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GAO

Report to Congressional Committees

March 2002

PENSION AND WELFARE BENEFITS ADMINISTRATION

Opportunities Exist for Improving Management of the Enforcement Program

GAO

Accountability * Integrity * Reliability

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Abbreviations

EDS	ERISA Data System
EFAST	ERISA Filing Acceptance System
ERISA	Employee Retirement Income Security Act of 1974
IRS	Internal Revenue Service
OPPEM	Office of Program Planning, Evaluation, and Management
PBGC	Pension Benefit Guaranty Corporation
PWBA	Pension and Welfare Benefits Administration
VFC	Voluntary Fiduciary Correction

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United States General Accounting Office
Washington, DC 20548

March 15, 2002

The Honorable Edward M. Kennedy
Chairman
The Honorable Judd Gregg
Ranking Minority Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable John A. Boehner
Chairman
The Honorable George Miller
Ranking Minority Member
Committee on Education and the Workforce
House of Representatives

The Department of Labor's Pension and Welfare Benefits Administration (PWBA) works to safeguard the economic interests of more than 150 million people in an estimated 6 million employee benefit plans—pension, health, and other plans with assets in excess of $5 trillion protected under the Employee Retirement Income Security Act of 1974 (ERISA). Safeguarding participants' interests in employee benefit plans is especially important to their health while working and their income in retirement. PWBA plays a primary role in ensuring that employee benefit plans operate in the interests of plan participants, and the effective management of its enforcement program is pivotal to ensuring the economic security of workers and retirees.

This report, prepared at our own initiative, discusses management issues associated with PWBA's enforcement of ERISA. We last reviewed PWBA's enforcement program in 1994[1] and concluded that PWBA needed to take steps to strengthen its enforcement program, including evaluating its resource allocation methods and main case selection processes. Our current review focused on assessing the progress PWBA has made in its efforts to improve its enforcement program so that it is effectively enforcing compliance with ERISA's employee benefit plan provisions. Specifically, our report discusses (1) PWBA's current strategy for

[1] U.S. General Accounting Office, *Pension Plans: Stronger Labor ERISA Enforcement Should Better Protect Plan Participants*, GAO/HEHS-94-157 (Washington, D.C.: Aug. 8, 1994).

enforcing ERISA's employee benefit plan provisions and (2) the areas in which PWBA could improve the management of its enforcement program.

To perform our work, we conducted over 100 in-depth interviews with staff and management in PWBA's headquarters and 5 of PWBA's 10 regional offices. We also conducted a nationwide e-mail survey of PWBA's investigative staff and their immediate supervisors. In addition, we reviewed internal PWBA guidance and documentation, agency performance plans and reports, and performance data relevant to PWBA's enforcement activities. Moreover, we interviewed key officials at other federal agencies with enforcement responsibilities regarding potential best practices and key individuals representing private organizations in the employee benefit plan, retired persons, and labor communities. We conducted our work between November 2000 and November 2001 in accordance with generally accepted government auditing standards. For further detail on our scope and methodology, see appendix I.

Results in Brief

PWBA's current strategy for enforcing ERISA's employee benefit plan provisions is a multifaceted approach of plan investigations supplemented by public education and a new voluntary correction program that are carried out mainly through its regional offices. Through its plan investigations, PWBA seeks not only to detect and correct violations, but also to have a deterrent presence that will prevent future violations. The Office of Enforcement prescribes the areas of focus for a portion of the regions' investigations to address issues of nationwide concern. Regional offices are then provided considerable flexibility in implementing PWBA's enforcement strategy by focusing the majority of their investigations on local issues. To complement its investigative activities, PWBA and its regional offices conduct outreach programs to inform plan sponsors, participants, and beneficiaries of their rights and responsibilities under ERISA and related employee benefit statutes. PWBA also publicly releases the results of its civil and criminal litigation against plans with violations to serve as a deterrent against future violations. To further enhance compliance, PWBA also recently established a Voluntary Fiduciary Correction (VFC) program, which allows plan sponsors to correct certain types of violations without penalty.

While PWBA has taken actions to strengthen its enforcement activities since our last review in 1994, in our current review we identified areas in which PWBA could further improve its enforcement program. In particular, we identified weaknesses in PWBA's management of its enforcement strategy and investigative process, in its overall human capital management, and in its measures for addressing program

performance. Specifically, weaknesses exist in the Office of Enforcement's program oversight and coordination in several key areas of its enforcement program. For example, PWBA has not gathered and analyzed information on the nature and extent of noncompliance. Lack of such data could undermine its enforcement strategy and operations. Although PWBA has taken steps to modernize its technology, most investigative staff still do not have sufficient and timely access to automated information for researching and selecting plans for investigation. Furthermore, PWBA lacks a centrally coordinated quality review process to ensure that investigations are conducted in accordance with accepted investigative quality standards. With regard to human capital management, PWBA has given limited attention to addressing key issues, including succession planning and workforce retention despite significant anticipated future workforce and workload changes. Considering that more than half of PWBA's senior management staff will be eligible to retire in the next 5 years, this situation could undermine the continuity and effectiveness of its enforcement program. Finally, we also found that PWBA's performance measures focus primarily on program outputs, such as the number of specific investigations conducted, rather than PWBA's impact on improving plans' overall compliance with ERISA.

The operational weaknesses and broader management issues that we identified in PWBA's enforcement program could affect its ability to effectively and efficiently carry out its responsibilities for enforcing ERISA's employee benefit plan provisions. Accordingly, we are making several recommendations intended to strengthen the Office of Enforcement's oversight and to enhance PWBA's ability to deploy its resources and better monitor the effectiveness of its operations. In its response to our draft report, PWBA acknowledged the need for more effective oversight and quality controls, and that there is a need to address the internal management issues we raised. PWBA also provided additional information on planned and current initiatives that they believe address a number of our recommendations. We made revisions to our draft report as appropriate.

Background

The Congress passed ERISA to address public concerns over the mismanagement and abuse of private sector employee benefit plans by some plan sponsors and administrators. ERISA is designed to protect the rights and interests of participants and beneficiaries of employee benefit plans and outlines the responsibilities of the employers and administrators who sponsor and manage these plans.

Three agencies share responsibility for enforcing the provisions of ERISA: the Department of Labor's PWBA, the Department of the Treasury's Internal Revenue Service (IRS), and the Pension Benefit Guaranty Corporation (PBGC). PWBA enforces ERISA's fiduciary standards for plan fiduciaries of privately sponsored employee benefit plans to ensure that plans are operated in the interests of plan participants, that reporting and disclosure requirements covering the type and extent of information given to the federal government and plan participants are met, and that specific transactions prohibited by ERISA are not used by plans. Under Title I of ERISA, PWBA conducts investigations of plans and seeks appropriate remedies to correct violations of the law, including litigation when necessary. The IRS enforces Title II of ERISA and provisions that must be met which give plans tax-qualified status,[2] including participation, vesting, and funding requirements.[3] The IRS also audits plans to ensure compliance and can levy tax penalties or revoke the tax-qualified status of a plan, as appropriate. The PBGC, under Title IV of ERISA in contrast, provides an insurance safety net for the participants and beneficiaries of defined benefit pension plans.[4] To do so, PBGC collects premiums from plan sponsors and then administers payment of pension benefits for terminated insufficient plans.

Over the last several years, the number of plans, participants, and assets within PWBA's enforcement jurisdiction have increased (see figs. 1, 2, and 3). PWBA's enforcement program includes a wide variety of pension and welfare plan sizes and types.[5] The majority of pension plans under PWBA's jurisdiction are small plans that serve fewer than 100 participants. However, the majority of pension plan participants under PWBA's jurisdiction are in a relatively small number of large plans that each serve thousands of participants. Moreover, since the passage of ERISA in 1974, the types of employee benefit plans and the financial transactions for

[2] To achieve tax-qualified status, plans must comply with a number of requirements in the Internal Revenue Code governing the provision of contributions and benefits.

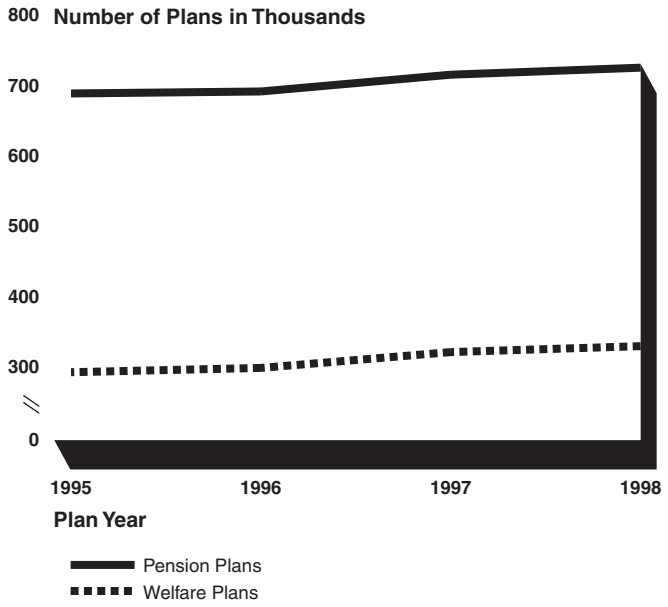
[3] ERISA includes minimum standards for how employees become eligible to participate in pension plans (participation standards), how employees earn a nonforfeitable right to their benefits (vesting standards), and how the plans are to be funded (funding provisions).

[4] Defined benefit plans pay specific retirement benefits, generally based on the number of years of service, earnings, or both. The sponsoring company is responsible for ensuring that plan assets are sufficient to pay benefits under the plan.

[5] Welfare plans are established and maintained to provide employee health benefits, disability benefits, death benefits, prepaid legal services, vacation benefits, child care, scholarship funds, apprenticeship and training benefits, or other similar benefits.

which PWBA must enforce ERISA provisions have become increasingly complex, giving the agency additional enforcement responsibilities.[6]

Figure 1: Employee Benefit Plan Universe under PWBA's Jurisdiction, 1995 to 1998

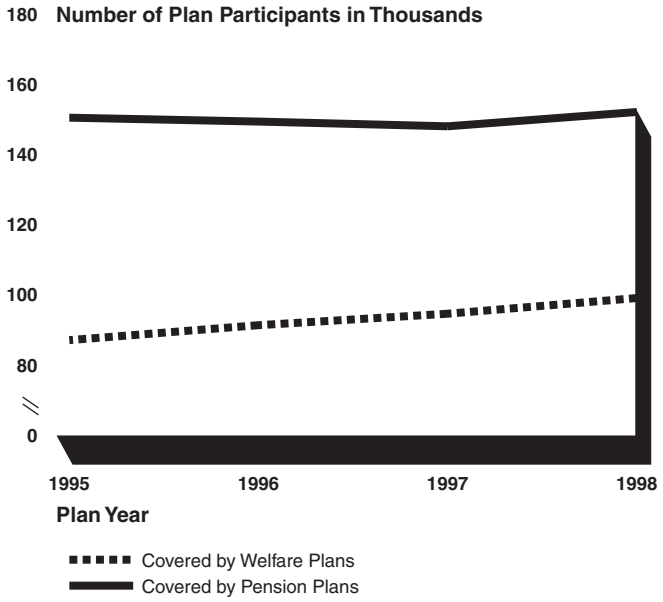


Note: Data for 1999-2001 are not yet available. Figure excludes insured and unfunded welfare plans with fewer than 100 participants, which are exempt from federal filing requirements, but for which PWBA has enforcement responsibility.

Source: PWBA.

[6] PWBA's enforcement responsibilities have increased particularly because of legislative changes in the health care area. The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), which provides for the limited continuation of health care coverage for employees and their beneficiaries if certain events would otherwise result in a reduction of benefits, expanded PWBA's responsibilities under ERISA. Recently, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), aimed at making health care coverage more portable and secure for employees, and the Newborns' and Mothers' Health Protection Act of 1996, the Mental Health Parity Act of 1996, and the Women's Health and Cancer Rights Act of 1998 added new responsibilities to PWBA's education, compliance assistance, and enforcement functions.

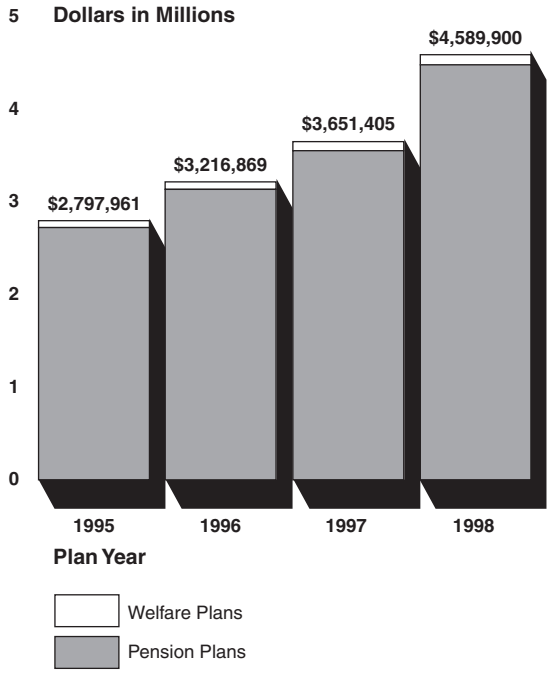
Figure 2: Number of Plan Participants under PWBA's Jurisdiction, 1995 to 1998



Note: Data for 1999-2001 are not yet available. Figure excludes insured and unfunded welfare plans with less than 100 participants, which are exempt from federal filing requirements, but for which PWBA has enforcement responsibility.

