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GAO
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Highlights

Highlights of GAO-04-749, a report to the Ranking Minority Member, Committee on Health, Education, Labor, and Pensions, United States Senate

PENSION PLANS

Additional Transparency and Other Actions Needed in Connection with Proxy Voting

Why GAO Did This Study

In 1998, about 100 million Americans were covered in private pension plans with assets totaling about $4 trillion. The retirement security of plan participants can be affected by how certain issues are voted on during company stockholders meetings. Fiduciaries, having responsibility for voting on such issues on behalf of some plan participants (proxy voting), are to act solely in the interest of participants. Recent corporate scandals reveal that fiduciaries can be faced with conflicts of interest that could lead them to breach this duty. Because of the potential adverse effects such a breach may have on retirement plan assets, we were asked to describe (1) conflicts of interest in the proxy voting system, (2) actions taken to manage them, and (3) DOL's enforcement of proxy voting requirements.

What GAO Recommends

GAO recommends that Congress consider amending ERISA to require fiduciaries to (1) develop proxy-voting guidelines, (2) disclose guidelines and votes annually, and (3) appoint an independent fiduciary to vote the company's own stock in its pension plan in certain instances. GAO recommends that DOL conduct another proxy enforcement study, and enhance coordination of enforcement strategies with SEC. DOL generally disagreed with our recommendations, but we believe that additional transparency and enhanced enforcement are needed.

www.gao.gov/cgi-bin/getrpt?GAO-04-749.

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

Conflicts of interest in proxy voting can occur because various business relationships exist, which can influence a fiduciary's vote. When a portion of a company's pension plan assets are invested in its own company stock, the internal proxy voter may be particularly vulnerable to conflicts of interest because management has an enhanced ability to directly influence their voting decisions. Although situations representing conflicts will occur, limited disclosure of proxy voting guidelines and votes may make proxy voting more vulnerable to such conflicts. Because of limited transparency, concerned parties do not have the information needed to raise questions regarding whether proxy votes were cast solely in the interest of plan participants and beneficiaries.

Some plan fiduciaries and the Securities and Exchange Commission (SEC) have taken steps to help manage conflicts of interest in proxy voting. Specifically, some plans voluntarily maintain detailed proxy voting guidelines that give proxy voters clear direction on how to vote on certain issues. The SEC has imposed new proxy voting regulations on mutual funds and investment advisers, requiring that specific language be included in the fund's guidelines on how fiduciaries will handle conflicts of interest. Some plan fiduciaries voluntarily make their guidelines available to participants and the public. In addition, some plans voluntarily disclose some or all of their proxy votes to participants and the public. Some plans also voluntarily put additional procedures in place to protect proxy voters from conflicts of interest in order to avoid breaches of fiduciary duty. For example, some plan sponsors hire independent fiduciaries to manage employer stock in their pension plans and vote the proxies associated with those stock. Plans may also hire proxy-voting firms to cast proxies to ensure that they are made solely in the interest of participants and beneficiaries.

DOL's enforcement of proxy voting requirements has been limited for several reasons. First, participant complaints about voting conflicts are infrequent, at least in part, because votes cast by a plan fiduciary or proxy voter generally are not disclosed; therefore, participants and others are not likely to have information they need to raise questions regarding whether a vote has been cast solely in their interest. Second, for DOL, the Employee Retirement Income Security Act of 1974 presents legal challenges for bringing cases such that it is often difficult to obtain evidence that the fiduciary was influenced in his or her voting by something other than the sole interests of plan participants. Finally, even if such evidence existed, monetary damages are difficult to value and fines are difficult to impose. And, DOL has no statutory authority to impose a penalty without first assessing damages and securing a monetary recovery. In part, because of these challenges, DOL has devoted few resources to enforcing proxy voting by plans.