United States General Accounting Office

GAO

Report to Congressional Requesters

April 2003

FEDERAL PENSIONS

DOL Oversight and Thrift Savings Plan Accountability

Accountability * Integrity * Reliability

GAO-03-400

GAO Highlights

Highlights of GAO-03-400, a report to Congressional Requesters

April 2003

FEDERAL PENSIONS

DOL Oversight and Thrift Savings Plan Accountability

Why GAO Did This Study

The Thrift Savings Plan (TSP) is a retirement savings and investment plan for federal employees, governed by the Federal Retirement Thrift Investment Board (the TSP Board). Recent events relating to the TSP Board's contract to upgrade TSP's record keeping system have raised questions about the management of the TSP. In light of the TSP Board's actions relating to the record keeping system and the recent submission of the TSP Board's legislative proposal that would enhance its independence, you asked us to examine federal oversight of the TSP Board. Specifically, our objectives were to (1) describe the Department of Labor's (DOL) oversight authority, under the Federal Employees' Retirement System Act of 1986 (FERSA) and (2) determine the actions DOL has taken in exercising its authority over TSP.

What GAO Recommends

To strengthen DOL oversight and to increase accountability of the TSP Board, Congress should consider amending FERSA to require DOL to establish a formal process by which the Secretary of Labor can report to the Congress issues of critical concern associated with the actions of the Executive Director and TSP Board members.

www.gao.gov/cgi-bin/getrpt?GAO-03-400.

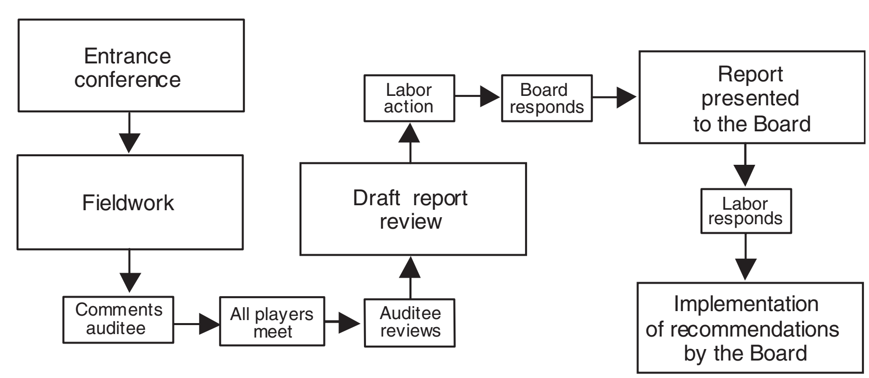
To view the full report, including the scope and methodology, click on the link above. For more information, contact Barbara D. Bovbjerg at (202) 512-7215.

What GAO Found

DOL is charged under FERSA with establishing an audit program of TSP and its operations. The audit program is to ensure that TSP assets have been reasonably safeguarded and that appropriate steps have been taken by TSP fiduciaries to comply with FERSA. If DOL finds that the Executive Director or TSP Board members have breached their fiduciary responsibilities, under FERSA, DOL cannot take legal action or obtain monetary penalties against the Executive Director and TSP Board members, although DOL may do so against other TSP fiduciaries. This limitation contrasts with DOL's authority in overseeing private pension plans under the Employee Retirement Income Security Act of 1974 (ERISA), which set certain minimum standards for pension plans sponsored by private employers and gives DOL authority to interpret and enforce those standards. Under ERISA, DOL is allowed to seek remedies to correct fiduciary violations.

DOL exercises its authority over the TSP Board through recommendations developed in its audit program, which is contracted to a public accounting firm to perform. DOL makes its recommendations to the TSP Board and service providers. However, the TSP Board is not required to implement DOL's recommendations. Since the inception of the audit program, DOL has made 810 recommendations to the TSP Board and its service providers. According to our analysis of DOL and TSP data, the TSP Board has implemented roughly 95 percent of DOL's recommendations, with the majority of the remaining recommendations scheduled for implementation in 2003. While the TSP Board does not always concur with DOL's recommendations, the TSP Board and DOL have resolved disputed recommendations by developing an alternative to address the disputed reviewed areas. However, DOL has also raised issues of concern to the TSP Board, in addition to making recommendations, where the TSP Board has not resolved the issue with DOL. In these instances, there is no formal process with which to ensure that the TSP Board is held accountable for these actions.

Reporting Process for Each TSP Review



Source: GAO's Analysis of DOL's Documentation.

