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UNITED STATES GENERAL ACCOUNTING OFFICE

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HUMAN RESOURCES DIVISION

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The Honorable William S. Cohen
Chairman, Subcommittee on Oversight
of Government Management
Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

Subject: Interim Report on the Department of Labor's Management of the ERISA Enforcement Program (GAO/HRD-85-82)

As requested by the Subcommittee, we are providing information from our ongoing general management review of the Department of Labor on the management of the Employee Retirement Income Security Act of 1974 (ERISA) enforcement program to assist the Subcommittee in its oversight hearings on implementation of ERISA.

The objectives of our overall management review are to determine how well Labor is organized and managed to (1) identify and handle emerging issues, (2) efficiently and effectively implement programs, and (3) provide business-like functional support systems, such as financial management and procurement. We chose the ERISA enforcement program as a case study for our overall review to assess, among other factors, the extent to which problems in management direction or control contributed to longstanding criticisms of the program.

We reviewed previously issued reports on the enforcement program and interviewed program officials in headquarters and 3 of 10 area offices (Atlanta, Chicago, and Dallas) to obtain their views on program operations and problems. As part of our overall review, we sent questionnaires to 10 managers involved in the program to obtain their perceptions on Labor Department management in general. We also analyzed program policy and strategy documents and selected program performance data. The Internal Revenue Service, the Department of Justice, and the Pension Benefit Guaranty Corporation also have roles to play in implementing certain ERISA provisions, but we did not include them in our review. Our work was performed in accordance with generally accepted government auditing standards.

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Although much of the information has been previously reported by us or others, we did not request Labor to review and comment officially on a draft of this report. However, the views of directly responsible officials were sought during our work and are incorporated in the report, where appropriate. We plan to obtain official comments from Labor on our overall report on Labor management, which will include the observations discussed in this interim report, as appropriate.

ERISA was passed to help ensure that employees who are covered by private pension and welfare plans receive the benefits to which they are entitled from these plans. Labor, specifically the Office of Pension and Welfare Benefit Programs (OPWBP), is responsible for enforcing ERISA's reporting, disclosure, and fiduciary provisions. According to Labor, OPWBP's overall fiscal year 1985 funding level is estimated at $29 million, and it has about 500 employees. Within OPWBP, the Office of Enforcement is responsible for providing policy, guidance, and direction to the field offices, which investigate the plans' compliance with the law.

LACK OF ASSURANCE THAT PROGRAM PROTECTS PARTICIPANTS

OPWBP's enforcement efforts have produced both monetary and nonmonetary results. For example, in fiscal year 1984, OPWBP reported closing 2,454 cases, of which 1,378 involved violations. Of the 1,378 cases, 383 involved $93 million in assets recovered or safeguarded under ERISA. To illustrate the types of problems identified in one recent case, OPWBP found that managers of a pension plan had engaged in a transaction prohibited under ERISA involving the purchase of an office building and other property from a sponsoring company and required that the property be sold, and funds be restored to the plan. In other examples, OPWBP required a plan to obtain sufficient bonding after it had found that the bonding initially secured by plan managers was inadequate and in another plan required that funds be restored to it after finding that plan managers had made an inappropriate loan.

Despite these accomplishments, the overall effectiveness of the program in protecting plan participants' benefits has been criticized over the last 10 years by a number of organizations, including GAO, Labor's Inspector General, and an internal Labor work group--the ERISA Enforcement Working Group--consisting of staff representing OPWBP, the Solicitor, and the Inspector General. In 1984, this work group reported that ERISA's enforcement program was unable to maintain credibility within the employee benefit plan community because there was no assurance that ERISA violations would likely be detected and corrected.

Longstanding problems in enforcing ERISA include (1) lack of a consistent long-term strategy; (2) limited coverage of benefit plans due to a small investigation staff relative to the number of plans to be monitored and the number of participants and amount of funds to be protected; and (3) inadequate staff training. Although Labor has recently taken action to improve the enforcement program, such as significantly enhancing OPWBP's organizational alignment, certain longstanding problems persist. We believe these problems largely center on the lack of a comprehensive, long-term enforcement strategy, which, when coupled with frequent turnover of key program officials, resulted in a reactive rather than a proactive approach to enforcement.

