




# Employee Retirement Income Security Act 1996 Report to Congress



U.S. Department of Labor  
Pension and Welfare Benefits Administration

Jan.	Feb.	Mar.
	<b>Golden Hammer Award</b> 	
Apr.	May	June
 <b>Qs &amp; As</b> <b>HIPAA</b> Health Insurance Portability and Accountability Act		
July	Aug.	Sept.
	<b>Women and Pensions:</b> <i>WHAT WOMEN NEED TO KNOW AND DO</i>	
Oct.	Nov.	Dec.
<b>Pension Payback Program</b> 		

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# Employee Retirement Income Security Act 1996 Report to Congress

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U.S. Department of Labor  
Alexis M. Herman, Secretary

Pension and Welfare Benefits Administration  
Meredith Miller, Deputy Assistant Secretary

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## Introduction

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The Pension and Welfare Benefits Administration (PWBA) of the U.S. Department of Labor protects the integrity of pensions, health plans and other employee benefits for more than 150 million people. The agency's mission includes administering and enforcing the fiduciary, reporting and disclosure, and coverage provisions of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). The provisions of Title I were enacted to address public concerns that funds of private-sector employee benefit plans were being mismanaged and abused.

Since its enactment in 1974, ERISA has been amended to meet the changing retirement and health care needs of employees and their families. The role of PWBA has evolved continually to meet these challenges. In 1985, the Consolidated Omnibus Budget

Reconciliation Act (COBRA) was passed, and PWBA was charged with issuing regulations regarding certain notification requirements. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) added new responsibilities in the regulatory arena. As a result, the agency established the Health Care Task Force, which is designed to provide technical guidance on how to apply ERISA's Title I provisions, as amended by HIPAA and other health care laws that affect group health plans.

This report details the 1996 accomplishments of the agency in executing its mission.

## 1996 Highlights

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The Pension and Welfare Benefits Administration counts the following among its 1996 accomplishments:

The agency continued to correct abuse of pension and other benefit plans through enforcement and regulatory actions and increased outreach efforts aimed at educating pension plan participants about their rights under the federal pension law.

In June PWBA obtained a guilty plea from the former owner of a Farmingdale, N. Y., company, resulting in the largest criminal case brought by the agency to address 401(k) fraud.

The agency's Health Care Task Force was established in September to provide technical guidance on the application of ERISA provisions to three new pieces of legislation: the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Mental Health Parity Act of 1996 and the Newborns' and Mothers' Health Protection Act of 1996. The agency issued a booklet to help employees and employers understand the impact of these new laws.

In October PWBA announced \$4.8 million had been restored to the pension plans of 16,800 workers as a result of its Pension Payback Program. The agency announced the paybacks following a 6-month period when it allowed employers to restore contributions to the 401(k) pension funds. Approximately 170 employers responded to the program, voluntarily restoring contributions ranging from \$43,000 to \$200,000.

As part of the agency's customer service standards, new goals were established to address complaints and requests for documents that decreased the response times to written and telephone inquiries.

The agency's Retirement Savings Education Campaign continued to gain momentum during the year by issuing public service announcements and two new consumer-oriented publications, one of which targeted retirement saving for women. These efforts were enhanced by issuing guidelines for employers who provide investment information to employees, and the issuance of a brief publication aimed at helping workers and retirees protect their health care in retirement.

Several provisions of the President's Retirement Savings and Security Act were enacted in 1996. The agency assisted in the development of a strategy for this legislation and in reviewing and offering recommendations concerning the Administration's position on HIPAA, the Newborns' and Mothers' Health Protection Act of 1996 and the Mental Health Parity Act of 1996.

Finally, PWBA initiated a national survey measuring the health insurance benefits of workers and retirees, supported studies on employee health benefits, and completed nine additional studies ranging in scope from the effects of public pension funds on investments and employment to how the introduction of 401(k) plans impacts defined benefit plans.

## Message from the Deputy Assistant Secretary

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As we reflect on 1996 and our many successes, we continue to make great strides in carrying out our responsibilities under ERISA. We have succeeded in addressing a new set of agency initiatives to educate plan participants, to seek voluntary compliance with ERISA regulations, and to continue to protect workers' pensions by preventing fraud and abuse.

We are proud of this year's accomplishments: receiving the Vice President's prestigious Hammer Award; prosecuting the largest criminal case brought by the agency to address 401(k) fraud and obtaining a guilty plea from the former owner of a Farmingdale, N.Y., company; and targeting specific audiences with information on what they should know about pension savings.



*Deputy Assistant Secretary  
Meredith Miller, PWBA*

We are also proud of the agency's contributions in helping to develop the strategy for the President's Retirement Savings and Security Act and in assisting with the development of the Health Insurance Portability and Accountability Act of 1996, the Newborns' and Mothers' Health Protection Act of 1996 and the Mental Health Parity Act of 1996.

As we move forward, we realize there are plenty of new challenges — new regulations to write, new ground to break on the pension protection front, and more audiences to target with pension and health benefits information.

We will continue to meet these challenges with the solid support of our capable legal and research staff, accountants, pension advisors, benefit specialists, and professional and support staff in every category.

The combined efforts of our agency in 1996 continued to secure and protect the pension, health and employee benefit plans of millions of American workers.

## Overview of PWBA Office Functions

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*PWBA accomplishes its mission through the collective efforts of seven major offices that either administer policies or carry out initiatives in the following areas: enforcement, participant assistance, exemptions, regulatory activities, policy and legislative analysis, accounting and auditing, research and health care. The agency also provides staff for a bipartisan, independent council that appraises the programs instituted under ERISA and makes recommendations to the Secretary of Labor.*

### ***Office of Enforcement***

The Office of Enforcement is responsible for overseeing and implementing the agency's investigative programs. Through 15 regional and district offices, it conducts investigations to detect civil and criminal violations of Title I of ERISA, related Labor Department regulations and criminal laws relating to employee benefit plans.

### ***Office of Program Services***

One of the primary ways PWBA satisfies its mission of protecting pension, health and other benefits in private-sector employee benefit plans is by helping plan participants and beneficiaries understand their rights, and employers and plan sponsors understand their obligations, under the federal pension law.

This function is executed through the Office of Program Services' (OPS) Division of Technical Assistance and Inquiries in the Washington, D.C., office, and the 15 PWBA field offices throughout the nation. When participants write, call or visit one of these offices, they receive individual assistance from benefit advisors who explain their rights under the law and help them obtain improperly denied benefits.

Public education is also a significant part of the responsibilities of PWBA. Through OPS's Division of Public Affairs, the agency provides plan participants, plan sponsors and the general public with educational publications and materials that increase public awareness of basic health, pension and retirement planning issues.

The Division of Public Affairs also serves as a liaison between the agency and the news media. It issues press releases on civil and criminal cases pertaining to ERISA; answers and directs media inquiries; holds press events to publicize agency issues and initiatives; hosts and arranges briefings on the agency's mission and U.S. pension law for foreign delegations; and arranges speaking engagements throughout the country for the Assistant Secretary and other departmental officials who deliver the agency's message on pension and retirement issues.

