

EBSA Says It Recovered \$2.6B For Benefit Plans In 2019

By Emily Brill

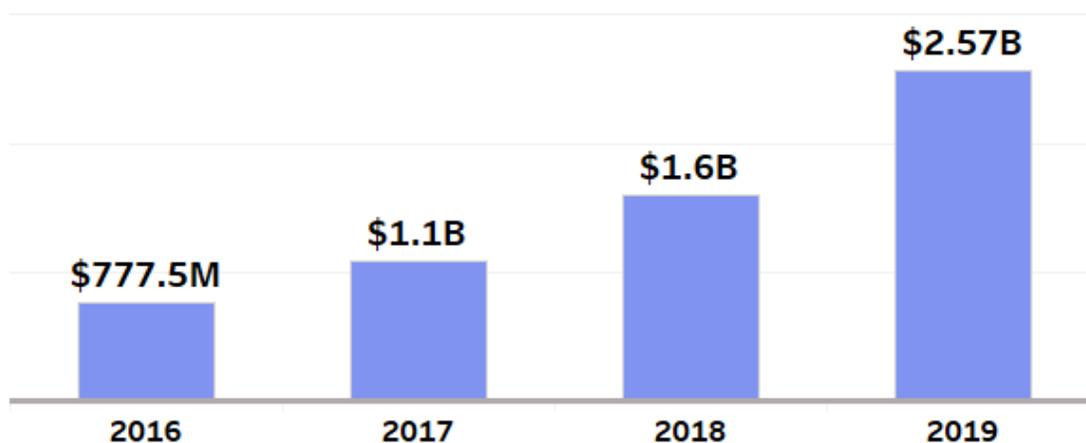
Law360 (November 22, 2019, 8:43 PM EST) -- The U.S. Department of Labor's Employee Benefits Security Administration announced it has recovered \$2.57 billion for employee benefit plans and their participants in fiscal year 2019, a whopping 60% increase from last year driven by an agency initiative to locate retirement plan participants who haven't been receiving benefits.

The EBSA recovered this \$2.57 billion through a variety of tactics, among them enforcement actions, an informal complaint resolution process and a voluntary fiduciary correction program that the Trump administration is planning to expand, according to a report released Thursday.

Enforcement actions scared up the majority of the money — \$2.02 billion — and 73% of that arose from the Terminated Vested Participant Project, a DOL initiative since 2014 that seeks to reconnect a plan's "missing" retirees with the benefits they're owed.

Total Recoveries By EBSA

The U.S. Department of Labor's Employee Benefits Security Administration recovered \$2.57 billion for benefit plans in fiscal year 2019, a whopping 60% increase from last year.



Source: U.S. Department of Labor

The project has largely been a success — the EBSA got \$1.5 billion back to retirees who'd previously thought their pensions lost in FY 2019 — but plan sponsors have chafed at the lack of guidance from the DOL on how to look for missing plan participants themselves, attorneys said.

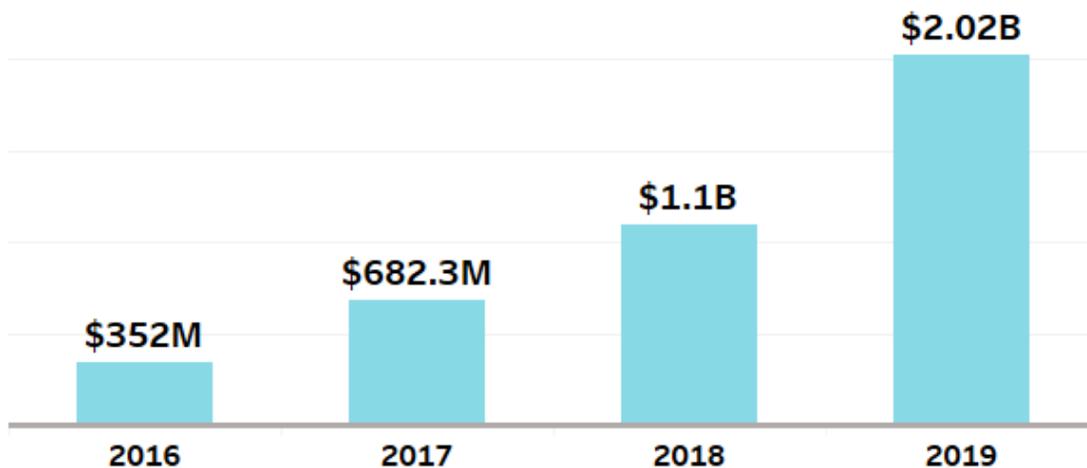
“For the last five years, DOL has had a major enforcement initiative where it’s been investigating plans to see who’s retired and isn’t getting a check, and plans are frustrated because there are no regulations saying, ‘This is how you search for folks,’” said Kevin Walsh, principal at Groom Law Group. “In the plan sponsor community, there’s been a whole lot of frustration around this topic.”