A brief discussion of the key problems we believe adversely affect program effectiveness and credibility follows.

LACK OF A CONSISTENT LONG-TERM STRATEGY

An effective strategy for enforcing ERISA and selecting plans for review is critical to achieve an effective program, particularly given the small number of investigators and large number of plans covered under the law. It is also important for determining the types of staff skills and training necessary since different types of plans would likely require different knowledge and expertise. Despite the importance of this, Labor has not had a comprehensive and consistent long-term strategy for enforcing the law or selecting plans for review. As a result, OPWBP does not have adequate assurance that plans most likely to be in violation of ERISA were being selected or that its limited resources have been most effectively applied.

Labor acknowledges that its approach to enforcement of ERISA has changed frequently over the years, largely in response to several internal and external reports criticizing how it was carrying out its mission. At its inception, ERISA enforcement emphasized technical assistance and program education. Then, as a result of two external reports in 1977 and 1978, the enforcement policy was redirected to fiduciary investigations with an emphasis on large employee benefit plans. In response to the criticisms of three additional reports issued in 1981 and 1982, the enforcement policy was again redirected in 1983 to give greater emphasis to criminal investigations, smaller plans, and consideration of ERISA violations other than fiduciary violations.

OPWBP has communicated its enforcement strategy through a Compliance Strategy Document. However, the document does not provide specific direction to the field offices on how to identify plans with the most potential for violations. Therefore, field offices developed their own methods for plan selection, resulting in wide variations in methods used and results achieved.

In 1978, we reported (HRD-78-154) that two field offices we reviewed used inconsistent bases for selecting plans to audit, and we said that better methods for selecting plans, such as random sampling, were needed. Labor's Inspector General made similar observations in a 1984 survey on ERISA enforcement. The Inspector General reported:

--Plan selection methods were inconsistent among the eight field offices visited, and responsibility for plan selection rested with supervisors in some offices and individual investigators or auditors in others.

--The success of case selection methods used by field offices varied widely. The percentage of unsuccessful cases (cases with no violations detected) varied widely among all field offices, ranging in fiscal year 1983 from 35 to 93 percent.

--Only two of the eight field offices reviewed had analyzed the effectiveness of their case selection methods.

The results of our current review of the ERISA enforcement program were similar to those reported by GAO in 1978 and the Inspector General in 1984. The three area offices we reviewed used different bases for case selection, and only one of the three had attempted to evaluate the effectiveness of its methods.

Another reason why development of and adherence to a sound long-term strategy is important in the pension program is because of the frequent turnover of key program officials. For the 10-year period that OPWBP was a part of the Labor-Management Services Administration, there were five Assistant Secretaries. Since 1974, there have been seven Administrators of OPWBP and eight Assistant Administrators of the Office of Enforcement. The adverse effects of this turnover were alluded to by the ERISA Enforcement Working Group, which reported that throughout the program's history, no consistent enforcement policy has been maintained beyond the tenure of the person with primary responsibility for implementing it.

In 1985, OPWBP developed a long-term plan with goals and objectives for each of its units. Although the Office of Enforcement's portion of the plan sets objectives only for the short-term--fiscal years 1985 and 1986--the Assistant Administrator agreed that long-term planning is a good management tool for establishing and maintaining program direction. He explained that he wrote short-term objectives because he had been in his position for only about a month and he needed more time in his position before he could develop effective long-term objectives.

Regarding program strategy and case selection methods, the Office of Enforcement's Assistant Administrator believes an effective enforcement program should focus its resources on as many plans as possible with an emphasis on detecting violations to make its enforcement presence known to the pension plan community. To achieve this type of program, he said the field offices should use a mixture of strategies to identify plans, including picking plans at random, reviewing plan data reported annually, and responding to complaints. Although he believes field offices should have the authority to manage their own casework, he agrees they should not be using inconsistent bases to select plans for review. In addition, he said his office had planned to develop a new Compliance Strategy Document in 1985, but he was uncertain as to when the document would be completed and whether it would specify case selection methods to be used by the field offices.