Through the OPS's Division of Public Disclosure, the agency provides the press and the public with basic financial information on employee benefit plans that private-sector companies file with the Labor Department.

### ***Office of Exemption Determinations***

The Office of Exemption Determinations administers the agency's program for granting administrative exemptions from the prohibited transaction provisions of ERISA. The office's two divisions are responsible for class exemptions and the administration of the individual exemptions program.

ERISA prohibits certain specified transactions between employee benefits plans and entities defined as "parties in interest." However, it gives the Labor Department authority to grant



exemptions from these prohibited transaction restrictions if an applicant can demonstrate that a transaction is administratively feasible; serves the interest of the plan, its participants and beneficiaries; and protects the rights of the plan participants and beneficiaries.

The office reviews applications for such exemptions and determines whether to grant relief. Individual exemptions relate to a particular plan or applicant. Class exemptions are applicable to anyone in the described transactions, provided the enumerated conditions are satisfied.

### ***Office of Regulations and Interpretations***

The Office of Regulations and Interpretations is responsible for planning, directing and carrying out PWBA's program for the development and delivery of policy and technical guidance concerning the application of Title I of ERISA. It also is responsible for interpreting certain provisions of the Internal Revenue Code, the Federal Employees' Retirement System Act of 1986 (FERSA), and other laws affecting employee benefit plans. The office develops regulations and interpretive bulletins, and issues advisory opinions, information letters and rulings. It also develops employee benefit plan reporting forms and provides training, technical assistance and other guidance to facilitate compliance with and enforcement of the fiduciary, coverage, reporting and disclosure and other statutory provisions administered by PWBA.

### ***Office of Policy and Legislative Analysis***

The Office of Policy and Legislative Analysis provides leadership and coordination of

employee benefit plan policy analysis, long-term policy development and legislative analysis. The office prepares technical analyses of legislative and policy proposals for PWBA policy-making officials. The office also prepares congressional and executive departmental briefings, and proposed testimony and regulatory analyses; monitors congressional hearings and other legislative activity; prepares speeches and handles inquiries and requests for technical assistance related to ERISA.

### ***Office of the Chief Accountant***

The Office of the Chief Accountant is responsible for enforcing the reporting and disclosure provisions of ERISA and administering an audit program to assure compliance with the fiduciary requirements of FERSA.

The office also has established several proactive programs designed to help educate plan professionals and encourage voluntary compliance through reduced fines.

### ***Office of Research and Economic Analysis***

The Office of Research and Economic Analysis plans and administers an employee benefits research and economic analysis program to support PWBA policy and program priorities. It is also responsible for maintaining comprehensive data and statistics on the private retirement income system and pension plan investments that are derived from the annual reports of the Form 5500. These are released semiannually in the *Private Pension Plan Bulletin* to make timely information available to research and policy analysts.

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### ***ERISA Advisory Council***

The Advisory Council on Employee Welfare and Pension Benefit Plans consists of 15 members, appointed by the Secretary of Labor to serve 3-year terms. The members must be qualified to appraise the programs instituted under the federal pension law.

Three members must represent employee organizations — with at least one representing participants of a multiemployer plan. Three must be selected from employer organizations, with at least one representative of employers maintaining or contributing to multiemployer plans; and three members must be selected

from the general public, one of whom must receive benefits from a pension plan. The other six members must be selected from the insurance, accounting, actuarial counseling, investment management and investment counseling, and corporate trust communities. The law also requires that five members rotate off the council each Nov. 14 and that no more than eight appointees represent any one political party.

The remainder of this report discusses the 1996 agency accomplishments.

## Enforcement

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In 1996, PWBA opened 4,726 civil investigations and 132 criminal investigations. PWBA investigations resulted in 96 indictments. Overall, the enforcement program recovered more than \$399 million for private benefit plans.

The Employee Contribution Project yielded substantial results in 1996. In June, the former owner of Job Shop Technical Services, Inc. in Farmingdale, N. Y., pleaded guilty to embezzling \$2.7 million from his workers' 401(k) plan, a plea that represented the largest case at the time in a nationwide anti-fraud campaign initiated by the agency.

The agency's innovative Pension Payback Program, launched in March, gave employers a 6-month grace period to contribute, with interest, funds deducted from employees' paychecks that were not deposited in 401(k) plans within required time periods. Employers in compliance with the program avoided potential ERISA and Internal Revenue Code civil or federal criminal sanctions, including civil injunctions, incarceration or criminal fines, excise taxes, and civil monetary penalties. Participation in the program was limited to employers who had not engaged in the most egregious conduct.

### Other Agency Initiatives

#### *MEWAs*

Multiple Employer Welfare Arrangements (MEWAs) — which pool small employers to create a larger entity with stronger negotiating power to purchase health or other welfare benefits — remained a national enforcement initiative. The agency continued its enforcement emphasis on identifying abusive and fraudulent MEWAs and worked to shut them down. The agency worked closely with

the Department of Labor's Office of the Solicitor to help identify these operations.

#### *HIPAA*

The new Health Insurance Portability and Accountability Act of 1996 (HIPAA) greatly expanded the scope of ERISA's PWBA-enforced health plan standards. Although enforcement actions based on the new provisions did not begin until July 1997, the agency began devoting significant resources in 1996 to provide field offices with the necessary technical training to respond to customer service needs and to establish required enforcement coordination between the Departments of Labor, Health and Human Services and Treasury — the three primary agencies responsible for administering and enforcing the law.

Investigations into cases involving investments in derivatives and enforcement actions to resolve violations in connection with purchases of annuities were also active in 1996.

In addition to the national projects discussed above, the agency continued to devote a significant portion of its enforcement resources to the investigation of criminal violations involving employee benefit plans.

### Criminal Cases

Criminal cases investigated by the agency in 1996 included both large and small plans, pension and health plans, MEWAs, single employer plans, including 401(k) plans, and Taft Hartley plans. Investigations spanned the U.S. and defendants ranged from business owners to service providers. The following list is a sampling of these cases.

***United States v. Sprei***

*1-19-96*

*New York, N.Y.*

Solomon Sprei, a Brooklyn insurance broker, was sentenced to 18 months imprisonment and ordered to make restitution of \$1.8 million for leading insurance companies to believe that group health policies they issued covered members of two unions with histories of low-health costs. Instead, Sprei sold the insurance to the general public, who consisted of mostly elderly, high-risk individuals, who were not union members. He promised the victims low-cost insurance by calling them “associate union members.” In exchange for a fee of \$14 per person per month, one of the unions allowed Sprei to use its name. When the insurance companies discovered the scheme, they canceled the coverage. As a result of Sprei’s actions, Empire Blue Cross/Blue Shield claimed losses of \$11 million. State Mutual Life Assurance of Worcester, Mass., claimed losses of \$5 million, CNA of Chicago claimed losses of \$3 million to \$5 million, and Prudential Newark also claimed several million in losses. A co-conspirator who worked at one of the companies previously pleaded guilty to the fraud. The case was investigated by PWBA, OIG’s Office of Labor Racketeering, the U.S. Postal Inspection Service and the FBI.