Source: PWBA.

Figure 3: Total Value of Assets Reported by Pension and Welfare Plans under PWBA's Jurisdiction, 1995 to 1998

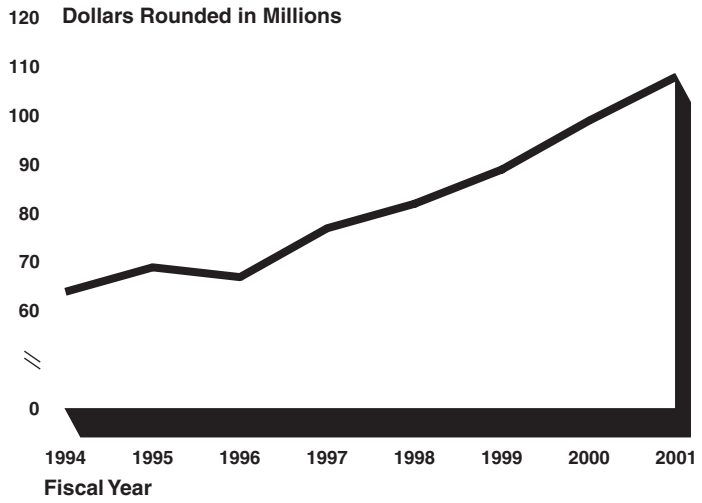


Note: Data for 1999-2001 are not yet available. Figure excludes insured and unfunded welfare plans with less than 100 participants, which are exempt from federal filing requirements, but for which PWBA has enforcement responsibility.

Source: PWBA.

PWBA's annual appropriations have risen in recent years, from $64 million in fiscal year 1994 to $108 million fiscal year 2001 (see fig. 4). PWBA earmarks its budget for three broad functions: (1) enforcement and compliance activities, which include conducting investigations of potential ERISA violations as well as reviews of plans' compliance with fiduciary, reporting, and disclosure standards; (2) policy, regulation, and public service activities, which include policy development and educational outreach programs; and (3) the agency's program oversight activities, which include providing internal administrative guidance. The enforcement and compliance activities are the main focus of PWBA's operations and account for $84 million or more than 75 percent of its budget in fiscal year 2001.

Figure 4: PWBA's Annual Appropriations, Fiscal Years 1994 to 2001

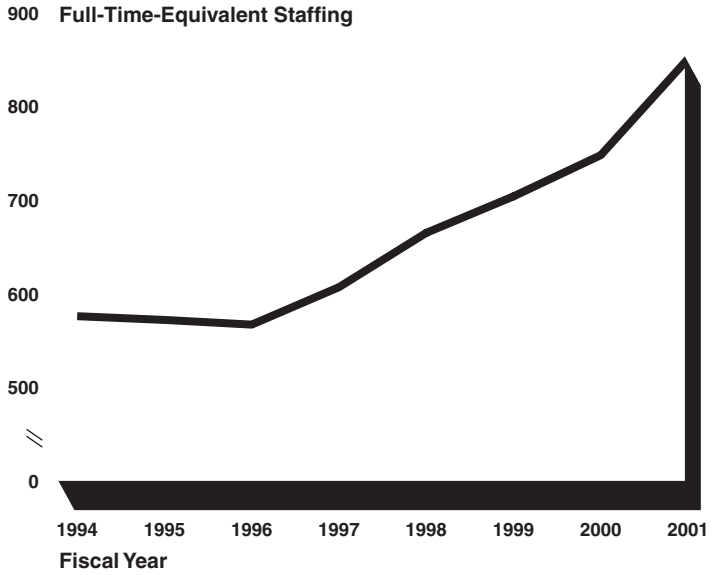


Source: Budget of the United States Government, fiscal years 1994 to 2001.

To accomplish its functions, PWBA relies on a relatively small but highly skilled and specialized staff.[7] Full-time equivalent (FTE) staff levels at PWBA have risen from 575 in fiscal year 1994 to 850 in fiscal year 2001 (see fig. 5).

[7] Many of PWBA's enforcement and compliance employees are attorneys or accountants.

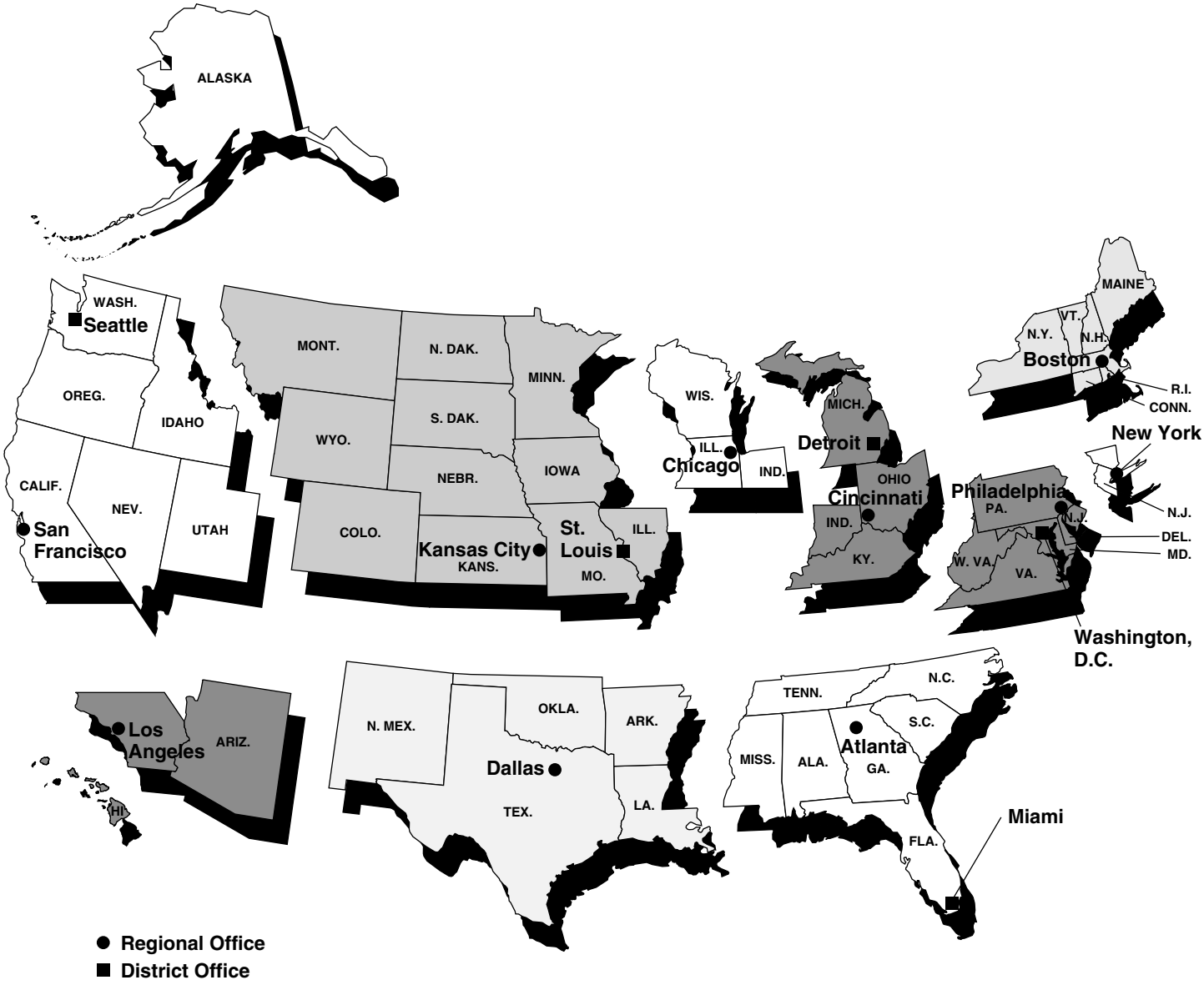
Figure 5: PWBA's Full-Time Equivalent Staffing, Fiscal Years 1994 to 2001



Source: Budget of the United States Government, fiscal years 1994 to 2001.

Over the years, PWBA has allocated the majority of its FTE increases to its enforcement and compliance function. Currently, the enforcement and compliance staff represent 80 percent of total PWBA staffing and most work in PWBA's 10 regional and 5 district offices (see fig. 6).

Figure 6: PWBA's 10 Regional and 5 District Offices



Source: PWBA.

PWBA Uses a Multifaceted Enforcement Strategy

PWBA's enforcement strategy is a multifaceted approach of targeted plan investigations supplemented by providing education to plan participants and plan sponsors and a new voluntary correction program for plan officials that are carried out mainly by its regional offices. PWBA allows its regions the flexibility to tailor their investigations to address the unique issues in their regions, within a framework established by PWBA's Office of Enforcement. The regional offices then have a significant degree of autonomy in developing and carrying out investigations using a mixture of approaches and techniques they deem most appropriate. Investigations range from responding to participant and others' concerns to developing large-scale projects targeted at a specific industry, plan type, or type of violation. To supplement their investigations, the regions conduct outreach activities to educate both plan participants and sponsors. The purpose of these efforts is to gain participants' help in identifying potential violations and sponsors' help in properly managing their plans and avoiding violations. The regions also process applications for the new Voluntary Fiduciary Correction program through which plan officials can voluntarily report and correct some violations without penalty.

PWBA Enforces ERISA Primarily Through Targeted Investigations

PWBA attempts to maximize the effectiveness of its enforcement efforts to detect and correct ERISA violations by targeting specific cases for review. In doing so, the Office of Enforcement provides assistance to the regional offices in the form of broad program policy guidance, program oversight, and technical support. The regional offices then focus their investigative workloads to address the needs specific to their region. Investigative staff also have some responsibility for selecting cases.

The Office of Enforcement identifies "national priorities"—areas critical to the well being of employee benefit plan participants and beneficiaries nationwide—in which all regions must target a portion of their investigative efforts. Currently, PWBA's national priorities involve investigating plan service providers,[8] health benefit issues, and defined contribution pension plans.[9] Officials in the Office of Enforcement said

[8] Plan service providers are third parties who assist plan sponsors in administering or providing other services to the plan.

[9] For a defined contribution pension plan, the employer establishes an individual account for each eligible employee and generally promises to make a specified contribution to that account each year. Employee contributions are also often allowed or required. The employee's retirement benefits depends on the total employer and employee contributions to the account as well as the investment gains and losses that have accumulated at the time of retirement or withdrawal. Therefore, the employee bears the risk of loss as to whether the funds available at retirement will provide a sufficient level of retirement income.

that national priorities are periodically re-evaluated and are changed to reflect trends in the area of pensions and other benefits. For example, health benefit issues have recently risen in importance due to significant changes in health care delivery methods, the aging of the population, and PWBA's expanded role in enforcing health plan standards under recent legislation aimed at making health care coverage more portable and secure for employees. Likewise, PWBA has placed an increasing emphasis on defined contribution pension plans, which have become a rapidly growing segment of the pension plan universe, because these plans are not guaranteed by PBGC and the risk of loss in these plans falls entirely on the individual plan participants. According to Office of Enforcement officials, the national priorities are also used to help leverage PWBA's investigative staff. For example, the emphasis on investigating plan service providers recognizes that an abusive practice of one service provider could affect a multitude of individual benefit plans and participants. On the basis of its national investigative priorities, the Office of Enforcement has established a number of national projects. For fiscal year 2001, there were six national projects pertaining to a variety of issues, including the timely crediting of employee contributions to defined contribution plans and the compliance of health plans with recent legislative changes.

The regional offices determine the focus of their investigative workloads based on their evaluation of the employee benefit plans in their jurisdiction and guidance from the Office of Enforcement. For example, each region is expected to conduct investigations that cover their entire geographic jurisdiction and attain a balance among the different types and sizes of plans investigated. In addition, each regional office is expected to dedicate some percentage of its staff resources to national and regional projects—those developed within their own region that focus on local concerns. In developing regional projects, each regional office uses its knowledge of the unique activities and types of plans in its jurisdiction. For example, a region that has a heavy banking industry concentration may develop a project aimed at a particular type of transaction commonly performed by banks. Currently, regional offices spend an average of about 40 percent of their investigative time conducting investigations in support of national projects and almost 25 percentage of their investigative time on regional projects.