SMALL STAFF SIZE RELATIVE TO PLAN UNIVERSE

The number of investigators and auditors has enabled OPWBP to review about 2,400 plans annually, or less than 1 percent of the universe each year. According to Labor, as of 1984, there were about 915,000 pension and 4.6 million welfare plans covered by ERISA. These plans involved 266 million participants (many persons were covered by more than one plan) and over $900 billion in assets. To carry out its investigation function, OPWBP's personnel ceiling for fiscal years 1985 and 1986 included 253 investigator and auditor positions. According to Labor, as of June 1985, OPWBP has about 200 investigators and auditors, or about 1 for every 4,500 pension plans.

In 1978 (HRD-78-154), we reported that staffing of ERISA enforcement was inadequate to detect and investigate criminal and civil violations and recommended that the Secretary of Labor determine the additional resources needed to effectively enforce the act. Over the last several years, ERISA program staff have identified the need for additional resources, but the total number of investigators and auditors for the program has not changed substantially although the number of pension plans reporting has increased.

LIMITED TRAINING FOR ENFORCEMENT STAFF

Since 1977, the training provided for ERISA professional staff has been criticized for being limited and inadequate. As we reported 7 years ago, training for professional staff still consists of primarily on-the-job activities and little, if any, formal classroom training. According to Labor's 1984 report on ERISA enforcement, only four nationally sponsored training courses have been prepared since the program was established in 1974.

During our current review, 12 of 14 OPWBP program managers in both the field offices and headquarters indicated that they did not believe Labor's professional training and development programs have been effective in improving employee performance. Furthermore, OPWBP managers were among the least satisfied with Labor's training programs for professionals and supervisors of all the major Labor components we recently surveyed. Most of the OPWBP managers we interviewed said the lack of adequate training affects their operations. For example, several said the quality of their staff work would improve if adequate training was provided on such issues as real estate, banking, and financial investing.

OPWBP's Office of Enforcement has recognized the problems in the training area and plans to develop a comprehensive training program in 1985. It plans to address the development of investigators' technical skills and updating of their knowledge in rapidly changing areas, such as those cited above.

RECENT INITIATIVES TAKEN TO IMPROVE ERISA ENFORCEMENT

Labor has taken several recent steps to address a number of the longstanding problems associated with ERISA enforcement. For example, in 1984 the Secretary of Labor designated OPWBP as a separate agency reporting directly to him to help resolve some of its management problems due to its organizational structure. In addition, OPWBP made several internal organizational realignments to more effectively use its resources. It restructured the headquarters office to be more responsive to program needs, abolished the regional level to give the headquarters office more control over the field offices, and consolidated field offices to more effectively allocate its resources. In addition, Labor acted to improve the OPWBP working relationships with the Solicitor's Office. For example, three regional solicitors now have the authority to handle ERISA litigation matters to help expedite enforcement efforts.

CONCLUSIONS

The corrective actions Labor is planning, has started, or has completed to address many of the longstanding problems associated with its ERISA enforcement program should help enhance program effectiveness and credibility. Some of OPWBP's longstanding problems, such as staffing levels and frequent turnover of key program managers, are difficult to resolve and involve issues Labor itself cannot totally control.

However, we believe that much of the criticism of the effectiveness of the ERISA enforcement program could be overcome if OPWBP were to develop and follow a comprehensive long-term enforcement strategy. This strategy should include such elements as specific goals and objectives to be achieved over a multi-year period; specific approaches to be used, including case selection methods, to meet the goals and objectives; how training problems will be addressed; and how progress and results will be evaluated. The strategy could also discuss various approaches that could be followed with alternative resource levels and the results likely to be achieved under each alternative.

RECOMMENDATIONS TO THE SECRETARY OF LABOR

We recommend that the Secretary (1) direct OPWBP to develop a comprehensive, long-term enforcement strategy, (2) periodically track progress, and (3) hold key program managers accountable for adhering to the strategy and producing results unless changes are adequately justified and approved.

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We trust that this information will be helpful to the Subcommittee, and we would be pleased to discuss these matters with you or your staff. We are sending copies of this report to the Secretary of Labor and other interested parties.

Sincerely yours,

Richard L. Fogel

Richard L. Fogel
Director

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