***United States v. Corace***

*6-12-96*

*New York, N.Y.*

Ralph Corace, an official of Job Shop Technical Services, Inc. was sentenced to 37 months imprisonment and fined \$60,000 for failing to deposit employee contributions owed the company’s 401(k) plan. The investigation

uncovered up to \$2.7 million in contributions from as many as 300 participants that were embezzled. Job Shop operated as an employee leasing company for engineers and consultants. The 401(k) plan had \$4.3 million in assets and covered 755 leased professionals throughout the U.S. Restitution was not ordered in view of a pending parallel civil litigation in which that matter is being addressed. The parallel criminal and civil cases were investigated by PWBA.

***United States v. Mett and Wiseman***

*6-27-96*

*Honolulu, Hawaii*

William Mett and Marvin Wiseman, owners of Center Arts Galleries, were charged in a 16-count indictment with embezzling and converting to their own use more than \$1 million in assets from their company-sponsored defined benefit and profit sharing plans. They were also charged with making false statements on an ERISA-required annual report regarding the disposition of plan assets, and with violating ERISA’s bar provision for continuing to serve as plan trustees after a prior fraud conviction. Allegedly, they withdrew money from plan accounts and deposited the funds to a company account. The company paid Mett a salary of \$378,000 and Wiseman got \$515,000. The defendants also allegedly used \$100,000 to pay attorneys who defended them in an earlier fraud trial. This is the first case in which defendants were charged with the ERISA bar provision violation resulting from a PWBA investigation. PWBA was assisted in the investigation by the U.S. Postal Inspection Service.

***United States v. Somerstein et al.***  
7-23-96  
*New York, N.Y.*

Stuart Somerstein and his wife Marianna, owners of Somerstein Caterers, and two others were charged with defrauding the employee benefit fund of Hotel and Restaurant Employees Union Local 100 by underreporting the amount of contributions due the fund. They also allegedly mailed false claims and inflated inventories to insurance companies. In addition, Stuart Somerstein was charged with embezzling \$155,000 from a company-sponsored pension plan. This case was investigated by PWBA, the Department of Labor's Office of the Inspector General, the U.S. Postal Inspection Service and the Nassau County police and fire departments.

***United States v. McLain et al.***  
5-9-96  
*Detroit, Mich.*

Former Cy Young award winner Denny McLain, Roger Smigiel and Jeffrey Egan were charged with conspiracy, pension plan theft, money laundering and criminal forfeiture in connection with a defined benefit plan sponsored by the Peet Packing Company, a small meat packer in Chesaning, Mich.

McLain and Smigiel bought Peet in January 1994 and immediately appointed themselves plan trustees. They directed a former bank trustee to transfer more than \$12 million of plan monies to a new bank custodian, and directed the new custodian to transfer more than \$3 million of the money to a shell company, Vanguard Investments, Inc., which was deliberately named to cause confusion

with the well-known Vanguard Group mutual fund company. To "launder" the money, Egan, who served purportedly as the plan's financial advisor, issued a \$2.5 million cashier's check made payable to Peet, which McLain deposited into a new company account. Egan used backdated loan documents signed by McLain and Egan to make the \$2.5 million look like a legitimate mortgage loan from the second shell company to Peet. The money was used for both company and personal expenses.

Egan pleaded guilty in September to embezzlement. In December, a jury found McLain and Smigiel guilty on the embezzlement, conspiracy and mail fraud charges. The court will decide the money laundering and forfeiture charges. This case was investigated by PWBA and the FBI.

***United States v. Kenemore, Jr., et al.***  
8-16-96  
*Dallas, Texas*

Lawrence Kenemore, Jr., a fraudulent MEWA operator, was sentenced in August to a 19-year jail term — one of the longest sentences resulting from a case in which PWBA was involved. The sentence followed a 24-count indictment charging Kenemore, his wife, son and five individuals, and included embezzlement, mail fraud, false statements and money laundering. He was found guilty as charged by a jury in May.

Kenemore was the manager and controller of ATG Association of Trust and Guarantee, which he created and used to market a fraudulent benefit program. He and his accomplices created three bogus labor unions to induce employers to contribute money to

what they had been told were trust funds for worker compensation and health coverage for their employees. A bogus third-party administrator was also created and used to deny or delay payment of worker compensation and health claims. Employers contributed approximately \$1.7 million. Approximately \$300,000 was deposited into health plan accounts. The defendants used the remaining amount for themselves.

All of the defendants were convicted and have been sentenced. Four of the defendants were sentenced only to probation. In agreeing to both the prosecution and defense motions for “downward departures” from the sentencing guidelines, the judge said that Kenemore “sucked the culpability from the other individuals in the cesspool surrounding himself.” His wife and two defendants were each sentenced to a year imprisonment. Kenemore’s lengthy sentence represented an “upward departure” due to liens he filed against the judge, prosecutors, investigators and others involved in the case. The liens were considered an obstruction of justice. This case was investigated by PWBA, the FBI, IRS and the Texas Attorney General’s Office.

***United States v. Giordano***

*8-15-96*

*Little Falls, N.J.*

Charles Giordano, former president of Teamster’s Local 125 of Little Falls, N.J., was sentenced to 20 months imprisonment, ordered to make restitution of \$80,000, and to forfeit future pension and health benefits amounting to \$530,000. His sentencing resulted from engaging in “kickback” activity while serving as a trustee for the union’s pension and health plans. He used his position to have the

pension plan invest \$2 million to finance a Florida real estate project. He was paid \$50,000 cash for his assistance. He also used his position to get service providers to the pension and health plans to pay him “kickbacks” of \$337,620 in order for them to keep plan business. Five individuals who paid the bribes have pleaded guilty, and all but one have been sentenced. This case resulted from an investigation conducted by PWBA, the FBI and the IRS.

***United States v. Palumbo Brothers, Inc. et al.***

*10-03-96*

*Chicago, Ill.*

A 35-count indictment was returned charging two trucking firms and six individuals in a \$20 million scheme involving a federally funded highway project and a scheme to cheat workers out of approximately \$3 million in wages and employer contributions to their union pension and health plans. The schemes spanned more than two decades in which the defendants allegedly created false weight tickets for trucks transporting materials and tickets for nonexistent truck loads.

In the labor scheme, they allegedly falsified payroll records to reflect fewer hours worked than was true, which cheated members of the Teamsters and Laborers unions by reducing the amount of employer contributions to union fringe benefit plans. This case is the result of an investigation conducted by the FBI, the Illinois State Police and Department of Transportation, the Inspector General’s Office of the U.S. Department of Transportation and PWBA.

## Civil Cases

The following is a sampling of the civil cases investigated in 1996. Specific agency initiatives that a case targets are identified in parenthesis at the end of the narrative.

### ***Reich v. John Hancock Mutual Life Insurance Company***

*12-17-96*

*Boston, Mass.*

John Hancock Mutual Life Insurance Company in Boston agreed to repay \$650,000 to its investment incentive pension plan following claims by the Department that the plan paid improper fees to the insurer's investment management subsidiary, according to a settlement with the Department. The plan covered 9,953 participants and had more than \$500 million in assets in 1993.