Contents

Abbreviations

AMS	American Management Systems, Inc.
CSRS	Civil Service Retirement System
DOJ	Department of Justice
DOL	Department of Labor
EBSA	Employee Benefits Security Administration
ERISA	Employee Retirement Income Security Act of 1974
FERS	Federal Employees' Retirement System
FERSA	Federal Employees' Retirement System Act of 1986
NFC	National Finance Center
TSP	Thrift Savings Plan

United States General Accounting Office
Washington, DC 20548

April 23, 2003

The Honorable Thomas M. Davis III
Chairman
Committee on Government Reform
House of Representatives

The Honorable Danny K. Davis
Ranking Member
Subcommittee on Civil Service
and Agency Organization
Committee on Government Reform
House of Representatives

The Honorable Dave Weldon, M.D.
House of Representatives

The Thrift Savings Plan (TSP) is a retirement savings and investment plan for federal employees, governed by the Federal Retirement Thrift Investment Board (the TSP Board). TSP is a defined contribution retirement plan[1] within the Federal Employees' Retirement System (FERS). Recent events relating to the TSP Board's cancellation of the contract to upgrade TSP's record keeping system have raised questions about the management of the TSP. TSP is now involved in court proceedings related to the contract. In light of the TSP Board's actions relating to the record keeping system and the recent submission of the TSP Board's legislative proposal that would enhance its independence, you asked us to examine federal oversight of the TSP. Specifically, our objectives were to (1) describe the Department of Labor's (DOL) oversight authority, under the Federal Employees' Retirement System Act of 1986 (FERSA) and (2) determine the actions DOL has taken in exercising its authority over the TSP Board. You also asked us to discuss the Department of Justice's responsibility in representing federal agencies in the courts. (See app. I for more information.)

[1]Under a defined contribution plan, employees have individual accounts to which the employer, employees, or both can make periodic contributions. Defined contribution plan benefits are based on the contributions to and the investment returns (gains and losses) on individual accounts.

To determine DOL's oversight authority under FERSA, we analyzed FERSA and relevant DOL regulations, as well as the TSP Fiduciary Oversight Program manuals and documentation. We also interviewed officials from the TSP Board, DOL, and DOL's contracted public accounting firm. To determine the actions DOL has taken in exercising its authority, we reviewed and analyzed all audit recommendations since TSP's inception. We also interviewed officials from DOL and its contracted public accounting firm about the audit process and how they establish their audit recommendations.

We conducted our work between November 2002 and April 2003 in accordance with generally accepted government auditing standards.

Results in Brief

DOL is charged under FERSA with establishing an audit program of TSP and its operations. The audit program is to ensure that TSP assets have been reasonably safeguarded and that appropriate steps have been taken by TSP fiduciaries[2] to comply with FERSA. If DOL finds that the Executive Director or the TSP Board members have breached their fiduciary responsibilities, under FERSA, DOL cannot take legal action or obtain monetary penalties against the Executive Director and the TSP Board members, although DOL may do so against other TSP fiduciaries. This limitation contrasts with DOL's authority in overseeing private pension plans under the Employee Retirement Income Security Act of 1974 (ERISA), which sets certain minimum standards for pension plans sponsored by private employers and gives DOL authority to interpret and enforce those standards. Under ERISA, DOL is allowed to seek remedies to correct fiduciary violations.

DOL exercises its authority over the TSP Board through recommendations developed in its audit program, which is contracted to a public accounting firm to perform. DOL makes its recommendations to the TSP Board and its service providers.[3] However, the TSP Board is not required to implement DOL's recommendations. Since the inception of the audit program, DOL

[2]A fiduciary is a person who has discretionary control or authority over the management or administration of a plan, including management of plan assets.

[3]Service providers include such entities as the National Finance Center (NFC), Barclays Global Investments (the investment manager), Metropolitan Life that issues TSP's annuities, and federal agencies that are responsible for providing processes and procedures for federal employees to participate in TSP through their agency.

has made 810 recommendations to the TSP Board and its service providers. According to our analysis, the TSP Board has implemented roughly 95 percent of DOL's recommendations, with the majority of the remaining recommendations scheduled for implementation in 2003. While the TSP Board does not always concur with DOL's recommendations, the TSP Board and DOL have resolved disputed recommendations by developing an alternative to address the disputed reviewed areas. However, DOL has also raised issues of concern to the TSP Board, in addition to making recommendations, where the TSP Board has not resolved the issue with DOL. In these instances, there is no formal process with which to ensure that the TSP Board is held accountable for these actions.