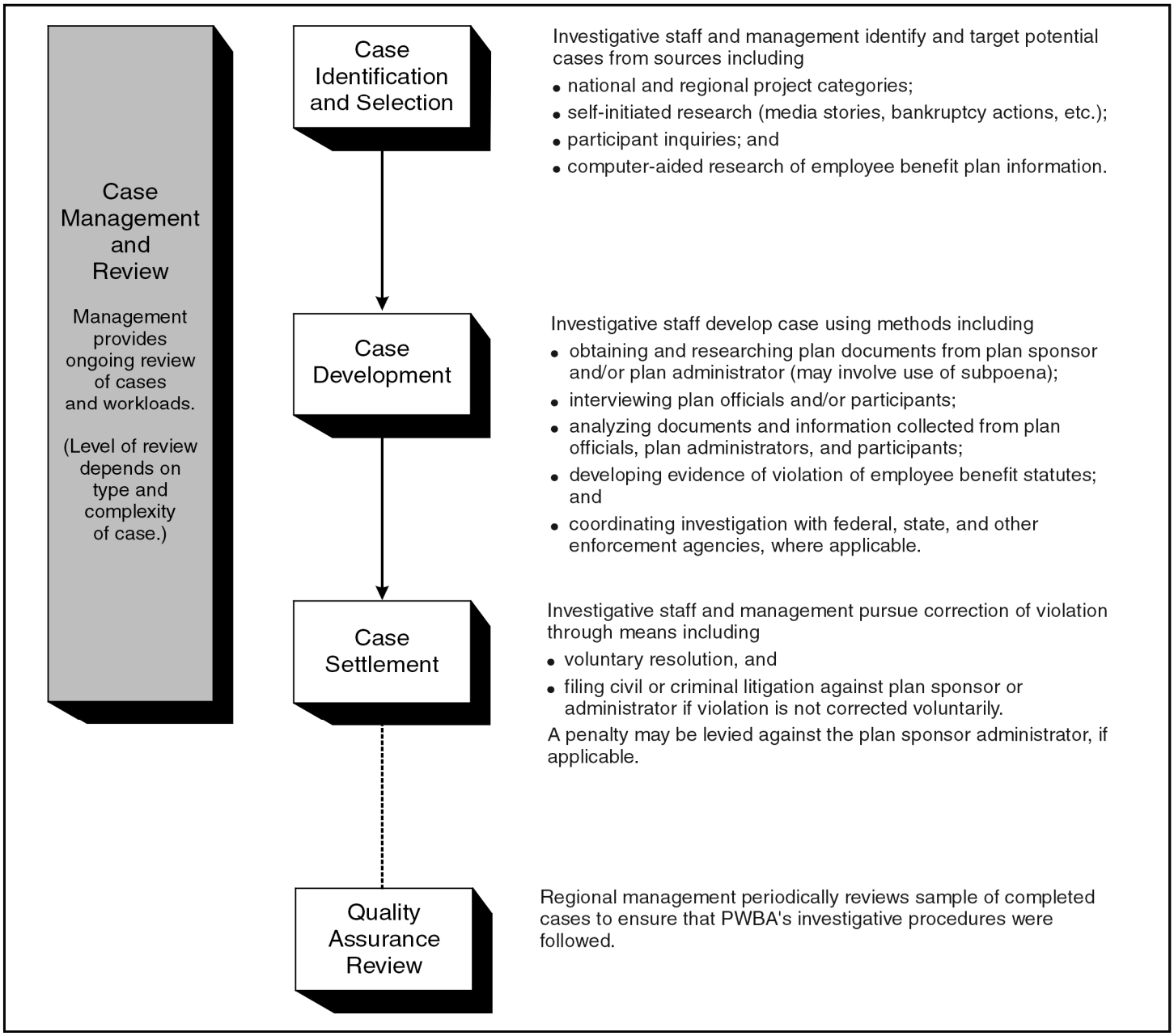
In addition to working cases from the national and regional projects, investigative staff are responsible for identifying a portion of their cases on their own to complete their workloads and address other potentially vulnerable areas. Investigative staff in regions we visited told us that these individualized cases often originate from news articles or other publications on a particular industry or company as well as tips from

colleagues in other enforcement agencies. Investigative staff and supervisors who responded to our survey indicated that leads from plan participants who call or write to the regions' benefit advisers for assistance are a major resource in targeting cases. The benefit advisers identify situations, including those where a participant's concerns may be indicative of broader violations, and refer these cases to the investigative staff.

PWBA's investigative process generally follows a pattern of selecting, developing, resolving, and reviewing cases (see fig. 7). In fiscal year 2001, PWBA expected to complete 6,954 investigations resulting from its enforcement activities.[10] Of these, 2,065 investigations—about 30 percent—were expected to be closed with results, such as plan assets being restored or protected. According to PWBA, its primary goal in resolving a case is to ensure that a plan's assets, and therefore its participants and beneficiaries, are protected. PWBA's decision to litigate a case is made jointly with the Department of Labor's Regional Solicitors' Offices. Although PWBA settles most cases without going to court, both the agency and the Solicitor's Office recognize the need to litigate some cases for their deterrent effect on other providers. According to PWBA, the decision to litigate is based on several factors, including the prospect of obtaining meaningful relief as a result of litigation, the nature of the violation, and consistency with PWBA's enforcement priorities.

[10] The number of investigations completed in a given year includes investigations opened in prior years and closed in the current year.

Figure 7: Overview of PWBA's Investigative Process



Source: GAO's analysis.

As part of its enforcement program, PWBA also detects and investigates criminal violations of ERISA. As a matter of policy, the Office of Enforcement requires the regional offices to limit the resources they use for criminal investigations to approximately 15 percent, to help maintain PWBA's focus on civil violations of ERISA. From fiscal years 1995 through 2000, criminal investigations resulted in an average of 47 cases closed with convictions or guilty pleas annually. Part of PWBA's enforcement strategy includes routinely publicizing the results of its litigation efforts in both the civil and criminal areas, as a deterrent factor.

PWBA Uses Education, Outreach, and a Voluntary Fiduciary Correction Program to Supplement Its Investigations

To further leverage its enforcement resources to prevent and detect violations and promote overall compliance with ERISA, PWBA provides education to plan participants and sponsors and now allows the voluntary self-correction of certain transactions without penalty. PWBA's education program for plan participants aims to increase their knowledge of their rights and benefits under ERISA. The agency also conducts outreach to plan sponsors and service providers about their ongoing fiduciary responsibilities and obligations under ERISA. Also, PWBA recently initiated the VFC program to facilitate corrections by plan officials who want to come into compliance with ERISA regarding their past practices and ensure better compliance in the future.

PWBA anticipates that educating participants and beneficiaries about their benefits, rights, and PWBA's enforcement authority will establish an environment in which individuals can help protect their own benefits by recognizing potential problems and notifying PWBA when issues arise. At the national level, education and outreach efforts are directed by PWBA's Office of Participant Assistance and Communication (OPAC), which develops, implements, and evaluates agencywide participant assistance and outreach programs and provides policies and guidance to other PWBA national and regional offices involved in outreach activities. PWBA's nationwide education campaigns include a retirement savings program, launched in July 1995 and expanded after the passage of the Savings Are Vital to Everyone's Retirement Act of 1997,[11] which we reported on earlier this year.[12] PWBA started a similar nationwide effort in 1998 after the passage of health plan legislation to assist participants in understanding their medical benefits. Both educational campaigns encourage participants

[11] P.L. 105-92, Nov. 19, 1997.

[12] U.S. General Accounting Office, *Retirement Saving: Opportunities to Improve DOL's SAVER Act Campaign*, GAO-01-634 (Washington, D.C.: June 26, 2001).

to call PWBA with questions and concerns about their employee-provided benefits, such as complaints about late contributions to their pension plans. Thus, these national outreach efforts are aimed at protecting participants and beneficiaries by giving them the information and means to protect themselves.

PWBA's regional offices also assist in implementing national education initiatives and conduct their own outreach to address local concerns. The regional offices' approximately 90 benefit advisers provide written and telephone responses to participants. Benefit advisers and investigative staff also speak at conferences and seminars sponsored by trade and professional groups and participate in outreach and educational efforts in conjunction with other federal or state agencies.

PWBA's efforts to educate plan sponsors and plan service providers aim to increase these groups' awareness of their responsibilities and rights under ERISA and its supporting regulations and procedures. At the national level, several PWBA offices direct specialized outreach activities. As with PWBA's participant-directed outreach activities, its efforts to educate plan sponsors and service providers also rely upon Office of Enforcement staff and the regional offices for implementation. For example, these staff make presentations to employer groups and service provider organizations about their ERISA obligations, and any new requirements under the law, such as reporting and disclosure provisions. PWBA staff also attend and make presentations at employee benefits seminars and conferences on ERISA. Additional outreach activities include developing partnerships with professional organizations associated with employee benefits. For example, several regional offices plan to work with state accounting societies to increase the societies' knowledge of conducting employee benefit plan audits.

To supplement its investigative programs, PWBA is also taking steps to promote the self-disclosure and self-correction of possible ERISA violations by plan officials through its new VFC program, which went into effect on April 14, 2000. The purpose of the VFC program is to protect the financial security of workers by encouraging plan officials to identify and correct ERISA violations on their own. Specifically, the VFC program allows plan officials to identify and correct 13 transactions, such as delinquent participant contributions to pension plans and improper expenditures of plan funds. Under the VFC program, plan officials follow a process whereby they (1) correct the violation using PWBA's written guidance; (2) restore any losses or profits to the plan; (3) notify participants and beneficiaries of the correction; and (4) file a VFC application, which includes evidence of the corrected transaction, with the

PWBA regional office in whose jurisdiction it resides.[13] If the regional office determines that the plan has met the program's terms, it will issue a "no action" letter to the applicant and will not initiate a civil investigation of the violation, which could have resulted in a penalty being assessed against the plan.

Weaknesses Identified in Management of Key Areas of Enforcement Program

PWBA has taken actions to strengthen its enforcement activities since our last review; however, we identified areas in which PWBA could make further improvements. Agencies need a strategic management process to position themselves to meet future challenges. Such a process should provide agencies with a framework for planning, implementing, and evaluating initiatives needed to accomplish the organization's mission. Effective program oversight, human capital management, and program performance measures are three of the ingredients of such a framework. We identified weaknesses at PWBA in these functions. Specifically, weaknesses exist in PWBA's program oversight and coordination in several key areas of its enforcement program, including estimating the nature and extent of plans' noncompliance with ERISA for planning purposes and maintaining a centralized review process to help ensure that investigations are conducted in accordance with quality standards. With regard to human capital management, PWBA has given limited attention to key issues, such as succession planning and workforce retention, despite anticipated future workforce and workload changes. Additionally, the performance appraisal system for investigative staff may undermine effective case selection and the quality of investigations. Finally, we found that PWBA's performance measures focus primarily on program outputs rather than on PWBA's overall impact.

Weaknesses in Office of Enforcement's Oversight of the Enforcement Program

Weaknesses exist in PWBA's current program oversight and coordination of the enforcement program by the Office of Enforcement in six key areas. Specifically, we found that PWBA

- lacks data on the extent of plans' noncompliance with ERISA,
- lacks a systematic review to improve its selection of cases,
- provides limited sharing of "best practices" information,

[13] PWBA's guidance includes a VFC Fact Sheet on its Internet site and *Federal Register* Notice, Volume 65, Number 51, "Voluntary Fiduciary Correction Program," March 15, 2000. Also, to be eligible for the VFC program, plans and applicants must not be under investigation by PWBA, and the application must not contain evidence of potential criminal violations, as determined by PWBA.

- has limitations on its use of technology for selecting and developing investigations,
- provides a limited quality review process for closed cases, and
- has not achieved the level of expected participation in its Voluntary Fiduciary Correction program.

Because the enforcement strategy is implemented through decentralized regional offices, the need for central oversight and coordination is critical to ensure that the agency is conducting quality investigations that cover the range of potential violations and variety of plans within its jurisdiction. In short, the Office of Enforcement needs to ensure that it has the people, processes, and technology in place to effectively and efficiently carry out the enforcement activities.

Lack of Data on the Extent of Plans' Noncompliance with ERISA May Undermine Enforcement Planning Efforts

To date, PWBA has not systematically estimated the nature and extent of employee benefit plans' noncompliance with ERISA provisions. Therefore, PWBA cannot ensure that it is accurately identifying the areas in which it needs to focus to most efficiently and effectively allocate its limited resources. Furthermore, the lack of reliable data on overall plan noncompliance may reduce the effectiveness of PWBA's education and outreach programs. For example, if PWBA does not know the extent of a certain type of problem, it cannot gear its education and outreach to the plan sponsors to help correct and prevent further violations. In addition, the lack of such information may prevent PWBA from accurately measuring the overall performance of its enforcement program.

In January 2000, PWBA issued a memorandum exploring the feasibility of developing a baseline of noncompliance with ERISA for pension plans. However, PWBA concluded that such an effort would require PWBA's full investigative staff 90 years to fully and accurately complete. PWBA proposed estimating the level of noncompliance within the entire pension plan population under its enforcement jurisdiction through large samples that would allow it to draw conclusions about the plan population with a high level of confidence and precision. However, PWBA did not consider analyzing the level of noncompliance by using a smaller sample size and a lower, but still acceptable, level of precision than it originally considered. Nor did PWBA propose targeting specific segments of the plan population—i.e., certain plan types, such as defined contribution pension plans, or specific industry categories, such as manufacturing—to incrementally assess the level of noncompliance for these areas. Either of these alternatives would likely have required less time and resources.

Currently, PWBA carries out the strategic planning activities for its enforcement program based on previous experiences in dealing with

violations of ERISA provisions, as well as perceived and reported areas of risk. However, strategic planning based on such an approach may fall short in identifying and accounting for the level and range of violations within PWBA's enforcement jurisdiction. We believe that PWBA should consider alternative, potentially less resource intensive, methods for assessing the level of plans' noncompliance. Such an approach could entail systematic and periodic reviews based on representative samples of the entire plan population or by plan type or industry sector. For example, PWBA could perform studies similar in concept to one issued by the IRS in 1998 that examined a specific segment of the pension plan population to identify areas in which those plans failed to comply with the Internal Revenue Code. PWBA has already taken some actions in this regard. For example, in fiscal year 1999, PWBA undertook a limited survey of a sample of health plans to gauge the level of compliance among these plans, which we discussed in a prior report.[14] PWBA could build upon this approach to cover all of the employee benefit plans under its enforcement jurisdiction. Such analyses could be more helpful in identifying areas of simple confusion or error on the part of plan providers in interpreting ERISA provisions, as well as areas consistently vulnerable to fraud and abuse. PWBA could use the information from these analyses to enhance its overall enforcement strategy, by shifting its resources to areas of greatest need or to specific problem areas, as well as enhance its plan provider outreach and education efforts. This information would also enable PWBA to develop more effective performance measures to better assess its enforcement strategy's impact on improving compliance with ERISA.

