interest
- act on behalf of a party with adverse interests
- accept “gratuity” from those doing business w/ the Plan (kickback)

Investigative Emphasis

Fiduciaries must NOT cause the Plan to engage in a “prohibited transaction”

- » Sale / exchange with party in interest (PII)
- » Loan / extension of credit with PII
- » Goods, services & facilities with PII
- » Transfer to, use by or for the benefit of a PII

Employee Contributions

- Handling of employee contributions

- Basic Rule –

As soon as they can be

“reasonably segregated”

from Employer’s general assets

Safe Harbor Reg. – 1/14/2010 - for plans with fewer than 100 participants

Employee Contributions

- “As soon as” varies from plan to plan
 - » will ask questions about handling
 - » will review practice / experience

Employee Contributions

- Outside Limits (Not a safe harbor)

- » Pension – 15 Business Days
after end of month
of withholding / receipt

Plans with less than 100 Participants –
deposit no later than 7 business days after
withholdings

<< *SIMPLE IRA Plans – 30 days after end of
month* >>

- » Welfare – 90 days after withholding / receipt

Concluding the Investigation

- Depends on any problems identified
- If no problems are noted, closing letter
- If problems are noted,
corrective actions are necessary

Needing Correction

- Usually, EBSA will send “Notice Letter”
 - » Identifies problems
 - » Offers chance to discuss correction
- EBSA encourages Voluntary Compliance
- Proper Correction >> “Closing Letter”
 - » Identifies problems & corrective actions
- No Correction >> referral to the Solicitor’s Office

Needing Correction

Depending upon the circumstances, EBSA may seek

- » Correction of prohibited transactions
- » Restoration of losses
- » Penalties
- » Removal of fiduciaries
- » Removal of service providers
- » Appointment of independent fiduciary
- » Implementation of new internal controls
- » Supplemental distributions to Ps & Bs
- » Final accounting

IRS Referrals

- IRS Coordination Agreement and Statute requires:
 - referral of prohibited transactions to IRS
 - » IRC § 4975 excise tax
(tax qualified pension plans)
 - referral of potential issues affecting tax qualified status

Criminal Referrals

- Under some circumstances,
criminal referrals may be made
 - » Theft / embezzlement
 - » Kickbacks / bribes
 - » False statements to investigators
 - » Willful failures to file / false filings
 - » Health care fraud

Compliance Assistance

- Office of Regulations & Interpretations

- » Advisory Opinion Letters, Regulations,
Technical Rulings

- » (202) 693 - 8500

- Office of Exemptions & Determinations

- » Exemptions from Prohibited Transaction
Rules

- Class & Individual basis

- » (202) 693 - 8540

Compliance Assistance

■ Office of Chief Accountant

- » Reporting & Disclosure issues
- » (202) 693 - 8360

■ Office of Health Plan Standards & Compliance Assistance

- » HIPAA & other group health laws
- » (202) 693 - 8335

Compliance Assistance

- EBSA website: www.dol.gov/EBSA
- EFAST website: www.efast.dol.gov
- Publications: 1-866-444-3272
- Technical Assistance (Toll-free number):
1-866-444-3272
- EFAST Hotline (Toll-free number):
1-866-463-3278 (Go EFAST)

Compliance Assistance

- **Regional Offices**
- **1-866-444-3272**

Helpful EBSA Publications

- Meeting Your Fiduciary Responsibilities
- Understanding Retirement Plan Fees and Expenses
- Selecting an Auditor for Your Employee Benefit Plan
- Reporting and Disclosure Guide
- Selecting & Monitoring Pension Consultants – Tips for Plan Fiduciaries
- Tips for Selecting and Monitoring Service Providers for Your Employee Benefit Plan