

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

BRIEFLY...

Highlights of Report Number: 05-09-005-12-001 to the Assistant Secretary for Employee Benefits Security.

WHY READ THE REPORT

The Employee Retirement Income Security Act of 1974 (ERISA) was enacted to protect pension, health, and other employee benefit plans of American workers. Currently, there are more than 6 million plans, involving 150 million workers and \$6 trillion in assets.

EBSA seeks to focus its enforcement resources on areas that have the greatest impact on the protection of plan assets and participants' benefits. As part of its efforts to accomplish this goal, EBSA has identified five national enforcement projects: Employee Contributions Project, Health Fraud/Multiple Employer Welfare Arrangements, Employee Stock Ownership Plans, Consultant/Adviser Project, and Rapid ERISA Action Team (REACT).

In the REACT project, EBSA aims to respond in an expedited manner to protect the rights and benefits of plan participants when the plan sponsor faces severe financial hardship or bankruptcy and the assets of the employee benefit plan are in jeopardy. Under REACT, when a company has declared bankruptcy, EBSA's goal is to take immediate action to (1) ascertain whether there are plan contributions which have not been paid to the plans' trust, (2) advise all affected plans of the bankruptcy filing, and (3) provide assistance in filing proofs of claim to protect the plans, the participants, and the beneficiaries. EBSA also attempts to identify the assets of the responsible fiduciaries and evaluate whether a lawsuit should be filed against those fiduciaries to ensure that the plans are made whole and the benefits secured.

WHY OIG CONDUCTED THE AUDIT

The OIG conducted a performance audit of EBSA's REACT project. The audit was designed to answer the following question: Is EBSA's REACT project accomplishing its goal?

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/2009/05-09-005-12-001.pdf>

September 2009

EBSA Could Strengthen Policies and Procedures over the REACT Project

WHAT OIG FOUND

EBSA could strengthen policies and procedures over the REACT project to better attain project goals of identifying plan sponsors facing severe financial hardship or bankruptcy in order to protect any assets of employee benefit plans that are in jeopardy.

EBSA has not developed and implemented national policies or procedures to proactively identify potential REACT cases prior to a bankruptcy filing. Specifically, EBSA has not defined "severe financial hardship" or a standard method of assessing a plan sponsor's financial condition in identifying potential REACT cases.

EBSA does not have a comprehensive method for measuring the desired activities and outcomes of the REACT project, and does not perform a national assessment to judge the value of the REACT project in meeting its overall enforcement mission. EBSA either does not document information needed to assess all REACT project goals or has not defined or implemented measures to determine how well these goals are being accomplished or their value to the REACT project.

WHAT OIG RECOMMENDED

We recommended the Assistant Secretary for Employee Benefits Security require EBSA to (1) develop more specific guidance for proactively targeting REACT cases based on severe financial hardship, (2) establish a performance measure(s) to accurately capture the REACT project's impact, and (3) develop an overall REACT project assessment that incorporates the regional assessments to determine whether the project is accomplishing its goal.

EBSA disagreed with many of our audit conclusions and defended their current practices. They did, however, agree to take several actions aimed at addressing most of our recommendations. For example, EBSA proposed to (1) establish a list of criteria that regions should consider when determining whether a company is experiencing "severe financial hardship," and (2) conduct an overall REACT project assessment starting in fiscal year 2010.