This report includes a Matter for Congressional Consideration to require DOL to establish a formal process by which the Secretary of Labor can report to the Congress issues of critical concern associated with the actions of the Executive Director and the TSP Board members.

Background

As of September 30, 2002, the TSP Board reported that the TSP had about 3 million participants and fund balances totaling approximately $96 billion, making it one of the largest retirement savings plans in the United States. TSP is available to federal and postal employees, Members of Congress and congressional employees, members of the uniformed services, members of the Judicial branch and persons covered by FERS or the Civil Service Retirement System (CSRS).[4] TSP provides federal (and in certain cases, state) income tax deferral on employee contributions and related earnings. TSP's assets and earnings on these assets generally cannot be used for any purpose other than providing benefits to participants and their beneficiaries, and paying TSP administrative expenses.

Through FERSA, Congress established the Federal Retirement Thrift Investment Board to administer TSP. The TSP Board is an independent agency in the Executive Branch of the Government, which oversees and assumes certain fiduciary and administrative responsibilities, such as performing its TSP responsibilities solely in the interest of the participants and beneficiaries of TSP. Similar to fiduciaries of private pension plans

[4]CSRS is a retirement plan for federal employees and covers employees hired prior to January 1, 1984. It is a defined benefit plan, a plan that specifies the benefit to be received at retirement by the participant. Employees hired after December 31, 1983, are not eligible for coverage in CSRS, but participate in either FERS or another CSRS Plan.

under ERISA, TSP fiduciaries are the persons who have discretionary control or authority over the management or administration of the plan, including the management of the plan's assets. The TSP fiduciaries include the TSP Board's Executive Director and its five Board members.[5] The TSP Board members are presidential appointees, who appoint the TSP Executive Director. The chairman and the TSP Board members are appointed to 4-year terms. The Executive Director and staff are responsible for managing the daily operations of TSP. The TSP Board members are responsible for establishing policies for the investment and management of TSP and are ultimately responsible for the oversight of daily TSP contribution record keeping and accounting activities.

As a part of administering the TSP, the TSP Board contracted with the American Management Systems, Inc. (AMS) to develop and implement a new record keeping system for the TSP in 1997. However, according to the TSP Board, AMS had consistently failed to adhere to the schedules established for delivery of the new system and was unable to perform the contract under a given timetable. As a result, in 2001 the TSP Board terminated the contract and subsequently the Executive Director filed a lawsuit on behalf of TSP.[6] This lawsuit is presently before the United States Court of Appeals for the District of Columbia.

FERSA Requires DOL to Audit the TSP Board and Its Operations

Under FERSA, DOL is charged with establishing a program to carry out audits to determine the level of TSP compliance with FERSA requirements relating to fiduciary responsibilities. ERISA is the law that governs private employer sponsored plans. Although DOL is responsible for enforcing the fiduciary responsibility provisions for both ERISA and FERSA, DOL has the authority to bring legal action against all fiduciaries under ERISA, but does not have such authority over the Executive Director or TSP Board members under FERSA. However, DOL can bring legal actions against other non-Board member fiduciaries under FERSA.

[5] There are also non-Board member fiduciaries that include entities such as TSP's service providers and the NFC.

[6] The TSP Board's litigation was initiated by the Executive Director who has subsequently resigned from the TSP Board.

FERSA Requires DOL or DOL's Designee to Audit the TSP Board

FERSA was designed to protect the rights and interests of TSP participants and prescribes the responsibilities of the Executive Director and the TSP Board members. FERSA requires the Secretary of Labor to carry out audits of the TSP Board and its operations.[7] DOL's audits are to ensure that TSP assets have been reasonably safeguarded and that appropriate steps have been taken by TSP fiduciaries to comply with FERSA. Through its audit program, DOL determines whether TSP fiduciaries have complied with FERSA and the TSP Board regulations relating to FERSA. DOL also determines whether TSP fiduciaries are acquiring, protecting, and using TSP resources economically, efficiently, and solely in the interest of TSP participants and beneficiaries. DOL's Employee Benefits Security Administration's (EBSA) Office of Chief Accountant administers this program on behalf of the Secretary of Labor.