Lack of Systematic Review to Improve Its Case Selection Processes

PWBA has not routinely analyzed the full range of cases investigated in order to determine which sources of cases are most effective in terms of detecting and correcting violations. The "sources of cases" are the original leads that brought the potential violation to PWBA's attention, such as a participant inquiry, a newspaper article, or a national or regional project. Such an analysis is critical to assist the regional offices in evaluating whether their investigative resources are focused in the most effective and efficient areas. Officials in the Office of Enforcement and several regional offices we visited told us that PWBA faces an overabundance of work and that they must manage multiple workload priorities. However, the effectiveness of prior sources of cases is a key piece of information that is

[14] See U.S. General Accounting Office, *Private Health Insurance: Federal Role in Enforcing New Standards Continues to Evolve*, GAO-01-652R (Washington, D.C.: May 7, 2001).

missing from PWBA's current workload priority and resource allocation decisions.

Previously, from fiscal year 1986 through fiscal year 1990, PWBA's Office of Policy and Research performed annual sources of cases evaluations that the agency says were aimed at ensuring that it was focusing its investigative resources on those cases that allowed it to maximize its effectiveness. However, the agency discontinued these analyses due to staff shortages. In November 2001, however, the Office of Enforcement completed another such analysis using data from its fiscal year 1999 investigations. The Office of Enforcement plans to perform such analyses on an annual basis, but is uncertain whether it will have sufficient resources to do so.

Limited Coordination and Sharing of "Best Practices" Information

Our review shows that the Office of Enforcement does not centrally coordinate the identification and sharing of best practices information among regions regarding case selection and investigative techniques. Limited coordination occurs in certain respects, such as the Office of Enforcement's provision of audit guides for specific national projects and within some regional offices regarding investigative techniques. However, the absence of a more formalized centrally managed process could lead to missed opportunities to increase the effectiveness of PWBA's enforcement efforts and leave the agency vulnerable to duplication of effort by its investigative staff.

Almost half of the investigative staff and their immediate supervisors who responded to our survey indicated that best practices information is shared within their region, but only on an informal basis. Management and some staff in one regional office we visited said that such information was not shared because it is considered "proprietary" in that it belongs to the individual investigator who developed it. These staff believed that the agency's performance appraisal system placed investigative staff in competition with each other for pay raises and promotions and that sharing an investigator's successful methods would negate their advantage over others. Numerous investigative staff told us that, at times, the lack of information sharing forced them to "reinvent the wheel" with each new investigation, which wasted valuable time and staff resources. Regarding the sharing of best practices information across regions, fewer than half of the respondents to our survey believed this takes place. During our regional office visits, some investigative staff told us that only limited and informal sharing takes place because of competition among the regions.

Representatives from the Office of Enforcement acknowledged that they could do a better job disseminating information among regions and

sharing best practices. However, they said that PWBA lacked the resources to conduct a major effort in this area. Currently, the Office of Enforcement disseminates information to the regions through annual training seminars conducted to explain policy and regulatory changes and quarterly regional managers' meetings.

Weaknesses in Technology Used for Selecting and Developing Investigations

We found that weaknesses remain in PWBA's use of technology for selecting plans to be investigated as well as its technological supports for developing information once a case has been opened. PWBA acknowledges that heavy reliance on technology is critical to its mission due to the small size of its workforce. In 1994, we reported that PWBA had done little to test the effectiveness of the computerized targeting runs it was using to select cases for investigation. Since then, PWBA has scaled down both the number of computerized runs available for staff to use and its reliance on these runs as a primary means of selecting cases. Accordingly, only 34 percent of all respondents to our recent survey indicated that case selection via preset computer searches of plan filings[15] was an effective method to identify cases involving ERISA violations. Several investigative staff we interviewed also explained that the computerized targeting runs were not very effective because source data were too old and the computer system did not allow them to customize targeting runs. PWBA recognizes these shortcomings and is attempting to improve computer-based targeting for investigative staff by developing both a quicker processing system for plan filings—the ERISA Filing Acceptance System (EFAST)—and a new targeting system—the ERISA Data System (EDS).

According to PWBA officials, EDS will provide investigative staff with enhanced targeting and research capabilities over previous PWBA systems. For example, staff will have the ability to perform ad hoc or customized inquiries to probe certain plan types, transactions, and employers in a specific sector directly from their computer. Previously, investigative staff were required to send requests for these types of inquiries to the Office of Enforcement for processing. In addition, EDS will have a selection of preset targeting runs to assist in case selection. Enforcement officials also plan to evaluate the preset targeting runs

[15] Pension, welfare, and fringe benefit plans are generally required to file an annual report on their financial condition, investments, and operations called the Form 5500 Annual Return/Report of Employee Benefit Plan. The Department of Labor, IRS, and PBGC jointly develop and maintain the Form 5500 series so employee benefit plans could satisfy annual reporting requirements under Title I and Title II of ERISA and under the Internal Revenue Code.

formerly available under its predecessor systems and, where appropriate, integrate them into EDS.

Despite PWBA's efforts, the agency may not fully benefit from EDS in the near future because of delays in the implementation of EFAST, which supplies the underlying data. In August 2000, EFAST began preliminary operations, such as document scanning, to process plan year 1999 filings. However, due to system development delays, complete plan data from that year and subsequent filing years are still not available electronically for investigative staff use. According to PWBA officials, by the end of fiscal year 2002 the system should be operating so that complete filing data are online and accessible to investigative staff within 1 year of receipt by PWBA. Meanwhile, investigative staff told us they often compensate for the lack of internal computer-targeting tools by using public domain databases that contain basic information from more recent plan filings for their research. Delays in the implementation of the EFAST system may also affect IRS enforcement and PBGC regulatory activities, which are dependent on EFAST plan filing data. Until EFAST is fully implemented, PWBA's ability to provide timely and quality plan filing data remains a concern and a potential area for further evaluation.

Weaknesses also exist in PWBA's provision of external databases to investigative staff for collecting and researching information to develop cases. According to investigative staff, databases containing legal, economic, and corporate demographic information are a useful research tool. However, 63 percent of the investigative staff and 83 percent of the supervisors responding to our survey indicated that they do not have adequate or timely access to Internet databases that are needed to perform their work. Several investigative staff in the regions we visited told us that they used the Internet to gain access to a wide range of information sources to develop case leads and conduct investigations, such as news stories about economic events and activities of major employers in their region. However, according to officials in PWBA's Office of Information Management, access to several of these databases is limited to a set number of investigative staff in each region mainly due to cost. For example, in two regional offices we visited staff told us that only select individuals had access to key research databases, which meant that all investigative staff inquiries were passed through them. According to staff we spoke with, this process was both time-consuming and cumbersome.

Closed Case Review Process May Not Adequately Ensure Work Quality

Our review also found that PWBA lacks a centrally coordinated quality review process to ensure that its investigations are conducted in accordance with its investigative procedures. Government auditing standards and GAO internal control principles emphasize the importance

of having a quality control process to ensure that audits and other reviews of government operations are conducted in a manner to help improve the performance of those operations. In 1999, the Office of Enforcement formally assigned the responsibility for performing quality assurance reviews on closed cases to its regional offices. However, the Office of Enforcement does not provide procedures or guidance for the regions responsible for conducting such reviews.

We contacted all 10 regions and found that three regions did not have a quality review process for examining closed cases while others had only a limited process. Management officials at the seven regional offices with closed case review programs told us that the results of their reviews are used for quality improvement and staff development purposes. However, we believe that regional policies and procedures for conducting these reviews may limit their utility in assessing the quality of investigations. First, auditing and internal control standards require that officials performing quality control reviews should be organizationally independent of the unit being reviewed but this was not the case in the regional offices. A lack of independence creates potential biases in case selection and review that could limit the value of PWBA's quality assurance efforts. In regions with review programs, the associate or deputy regional directors, officials who are not fully independent of the work, conduct the quality reviews. In one region we found that group supervisors, who are even closer to the performance of investigations, select cases to be reviewed, a practice performed by associate or deputy regional directors in the six other locations. Second, management in regions with review programs noted that their closed case reviews were administrative in nature and generally focused on whether case procedures and forms had been documented. While this type of internal control activity has value, PWBA's reviews rarely address the technical merits of cases. We found that only one region's review process evaluated substantive technical case issues. Third, we found variation in how regions captured and reported the results of their reviews. Management officials in five of the seven regions with review programs provide written reports documenting their findings to the regional director, while officials in the sixth and seventh regional offices convey their results orally to staff in regional training and verbally to the regional director, respectively. The Office of Enforcement does not require the regions to report their findings and thus cannot ensure the quality of PWBA's investigations nationwide.

An effective quality control system is important considering that PWBA's enforcement resources are already highly leveraged and it will face increasing future workload challenges. Thus it is essential that PWBA's quality control system ensure the independence of individuals responsible

for closed case quality reviews. In addition to addressing administrative issues, these reviews should focus on substantive technical case issues to provide more assurance that established policies, procedures, and investigative standards are followed. Such a system should also include mechanisms to provide constructive feedback to staff and to make any necessary improvements in program policies and operations.

Low Participation in Voluntary Fiduciary Correction Program

PWBA has not realized the level of participation in the VFC program that it expected at the program's inception. When PWBA announced the program, it anticipated that up to 700 plans would apply for and use the program within its first year. As of July 2001—approximately 15 months after the program's inception—PWBA reported that only 37 plans had submitted 60 applications for this program. PWBA officials acknowledged that the VFC program is a "work in progress," and they are optimistic that it will expand and thus contribute to the effectiveness of the enforcement program. Specifically, PWBA believes that the voluntary correction of violations through the program will be less costly than direct intervention and will allow the agency to further leverage its limited investigative resources. PWBA officials also told us that the number of VFC program applications received alone does not fully capture the benefits of this program, because some plan sponsors may use the program's guidance to correct possible ERISA violations without filing an application with PWBA. While employee benefit industry officials cite benefits of the VFC program, such as the absence of user fees or penalties, they expressed concern that some of the program's current requirements hinder participation. For example, the program requires plan officials to notify all plan participants of the potential violation and the ensuing correction, a step they are not required to follow when they are subject to a traditional PWBA investigation. Benefit experts also cited PWBA's requirement to refer plans to the IRS for the levying of an excise tax on each prohibited transaction corrected as another potential barrier.[16] Given PWBA's expectations of the VFC program to promote overall compliance with ERISA and leverage its enforcement resources, we believe that PWBA needs to closely monitor and analyze the barriers to participation in the program and the program's effect on its enforcement strategy.

[16] PWBA's VFC Program Notice states that section 3003(c) of ERISA obligates Labor to report prohibited transactions to the IRS. Under section 4975 of the Internal Revenue Code, the IRS may levy a 15-percent excise tax on prohibited transactions.

Human Capital Management Has Received Limited Attention

Our review showed that PWBA has given limited attention to human capital management despite anticipated workforce and enforcement workload changes. Although PWBA has developed training and mentoring programs for its new staff, it has only begun to consider the larger issues of workforce planning, including succession planning and workforce retention. This situation could undermine the continuity and effectiveness of the enforcement program because more than half of the PWBA senior management staff present on September 30, 2000, will be eligible to retire in the next 5 years. Finally, our review found that PWBA's current performance appraisal system for investigative staff may be causing unintended, undesirable behaviors regarding the selection and prioritization of cases as well as the sharing of best practices.

Human capital management functions are carried out by the Office of Program Planning, Evaluation, and Management (OPPEM). OPPEM has recently begun to look into the issues that drive workforce planning, but it has not implemented plans to prepare for the retirement of many of PWBA's managers or to help ensure the retention of highly qualified employees. Similar to the rest of the federal government, PWBA faces the possible retirement of many of its employees in the near future, especially at the senior management level. This situation could compromise PWBA's ability to manage its enforcement program efficiently and effectively. By fiscal year 2006, 21 percent of PWBA's employees agency wide and 55 percent of PWBA's senior managers will be eligible to retire. In addition, PWBA faces recruitment and retention problems. The agency ended fiscal year 2000 unable to fill 8 percent of its authorized positions, including its national criminal coordinator position, which remained unfilled as of the end of November 2001. PWBA's attrition rate is also one of the highest within the Department of Labor. In fiscal year 2001, PWBA's rate of attrition was 9.7 percent compared with Labor's overall rate of 7.6 percent.

OPPEM officials have acknowledged the importance of addressing attrition and future retirement needs. To that end, OPPEM recently collected data from regional management on the skill mix needed to perform the future work of the agency. OPPEM has not yet implemented the steps necessary to facilitate employee retention and the smooth succession of senior staff, but anticipates using the collected data to develop specific strategies to ensure a skilled workforce in the future. In addition, OPPEM has begun to consider potential actions within its control to address the upward trend in attrition, including the adoption of retention bonuses and pay banding. OPPEM also recently developed an exit survey to better understand the reasons why employees are leaving the agency. Nevertheless, PWBA still lacks a comprehensive human capital plan or strategy that is linked to its current and future workforce needs.

