



Highlights of GAO-07-703, a report to congressional requesters

June 2007

DEFINED BENEFIT PENSIONS

Conflicts of Interest Involving High Risk or Terminated Plans Pose Enforcement Challenges

Why GAO Did This Study

To protect workers' retirement security, the requesters asked GAO to assess: 1) What is known about conflicts of interest affecting private sector defined benefit (DB) plans? 2) What procedures does PBGC have to identify and recover losses attributable to conflicts? 3) What procedures does Employee Benefits Security Administration (EBSA) have to detect conflicts among service providers and fiduciaries for PBGC-trusteed plans? 4) To what extent do EBSA, PBGC, and SEC coordinate their activities to investigate conflicts? GAO interviewed experts, including agency officials, attorneys, financial industry representatives, and academics, and GAO reviewed PBGC documentation and EBSA enforcement materials. GAO analyzed Labor, SEC, PBGC, and private sector data, including data on pensions, pension consultants, and rates of return data, and conducted statistical and econometric analyses.

What GAO Recommends

GAO recommends that PBGC assess the risks from conflicts of interest; that EBSA expand enforcement to include a focus on PBGC-identified plans; and that each agency share data on conflicts. Congress should consider amending ERISA to expand Labor's authority to recover losses against non-fiduciaries. Each agency generally concurred with the report, although EBSA expressed some methodological concerns.

www.gao.gov/cgi-bin/getrpt?GAO-07-703.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Barbara Bovbjerg at (202) 512-7215 or Bovbjergb@gao.gov.

What GAO Found

A conflict of interest typically exists when someone in a position of trust, such as a pension consultant, has competing professional or personal interests. Though data are limited on the prevalence of conflicts involving plan fiduciaries and consultants, a 2005 SEC staff report examining 24 registered pension consultants identified 13 that failed to disclose significant conflicts. GAO's analysis found that, in 2006, these 13 consultants had over \$4.5 trillion in U.S. assets under advisement. GAO also analyzed a sample of ongoing DB plans associated with the 13 consultants that, as of year-end 2004, had total assets of \$183.5 billion and average assets of \$155.3 million. Additional sample analysis showed that the DB plans using these 13 consultants had annual returns generally 1.3 percent lower than those that did not. Because many factors can affect returns, and data as well as modeling limitations limit the ability to generalize and interpret the results, this finding should not be considered as proof of causality between consultants and lower rates of return, although it suggests the importance of detecting the presence of conflicts among pension plans. Whether specific financial harm was caused by a conflict of interest is difficult to determine without a detailed audit.

As a creditor and a trustee of terminated plans, PBGC's policies and procedures are oriented toward the likely recovery of assets, rather than explicitly focusing on losses associated with conflicts of interest involving service providers. Although PBGC has broad legal authority to recover losses attributable to conflicts of interest, PBGC officials told us that the agency limits its pursuit of cases to those in which the recovery will likely exceed the cost of bringing a case to court successfully. While monetary recoveries by PBGC may improve the agency's financial position, they generally have little effect on participant benefits because most affected participants already receive their full benefits promised by their plans. According to PBGC, more than 90 percent of all beneficiaries of PBGC trustee plans received their full promised plan benefit.

While EBSA's enforcement program is concerned with conflicts of interest affecting all private pension plans, it does not have specific procedures for plans trusteed or likely to be trusteed by PBGC. EBSA has recently initiated the Consultant/Advisor Project (CAP) to focus on conflicts among service providers, though it includes no specific focus on high risk or terminated plans. Moreover, existing law limits EBSA's efforts to pursue conflicts and redress for financial harm when certain service providers are either not fiduciaries under ERISA or did not knowingly act in concert with a fiduciary.

Coordination among EBSA, PBGC, and the SEC on conflicts of interest is primarily informal, in part because of agencies' different responsibilities. The agencies' investigative activities for conflicts of interest tend to operate independently. Differences in agency missions pose challenges to the three agencies' developing a coordinated focus to pursue conflicts of interest affecting individual pension plans.