The Department's suit, filed in March, alleged that Hancock retained its subsidiary to manage a portion of the plan's assets in March 1986 and allowed the plan to pay more than \$615,000 in fees to that subsidiary.

The company also agreed that it would not cause any of its plans to pay service fees to Hancock or its subsidiaries other than for reimbursement of direct expenses. In a separate agreement, Hancock agreed to pay the government \$130,000 in civil penalties.

### ***Reich v. Carroll***

*11-27-96*

*Boston, Mass.*

In the first case under federal civil pension law in which the search and seizure of records has

been allowed, a federal court in Boston granted, and the U.S. Department of Labor executed, a search warrant in a case involving the administrator to a pension plan for franchises of ITT Sheraton Hotels. The plan covered more than 420 participants and had more than \$2.5 million in assets as of November 1996.

The administrator was placed in the custody of the U.S. Marshals Service in October for defying a court order to testify and produce documents subpoenaed by the Department. The search warrant was requested following a court hearing in which the administrator refused to participate.

### ***Reich v. Hall Sprinkler Company***

*10-7-96*

*Dallas, Texas*

The Department settled a lawsuit against Hall Sprinkler Company alleging the defendants made direct loans of \$370,000 in plan assets to the plan sponsor and failed to collect participant loans. The bulk of the loans, \$173,000 plus interest, allegedly were made to members of the Hall family. Additionally, the plan sponsor allegedly failed to deposit employee contributions and participant loan payments made through payroll deductions to the trust.

The plan was established in 1966. It had 49 participants and assets totaling \$1.2 million in 1989.

Settling defendants include the company, its president, Ronald C. Hall, and the estate of his mother, Vera S. Hall, who, until her death, was the corporate secretary-treasurer. Although

the consent order barred Ronald Hall from serving any employee benefit plan covered by the Employee Retirement Income Security Act, he will be allowed to continue as trustee for the profit-sharing plan until its assets are liquidated and reallocated to other participants of the plan. Hall and his mother's estate will also forfeit their individual account balances to the plan.

Hall Sprinkler Company and its profit-sharing plan trustee agreed to restore more than \$634,000 in assets to the plan under a consent order obtained by the Department.  
**(Employee Contributions Project)**

***Reich v. Autrey***

8-29-96

*Jacksonville, Fla.*

The Department filed a lawsuit in 1994 alleging that the trustees of the National Electrical Contractors Association/ International Brotherhood of Electrical Workers (NECA-IBEW) invested plan money in a St. Augustine, Fla., development project. The investment allegedly was made in exchange for contracts promising to repay the principal and interest.

The plan's investment guidelines placed limits on the percent and quality of plan investments in such fixed income securities, such as this real estate investment. The trustees also were alleged to have failed to obtain adequate financial security for the investment, which resulted in financial losses.

The trustees made full restitution of \$4 million to the plan as part of a judgment obtained by the Department.

***Reich v. Hassenmiller***

9-08-96

*Wallingford, Conn.*

The Department filed suit against 14 trustees of a former securities broker for the Connecticut Plumbers and Pipefitters pension fund to recover more than \$3 million in losses from overly risky investments in derivatives.

The lawsuit sought recovery of all losses, plus any gains the fund's assets would have earned had the defendants invested plan funds in other appropriate financial instruments. It also seeks to remove the trustees from their positions with the fund and permanently bar them from service to any plan governed by ERISA.

The trustees and broker, Steven G. Hassenmiller, allegedly purchased 77 collateralized mortgage obligations (CMOs), a class of derivatives, for the plan, which covered 2,475 participants and had \$106 million in assets.

In addition, the trustees improperly delegated to Hassenmiller discretion in setting the timing and price of the purchases and sales for the fund's CMO investments; never required Hassenmiller to comply with the fund's requirements regarding investment managers; never established investment guidelines with which Hassenmiller had to comply as required by the fund's documents; failed to properly appoint, monitor and remove Hassenmiller as an investment manager and advisor; and failed to effectively monitor the fund's investments in CMO investments.



The trustees hired Criterion Investment Management to assume management of the mortgage-backed securities from Hassenmiller. On Criterion's recommendation, the entire fund portfolio in CMOs was sold at a total loss of approximately \$5.5 million. **(Derivatives Project)**

***Reich v. Guckin***  
7-11-96  
*Philadelphia, Pa.*

A federal court granted the Department's petition seeking a temporary restraining order removing Joseph J. Guckin as trustee of the Penjerdel Refrigeration Company 401(k) retirement plan and temporarily replacing him with an independent fiduciary. The company was a mechanical contractor in Philadelphia for commercial heating and air conditioning systems. The 401(k) plan covers 12 employees and currently has approximately \$164,000 in assets.

Guckin, who was also sole owner of Penjerdel Refrigeration's successor, Penjerdel Engineering Company, allegedly failed to collect \$140,718 in unauthorized loans made by the plan to himself and Penjerdel Engineering, according to the Department's lawsuit. He also diverted \$43,969 in employee contributions and failed to collect \$37,225 in matching plan contributions owed to plans for 1989 and 1991.

The lawsuit seeks a court order requiring Guckin to restore more than \$222,000 in restitution to the plan, permanently barring him from managing any plan governed by federal pension law and appointing an

independent trustee to manage the plan and distribute its assets, if appropriate. **(Employee Contributions Project)**

***Reich v. Devine***  
7-05-96  
*New York, N.Y.*

The Department sued the trustees of the New York District Council of Benefit Funds for misusing more than \$37 million in assets of the pension, annuity, vacation and welfare funds of the New York District Council of Carpenters. Participating employers contribute to the plans under collective bargaining agreements.

The lawsuit alleged the fund trustees violated ERISA by: transferring more than \$37.6 million from the pension, annuity and vacation funds to the welfare fund; failing to collect money transferred to the welfare fund; failing to enter into leases and collect rent owed to the pension and apprenticeship funds by the District Council, union locals and other funds; and for compensating employees Alan Burns and Dominick Lavacca without monitoring the services they provided to the funds; and failing to obtain reimbursement for services performed for the Council at the plan's expense.

The lawsuit seeks a court order requiring that the trustees restore all plan losses resulting from their improper actions, requiring the funds and the unions repay any funds that were improperly received by them and correcting all prohibited transactions.

***Reich v. Livingston***

4-03-96

*New York, N.Y.*

A consent judgment obtained by the Department ordered the former trustees of a welfare and health plan, sponsored by the defunct District 65 United Auto Workers, to repay the plan more than \$6 million.

The ex-trustees allegedly failed to: 1) evaluate, marshal and maintain adequate levels and reserves sufficient to fund benefit obligations; 2) adequately and timely adjust eligibility requirements and benefit levels to the flow of contributions received; 3) monitor and manage the plan's fiscal condition and solvency; and 4) implement appropriate cost containment measures.

In addition, the defendants allegedly permitted plan administrative costs to exceed reasonable levels by, among other things, allowing personnel on the plan's payroll to perform substantial services for the union.