Sound human capital management practices dictate that organizations should periodically engage in strategic planning and analyses to better position themselves to meet future challenges. Our prior work on human capital management planning also suggests that strategies should be linked to current and future human capital needs, including the size of the workforce; its deployment across the organization; and the knowledge, skills, and abilities needed by agencies. Staff deployment, both geographically and organizationally, should also enhance mission accomplishment and provide for efficient, effective, and economical operations.[17]

In addition, PWBA's performance appraisal system may serve as a disincentive to conducting quality casework and sharing best practices information and, therefore, has the potential to undermine the agency's enforcement program. In 1997, PWBA added a dimension to its rating system that evaluates investigative staff on the number of cases closed during the year. Investigative staff receive a set amount of points for closing a case based on the type of case and how it was resolved. The rating form used to calculate the points for cases closed does not include points for case complexity, number of violations found, or number of participants and beneficiaries affected. However, supervisors can grant additional discretionary points to investigators based on the above factors. Although the point minimum is only one dimension in the rating system, we believe that it may act as a disincentive in some cases in that staff are not motivated to complete a range of investigations that includes plans of different sizes and degrees of complexity. During field visits, investigative staff and their supervisors expressed concern about the point-rating system. In addition, 50 percent of all the investigative staff and their immediate supervisors who responded to our survey believed the rating system to be ineffective at motivating staff to initiate and complete a wide range of investigations. Among supervisors responding to our survey, more than one-third noted that the rating system is ineffective. Only 21 percent of all survey respondents believed the system to be effective. Respondents who believed the rating system to be ineffective were generally concerned that the current system (1) placed too much emphasis on quantity, rather than the quality of work performed; (2) caused investigative staff to focus more heavily on less complex plans and to perform more investigations of small plans; and (3) placed too much emphasis on monetary results. We believe that PWBA could strengthen its rating system by better incorporating case complexity into the point scale

[17] U.S. General Accounting Office, *Human Capital: A Self-Assessment Checklist for Agency Leaders*, GAO/OGC-00-14G (Washington, D.C.: Sept. 2000).

and considering additional measures to account for the overall impact of the case on plan participants and beneficiaries.

PWBA's current rating system for investigative staff also lacks a teamwork dimension. As previously noted, enforcement staff engage in only limited sharing of best practices both within and across PWBA's regions. Our prior work on human capital management has found that leading organizations foster cultures in which individual employees interact, support, and learn from each other as a means of contributing to the high performance of their peers and their organization as a whole.[18] Thus, PWBA may foster greater sharing of best practices among its investigative staff and enhance the effectiveness of its overall enforcement program by adding a teamwork dimension.

Finally, we identified a productivity requirement used by one region we visited which supplements PWBA's rating system for investigative staff and may have implications for case quality. This region requires its investigative staff annually to process 30 cases and to refer 2 cases to Labor's Regional Solicitor for litigation. Investigators we spoke with in that region and respondents to our survey indicated that this additional requirement sometimes causes them to focus on less complex cases rather than those that may take longer to resolve. Management in that regional office explained that the "30/2" standard was a goal for staff to strive toward and not a requirement. However, an internal regional memorandum we obtained indicated that this standard is tied to the "timeliness" performance standard in the rating system. Officials in the Office of Enforcement told us that they were unaware of any additional "unofficial" expectation being established in the region.

Performance Measurement System Provides Limited Assurance of Overall Program Effectiveness

While PWBA's performance goals and measures have evolved over time, several still do not help PWBA assess the impact of its enforcement program on improving overall compliance with ERISA. Performance measures that are included in agencies' annual performance plans should indicate progress towards their goals and should be objective, measurable, and quantifiable. PWBA's program performance measures fall short of this requirement in that they generally focus on how well it is managing and using its resources—such as the number of specific investigations conducted—rather than on PWBA's overall impact on improving the security of employee benefits.

[18] GAO/OCG-00-14G.

The performance measures that PWBA uses to track progress towards meeting its enforcement goals have improved since it published its first strategic plan in fiscal year 1999. For example, beginning in fiscal year 2001, PWBA began to use separate measures for pension and welfare plans related to deterring and correcting violations of relevant statutes. We had reported that the previously combined measures could have masked poor performance in one of these areas and hindered PWBA's efforts to monitor and measure two distinct workloads. Also since its first strategic plan, PWBA has increased the numeric performance target goals for several of its enforcement-related workloads, which shows that the agency is attempting to increase productivity. For example, from fiscal year 1999 to fiscal year 2002, PWBA increased its target for the percentage of civil investigations closed with corrected violations from about 16 percent to nearly 36 percent. In addition, several of PWBA's enforcement-related performance measures have a quality component and focus on actual results achieved, such as closed investigations where assets or participant benefits are restored. These quality-focused measures provide a useful framework for management to communicate its investigative priorities and may serve as an incentive for supervisors and investigative staff to pursue the most productive case leads.

Despite these changes, room for improvement remains in PWBA's current enforcement-related performance measures (see table 1). PWBA continues to aggregate performance measures for separate program activities into a single overall measure, which makes it difficult to assess performance. For example, for closed fiduciary investigations of pension and health plans, PWBA aggregates and reports the number of cases with four types of results—(1) restored assets, (2) corrected prohibited transactions, (3) recovered participant benefits, and (4) plan assets protected from mismanagement and risk of future loss is reduced. As a result, assessing whether the goal is actually being met may be difficult, because success in one of the four elements may obscure failure in another.[19]

[19] We previously criticized this performance measure in our assessment of Labor's fiscal year 2002 annual performance plan. See U.S. General Accounting Office, *Department of Labor: Status of Achieving Key Outcomes and Addressing Major Management Challenges*, GAO-01-779 (Washington, D.C.: June 15, 2001).

Table 1: PWBA's Enforcement-Related Performance Measures for Fiscal Year 2002

Performance measure	Target
Increase by 5 percent per year the number of closed civil investigations of employee pension plans where assets are restored, prohibited transactions are corrected, participant benefits are recovered, or plan assets are protected from mismanagement and risk of future loss is reduced.	1,993
Increase by 5 percent per year the number of closed civil investigations of employee health and welfare plans where assets are restored, prohibited transactions are corrected, participant benefits are recovered, or plan assets are protected from mismanagement and risk of future loss is reduced.	620
Increase by 3 (to 10) the number of closed fiduciary investigations where plan assets are protected by filing a proof of claim or adversary complaint in a bankruptcy action.	10
Increase by 1 percent per year the ratio of closed civil cases with corrected violations to total civil cases closed.	51.83 percent
Increase by .25 percent per year the ratio of criminal cases referred for prosecution to United States Attorneys or to State prosecutors to total criminal cases closed.	43.41 percent
Increase by 2 percent benefit recoveries for individuals achieved through the assistance of Benefit Advisers.	$67 million

Source: PWBA's fiscal year 2002 Revised Final Annual Performance Plan.

In addition, some of PWBA's performance measures may not be sufficiently defined to help ensure that the agency properly tracks its achievements. For example, PWBA's fiscal year 2000 measure to track the assistance provided by benefit advisers aims to increase by 2 percent the amount of their *benefit recoveries*—the dollar value of benefits returned to participants. In its fiscal year 2000 performance report, PWBA stated that it met this goal. However, in this assessment PWBA also counted *benefits protected*—the dollar value of benefits prevented from being lost, which typically involve health plans. Thus, it was unclear whether PWBA met its goal as originally defined. This characterization of the goal persists in PWBA's fiscal year 2001 and 2002 annual performance plans.

Finally, our review identified the need for additional measures to more fully assess the effectiveness of the enforcement program. About one-third of all survey respondents indicated that PWBA needed additional measures than those currently being used to assess the enforcement functions. These survey respondents and investigative staff we spoke with in the regions generally noted that PWBA's existing measures placed too much emphasis on numbers of investigations conducted and monetary recoveries and too little emphasis on the number of plan participants and beneficiaries helped by PWBA's enforcement program. For example, a

relatively simple pension plan case could lead to millions of dollars in recoveries but help few participants whereas a complex welfare plan case may yield little in monetary recoveries but substantially help many participants. However, PWBA does not currently have any annual performance plan measures that track the number of employee benefit plan participants helped by PWBA's enforcement efforts.

Conclusions

PWBA is a relatively small agency facing the daunting challenge of safeguarding the economic interests of millions of Americans by overseeing the providers of employee benefit plans. Over the years, PWBA has taken steps to strengthen its enforcement program and leverage its resources. The agency has placed the majority of its resources into its enforcement program, decentralized its investigative authority to the regions, and made improvements in technology. All these actions contributed to what is, overall, a well-run program. However, we found that PWBA currently provides limited national oversight and coordination in key areas that have the potential to impede the operations and overall effectiveness of its enforcement program over the long term. Thus, it is important that PWBA take steps as soon as possible to improve weaknesses in its case selection analyses, best practices sharing, and quality assurance processes. In the longer term, PWBA needs to readdress whether and how it can better assess the level of noncompliance with ERISA and take steps to link this assessment with its human capital initiatives and resource allocation decisions. The ever-changing complexities of employee benefit plans and their financial transactions coupled with the imminent retirement of a large portion of PWBA's workforce heighten the need for PWBA to act more strategically to ensure that it designs the most efficient and effective enforcement program to address its workloads.

Recommendations for Executive Action

To improve the agency's management of the enforcement program, we recommend that the Secretary of Labor direct the Assistant Secretary of Labor, PWBA, to take the following actions:

Direct the Office of Enforcement to improve its oversight role in key areas.

- Develop a cost-effective strategy for assessing the level and type of ERISA noncompliance among employee benefit plans. Such a strategy should include an assessment of the feasibility of using sampling and/or segmenting the plan universe to allow PWBA to determine the level of noncompliance with an acceptable level of confidence.

- Institutionalize and conduct regular reviews of the sources of cases that lead to investigations.
- Coordinate the sharing of "best practices" information among regions relating to the optimum and most productive techniques for selecting and conducting investigations.
- Develop a closed case quality review process that ensures the independence of reviewers and sufficiently focuses on substantive technical case issues.
- Monitor and analyze the barriers to participation in the Voluntary Fiduciary Correction program and explore ways to reduce them.

Direct the Office of Program Planning, Evaluation, and Management to improve PWBA's human capital functions.

- Conduct a comprehensive review of PWBA's future human capital needs, including the size and shape of the workforce; the knowledge, skills, and abilities needed; succession planning challenges; and staff deployment issues.
- Reevaluate the performance rating system for enforcement staff to ensure that case complexity and teamwork issues receive sufficient emphasis.

PWBA's Comments and Our Evaluation

We provided a draft of this report to PWBA for review and comment. PWBA's comments are included in appendix III, followed by our brief response to some inaccuracies in PWBA's January 31, 2002, comment letter. PWBA also provided additional technical comments on our draft report, which we incorporated where appropriate. In its response to our draft report, PWBA acknowledged the need for more effective oversight and quality controls, and that there is a need to address the internal management issues we raised. PWBA also provided additional information on planned and current initiatives that they believe address a number of our recommendations. PWBA disagreed with one of our observations that its aggregation of performance measures for separate program activities into a single overall measure makes it difficult to assess performance. Our reply to PWBA follows below. We acknowledge PWBA's continuing efforts to improve its ERISA enforcement program but believe that implementing our recommendations will further strengthen the program.

In response to our recommendation that PWBA develop a cost-effective strategy for assessing the level and type of ERISA noncompliance among employee benefit plans, PWBA cited an ongoing project to gauge health plans' compliance with ERISA. PWBA noted that upon compiling the results of this project, it would gauge the use of such reviews. We revised our report to reflect this initiative. We acknowledge PWBA's efforts in this

area but believe that PWBA could build upon this existing work to better assess the level and type of ERISA noncompliance for the entire plan universe, including pension and welfare plans, under its enforcement jurisdiction.

Regarding our recommendation that PWBA institutionalize and conduct regular reviews of the sources of cases that lead to investigations, PWBA responded that it completed a Case Opening and Results Analysis 1999 Baseline Study in November 2001, and that it will produce similar reports in future years. We revised our report to reflect that PWBA had completed this analysis. As we noted in our report, PWBA's last sources of cases analysis was performed in 1990, and we believe that conducting such analyses on a regular, more frequent basis is important to evaluating whether PWBA's investigative resources are focused in the most effective and efficient areas. We believe that the results of these reviews will also help assist PWBA's future workload and resource allocation decisions.

In response to our recommendation that PWBA coordinate the sharing of "best practices" information among regions for selecting and conducting investigations, PWBA noted that sharing among senior field managers does occur and cited various activities in place to foster information sharing. However, PWBA agreed to find ways to address the problem to the extent that it exists. Our survey results indicate that PWBA may need to take actions to foster staff-to-staff information sharing. Considering that more than half of the investigative staff that responded to our nationwide survey felt that formal sharing across regions does not occur, PWBA should take additional steps to assess how best practices sharing among regions—including at the staff level—can be improved.

In response to our recommendation that PWBA improve its closed-case quality review process to ensure reviewer independence and that substantive technical issues are addressed, PWBA agreed that a quality review program is important. However, PWBA stated that given its organizational structure, none of its components are totally independent of the enforcement process. PWBA agreed to discuss our findings with its Regional Directors and explore possible modifications and improvements. PWBA also noted that it has a number of processes for reviewing staff work products and case summaries during ongoing assignments. We are aware of PWBA's product review process as depicted in Figure 7 of our draft report. However, we found that only one region's closed-case quality assurance review process addressed substantive technical case issues to ensure that established policies, procedures, and investigative standards are followed. Given the importance of independent and substantive quality

assurance reviews to ensuring the integrity of its enforcement program, we believe that PWBA needs to address the deficiencies noted.