FERSA specifically requires that DOL's audit program ensure compliance with FERSA requirements relating to fiduciary responsibilities and prohibited activities of fiduciaries. TSP fiduciaries are required to perform their responsibilities in the interest of participants and beneficiaries for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying the reasonable expenses of administering TSP. Other fiduciary responsibilities include:

- Using the care, skill, prudence, and diligence under the prevailing circumstances that a prudent individual acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like objectives.
- To the extent permitted by law, diversifying the investments of the fund so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

DOL is also required to determine TSP fiduciary's compliance with FERSA's prohibited transaction provisions. Prohibited transactions include a fiduciary dealing with TSP assets in his or her own interest or for his or her account. Other prohibited transactions relate to fiduciaries engaging in transactions involving TSP on behalf of a party or representing

[7]DOL usually audits the TSP Board and its operations annually.

a party whose interests are adverse to the interest of TSP or the interests of its participants or beneficiaries.[8]

DOL Cannot Take Legal Actions Against the Executive Director Or a TSP Board Member Under FERSA, but Can Take Legal Actions Against Any Fiduciary Under ERISA

DOL is responsible for enforcing fiduciary responsibility provisions of both ERISA and FERSA.[9] Although FERSA requires DOL to audit TSP, it does not grant DOL the authority to take legal or other measures against the Executive Director or a TSP Board member if such fiduciaries are found to have violated FERSA requirements. Under a 1988 amendment[10] to FERSA, the Secretary of Labor cannot initiate a civil action against the Executive Director or a TSP Board member. Because of this lack of enforcement authority, DOL cannot bring legal actions against the Executive Director or a TSP Board member to enforce FERSA fiduciary provisions. However, the Secretary of Labor can initiate a civil action against other persons who are fiduciaries of TSP but only for fiduciary breaches.[11]

ERISA sets minimum standards for pension plans sponsored by private employers and gives DOL the authority to interpret and enforce certain minimum standards for private pension plans sponsored by private employers. Under ERISA, DOL is allowed to seek remedies to correct fiduciary violations of ERISA, including using litigation when necessary. Plan fiduciaries under ERISA must avoid conflicts of interest whereby they or parties that manage or provide services to the plan could benefit from the fiduciary's actions. Fiduciaries who do not follow ERISA principles regarding prohibited activities may be personally liable for any

[8]In addition, other prohibited transactions include a fiduciary receiving consideration for his or her own personal account from any party dealing with sums credited to TSP in connection with a transaction involving TSP assets; engaging in transactions with any person whom the fiduciary knows to be a party in interest; and causing TSP to own any assets outside the jurisdiction of the district courts of the United States.

[9]Congress designed ERISA to protect the rights and interests of private pension plan participants and beneficiaries and outlined the responsibilities of the employers and administrators who sponsor and manage these plans.

[10]Pub. L. No. 100-238 (1988).

[11]Any fiduciary other than the Executive Director or TSP Board member who breaches his fiduciary responsibility, duty, or obligation, as set out in FERSA, shall be personally liable to TSP for any losses resulting from each breach or violation and will be responsible for restoring to TSP any profits made through use of TSP assets, and shall be subject to such other equitable or remedial relief a court may consider appropriate. These fiduciaries may also be removed for a fiduciary breach.

losses to the plan, or for restoring any profits made through improper use of the plan's assets. According to DOL, its primary goal in litigating a case is to ensure that a plan's assets, and therefore, its participants and beneficiaries, are protected.

DOL Makes Audit Recommendations to the TSP Board but Has No Formal Process With Which to Ensure That Additional Concerns Are Addressed

DOL exercises its authority over the TSP Board through recommendations developed in its audit program, which is contracted to a public accounting firm to perform. DOL makes its recommendations to the TSP Board and service providers and since inception has made 810 recommendations to the TSP Board and its service providers. The TSP Board is not required to implement DOL's recommendations and does not always agree with DOL's recommendations, although they have implemented approximately 95 percent of DOL's recommendations with the majority of the remaining recommendations scheduled for implementation in 2003. However, if DOL has concerns with the Executive Director or a TSP Board member's actions there is no formal process by which to ensure the Executive Director and TSP Board members are held accountable for their actions.

DOL Exercises Its Authority Through Recommendations Made Through Its Audit Program

DOL exercises its authority over the TSP Board through recommendations developed in its audit program, which is performed by auditors of a public accounting firm.[12] These auditors report solely to DOL and do not report to the TSP Board. The auditors' primary responsibility is conducting fiduciary audits, which include audits of TSP and its service providers. Although the Executive Director and TSP Board members are ultimately responsible for managing TSP, they implement their fiduciary responsibility through third party contracts with service providers that actually carry out the day-to-day operations of TSP, such as record keeping of and investing TSP funds. Consequently, audits are primarily conducted on TSP's service providers.