***Reich v. Strong Capital Management***

6-06-96

*Menomonie Falls, Wis.*

Under a consent judgment obtained by the Department, Strong Capital Management, Inc. (SCM), agreed to pay \$5.9 million to approximately 101 plans. A Department lawsuit, filed simultaneously with the judgment, alleged that SCM directly exchanged and transferred the assets of plan clients with the accounts of other plans, mutual funds and accounts of other clients. SCM conducted at least 1,598 cross-trades of securities among the accounts of plans managed by the firm and other clients.

SCM also allegedly failed to obtain separate representation on behalf of the plans in making the cross trades. Sponsors of the plans will receive recoveries of \$40,000 or more under the judgment.

***Reich v. Hayden***

7-01-96

*Boston, Mass.*

The Department filed suit against Frederick Lee, president of Lee Publications, Inc. and pension plan trustees Jack Hayden, Robert Moyer, Albert Leach and Bruce Button for actions that left Lee Publications in debt to its own plan.

Lee allegedly failed to deposit employee and employer contributions into the company's pension plan. The trustees allegedly failed to ensure that these contributions were deposited in the plan account.

In an attempt to rectify the debt, Lee and the trustees accepted a \$250,000 mortgage note secured by property owned by the company, according to the lawsuit.

In a later transaction, the plan loaned Lee Publications more than \$252,000. In exchange for that loan, the company gave the pension plan a first mortgage on another company-owned property.

Lee and the trustees agreed to restore more than \$483,000 in losses to the Lee Publications, Inc. pension plan to resolve the lawsuit. Additionally, the consent judgment barred all defendants from serving in positions of trust for plans which are governed by ERISA and ordered the defendants to appoint

an independent trustee for the pension plan within 30 days. **(Employee Contributions Project)**

***Reich v. Pacific Lumber***

*5-10-96*

*Scotia, Calif.*

As part of a preliminary settlement with the Department and private litigants, Pacific Lumber, its officers and subsidiaries agreed to deposit \$7 million into a settlement fund for 2,681 participants and beneficiaries.

The company, its parent and subsidiaries sponsored the defined benefit plan for approximately 6,000 participants before terminating the plan in 1986 to recover more than \$62 million in surplus pension assets after Maxxam, Inc. acquired Pacific Lumber. More than \$37 million in plan assets were used to purchase annuities from Executive Life Insurance Company to provide the benefits of the terminated plan. In 1991, Executive Life was placed in receivership by the state of California.

The Department's lawsuit charged Pacific Lumber, Maxxam, Inc. and corporate executives with imprudently selecting Executive Life to purchase the annuity contract for the plan. The lawsuit alleged the defendants purchased the annuity from Executive Life despite negative findings by their own insurance expert on the insurer's ability to pay claims.

Under the preliminary settlement, the court will appoint an administrator to oversee the settlement fund and distribute its assets to participants and beneficiaries. **(Annuities Project)**

***Reich v. Fiore***

*4-15-96*

*Dallas, Texas*

The Department was awarded a temporary restraining order placing a \$10 million fraudulent health and welfare benefits program, operated by the International Association of Entrepreneurs of America (IAEA), under the control of an independent fiduciary. The association's 333 employer members had established employee benefit plans providing health and occupational illness and injury benefits to approximately 16,000 employees.

From November 1992 to 1995, the association collected more than \$25 million in employer and individual contributions. The Department's complaint alleged approximately \$10.3 million was diverted to or used by the defendants and entities controlled by them. The Department's lawsuit also alleged the defendants used more than \$1 million in trust assets to make unsecured or under-secured loans to personal friends and their companies.

The temporary restraining order froze the assets of certain defendants, removed them from their positions as fiduciaries or service providers and appointed an independent fiduciary to operate the trust pending further order of the court.

In addition, the Department obtained a partial settlement with defendant Ross Fuller, who had served as trustee, administrator, committee member and investment adviser, and his company, Stockton Fuller and Company, Inc. and benefit review committee members William T. Charvenak and Norman Rosenberg.

They resigned from their positions and have been enjoined from dealing with employee benefit plans governed by federal pension law.

The lawsuit alleges the defendants failed to provide an actuarially sound basis to fund benefits promised plan participants and beneficiaries and failed to set aside sufficient reserves to ensure payment of legitimate claims. As a result participants and their beneficiaries have and will continue to incur claims that will never be paid by the trust.

The defendants also allegedly used the trust's assets for their personal gain while defying state and federal court orders to submit to state regulation. There are pending legal actions with at least 10 states regarding IAEA. **(MEWA Project)**

***Reich v. Bank of America***

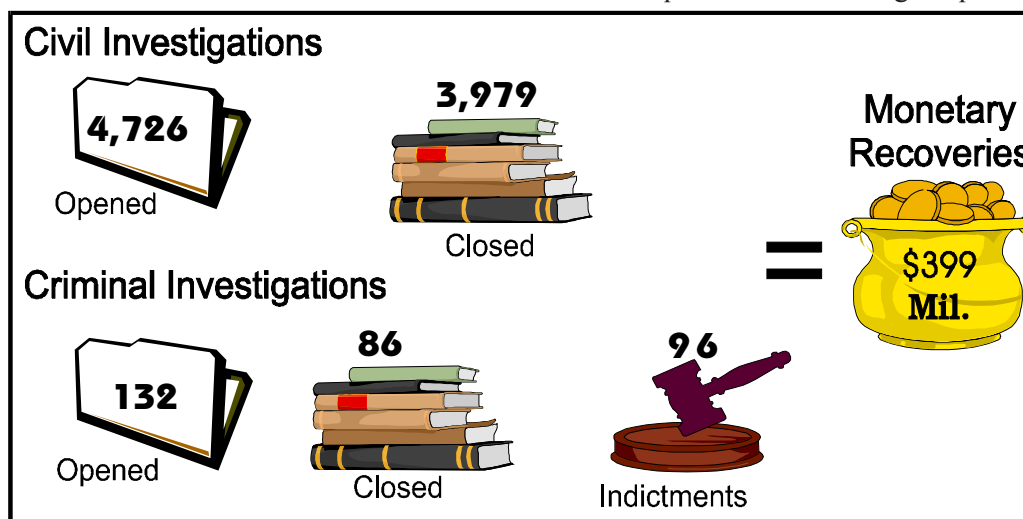
4-08-96

*San Francisco, Calif.*

As part of a settlement reached with the Department, the Bank of America paid \$4 million to two pension plans of Norcal Waste Systems, Inc. The \$4 million restores all losses suffered by the pension plans in connection with poor investment practices.

The complaint alleged that Bank of America was negligent in failing to investigate the safety of the investment, as well as the relationship between the plans, Norcal and its subsidiary. The complaint also alleged that Bank of America illegally accepted an instruction from Norcal officials to make the investment when the bank's trust agreement made it solely responsible for making the investment decision.

The settlement does not bar the bank from further service to ERISA plans. Instead, the settlement preserves the Department's ability to investigate the bank's management of other ERISA plan accounts during the past 6 years.



*Both civil and criminal cases and recoveries or indictments may continue from one calendar to the next (i.e., a case opened in 1996 may not be settled until 1997). The numbers in the chart above represent totals for the 1996 calendar year.*

## Participant Assistance/Public Education

### Technical Assistance Initiatives

PWBA continued to provide the highest quality service to its customers in 1996 by expanding existing initiatives and implementing new ones. Customer service standards implemented in 1995 to decrease response times to written and telephone participant inquiries were broadened to include goals for handling complaints and document requests, as well as requests for advisory opinions and exemption determinations.

