

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

BRIEFLY...

Highlights of Report Number 09-11-001-12-121, to the Assistant Secretary for Employee Benefits Security.

WHY READ THE REPORT

The private retirement system in the United States involves about \$6 trillion of investments, including approximately \$2.3 trillion of corporate stock for about 120 million Americans. Owning this corporate stock includes the right to vote on corporate issues. How a plan votes on corporate issues during company stockholders meetings can affect the retirement security of plan participants and beneficiaries.

Since many retirement plans invest in corporate stock, proxy-voting is integral to the fiduciary act of managing retirement plan investments, and the plan trustee can exercise the votes itself or through (i) a named fiduciary through instruction of the plan trustee, or (ii) the investment manager to which investment authority of the relevant asset has been delegated. The Employee Benefits Administration (EBSA) requires fiduciaries to vote solely for the plan's economic interests and requires named fiduciaries periodically to monitor proxy-voting decisions made by third parties.

In 2004, the General Accountability Office (GAO) issued an audit report entitled "Pension Plans: Additional Transparency and Other Actions Needed in Connection with Proxy-voting." GAO found that ERISA presented legal challenges for bringing cases such that it was 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. Additionally, GAO found DOL had no statutory authority to impose a penalty without first assessing damages and securing a monetary recovery. In part, because of these challenges, GAO pointed out that DOL had devoted few resources to enforcing proxy-voting by plans.

WHY OIG CONDUCTED THE AUDIT

We conducted the audit to determine to what extent EBSA had assurances that proxies were voted solely for the economic benefit of plan participants and beneficiaries.

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/2011/09-11-001-12-121.pdf>

March 31, 2011

Proxy-voting May Not be Solely for the Economic Benefit of Retirement Plans

WHAT OIG FOUND

EBSA does not have adequate assurances that fiduciaries or third parties voted proxies solely for the economic benefit of plans. EBSA's proxy-voting requirements do not specifically require fiduciaries or investment managers to document (1) the monitoring of proxy-voting activities or (2) economic rationale for proxy-voting decisions. For the calendar year 2009, we found that fiduciaries did not document that they monitored proxy-voting decisions for 90 percent of plans we reviewed, and proxy voters were unable to provide documentation to substantiate the economic benefit of proxy-voting decisions for 2,455 of 3,194 (77 percent) proposals, representing votes on 574 million shares of stock with values totaling \$11.6 billion.

We also noted EBSA has devoted few resources to enforcing proxy-voting requirements. While EBSA did conduct three proxy-voting projects between 1988 and 1996, EBSA did not routinely review proxy-voting decisions. EBSA lacks the statutory authority to assess penalties in cases that did not result in financial losses to plans and it is difficult to attribute monetary losses to proxy-voting decisions. EBSA also stated court cases have shown that fiduciaries may not need to document the rationale for their fiduciary decisions.

Without additional transparency and enhanced enforcement activities, concerns about the fiduciary use of plan assets to support or pursue proxy proposals for personal, social, legislative, regulatory, or public policy agendas, which have no clear connection to increasing the value of investments used for the payment of benefits or plan administrative expenses, may not be properly addressed.

WHAT OIG RECOMMENDED

We made three recommendations to the Assistant Secretary for the Employee Benefits Security: (1) propose amending ERISA to give the Secretary of Labor the authority to assess monetary penalties against fiduciaries for failure to comply with proxy-voting requirements, (2) revise proxy-voting requirements in 29 CFR 2509.08-2 to require documented support for fiduciary monitoring and the economic benefit for proxy-voting decisions, and (3) include fiduciary proxy-vote monitoring in enforcement investigations to ensure that the economic benefit for proxy-voting decisions are appropriately documented.

The Assistant Secretary for Employee Benefits Security did not agree to implement our recommendations. While EBSA supported expanding ERISA civil penalties for all fiduciary breaches, it did not believe proxy-voting activities warranted specific legislative changes, specific documentation requirements, or increased enforcement activities.