DOL, in directing its contract auditors, determines the audits to be done each year. Auditing officials said that issues from previous audits and issues confronting TSP's service providers usually determine the types of audits performed. DOL officials stated that they also present any relevant concerns that they think the auditors should address based on issues DOL

[12]FERSA allows DOL to contract out its reviews using qualified nongovernmental organizations, such as an accounting firm, or in cooperation with the Comptroller General of the United States, as the Secretary of Labor considers appropriate.

identified during its investigations of private pension plans. Once DOL approves the audits, DOL and the auditors meet with the TSP Board to inform them of the number of audits that will be conducted and the topics each review will address for the coming year. Arrangements are then made with the appropriate TSP service provider, informing them of the audit. DOL has spent roughly $350,000 to $750,000 per year on TSP audits over the last 5 years. Funding for the TSP contract has varied based on DOL's other contracting needs. See appendix II for more information on the audit report process.

DOL reviews auditor's recommendations and once approved, presents the recommendations to the TSP Board and its service providers. DOL officials said that recommendations are made when the potential for significant improvement in operations and performance is substantiated by audit findings. In addition, DOL makes recommendations that affect compliance with FERSA and TSP Board policies and improve management controls when significant instances of noncompliance are noted or significant weaknesses in controls are found.

As of November 1, 2002, the TSP Board's recommendation status report noted that 810 audit recommendations have been made to the TSP Board and its service providers. The TSP Board classifies DOL's recommendations into three categories (1) NFC recommendations that relate to some component of the record keeping system, (2) TSP Board audit recommendations that relate to the administrative component of the TSP Board and service providers, and (3) recommendations made jointly to NFC and the TSP Board. As shown in table 1, the majority of the recommendations have been made to NFC.

Table 1: DOL Recommendations Made Through Its Audit Program

Focus of Recommendation	Number of recommendations	Percentage of all recommendations made to each entity
NFC	497	61
TSP Board	219	27
Joint NFC and TSP Board	94	12
Total	**810**	**100**

Source: GAO's analysis of the TSP Board and DOL data.

DOL reports that the TSP Board has implemented about 95 percent of DOL's recommendations. To keep track of the reviews and recommendations over the years, the TSP Board has maintained an extensive database outlining the overall status of all audits and recommendations, issued by DOL, to ensure that all recommendations are addressed. DOL has also maintained its own database. However, both DOL and TSP Board officials recognized that there are discrepancies in the number of open versus closed recommendations in each of their databases.

According to the TSP Board, 10 recommendations are open.[13] Using TSP Board numbers, the TSP Board has implemented approximately 99 percent of all recommendations. However, DOL reports that 41 recommendations are open and using DOL numbers, approximately 95 percent of all recommendations have been implemented, with the majority of the remaining recommendations scheduled for implementation in 2003.[14] Both the TSP Board and DOL officials say that the discrepancy is due to the time lapse that exists between the TSP Board's implementation of the recommendations and DOL's follow-up review. Once the TSP Board or the service provider implements the recommendations, the TSP Board will close the outstanding recommendations. However, DOL will maintain the recommendations as open until an additional review is conducted of TSP or its service providers, ensuring that the TSP Board has addressed the audit recommendations to the auditor's satisfaction.

The TSP Board and its service providers are not statutorily required to implement any of DOL's audit recommendations. According to the DOL and TSP officials, this voluntary process has generally worked well since the audit program's inception. TSP officials have said that if in their opinion a recommendation has merit, the TSP Board adopts it; otherwise, the TSP Board does not implement it. Although the TSP Board does not always concur with DOL's recommendations, the TSP Board and DOL have resolved disputed recommendations by developing an alternative to the proposed recommendation.

[13]Six recommendations pertain to NFC and four recommendations pertain to the TSP Board.

[14]DOL auditors classify the 41 open recommendations into three categories: (1) 23 recommendations such as recommendations related to security access and controls address fundamental controls, which focus on significant procedures or processes that have been designed and operated to reduce the risk that material intentional or unintentional processing errors could occur; (2) 12 recommendations that address less critical controls, which concentrate on procedures and processes that augment fundamental controls; and (3) 6 recommendations that address enhancing efficiency and effectiveness of specific processes, methods, and internal controls.

No Formal Process Exists to Ensure Accountability of the Executive Director and TSP Board Members

DOL has raised issues of concern to the Executive Director and TSP Board members outside its routine TSP compliance audit reporting process. The Executive Director and TSP Board members have not always agreed with DOL, and while the TSP Board members maintain the issue is resolved, from DOL's perspective the concern has not been addressed. In these instances, since FERSA does not provide DOL with a formal process to resolve issues of dispute, there is no process by which DOL can ensure that the Executive Director and TSP Board members are held accountable for their actions.