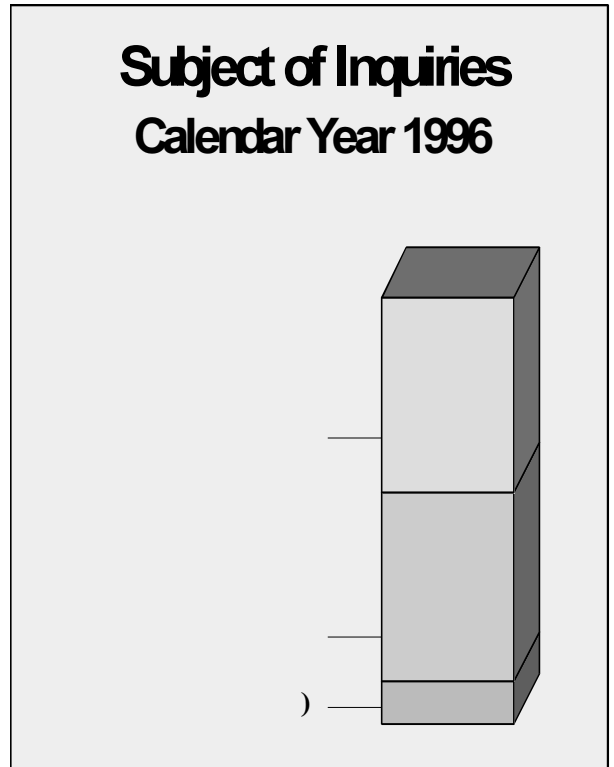
A new audio-forms telephone system was implemented in April 1996. It is an improved customer-friendly system that allows individuals to get prompt automated answers to common questions and immediate access to a pension advisor if they need individual attention.

Extensive publicity from the implementation of a combined service/enforcement initiative that targets abuse of participant contributions to 401(k) and other employee benefit programs resulted in increased calls to PWBA for information and technical assistance.

In 1996, results from the agency's customer service satisfaction survey revealed that:

- 98.8 percent of the nearly 106,000 individuals who called for assistance received a return call by the end of the business day.

- 86 percent of the more than 19,500 individuals who wrote the office received a response within 30 days.



### CY 1996 Inquiries Summary

**Total: 135,452**

Telephone	116,180	Visitors	787
Written	18,485		

### *Benefit Recoveries*

**\$16.3 Million**

Fiscal Year 1996

**NOTE: Data is annualized - based upon data available.**

## Retirement Savings Education

PWBA's successful Retirement Savings Education Campaign, launched in 1995, continued to gain momentum. The agency and the American Savings Education Council (ASEC) increased educational materials available to individuals, groups and organizations. In addition to the campaign's signature brochures *Top 10 Ways to Beat the Clock and Prepare for Retirement* and *What You Should Know About Your Pension Rights*, the agency issued *Women and Pensions — What Women Need to Know and Do*. This brochure provided women with a checklist of questions and action steps for retirement planning. Labor Secretary Robert B. Reich spoke at a Working Women's Summit event attended by more than 2,000 executive and professional women, which was sponsored by the Labor Department to draw attention to women in the workplace.

In October, the agency underscored its commitment to protect and preserve American workers' retirement incomes through education and vigorous law enforcement, and released the consumer booklet, *Protect Your Pension*. It provides guidance on how to read and understand a plan's annual financial report and explains the general rules governing plan contributions and investments. A major portion of the booklet discusses useful tips workers can use that may indicate that ERISA has been violated, which includes becoming aware of such factors as consistent investment losses over several years or too much money being concentrated in one type of investment.

The agency also distributed public service announcements (PSAs). A series of seven PSAs were distributed nationally and placed in more than 8,000 magazines and newspapers.

The agency also distributed two million copies of retirement savings brochures and booklets; made available the *Top Ten Ways* brochure through the Consumer Information Center's catalog via mail order; and engaged the Secretary and Assistant Secretary to speak nationally to varied groups to keep the retirement savings message in the forefront.

## Other Educational Initiatives

In addition to the Retirement Savings Education Campaign, PWBA launched several new initiatives in 1996 designed to either better prepare working Americans for retirement or to foster pension security.

In June the agency finalized an interpretative bulletin giving employers clearer guidelines about investment information they can provide employees. The bulletin was developed by the agency in response to requests from employers about what they can tell employees without the information being considered investment advice. The guidelines could help the more than 20 million workers who invest in 401(k) retirement funds and who must make choices regarding how to allocate their money among various investment options.

The categories of information and materials that the bulletin stipulated employers and service providers can give to workers, without giving rise to fiduciary status, and therefore without liability for losses from their investment decisions, include: 1) general financial and investment information that has no direct relationship to specific investment alternatives available to participants; 2) materials that help participants assess the relevance of hypothetical asset allocation models to their investment situation; and 3) interactive materials and information

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that allows participants to design and assess multiple asset allocation models.

The agency prepared a new edition of a booklet entitled *Trouble Shooter's Guide to Filing the ERISA Annual Reports*. The booklet was designed to facilitate compliance by the public with the laws and regulations that apply to annual reports by employee benefit plans. In August the agency released *Questions and Answers: Recent Changes in Health Care Law*. The booklet is designed to help employees and employers understand their

rights and obligations under the Health Insurance Portability and Accountability Act of 1996 and addresses frequently-asked questions pertaining to HIPAA, the Mental Health Parity Act of 1996 and the Newborns' and Mothers' Health Protection Act of 1996.

These publications, along with other educational materials, are available on the Internet on PWBA's home page at <http://www.dol.gov/dol/pwba>

## Exemptions

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In 1996, PWBA devoted time to several issues raised through requests for class exemptions. Many of these issues related to streamlining the exemption process in cases where the agency believed that the appropriate findings could be made. Specifically, PWBA published a final class exemption permitting a wide variety of transactions that involve large pension plans managed by in-house managers.

PWBA also granted a class exemption, called the Class Exemption to Permit Certain Authorized Transactions between Plans and Parties-in-Interest (EXPRO), which reduces the time necessary to process those exemption applications that represent the types of routine transactions previously considered by PWBA. Under the final class exemption, transactions can be entered into in as little as 78 days from the date the Department acknowledges receipt of the applicant's submission.

A number of employers who sponsored plans that held guaranteed insurance contracts (GICs) requested permission to purchase the GICs from their plans or to loan money to their plans in circumstances where the insurer was insolvent. As a result, PWBA approved eight exemption applications involving requests from employers to loan money to plans or either guarantee or buy GICs from plans to prevent losses or delays in benefits.

PWBA published a final class exemption that was necessary for the implementation of a voluntary compliance program designed to encourage employers to voluntarily restore delinquent participant contributions plus lost earnings to pension plans.

In addition, the agency processed over 40 good faith waivers imposed under Sec. 502(l) of ERISA. This section imposes a 20 percent

penalty on any person who has been found to have breached his fiduciary responsibilities.

