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Highlights

Highlights of GAO-07-22, a report to the Ranking Minority Member, Committee on Health, Education, Labor and Pensions, U.S. Senate

Why GAO Did This Study

The Department of Labor's (DOL) Employee Benefits Security Administration (EBSA) enforces the Employee Retirement Income Security Act of 1974 (ERISA), which sets certain minimum standards for private sector pension plans. On the basis of GAO's prior work, the Senate Committee on Health, Education, Labor and Pensions asked GAO to review EBSA's enforcement program. Specifically, this report assesses (1) the extent to which EBSA has improved its compliance activities since 2002; (2) how EBSA's enforcement practices compare to those of other agencies; and (3) what obstacles, if any, affect ERISA enforcement. To do this, we reviewed EBSA's enforcement strategy and operations, and interviewed officials at EBSA, the Internal Revenue Service (IRS) and the Securities and Exchange Commission (SEC), among others.

What GAO Recommends

GAO recommends that EBSA evaluate its enforcement strategy in light of other agencies' strategies, determine how ERISA's filing deadlines affect its investigators, increase coordination with SEC, and determine how attrition affects its operations. EBSA disagreed with our recommendation to evaluate their strategy in light of other agencies' strategies, but agreed with the remaining recommendations.

Congress should consider amending 502(l) of ERISA to give DOL greater discretion to waive the civil penalty, when appropriate.

www.gao.gov/cgi-bin/getrpt?GAO-07-22.

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

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EMPLOYEE BENEFITS SECURITY ADMINISTRATION

Enforcement Improvements Made but Additional Actions Could Further Enhance Pension Plan Oversight

What GAO Found

In March 2002, we identified weaknesses in EBSA's enforcement program, despite the agency's actions to strengthen it. Since that time, EBSA has, among other things, promoted coordination among regional investigators and increased participation in its voluntary correction programs, as we recommended. EBSA also has recruited investigators with advanced skills in accounting, finance, banking, and law that officials believe are necessary due to ERISA's technicalities. Yet some weaknesses identified in 2002 remain. Specifically, EBSA still has not adequately assessed the nature and extent of ERISA noncompliance, even though it has taken steps to do so. Without these data, EBSA is not positioned to focus its resources on key areas of noncompliance nor have adequate measurable performance goals to evaluate its impact on improving industry compliance. We also found that while some regional offices did routinely attempt to confer with their respective regional office of the SEC—the agency that oversees many of the same pension service providers under the securities laws—for case leads or to consider trends in potential pension violations, others did not. Lastly, EBSA's overall attrition rates remain high, with many investigators leaving for employment outside the federal government, yet EBSA has taken limited steps to evaluate the effect such attrition has on its operations.

EBSA does not conduct routine compliance examinations and broad, ongoing risk assessments to focus its enforcement efforts like other agencies. Rather, investigators rely on various sources for case leads, such as participant complaints, agency referrals, and computer targeting. While such sources are important, this approach generally limits EBSA to leads discerned by participants and other government agencies or those disclosed by plan sponsors, and not those more complex or hidden. Further, EBSA also has not established a comprehensive risk assessment function. Instead of broad risk assessments, EBSA's annual risk evaluations are generally limited to a risk analysis of frontline investigators' case loads. In contrast, in addition to such activities, IRS and SEC incorporate routine compliance programs in an attempt to detect violations and identify emerging trends that may warrant enforcement action. Also, the SEC and Pension Benefit Guaranty Corporation have dedicated staff to regularly analyze information from various sources, such as investigations and academic research.

Certain statutory obstacles also limit EBSA's oversight of private sector pension plans. First, restrictive legal requirements have limited EBSA's ability to assess penalties against fiduciaries and can impede the restoration of plan assets. DOL officials said that the 502(l) penalty under ERISA discourages quick settlement and can reduce the amount of funds returned to pension plans. Second, EBSA investigators' access to timely information necessary for identifying potential violations is limited by ERISA's filing requirements. Even though EBSA is taking steps to address processing delays, in 2006, investigators were relying on information up to 3 years old to target new case leads in some cases.