Recently, DOL strongly expressed concerns about certain actions taken by the Executive Director and TSP Board members. For example, DOL had concerns about the authority of TSP Board members to pursue a lawsuit against the company contracted by the TSP Board to upgrade the TSP record keeping system. DOL sought to convince the TSP Board members of the seriousness of the matter and persuade the Executive Director and TSP Board members to take corrective steps prior to DOL opening an audit or investigation. In response, both the Executive Director and TSP Board members took issue with DOL's authority to question the TSP Board's actions and continued to pursue its litigation. In addition, DOL for years has informally recommended that the TSP Board establish its own internal audit function that would report directly to the Executive Director and TSP Board members. Although the Executive Director and TSP Board members evaluated establishing their own internal audit function, they have not done so and consider the matter to be closed.

Given the absence of enforcement authority under FERSA, the Executive Director and TSP Board members are not held accountable for their actions when they disagree with DOL. Although the TSP Board is required under the Inspector General Act Amendments of 1988 [15] to send its annual audit reports to Congress specifying any actions taken by the TSP Board including summaries of significant audit findings, DOL cannot require the Executive Director or TSP Board members to take specific actions if the TSP Board declines to address DOL's concerns.

Conclusion

FERSA established the governance structure of the TSP and ensured that, through an audit program under DOL, fiduciary compliance would be monitored. FERSA, however, allows the Executive Director and TSP

[15] Pub. L. 100-504.

Board members to be the final decision makers on the proper governance of TSP with limited external oversight. Amending FERSA to allow DOL to have a formal process, to ensure its concerns are resolved, could help ensure that actions by the Executive Director or TSP Board members, which DOL deems inappropriate, are addressed.

Matter For Congressional Consideration

To strengthen DOL oversight and to increase accountability of the TSP Board, Congress should consider amending FERSA to require DOL to establish a formal process by which the Secretary of Labor can report to the Congress issues of critical concern about actions of the Executive Director and TSP Board members.

Agency Comments

We provided a draft of this report to the Federal Retirement Thrift Investment Board, the Department of Labor, and the Department of Justice (DOJ) for their review and comment. We received written comments from the Federal Retirement Thrift Investment Board, which are reprinted in Appendix III. The Federal Retirement Thrift Investment Board generally agreed with our findings and conclusions. DOL and the TSP Board also provided technical comments on the draft. We incorporated each agency's comments as appropriate.

As agreed with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after its issue date. At that time, we will send copies of this report to the Secretary of Labor, the Federal Retirement Thrift Investment Board, and the Department of Justice. We will also make copies available to others on request. In addition, the report will be available at no charge on GAO's Web site at http://www.gao.gov.

If you have any questions concerning this report, please contact me at (202) 512-7215 or George Scott at (202) 512-5932. Other major contributors include Richard Burkard, Tamara Cross, Patrick DiBattista, Kim Granger, Jason Holsclaw, and Roger Thomas.

Barbara D Bovbjerg

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

Appendix I: Department Of Justice Is Responsible for Representing Federal Agencies

Generally, the Department of Justice (DOJ) has responsibility for representing federal agencies in the courts. Unless otherwise authorized by law, the conduct of litigation involving any federal agency is reserved to the DOJ.[1] Moreover, an agency generally may not employ an attorney for the conduct of litigation in which the agency is a party, but must refer the matter to DOJ.[2] DOJ officials we spoke with told us that they consider themselves to have broad authority to represent the federal government in court, regardless of the particular facts or circumstances. The officials stated that in most cases an agreement can be reached with the agency and DOJ as to whether or not to pursue a particular case; however, if an agreement cannot be reached, the Attorney General makes the final decision.

Congress, however, has created a number of exceptions to DOJ's control over agency litigation, and has authorized, to varying degrees, certain executive, legislative, and independent agencies to conduct litigation on their own behalf. This grant of authority to agencies has in some instances been broad, as in the case of the Federal Deposit Insurance Corporation (FDIC). By statute, FDIC may sue or represent itself, "through its own attorneys, in any court of law or equity, State or Federal."[3] Often, however, Congress limits the authority of the agency to sue only under a particular program or for a limited purpose.[4] Moreover, when Congress authorizes agencies to represent themselves, it may require that the agency consult or obtain the concurrence of DOJ.[5]

[1] 28 U.S.C. 516, 519.