Regarding our recommendation that PWBA monitor and analyze the barriers to participation in the Voluntary Fiduciary Correction (VFC) program, PWBA told us that it is assessing potential barriers, including the VFC's general notice and excise tax reporting requirements. These requirements were noted as potential barriers to participation in our draft report. Given PWBA's stated expectations for the VFC program—which include allowing PWBA to leverage its investigative resources and the correction of violations in a less costly manner than via its direct intervention—ongoing attention to this program is needed to increase participation over current levels.

PWBA cited various current and planned activities related to human capital management and succession planning in response to our recommendation that it conduct a comprehensive review of its future human capital needs. However, the activities PWBA cited are primarily stand-alone efforts and are not linked to an agency-wide assessment of potential changes in PWBA's future workload and workforce. Although PWBA's human capital initiatives have value, PWBA still lacks a comprehensive human capital plan or strategy that is linked to its current and future workforce needs. Human capital management planning strategies should be linked to current and future workforce needs, including the size of the workforce; its deployment across the organization; and the knowledge, skills, and abilities needed by staff. PWBA's attention to human capital management is critical, in part, because by fiscal year 2006, 21 percent of PWBA's employees' agency-wide and 55 percent of PWBA's senior managers will be eligible to retire. As we reported, this situation could compromise PWBA's ability to manage its enforcement program efficiently and effectively.

In response to our recommendation that PWBA reevaluate the performance rating system for enforcement staff to ensure that case complexity and teamwork issues receive sufficient emphasis, PWBA stated that it would provide a copy of our report to union officials representing its field staff and ask them to assist in determining whether the performance standards should be revised. PWBA also reported that for the one region we identified as having a productivity requirement that supplemented PWBA's rating system for investigative staff, it has retracted that requirement. This provision required investigative staff annually to process 30 cases and to refer 2 cases to Labor's Regional Solicitor for litigation.

Although we did not make any recommendations on PWBA's annual performance plan (APP) goals and measures, PWBA raised various concerns about our observations in this area.

- PWBA disagreed with our assessment that aggregating four separate and key measures of results for closed investigations makes it difficult to assess performance. PWBA stated that these activities are all linked to the desired outcome of secure benefits and that further separation of the data was not appropriate or necessary. However, PWBA acknowledged that it does internally monitor these component measures separately for management purposes. Despite PWBA's position, we continue to believe that the aggregation of measures for separate program activities into a single overall measure makes it difficult to assess performance because success in one of the four elements may obscure failure in another.

- Regarding PWBA's measure to track recoveries by benefit advisers, PWBA stated that it modified its fiscal year 2001 performance report by adopting the generic term "recovery" for this measure in place of "recovered or protected," as previously used. PWBA further stated that the term "recovery" in actuality is a function of "benefits restored" plus "benefits protected." We still do not believe that PWBA's revision sufficiently improves the clarity of this measure. Benefit recoveries—lost benefits actually returned to participants—are distinct from benefits protected, which include benefits that are threatened but not actually lost.

- Regarding our observation that PWBA does not measure the number of employee benefit plan participants helped by its enforcement efforts, PWBA replied that emphasizing participant numbers could skew the enforcement program strongly in favor of investigating large plans and leave many small-and medium-sized plans without sufficient oversight. Our draft report did not state that PWBA emphasize such measures, but rather that PWBA may need additional measures to fully assess the effectiveness of its enforcement program.

We are sending copies of this report to the secretary of labor, the assistant secretary of PWBA, and other interested parties. Copies will be made available to others upon request. This report is also available on GAO's homepage at http://www.gao.gov.

If you have questions concerning this report please contact me at (202) 512-7215, or Daniel Bertoni at (202) 512-5988. Other major contributors are listed in appendix IV.

Barbara D. Bovbjerg
Director, Education, Workforce,
and Income Security Issues

Appendix I: Scope and Methodology

This appendix describes our approach for collecting and analyzing data and for interviewing officials to document the management of the enforcement program at the Pension and Welfare Benefits Administration (PWBA). The objectives of our review were to determine (1) PWBA's current strategy for enforcing the Employee Retirement and Income Security Act's (ERISA) employee benefit plan provisions and (2) what areas PWBA could improve in the management of its enforcement program.

We conducted our review at PWBA headquarters in Washington, D.C., and 5 of 10 regional offices: Boston, Massachusetts; Philadelphia, Pennsylvania; Kansas City, Missouri; Dallas, Texas; and San Francisco, California. We selected the regional offices based on the following range of criteria: (1) geographic distribution—dispersed across the nation; (2) geographic coverage areas—mixture of small, medium, and large jurisdictions; (3) industry sectors covered; (4) workload levels; (5) performance indicators—mixture of low, medium, and high levels of performance results; (6) type of regional projects; (7) regional management—long-tenure managers versus managers recently reassigned from the national office; and (8) best practices used—locations known for innovative approaches. We also conducted a nationwide survey of PWBA's investigative staff and their immediate supervisors. In addition, we reviewed internal guidance and documentation, agency performance plans and reports, and performance data relevant to PWBA's enforcement activities. We also visited PWBA's contractor-run computer facility for the ERISA Filing and Acceptance System (EFAST) in Lawrence, Kansas. Furthermore, we interviewed key officials at other federal agencies with enforcement responsibilities regarding potential best practices as well as representatives from the nongovernmental employee benefits, retired persons, and labor communities. We conducted our work from November 2000 through November 2001 in accordance with generally accepted government auditing standards.

Identification of PWBA's Current Enforcement Strategy and Areas for Improvement

We interviewed and surveyed PWBA management and staff, as well as reviewed and analyzed relevant documentation from PWBA and the Department of Labor's Office of the Inspector General (OIG). To identify the current enforcement strategy and identify areas for improvement, we reviewed available PWBA policy guidance, internal studies, OIG reports, budget documents, performance and workload trend data, and other internal documents.

Interviews with PWBA Managers and Staff

To document the management of PWBA's enforcement program, including the agency's enforcement strategy and areas for managerial improvement, we conducted in-depth interviews with more than 100 PWBA employees. These included senior managers at PWBA's headquarter offices as well as senior managers, group supervisors, investigative staff and auditors, and benefit advisers at each of the five regional offices. We gathered the information using structured interview guides. In order to provide a degree of consistency across the agency, our interview guides included general questions applicable to all employees regarding agency procedures and policies, as well as specific questions tailored to each individual's particular position or area of expertise.

Survey of Investigative Staff and Supervisors

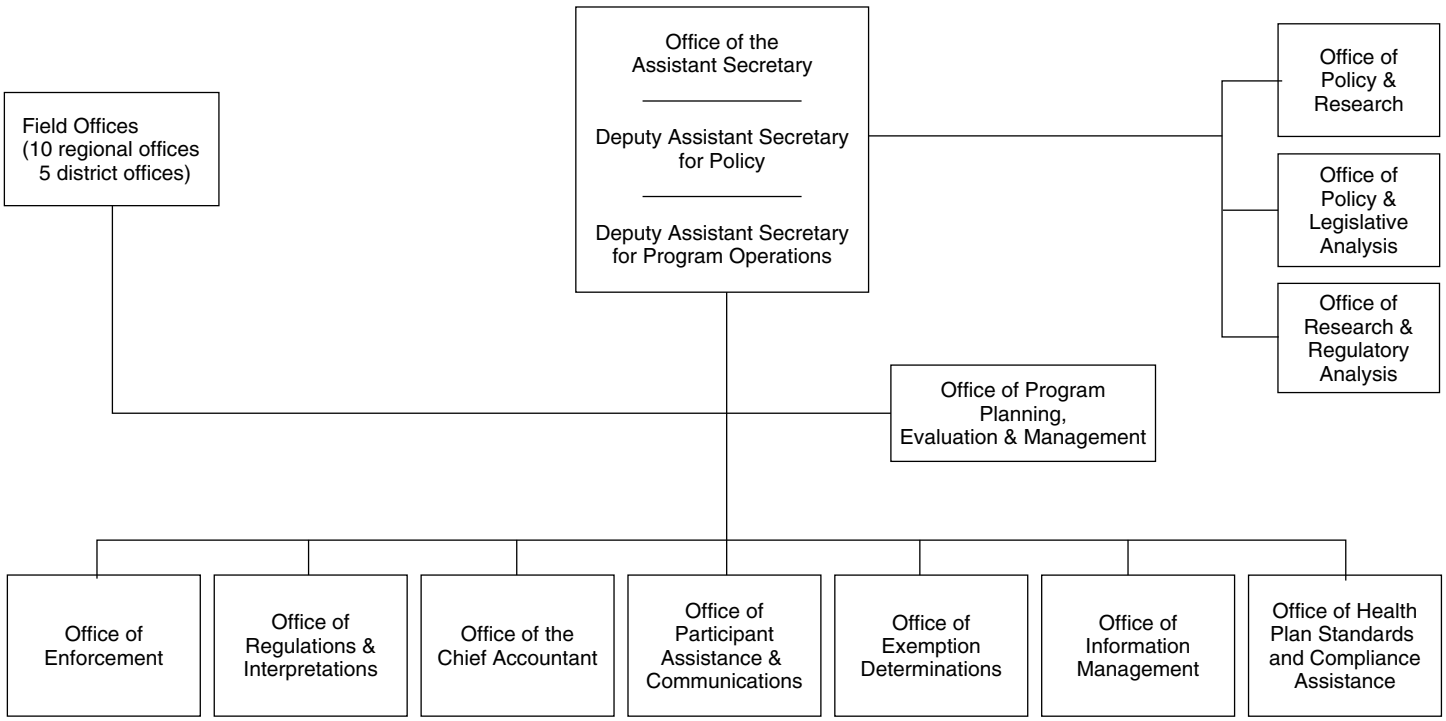
To collect additional data on PWBA's management of its enforcement program, we surveyed PWBA's entire investigative staff and their immediate supervisors—a total of 375 individuals. Of this number, 267 (approximately 71 percent) responded to the e-mail survey—representing all of PWBA's regional offices nationwide. To help gather accurate, unbiased data, survey respondents were assured anonymity. The survey questions reflected much of the content of the interview guides administered during field visits to headquarters and regional staff. Questions were designed to ascertain the effectiveness of various aspects of PWBA's management, including written guidance, quality assurance, enforcement priority areas, national office evaluations of the enforcement program, case targeting, benefit adviser leads, technological supports, sharing of "best practices" information, training supports, and the rating system.

Interviews with Representatives from Other Federal Agencies and Nongovernmental Organizations

In order to place PWBA's management of its enforcement program in larger context, we conducted interviews both with key officials from other federal agencies having enforcement responsibilities and individuals representing private organizations devoted to employee benefit and labor issues. We conducted interviews with officials from the Securities and Exchange Commission and from the Department of the Treasury's Internal Revenue Service to discuss their general enforcement strategies and any applicable best practices. We also solicited the opinions of experts from various external groups representing the pension industry, retired persons, and labor organizations—such as the American Benefits Council, the American Society of Pension Actuaries, the American Association for Retired Persons, and the American Federation of Labor and Congress of Industrial Organizations.

Appendix II: PWBA Organization Chart

Figure 8: U.S. Department of Labor, Pension and Welfare Benefits Administration



Source: PWBA.

Appendix III: Comments from the Pension and Welfare Benefits Administration

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

U.S. Department of Labor

Assistant Secretary for
Pension and Welfare Benefits
Washington, D.C. 20210

JAN 31 2002

Mr. Daniel Bertoni
Assistant Director
Education, Workforce,
and Income Security Issues
United States General Accounting Office
Washington, DC 20548

Dear Mr. Bertoni:

We have reviewed the General Accounting Office's (GAO) draft report entitled "Pension and Welfare Benefits Administration: Opportunities Exist for Improving Management of the Enforcement Program" (GAO-02-232). This letter provides our general comments concerning the draft report; we have already provided technical comments directly to you and your staff. We appreciate the recognition that actions have been taken since GAO's last review in 1994 to strengthen the enforcement program and leverage the use of our resources in what you conclude is "overall, a well-run program."

See comment 1 on page 52.

While we acknowledge the need for more effective oversight and quality controls, the agency has not been indifferent to these matters, and we will describe below some of those efforts. As GAO recommended in 1994, the agency has delegated a great deal of independence to the Regional Directors. The Regional Directors operate within a policy framework established through our Strategic Enforcement Plan and the annual program planning process. Since 1994, the Agency and the enforcement program have grown considerably, and we agree that there is a need to address these internal management issues. At the same time, it is important to recognize that much of our success is a result of the organizational culture that provides a significant amount of discretion to the Regional Directors to manage their staffs and to address the enforcement issues most relevant to their respective regions.

It is also worth noting that in addition to expanding in size since 1994, PWBA's mission has grown with the enactment of HIPAA and three other related health care statutes, the passage of the SAVER Act that expanded our outreach, education, and participant assistance programs, and the transfer of the responsibility from the IRS to PWBA for processing the ERISA annual reports (Form 5500s).

Provided below is information related to activities that have been undertaken in the enforcement area and the information technology, human capital management, and

Government Performance and Results Act (GPRA) areas which we believe was not covered in the draft report.

