

**U.S. Department of Labor
Office of Inspector General
Office of Audit**

BRIEFLY...

Highlights of Report Number: 09-10-001-12-121, to the Assistant Secretary for the Employee Benefits Security Administration.

WHY READ THE REPORT

The report discusses EBSA's efforts to protect pension plan assets from conflicts of interest in pension plan service providers. Conflicts of interest affecting pension plans arise when a service provider has competing professional or personal interests. Such competing interests can hinder the service provider's and the plan fiduciary's ability to fulfill duties impartially and act solely in the interest of plan participants or beneficiaries.

Conflicts of interest are of concern in most ERISA covered pension plans. In 2005, the SEC examined 24 service providers who were registered investment advisers; and therefore, fiduciaries under SEC rules. The SEC found inadequate disclosure of continuing conflicts of interest in 13 of the 24 service providers (54 percent). These 13 service providers, as investment advisers, had more than \$4.5 trillion in assets under advisement. Furthermore, these service providers had contracted with defined benefit plans that had total assets of \$183.5 billion and average assets of \$155.3 million per plan.

WHY OIG CONDUCTED THE AUDIT

The audit objective was to answer the question: Has EBSA taken action to evaluate and reduce risk of harm to plan participants from conflicts of interests in pension service providers?

READ THE FULL REPORT

To view the report, including the scope, methodology, and full agency response, go to:

<http://www.oig.dol.gov/public/reports/oa/2010/09-10-001-12-121.pdf>.

September 30, 2010

EBSA NEEDS TO DO MORE TO PROTECT RETIREMENT PLAN ASSETS FROM CONFLICTS OF INTEREST

WHAT OIG FOUND

EBSA has taken several actions to evaluate and reduce risk of harm to plan participants and beneficiaries from conflicts of interest in service providers. For example, EBSA (1) developed two new regulations regarding fee determinations and disclosures and is requiring this information be reported to EBSA; (2) followed up on the 2005 SEC report on conflicts of interest and initiated 12 specific investigations; (3) worked with the SEC to develop guidelines for plan fiduciaries to use in selecting and monitoring specific service providers, and (4) implemented the Consultant Adviser Project, which concentrated resources on improper, undisclosed compensation by certain service providers.

While these actions go a long way toward creating transparency in plan activities and improving protections for plan assets and participant benefits, EBSA needs to do more to protect plan participants and beneficiaries from conflicts of interest in service providers. Specifically, EBSA needs to address other critical regulatory areas, such as broadening the definition of fiduciary status for investment advisers, requiring disclosure of all conflicts of interest and consideration of these conflicts of interest by plan fiduciaries when selecting service providers.

The narrow definition of a fiduciary and the lack of regulations dealing with conflicts of interest has hampered EBSA's enforcement program. For example, while the SEC reviewed 24 pension service providers and took action on 13 instances of inadequate disclosure of conflicts of interest, EBSA, using its regulations, could not take any enforcement action on the inadequate disclosure to pension plans.

WHAT OIG RECOMMENDED

The OIG recommended that EBSA: (1) broaden the definition of a fiduciary for investment advisers, and (2) develop regulations requiring disclosure of all conflicts of interest and consideration of conflicts of interest in selection of service providers.

The Assistant Secretary for the Employee Benefits Security Administration agreed with the finding and recommendations.