[2] 5 U.S.C. 3106.

[3] 12 U.S.C. 1819(a). *FDIC v. Irwin*, 727 F. Supp. 1073 (N.D. Tex. 1989), *aff'd on other grounds*, 916 F.2d 1051 (5th Cir. 1990).

[4] 7 U.S.C. 216 (authorizing the Secretary of Agriculture to enforce certain orders in District Court).

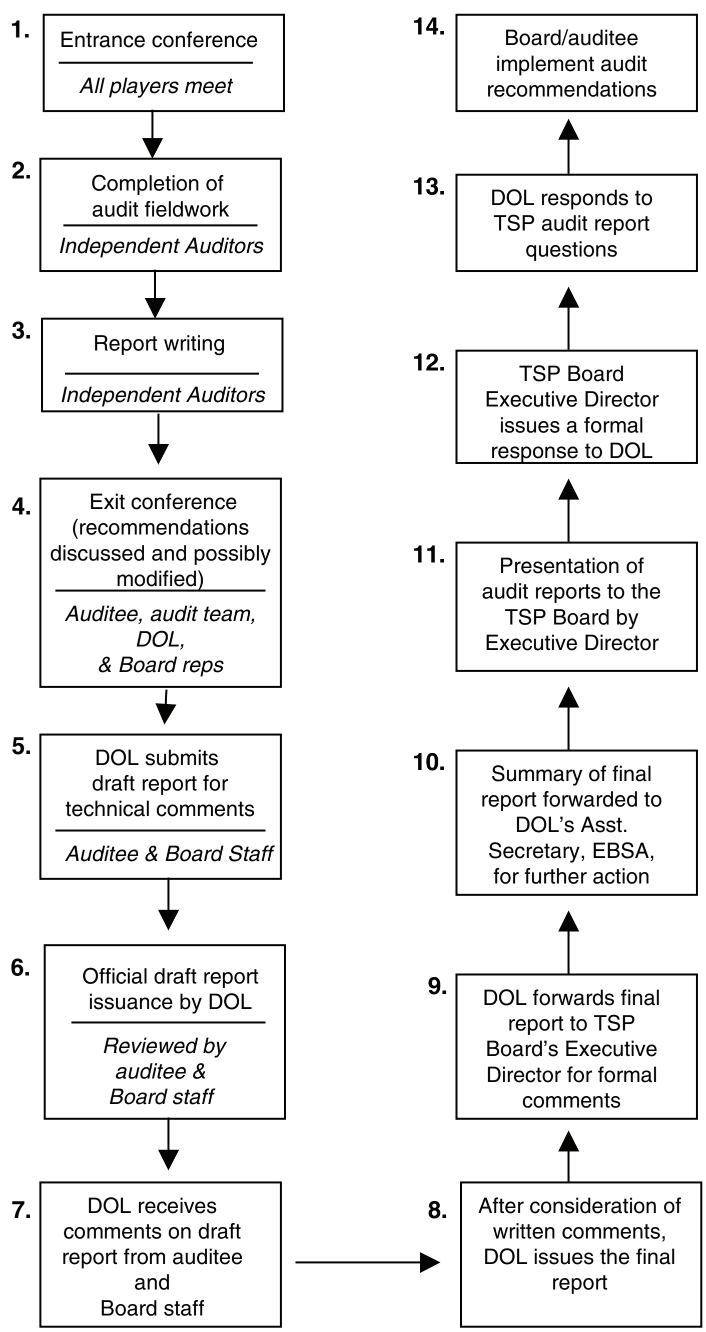
[5] 29 U.S.C. 663, authorizing the Solicitor of Labor to represent the Department of Labor for certain purposes, subject to the control of the Attorney General.

Appendix II: Process for TSP Audits

Before each audit, DOL's Employees Benefits Security Administration's (EBSA) Chief Accountant notifies the Federal Retirement Thrift Investment Board's Executive Director of the proposed entity that will be audited and instructs the Executive Director to notify the proposed auditee of the pending field visit for purposes of arranging an entrance conference. Upon arrival at the entity to be audited, the independent auditors are responsible for conducting audits in accordance with our Government Auditing Standards and DOL's Audit Program Manuals. DOL's independent auditors may perform one of four types of audits, full scope, limited scope, restricted scope, and special project reviews.[1] After the entrance conference, the independent auditing firm conducts fieldwork and drafts a report of its findings. Figure 1 highlights the individual steps taken by each entity in the auditing process, including the auditee, the independent auditors, DOL, and the TSP Board.

