



Highlights of [GAO-08-774](#), a report to the Chairman, Committee on Education and Labor, House of Representatives

Why GAO Did This Study

American workers increasingly rely on 401(k) plans for their retirement security, and sponsors of 401(k) plans—typically employers—have critical obligations under the Employee Retirement Income Security Act of 1974 (ERISA). When acting as fiduciaries, they must act prudently and solely in the interest of plan participants and beneficiaries. The Department of Labor (Labor) is responsible for protecting private pension plan participants and beneficiaries by enforcing ERISA. GAO examined: (1) common 401(k) plan features, which typically have important fiduciary implications, and factors affecting these decisions; (2) challenges sponsors face in fulfilling their fiduciary obligations when overseeing plan operations; and (3) actions Labor takes to ensure that sponsors fulfill their fiduciary obligations, and the progress Labor has made on its regulatory initiatives. To address these objectives, GAO administered a survey asking sponsors how they select plan features and oversee operations, reviewed industry research, conducted interviews, and reviewed related documents.

What GAO Recommends

GAO is not making any additional recommendations in this report, but GAO has previously suggested that Congress consider changes to ERISA addressing fiduciary roles.

To view the full product, including the scope and methodology, click on [GAO-08-774](#). To view the survey results, click on [GAO-08-870SP](#). For more information, contact Barbara Bovbjerg at (202) 512-7215 or bovbjergb@gao.gov.

PRIVATE PENSIONS

Fulfilling Fiduciary Obligations Can Present Challenges for 401(k) Plan Sponsors

What GAO Found

Plan sponsors commonly select certain noninvestment and investment features, and their decisions about which investment features to select generally have important fiduciary implications. According to industry research, most 401(k) plans offer a number of common features, such as employer contributions and loans for employees. Some of these decisions seldom involve fiduciary obligations set by ERISA because they are mainly business decisions related to establishing the plan. However, a sponsor's decisions about investment features, like the menu of investment options, entail important fiduciary obligations under ERISA. ERISA and its regulations stipulate certain requirements for these investment decisions, like offering diversified funds and prudently selecting and monitoring investment options. Various other factors also affect a sponsor's menu decisions, including the size of the plan and the role of external advisers and other providers.

Plan sponsors face challenges in fulfilling their obligations when fiduciary roles are not clearly defined or when sponsors lack important information about arrangements between service providers. Fiduciary roles that are not clearly defined can lead to gaps in plan oversight. For example, several industry professionals noted situations when sponsors assumed they had delegated fiduciary investment advice for the selection and monitoring of investment funds to a service provider, but the service provider did not acknowledge that fiduciary role. Sponsors also have fiduciary obligations when selecting and monitoring one or more service providers. To fulfill these obligations, Labor's guidance indicates that sponsors should obtain information about service providers' compensation arrangements and potential conflicts of interest that could affect the service provider's performance. Labor and various industry practitioners have proposed new ways to improve fiduciary oversight that may address some of the challenges of unclear fiduciary roles and providers' arrangements.

Labor takes various actions to monitor sponsors' fiduciary oversight of 401(k) plans and has made some progress on its regulatory initiatives. Labor's actions include investigating reports of questionable 401(k) plan practices, collecting information from plan sponsors, and conducting outreach to educate plan sponsors about their responsibilities. Labor is also proceeding with several initiatives to improve disclosures to participants, plan sponsors, government agencies and the public. For example, Labor recently published a proposed rule on the information that service providers must disclose to plan sponsors but is trying to resolve several questions before issuing a final rule. In addition, certain matters that GAO has asked Congress to consider would help Labor in its efforts to improve sponsors' fiduciary oversight. We previously suggested that Congress amend ERISA to (1) explicitly require 401(k) service providers to disclose to plan sponsors the compensation they receive from other service providers and (2) give Labor authority to recover plan losses against certain types of service providers even if they are not currently considered fiduciaries under ERISA.