Recommendation No. 1: Develop a cost-effective strategy for assessing the level and type of ERISA noncompliance among employee benefit plans.

PWBA recently did embark on a statistical study to gauge health plans' compliance with the new provisions of Part 7 of ERISA (i.e., HIPAA, Mental Health Parity Act, Newborns' and Mothers' Health Protection Act, and Women's Health and Cancer Rights Act). After conducting a pilot project in FY 2000, covering approximately 200 investigations (not statistically selected), we decided to conduct a statistically valid review in this area. This project, entitled the Health Disclosure and Claims Issues—Project 2001 (HDCI), required extensive planning among PWBA's enforcement, research, and health plan compliance staffs. The project involved the referral of data on randomly selected group health plans to field offices for compliance reviews. PWBA compiled a statistically valid sample of approximately 400 multiemployer plans from Annual Report filings. A more labor-intensive task involved identifying by telephone contact over 900 covered plans from a random pool of over 2,100 single employers. These efforts, and ensuring the statistical integrity of the project, demanded meticulous record keeping at both the national and field office levels as these offices exchanged data on hundreds of entities. We have completed the investigative phase of the project and are just beginning the analysis of the results of the investigations. The Agency looks forward to being able to utilize the results of this project to guide our decisions regarding the allocation of the Agency's resources in the area of noncompliance by health plans.

In addition, once we have compiled the results of HDCI—Project 2001, we will be able to gauge better the use of such studies. As we begin planning later this year for FY 2003, we will give very serious consideration to conducting another baseline project within the framework of our existing resources and Agency priorities. We intend to continue to discuss this issue with the Agency's Regional Directors. With PWBA's resource limitations, it is important to ensure that any national enforcement initiative be manageable, while continuing to uncover misconduct and protect plan participants.

However, as GAO correctly points out, PWBA's current enforcement strategy recognizes its extremely limited investigative resources and relies on effective targeting methodologies and the identification of at-risk participant populations to leverage those resources most efficiently. The data reveal that this strategy is apparently working: both the percentage of PWBA cases converted to fiduciary investigations and the percentage of investigations resulting in the identification of violations have been steadily increasing over the past few years. By conducting enforcement projects, both nationally and regionally, PWBA identifies segments of the plan universe to ensure compliance with ERISA. The 401(k) Fee Project is an example where cases were targeted to ascertain the degree of compliance in a specific area. The enforcement project was one element of a multi-component PWBA initiative to address allegations regarding high and excessive fees charged to 401(k) plans. Fifty plans were selected for inclusion in the project with each region assigned five investigations. Forty of the plans identified for inclusion in the

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project were selected because they were plan clients of institutions for which allegations of high or undisclosed fees had been made by the media or because of similar information obtained by PWBA in other investigations. The Form 5500 database was queried to identify the plan clients of these service providers through Schedule C of the Form 5500. This information was analyzed and plans were selected for investigation. Investigations of the plans were conducted and violations were cited where applicable. Other examples of similar initiatives include:

-- The proxy projects were initiated to ensure compliance with ERISA's requirements to manage the proxy voting of stock owned by plans prudently and in the interest of participants.

-- The employee contributions project ensured the timely payment of withheld employee contributions to health and pension plans, in particular 401(k)s.

-- PWBA also undertook a systematic review of 401(k) plans to ensure that fidelity bonds were in place as required to guard against loss through fraud or dishonesty.

-- Multiple Employer Welfare Arrangements (MEWAs) have been and continue to be a national emphasis because of the agency's experience that unscrupulous operators may leave participants with large, unpaid claims.

-- More recently, PWBA has identified orphan plans and plans whose sponsors are in bankruptcy as national emphases.

Recommendation No. 2: Institutionalize and conduct regular reviews of the sources of cases that lead to investigations.

In November 2001, PWBA completed the Case Opening and Results Analysis (CORA) 1999 Baseline Study to rank the most likely source that would best identify a potential violation of ERISA. The agency intends to build on the CORA 1999 Baseline Study and will produce CORA reports in future fiscal years so that longitudinal studies can be prepared. Work has already begun on the CORA 2000 study; currently data verification of FY 2000 data is underway, which is the preliminary step before data analysis can begin. In addition to analyzing the results based on the source of an investigation, PWBA intends to conduct corollary studies as part of CORA for management use.

It was important for PWBA to approach this analysis in a methodical manner and with long-term goals in mind. The first step was to complete the design, testing, and full implementation of the Enforcement Management System (EMS), so that the Agency would have reliable data upon which to base its studies. EMS is a significant milestone which has expanded the information being collected on investigations, empowered investigators and managers at all levels to access instantly information on any closed or

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open investigation, and provided flexibility to allow the addition of new data elements as the need arises. The system provides standard reports useful to both investigators and managers and permits the export of these reports to Excel for further analysis and calculations. These reports allow the regions to monitor and review specific information as to sources of cases, as appropriate.

Recommendation No. 3: Coordinate the sharing of "best practices" information between [sic] regions relating to the optimum and most productive techniques for selecting and conducting investigations.

"Best Practices"
With respect to the sharing of "best practices," we note that while Office of Enforcement (OE) managers did refer to being able to do a better job in the area, that response was given in the context of needing additional resources to be able to do so. We believe that we have taken a strong, proactive role in coordinating and delivering information on "best practices." GAO mentions on page 20 that ". . . fewer than half of the respondents [to the survey] believe [that sharing "best practices" across regions] takes place." However, it is possible that many field staff are unaware that considerable sharing among senior field managers does, in fact, occur on a regular basis; we will try to find ways to address the problem to the extent that it exists. For example:

-- We routinely review and share with field staff and managers (no less often than quarterly) the planned regional enforcement projects for the upcoming year and the results/successes achieved. This sharing of issues explored, targeting methodologies, and lessons learned is not reflected in GAO's report.

-- A specific audit guide to review plans' compliance with Part 7 of ERISA was developed and shared in connection with the HDCI—Project 2001.

-- Other specialized training in the areas of bankruptcy, proxy voting, MEWAs, and derivatives were developed by certain regions with OE assistance and made available to all other regions. Regions routinely share their investigative materials when their regional enforcement projects are adopted by another region; for example, the Kansas City region provided a senior investigator to conduct hands-on training to the Atlanta region when Atlanta adopted the settlor fee project. Similarly, Kansas City provided the written materials developed in conjunction with the settlor fee project to both the Dallas and New York regions.

-- During our annual field office training, we have made presentations in every region to field staff on techniques for selecting and investigating cases on such varied topics as orphan plans, health plans, Employee Stock Ownership Plans (ESOPs), MEWAs, and employee contribution cases.

-- Individual OE staff members are assigned responsibility as subject matter experts for a wide range of topics, issues, and projects and are charged with

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monitoring field activities and sharing information through written guidance memoranda or national teleconferences.

-- We have a program of formal presentations on the topic of "What Works and What Doesn't Work" which is given by a Regional Director at most of the quarterly Regional Directors' meetings. The Regional Director making the presentation provides insight into what has and has not been helpful in doing the job.

-- Recently, field offices have been provided with Discoverer software that allows them to create their own ad hoc computer targeting reports. Field offices were also provided with a methodology for numbering these targeting reports. OE will monitor these reports for success and share these with the other field offices.

-- The recently issued CORA 1999 Baseline Study established a baseline of case-related data to assist enforcement personnel in selecting sources of cases with the greatest likelihood of producing results on behalf of participants and their families. CORA determined the sources of investigations that were the most common reason for opening an investigation. OE provided regions with copies of CORA to assist them in targeting plans for potential violations of ERISA.

-- The agency has developed and conducts a number of multi-week courses attended by all investigative staff in basic ERISA law and investigative techniques; auditing techniques for non-accountants; reviewing financial institutions servicing plans; and criminal law and investigative procedures.

PWBA National Targeting Committee

GAO omitted a description of the PWBA National Targeting Committee, which meets annually and is composed of at least one representative from each region as well as OE representatives. Committee meetings are open forums used to facilitate the exchange of ideas and experiences, and committee representatives are expected to carry back to their regions any helpful information gleaned from these discussions. Committee members share ideas and experiences relating to case targeting and develop strategies and methodologies designed to maximize the effective use of PWBA resources. The committee prepares a written report based upon the information shared in the annual targeting committee meeting. These reports are provided to the Regional Directors, the Director of Enforcement, and the Deputy Assistant Secretary for Program Operations, and are shared at the staff level. Included in these reports are descriptions of regional projects, targeting reports, and other methodologies used to locate plans with potential problems. GAO staff were provided copies of two of these reports.

Technology used to help select plans for investigation

GAO concluded that most of the PWBA investigative staff does not have sufficient and timely access to automated information for researching and selecting plans for investigation. However, each region, at a minimum, has the following services available to them: Westlaw; RIA; BNA; Lexis-Nexis; and People Finder. The last two services

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are limited to only one person in each office due to licensing costs. The agency makes every effort to find the best available Internet sites and relies on input from the Solicitor's Office in its selection of web sites for conducting legal research. The National Training Coordinator also recommends publications that would assist in the conduct of investigations. Regions are given annual funding authority to procure books, services, and publications as needed. Instances where specific software is needed for help in an investigation can usually be accommodated within the budgetary resources of the region.

PWBA will again survey the regional staff to find the names of specific sites that investigators find useful during investigations and perform a cost-benefit analysis to ascertain the best way to make these services available to the staff. Although it may be ideal to provide each person within the agency a license to a particular software or Internet tool, the licenses are expensive and there is a significant time commitment to master the use of some of the software, such as Discoverer. It is the job of PWBA management to establish budget and time priorities. We may need to ensure that staff understand more of the management issues involved in these decisions.

Finally, it should be noted that PWBA has an internal "Intranet" site that is used to share a variety of information related to 1) cases underway in the Agency (a global search function covers all National Office components and the field), 2) technical information on conducting Part 7 compliance reviews, 3) the Enforcement Manual, 4) the EMS Users Manual, 5) web-based directories, and 6) the ERISA Data System (EDS). Plans are underway to place additional materials on the Intranet related to specific regional initiatives, enforcement issues, administrative guidance, and PWBA advisory opinion letters (combined with a search engine).

ERISA Data System (EDS)

It should be noted that the ERISA Data System (EDS) has now been successfully implemented in all field offices. EDS provides all investigators with the ability to probe directly the EFAST data by the most commonly used criteria, such as plan types, business sectors, certain investments (such as real estate), and other significant indicators. Feedback from the field offices regarding EDS has been very positive thus far. The 5500 data are made available when received from the EFAST contractor (currently on a monthly basis, but will be nightly once a software change request has been implemented). We are aware of the difficulties caused by the transition to the new EFAST system and expect that this technology will pay off once it is fully implemented.

We have also implemented the first phase of EDS targeting using the Oracle Discoverer query tool. This tool gives the regions the ability to search for plans as well as target plans that fit certain criteria designated by the investigator. These users have been provided a starting library of 21 targeting workbooks, which can be modified as the regions need to adjust them for local conditions. The results can be exported to Excel spreadsheets to be made available to all investigators. The OE has created a new targeting numbering scheme so that the outcomes of the resulting investigations can be better tracked. In addition to the preset targeting workbooks, these Discoverer users have the ability to create queries based on any data element on the Form 5500 plus

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accompanying schedules. The next EDS targeting phase is under development, and we expect implementation in the coming months. This phase will make a viewer version of Discoverer available to all investigators so that they can all run the preset queries and adjust benchmarks and thresholds as they see fit.

Recommendation No. 4: Develop a closed case quality review process that ensures the independence of reviewers and sufficiently focuses on substantive technical case issues.

PWBA agrees that a quality review program is important. As pointed out by GAO in its report, the majority of regions conduct an active program of quality review on closed cases, although the reviews were criticized because of the lack of independence on the part of the reviewers and the perceived lack of substantive technical review in some instances. While OE has not issued specific written procedures or guidance on how offices should conduct these reviews, we have discussed other offices' practices and policies at managers' conferences and provided written materials describing these programs.

In the past, we have struggled with this issue and have tried different models for conducting accountability reviews—none of which fully met the Agency's needs. For example, in 1992-93, we tried a pilot review project that covered enforcement and administrative operations. That model relied on National Office staff examining a pre-determined set of cases and selected aspects of the administrative part of the office operations. The latter part of the review was well received, but there were considerable differences of opinion on the accuracy and value of the enforcement review—in large part because several of the National Office staff reviewing casework had little or no experience in actually conducting investigations. This situation still exists today in that many of the OE staff have either worked only a short time in the field (on a detail) or have no field experience. Also, given the streamlined organizational structure in PWBA, there is no component that is totally independent of the enforcement process where staff would be knowledgeable enough to conduct such reviews. However, we will discuss GAO's findings with the Regional Directors and explore possible modifications and improvements to the current quality review program. We will provide a more detailed response on this matter when we respond to the recommendations in the final report.

We also would like to point out that OE has a number of routine processes in place that allow it to provide substantive technical oversight, ensuring consistent application of the law and agency procedures regarding the voluntary compliance process, litigation, penalty assessments, and claiming monetary results. OE receives and reviews every work product in each of these categories and, where appropriate, discusses discrepancies with specific offices. In fact, no monetary recovery submission is approved until it undergoes two levels of review in OE to ensure that violations are correctly cited with sufficient evidentiary basis and that monetary correction has actually occurred as a direct result of field office activities.