The agency also granted an exemption for the lending of securities, under certain "exclusive borrowing" arrangements, to Smith Barney or any affiliate that is a U.S. registered broker-dealer, by employee benefits plans to which Smith Barney acts as a securities lending agent.

In addition, PWBA proposed a class exemption that would permit the receipt of services at reduced or no cost by an individual from a broker-dealer according to an arrangement in which the individual's IRA or Keogh plan is taken into account for purposes of determining eligibility.

PWBA also granted an exemption that permits the purchase and sale of "emerging market" securities, and certain repurchase agreements relating thereto, between Chase Manhattan Bank (Chase) or an affiliate and IBM Pension Plans for which Chase or an affiliate is a service provider.

In 1996, the agency received 235 exemption applications, granted 108, denied or withdrew 116 and had 187 pending by year's end.

In other actions, PWBA granted six exemptions that permitted employee benefit plans to invest in asset-backed securities; three that permitted the conversion of collective investment funds into mutual funds; and an exemption for the demutualization of an insurance company and the sale of collateralized mortgage obligations (CMOs). These included:



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***Exemptions for asset-backed securities***

96-11 January 31  
*ContiFinancial Services Corp.*

96-12 March 12  
*World Omni Financial Corp. and its Affiliates*

96-22 April 3  
*First Union Corp.*

96-84 November 13  
*HSBC Securities, Inc.*

96-92 December 17  
*BA Securities, Inc.*

96-94 December 30  
*First Chicago NBD Corp.*

***Exemption in connection with the demutualization of an insurance company***

96-87 December 12  
*Blue Cross and Blue Shield of Virginia*

***Exemptions for the conversion of collective investment funds into mutual funds***

96-1 January 31  
*First Hawaiian Bank*

96-54 July 22  
*Wells Fargo Bank N.A.*

96-74 October 2  
*Chicago Trust Company*

***Exemption for the sale of CMOs***

96-52 July 12  
*First Virginia Banks*

***Exemptions for GICs***

96-28 April 24  
*Associated Claims Management 401(k) Plan*

96-30 May 6  
*Aultman Retirement Plan Savings*  
Sponsor Guarantee to Plan

96-44 June 4  
*Sprague Electric Co. Retirement and Savings Plan*  
Sale by Plan

96-53 July 12  
*Amsouth Bancorporation Thrift Plan*  
Sale by Plan

96-58 July 22  
*Fieldcrest Cannon Retirement Savings Plan for Salaried/ Hourly Employees*  
Sponsor Guarantee to Plan

96-67 August 27  
*Cablevision Industries Profit Sharing Plan*  
Sale by Plan

96-72 September 18  
*MEI Technology 401(k) Plan*  
Sale by Plan

96-81                      October 25  
*Rexam Retirement Savings Plan*      Loan to Plan

### ***EXPRO Grants***

96-01E                    November 11  
*Morrison Knudsen Plan*                      Sale of securities to a party-in-interest

96-02E                    November 25  
*Ironwood Capital*                      Plan investment in asset-backed securities

96-03E                    December 9  
*Deutsche Bank*                      Plan investment in asset-backed securities

### ***Other Significant Exemptions***

96-14                      March 12  
*Morgan Stanley and Co. Inc. and Morgan Stanley Trust Company.* Permits: (1) the lending of securities to Morgan Stanley and Co. and affiliates of Morgan Stanley Trust Company (MSTC) by employee benefit plans for which MSTC serves as a directed trustee (or custodian) and securities lending agent; and (2) the receipt of compensation by MSTC in connection with these transactions.

96-17                      March 22  
*General Motors Hourly Rate Plan and General Motors Retirement Plan.* Permits transactions including the acquiring, managing, developing, leasing, financing or sale of real property or the borrowing or lending of money between the plan and various parties-in-interest at the direction of a GM in-house manager.

96-35                      May 10  
*NBD Bancorp.* Permits the merger of two collective investment funds (CIFs) maintained by NBD Bancorp, a company that is a fiduciary with respect to each plan holding assets in the different CIFs.

96-59                      July 31  
*PaineWebber.* Permits the provision of asset allocation services by a PaineWebber division to the independent fiduciary or directing participant of an ERISA section 404(c) plan, which may result in the selection of PaineWebber portfolios for investment.

96-75                      October 2  
*Pacific Mutual Life Insurance Company.* Permits the sale to plans of a synthetic guaranteed investment contract (GIC) offered by the Pacific Mutual Life Insurance Company that is also an investment adviser, and/or provides other services with respect to such plans.

96-76                      October 17  
*Teachers Insurance and Annuity Association of America (TIAA).* Permits the purchase and sale by TIAA of units of participation in a real estate separate account established and operated by TIAA from plans in the event of a net withdrawal from such account for the purpose of providing liquidity to investing plans or participants.

96-80                      October 25  
*Lehman Brothers.* Permits the sale of collateralized guaranteed investment contracts (GICs) by Lehman to employee benefit plans with respect to which Lehman Brothers is a service provider.

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96-87 December 12  
*Blue Cross and Blue Shield of Virginia.* Permits the receipt of cash and/or common stock issued by Trigon HealthCare, Inc., a wholly-owned subsidiary of Blue Cross and Blue Shield of Virginia, by a plan policyholder (other than a plan sponsored by the company or its affiliated) in exchange for the plan policyholder's membership interest in the company.

96-90 December 17  
*Smith Barney Shearson Prototype Defined Contribution Plan.* Permits the past acquisition, holding and exercise by the Highland Federal Bank plan of stock purchase rights that were issued by the Highland Federal Bank, the plan sponsor.

partnership interests owned by certain employee benefit plans with respect to which some of the lenders are parties-in-interest; and 2) the agreements by the plans to honor capital calls made by Chase in lieu of the partnership's general partner.

*Federated Investors.* This proposed class exemption would permit plans to purchase shares of a registered investment company in exchange for plan assets transferred in-kind from a bank maintained collective investment fund (CIF), where the bank that serves as a fiduciary of the plan is also the investment adviser for the registered investment company.

### ***Significant Published Proposals:***

*Morgan Stanley and Company.* This proposal would permit the British affiliate of a U.S. registered broker-dealer to: 1) engage in principal transactions on behalf of plans, in the same manner permitted for U.S. registered broker-dealers under section II of class exemption prohibited transaction exemption (PTE) 75-1; 2) engage in the lending of securities that are plan assets, in the same manner permitted for U.S. registered broker-dealers under class exemption PTE 81-6; and, 3) extend credit to plans to permit the settlement of securities transaction provided that the subject transactions satisfy a number of conditions equivalent to those found in PTE 75-1.