But the DOL has indicated that it’s working on providing guidance, Walsh said. He wonders if the Trump administration’s planned expansion of the EBSA’s voluntary fiduciary correction program, which the DOL placed on its priority list on Wednesday, will offer insight about how plans can locate missing participants themselves.

“This could be the vehicle they use to get out that guidance,” Walsh said.

Recoveries From Enforcement Actions

EBSA has almost doubled its recovery from enforcement actions each year since Trump took office.



Source: U.S. Department of Labor

Money returned to retirees through the Terminated Vested Participant Project has comprised the majority of the money collected through the EBSA’s enforcement actions since 2017, according to DOL data.

The overall amount of money collected through enforcement actions has grown by leaps and bounds each year since Trump took office, almost doubling each year from 2016 until now.

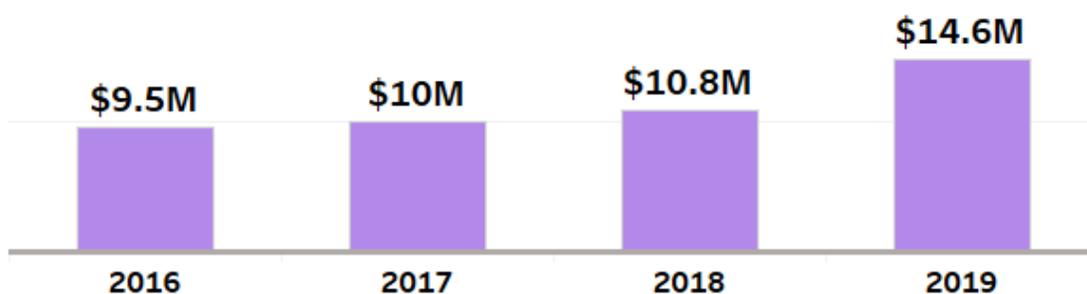
“This year’s report shows the monstrous growth of reported recoveries by the department in their enforcement actions, which is a trend that has continued over the past couple of years,” said Elizabeth S. Goldberg, an associate at Morgan Lewis & Bockius LLP who has studied the EBSA enforcement data for the past several years.

Before the Terminated Vested Participant Project, the EBSA was not collecting such a massive amount of money, Goldberg said.

“Of the \$2.02 billion in recoveries, \$1.5 billion is from the Terminated Vested Participant Project and \$0.5 billion is from everything else,” Goldberg said. “That ‘everything else’ — that \$0.5 billion — really aligns with what we had seen historically before this trend the past few years.”

Recoveries From Voluntary Correction Program

The DOL’s voluntary fiduciary correction program, which the Trump administration is planning to expand, has steadily brought in more money each year since 2016.



Source: U.S. Department of Labor

The amount of money collected through the voluntary fiduciary correction program has also risen year over year, though not at the pace of the enforcement-action cash. The EBSA collected \$14.6 million through the program in FY 2019, up 35% from the last fiscal year.

The EBSA indicated in this fall’s regulatory priorities list, released Wednesday, that it is hoping to expand its voluntary fiduciary correction program by April. The program, adopted in 2002 and revised in 2005 and 2006, allows plan fiduciaries to voluntarily correct their mistakes to avoid potential civil actions or penalties, according to the EBSA.

There were 1,600 applications for the voluntary fiduciary correction program in FY 2019, up just slightly from 1,414 last year, the EBSA said.

--Editing by Jack Karp.