[1]A full scope review includes determining the overall adequacy and effectiveness of applicable procedures and controls, examining significant changes in the applicable procedures, and determining the status of prior year recommendations. The full scope review includes statistical samples and resulting conclusions inferable to the entire system tested. The limited scope review focuses primarily on the status of all open prior recommendations, and may also incorporate analyzing a nonstatistical sample of transactions. Restricted scope reviews utilize only certain audit program guides within the TSP Fiduciary Oversight Program, and perhaps will include nonstatistical sampling procedures. On occasion, the auditors will also perform a number of special projects, usually at the specific request of DOL. Special projects address a particular area of focus, which is not covered by the TSP Fiduciary Oversight audit program guide.

Figure 1: DOL's Typical Audit Program Report Process



Source: GAO's analysis of DOL's documentation.

After audits are completed, recommendations are made to the TSP Board and the auditee. DOL reviews all recommendations made before they are presented to the TSP Board. The process works in such a way that the auditors draft recommendations based, in part, on the service provider's input throughout the audit fieldwork. The auditors then provide DOL with their findings and recommendations. Once DOL approves the recommendations, an exit conference is held with the service provider. Auditing and DOL officials said that DOL generally agrees with the auditor's recommendations and because the service provider acknowledges all recommendations prior to the actual exit conference, no substantive disagreements are generally voiced. According to DOL officials, the recommendations may sometimes be modified if the same objective can be obtained through a more efficient procedure than what the original recommendation states. If this occurs, an additional draft report is prepared by the auditors and sent to DOL and to the service providers. The service provider is requested to respond, in writing, to the reported recommendations within 30 days of receiving the revised draft report. If the draft report contains anything potentially affecting other DOL offices (e.g., DOL's Solicitor's Office), a copy is also forwarded for their comment. Written comments are then advanced to EBSA's Office of Federal Employee Retirement System Act (FERSA) Compliance, where it is reviewed and then forwarded to the auditors for inclusion in the final report.

The final report of an audit is usually sent to EBSA's Chief Accountant within 90 days of the exit conference with a service provider. At that time, the Chief Accountant will sign the transmittal to the final report indicating his/her concurrence with the recommendations. The Chief Accountant will then provide the final report, including all audit recommendations, to the TSP Board's Executive Director. The TSP Board's Executive Director is then requested to formally respond to DOL within 30 days of receiving the report. After the TSP Board review the recommendations, it is given the opportunity to comment on the findings. TSP Board officials said that there are times when the TSP Board does not concur with the audit recommendations. However, they said when this occurs, a consensus is reached on an alternative way of addressing the issue that satisfies the auditors. Eventually, the TSP Board's Executive Director presents all audit recommendations to the TSP Board members at a regularly scheduled monthly meeting.

Appendix III: Comments from the Federal Retirement Thrift Investment Board

THRIFT SAVINGS PLAN

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD
1250 H Street, NW Washington, DC 20005

April 21, 2003

HAND-DELIVERED

Ms. Barbara D. Bovbjerg, Director
Education, Workforce, and Income
Security Issues
U. S. General Accounting Office
Washington, DC 20548

Dear Ms. Bovbjerg:

Thank you for the opportunity to comment on the draft of your report entitled "Federal Pensions: Accountability Needed to Better Oversee the Thrift Savings Plan." The Executive Director (Acting) has separately submitted technical comments which we hope are useful in finalizing it.

Your report describes the extensive Department of Labor (DOL) audit program currently in place for the Thrift Savings Plan. Although the Federal Retirement Thrift Investment Board already formally reports all audit activity (including DOL's) to the Congress every year, to the extent that the additional reporting you recommend is not duplicative, we believe it could enhance confidence in the program. While it is critical that the independence of the Board and the obligation of the fiduciaries to act solely in the interest of Plan participants and beneficiaries not be in any way reduced, opening the DOL audit process to even more oversight in no way jeopardizes these imperatives.

The current Board members have made openness and hands-on review the hallmarks of our tenure. We meet in person each month and are carefully reviewing all major agency activities. When we met with Department of Labor officials at our January meeting, we made it clear that we wanted to hear about any and all matters of concern. The extensive Department of Labor audits program must be managed through an orderly process. However, if a pressing issue is identified, even if the audit process is not complete or the issue is beyond its normal scope, we want to hear about it right away.

Thank you again for the opportunity to comment.

Sincerely,

James B. Petrick for

Andrew M. Saul
Chairman

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