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OE also receives and reviews quarterly written case summaries that the field offices identify as being the most significant and shares them with other components within the national office, such as PBSD, ORI, and OED. A group meeting is then held to discuss the issues identified for investigation and to offer suggestions to the field office to enhance the investigative results. On occasion, it is concluded that the issue identified is, in fact, not a problem (possibly because of the existence of a complex statutory or class exemption), and the field office is so advised.

V. Monitor and analyze the barriers to participation in Voluntary Fiduciary Correction Program and explore ways to reduce them.

GAO characterizes participation in the Voluntary Fiduciary Correction Program (VFCP) as "low" in light of the Agency's original projection of 700 that appeared in the context of the VFCP's economic impact analysis. It must be noted that this projection was merely a mathematical calculation based on very limited experience related to the Department's closest analog, the Pension Payback Program (PPP). However, the PPP had significant distinctions from the VFCP, including a narrower scope, a more limited duration, and excise tax relief resulting in approximately 170 plans participating in the six-month program. The fact that participation in the VFCP in practice is below that estimate, in our view, only goes to the issue of the legitimacy of the underlying assumptions made when it was calculated and does not necessarily reflect on the quality of the program.[1]

PWBA sought public comment on all aspects of the VFCP, and found that the VFCP as originally proposed included provisions that public commenters and potential applicants found to be potential disincentives to participate, such as a general notice requirement and mandatory reporting of prohibited transactions to the IRS for excise tax imposition. PWBA has submitted a final VFCP to the Office of Management and Budget, and will provide a description of the final program to GAO as soon as it is released.

[1] When PWBA announced the program, the Agency stated in the *Federal Register*, "The Department projects that Plan Officials of approximately 700 plans will apply for and use the VFC Program . . . . The Department views this estimate as an upper bound; actual participation may be somewhat smaller depending on the cost effectiveness of correcting the actual transactions involved, the complexity of the legal and factual issues involved in a given transaction, and the degree of similarity between an actual transaction and a transaction and correction described by the terms of the VFC Program. The Department recognizes that Plan Officials may not view the VFC Program as offering a cost effective means of correcting all potential violations." Nowhere is it indicated that the 700 participating plans would apply within the first year. It was always assumed that there would be a warm-up period before reaching full levels of participation.

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VI. Conduct a comprehensive review of PWBA's future human capital needs, including the size and shape of the workforce; the knowledge, skills, and abilities needed; succession planning challenges; and staff deployment issues.

Human Capital Management

PWBA has identified the human resource management challenges it will face within the next five years and is taking proactive steps to ensure that the right people are in the right place at the right time and that the systems are in place to meet these challenges. Set forth below is a description of the kinds of activities being undertaken by the agency within existing resources:

-- In FY 2001, PWBA's attrition rate dropped to 9.4 percent. We also understand that the Departmental attrition rate in FY 2000 was 7.2 percent and was 6.7 percent in FY 2001. While our attrition rate was still higher than the Departmental average in FY 2001, we have made considerable improvement in this area.

-- PWBA is currently planning to implement a student loan repayment program as one vehicle to attract and retain valuable employees. Because the retention problem is more significant in certain field offices, the plan is to establish a pilot program. If this program proves successful, it may be implemented PWBA-wide.

-- In order to provide National Office Directors and Regional Directors additional tools to recruit well-qualified candidates for PWBA major occupations, the Deputy Assistant Secretary has re-delegated authority to them to approve certain human resource flexibilities. This includes the authority to approve advances in pay, superior qualification appointments, and payment of travel expenses for interviews.

-- To recruit more effectively well-qualified candidates, PWBA established national and field recruitment teams. Each national office component and region designated an individual to facilitate recruitment for major occupations. Recruitment team members attend a variety of job fairs, college campuses, and other events where applicants with the necessary skills to do the work of the organization are available. Recruitment team members can access a group e-mail address to alert other team members about their recruitment activities and share information about the best sources of candidates. In addition to recruitment teams, PWBA is beginning to advertise its vacancies on the Internet. We have begun to utilize BenefitsLink.com to advertise senior management and specialized positions. Based on our preliminary review of the visits to our advertisements, we believe this medium offers a very good recruitment source for future job advertisements.

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Succession Planning

While PWBA has not instituted a formal succession plan, we have taken significant steps to build, sustain, and effectively deploy the skilled, knowledgeable, diverse, and high-performing workforce needed to meet current and emerging needs.

-- PWBA has made extensive use of the U.S. Office of Personnel Management (OPM) supervisory and executive development programs. Annually, PWBA sends non-supervisors, supervisors, and other managers to OPM's supervisory and executive development programs. Over the years, a number of employees who attended the OPM training have moved into supervisory and senior management positions with the agency. We know from reviewing past results that employees who have attended the training programs have progressed to supervisory and managerial positions in PWBA. These programs are highly rated by those who attend. In FY 2000 and FY 2001, we sent 29 employees and 35 employees, respectively, to OPM courses. In FY 2002, 47 employees are scheduled to attend at a cost of $148,000 for tuition and room and board.

-- In addition, we have established Deputy Regional Director positions in all 10 regions, providing more staff the opportunity to develop the expertise needed to manage a regional office. These positions also provide the missing "link" in the career ladder in our Field positions, since the first-line supervisors don't have the similar range of experience in running a multi-faceted program with a sizable staff (50-75 employees per office).

-- PWBA conducts an extensive in-house technical training program. In FY 2001, PWBA contracted with Job Performance System, Inc., to undertake a training needs assessment and make recommendations on how PWBA could improve its training program. The agency is currently evaluating that assessment and has begun implementing recommendations, as appropriate and as resources permit.

-- PWBA provides long-term career development assignments in two categories– executive potential and executive leadership. Each program lasts approximately one year. Over the past several years, PWBA has supported nine employees in these assignments. The executive potential program is available to supervisory employees who demonstrate executive management potential. Employees selected for this program must complete two 60-day rotational assignments outside PWBA. These rotational assignments are designed to give the employee exposure to the operations of other federal or state agencies. In some cases, the employee may work in a private sector organization during one of the rotational assignments. The executive leadership program is designed primarily for journey-level employees who demonstrate supervisory potential. Employees selected for this program conduct research on management and work-related issues, prepare group reports, shadow supervisory and management officials in their daily work, and complete two rotational assignments.

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-- PWBA also provides opportunities for short-term career development assignments. A few years ago, the Deputy Assistant Secretary for Program Operations established a Special Assistant position in his immediate office to provide journey-level employees with an opportunity to work on projects at the highest level in the agency. Since its inception, 14 employees have completed a rotational assignment. Of these, five have either been selected for supervisory or other management positions on a permanent or acting basis. For FY 2002, the Deputy Assistant Secretary has selected five Field staff for this program. PWBA has also established a similar rotational program involving regional offices. The PWBA San Francisco Regional Office is the first to participate in this program.

-- The Department of Labor has an SES candidate development program, in which PWBA has participated. This program lasts approximately 18 months and includes rotational assignments inside and outside the Department of Labor. A PWBA employee who was selected for the program has completed all requirements and is now eligible for a noncompetitive appointment to a position in the Senior Executive Service.

Recommendation No. 7: Reevaluate the performance rating system for enforcement staff to ensure that case complexity and teamwork issues receive sufficient emphasis.

See comment 2 on page 52.

The current performance rating system for field investigators and auditors was designed in partnership with the union that represents field bargaining unit employees—the National Council of Field Labor Locals (NCFLL). The performance standards reflect a desire to have a less subjective performance rating system. In FY 2000, at the request of the NCFLL, an analysis of the first performance element was undertaken, and as a result the element was modified for the rating period beginning April 1, 2001. We will provide a copy of GAO's report to NCFLL and ask them to assist us in determining whether the performance standards should undergo another joint revision, after the conclusion of the current rating cycle.[2] It should be noted that GAO states that about one-third of survey respondents indicated that PWBA needed additional measures than those currently being used to assess the enforcement functions. This could be restated to show that about two-thirds of survey respondents did not feel that PWBA needed additional measures.

Performance Measurement System Needs Improvements

Another conclusion reached by GAO, but not mentioned in terms of a specific recommendation for executive action, is that PWBA's performance measurement system provides limited assurance of overall program effectiveness. In a previous GAO report

[2] GAO notes that one region appears to have a productivity requirement in addition to those set forth in the formal performance standards. The Regional Director has agreed to retract formally the informal requirement of processing 30 cases and making two referrals to the Solicitor's Office via memo to the entire investigative staff.

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(GAO-01-779, June 15, 2001), PWBA agreed with GAO that a single enforcement performance goal, as delineated in our FY 1999 and FY 2000 Annual Performance Plans, failed to be sensitive enough to measure adequately both pension and health related enforcement activities. In fact, prior to the issuance of that report, PWBA had already taken steps to bifurcate the goal into a pension and health enforcement goal to reflect more effectively the use of resources. In essence, GAO and PWBA had a mutual interest. We disagree, however, that further separation of the data within the respective goals is appropriate or necessary. GPRA envisioned overarching, outcome-oriented goals. While we continue to strive for outcome-oriented goals, it is acceptable to measure outputs that serve as surrogates to outcomes and can be reasonably linked to success. We believe restoring assets, correcting prohibited transactions, recovering participant benefits, and protecting plan assets are all linked to providing for the desired outcome of secure benefits.

While we appreciate that further separating the enforcement goals would provide us more specificity with respect to individual strategies, it would take us backwards in the performance measure evolution by measuring activities rather than a more outcome-oriented measure that incorporates numerous aspects of performance. PWBA considers the data to assess specific strategies. We aggregate it for the purpose of reporting broad goals while still monitoring the success or failure of individual strategies. We believe that the four outputs--restored assets, corrected prohibited transactions, recovered participants benefits, and plan assets protected are all favorable and indicate our success, none of which has greater weight over the other. Therefore, taken together and balancing the need for broad strategic objectives, the existing goals best serve PWBA's ability to manage towards results rather than by activity.

On pages 29-30, GAO raised questions regarding the performance measure used to track recoveries by the Benefit Advisors (whether the goal was defined as "benefits recovered" or "benefits restored") and whether the FY 2000 goal was met. In fact, PWBA exceeded its goal. In FY 2000, we recovered $62 million as a result of Benefit Advisor assistance. To address the confusion over the term "benefit recovery," PWBA modified its FY 2001 performance report and adopted the generic term "recovery" which in actuality is a function of "benefits restored" plus "benefits protected."

PWBA does have a concern about GAO's observation that the agency does not currently have any annual performance plan measures that track the number of employee benefit plan participants helped by PWBA's enforcement efforts. In the 1980s, PWBA's enforcement strategy concentrated large amounts of resources on "significant" cases (i.e., those that affected the largest number of participants). With the passage of time, however, we have learned that more problems exist in medium to small size plans--and that they tend to have fewer professional advisors or service providers. To emphasize participant numbers could inappropriately skew the enforcement program strongly in favor of investigating large plans, which would leave many of the most vulnerable participants without government assistance. Furthermore, if there were a numeric goal related to the number of participants affected by our investigations, that same goal would have to be placed in the performance plans of the field managers, which would bias the

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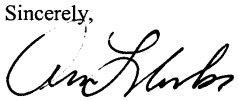
selection of cases for investigation. As a matter of policy, PWBA has not used participant numbers but has instead used the number of investigations as a measure.

In conclusion, the Department of Labor appreciates having had the opportunity to comment on this draft report.

Sincerely,



Ann L. Combs

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GAO Comments

1. In its response letter PWBA incorrectly depicted our prior work on its enforcement program. PWBA stated, "As GAO recommended in 1994, the agency has delegated a great deal of independence to the Regional Directors." While our 1994 report, *Pension Plans: Stronger Labor ERISA Enforcement Should Better Protect Plan Participants*, GAO/HEHS-94-157 (Washington, D.C.: Aug. 8, 1994), contained three recommendations to improve Labor's ERISA enforcement program, we did not recommend that PWBA delegate independence to its Regional Directors. In the context of our 1994 recommendation that PWBA increase the use of penalties authorized by ERISA by establishing procedures to routinely review referrals of potential violators from the Internal Revenue Service, we did state that PWBA use "…decentralized legal staff to help assess prohibited transaction penalties when warranted."

2. In commenting on our assessment of PWBA's performance rating system for enforcement staff, PWBA incorrectly linked one of our findings on its agency performance plan measures to a discussion of their rating system—e.g., that about one third of survey respondents believed PWBA needed additional agency performance measures to assess its enforcement functions. The example PWBA referred to is not related to its performance rating system but to our survey finding that PWBA may need additional measures to more fully assess the effectiveness of its enforcement program. We based this conclusion on our review and analysis of PWBA's measures and our nationwide survey of its investigative staff and supervisors. About one-third of those surveyed noted that additional measures were needed to assess the enforcement functions; about 40 percent felt that current measures were adequate; and about 26 percent submitted a "do not know" response. Although one-third of staff responding is not a majority, this seemed an important observation by a significant number of people knowledgeable about PWBA's operations. Respondents and investigative regional staff we spoke with generally noted that PWBA's measures placed too much emphasis on numbers of investigations conducted and monetary recoveries and too little emphasis on the number of plan participants and beneficiaries helped by PWBA's enforcement program.

Appendix IV: GAO Contacts and Staff Acknowledgments

GAO Contacts

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Staff Acknowledgments

In addition to those named above, Frank F. Putallaz, George A. Scott, Aonghas St-Hilaire, Roger J. Thomas, and Anthony J. Wysocki made key contributions to this report.

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