*The Chase Manhattan Bank.* This proposal would permit 1) the granting to Chase, as the representative of lenders participating in a credit facility, of security interests in limited

## Regulatory Activities

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During 1996 PWBA:

- Published for public comment a proposed rule relating to the elimination of various regulations and interpretive bulletins that had been determined to be obsolete. PWBA identified 34 regulations for elimination or reinvention, in whole or in part.
- Published a final rule revising the definition of when participant monies paid to or withheld by an employer for contribution to an employee benefit plan constitute “plan assets” for purposes of Title I of ERISA. The revised rule shortened the time period during which employers may hold employees’ 401(k) contributions before depositing the funds in employees’ accounts.
- Issued Interpretive Bulletin 96-1 describing the Department’s views concerning the circumstances whereunder giving investment-related information to participants and beneficiaries in participant-directed individual account plans will not constitute “investment advice” under Title I of ERISA. This bulletin helps employers and others who provide investment information to know what standards apply in determining whether an education activity may give rise to fiduciary status.
- Published a Request for Information in the *Federal Register* soliciting input from the public regarding the development of regulations providing guidance on amendments of Title I of ERISA effected by the Small Business Job Protection Act of 1996 that limit the liability of insurers with regard to certain types of contracts issued to or for the benefit of employee benefit plans.

## Policy and Legislative Analysis

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In 1996, PWBA worked for the enactment of the President's Retirement Savings and Security Act. Significant portions of this legislation were enacted as part of the Small Business Job Protection Act of 1996, Public Law 104-188, including the creation of a new kind of pension plan for small businesses known as the SIMPLE plan. Other changes included the simplification of the nondiscrimination rules, distribution rules, expansion of 401(k) plans to tax exempt organizations, and other miscellaneous simplification provisions.

PWBA assisted in reviewing, analyzing and presenting recommendations of the Administration's position concerning health reform legislation affecting employee health plans. Significant portions of the President's health reform initiative were enacted in 1996 as part of the Health Insurance Portability and Accountability Act of 1996, the Newborns' and Mothers' Health Protection Act of 1996 and the Mental Health Parity Act of 1996. These laws established new minimum standards limiting exclusions based on pre-existed conditions, prohibiting discrimination against participants and beneficiaries based on health status, provided minimum standards for hospital stays for mothers and newborns and

provided parity in the application of certain limits to mental health benefits.

The definition of an "investment manager" was modified as a result of the National Securities Markets Improvement Act of 1996, with technical assistance from PWBA.

### Key Testimony

#### *June*

Assistant Secretary Olena Berg before the House Economic and Educational Opportunities Subcommittee on Issues in Pension Reform.

#### *July*

Deputy Assistant Secretary Alan Lebowitz before the Subcommittee on Human Resources and Governmental Relations of the Committee on Governmental Reform and Oversight on Organized Crime and Labor Racketeering in Employee Benefits.

## Accounting and Auditing

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During 1996, PWBA continued its multifaceted program to improve enforcement of ERISA's reporting and disclosure requirements and to encourage timely compliance with the law. In addition to traditional enforcement initiatives involving civil penalties, the agency engaged in a program to encourage proactive voluntary compliance, continued to coordinate with the accounting profession, instituted additional educational outreach seminars and looked at ways to assess the quality of employee benefit plan audits.

### ***Reporting Compliance Program***

The reporting compliance program is divided into deficient filers late-filers, and non-filers. Penalties are imposed on plan administrators for failure to submit complete and accurate Form 5500 Series annual reports with the Department. In 1996, approximately \$13 million in civil penalties was assessed against plan administrators under the agency's reporting compliance program for filing unsatisfactory Form 5500 Series annual reports. Approximately \$25 million was assessed for late filings and non-filings.

PWBA's Delinquent Filer Voluntary Compliance (DFVC) Program encourages plan administrators to file previously unfiled Form 5500 Series annual reports and to resolve late filer penalties. In addition, plan administrators of "top hat" plans and apprenticeship and training plans who missed their filing deadlines were encouraged to submit statements and elect an alternative method of compliance in lieu of annual reports.

The DFVC Program simplified the filing process and reduced the financial hardship for voluntary compliance for small business

through smaller fines. In 1996, almost 3,200 plans chose to take advantage of the DFVC program, and the program collected more than \$9 million in civil penalties.

### ***Coordination with the Accounting Profession***

The agency continued its work with the American Institute of Certified Public Accountants (AICPA) to revise the AICPA's 1996 guide for auditing employee benefit plans. The updated guide, published in May, incorporated new audit and accounting requirements issued by the Financial Accounting Standards Board (FASB). The guide's purpose is to improve compliance with ERISA's audit, reporting and disclosure provisions.

### ***Educational Outreach***

Under the sponsorship of the International Foundation of Employee Benefit Plans, PWBA initiated an educational outreach program. Through a series of workshops, the agency presented both the Form 5500 filing requirements and an overview of the Department's enforcement program. The agency conducted 14 such workshops during 1996, with an additional 13 workshops being planned for 1997.

The educational outreach program earned the agency staff a National Performance Review Hammer Award for reinventing government. The outreach team's efforts improved pension plan administrators' compliance with the reporting and disclosure requirements of ERISA. Its efforts also resulted in reducing penalties paid by businesses, savings millions of dollars in compliance costs.

The innovative program was created by the PWBA Chief Accountant's office to educate the employee benefit plan community about ERISA requirements.

***Referral of Substandard Audit Work***

Through December 1996, PWBA referred 264 cases of potential deficient accounting and auditing work to the American Institute of Certified Public Accountants' Professional Ethics Division. Seventy-eight cases were either referred to the AICPA's trial board, or the accountant reached a settlement agreement. One hundred ten cases resulted in remedial corrective action letters. No violations were found in 11 cases, while 24 cases were closed for other reasons.

Sixty-nine cases were referred to state boards of accountancy in instances where the AICPA lacked jurisdiction over the accountant or the accountant was not properly licensed.

***Performance of Onsite Workpaper Reviews***

ERISA requires the administrator of each ERISA-covered plan to engage an independent public accountant to conduct an annual audit of the financial statements of the plan. The audit is to be performed in accordance with generally accepted auditing standards and is to state whether the financial statements have been prepared in conformity with generally accepted accounting principles.

To ensure employee benefit plan audits comply with professional standards, the Department conducts an ongoing quality control program for improving the audit work performed by independent public accountants.

The agency performed 52 on-site reviews and analyses of audit work papers that support the accountant's reports.

<b>Plan Audit Reviews - 1996</b>	
Number of reporting compliance cases	3,074
Reviews of auditor's work papers	52
<b>Plan Audit Reviews - Cumulative through 12/31/96</b>	
Total audits referred	333
State licensing boards	69
AICPA	264
Resolutions - AICPA	223
Referred to AICPA trial board or settlement	78
Letters for corrective action	110
No deficiencies	11
Closed for other reasons	24

***Thrift Savings Plan Audits***

PWBA conducted approximately 30 fiduciary compliance audits of the Thrift Savings Plan (TSP) as required by the Federal Employees' Retirement System Act. Audit procedures were designed to strengthen the security of the \$46 billion held in 2.3 million TSP accounts of federal workers and to enhance opportunities for greater net earnings by recommending improvements in the TSP system.

## Research

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In 1996, PWBA published data and statistics from the annual reports of the Form 5500 that covered the 1992 plan year. Highlights show the number of active participants in all private pension plans increased 4 percent from 61.5 million in 1991 to 64.2 million in 1992. The number of defined contribution plan active participants increased 9 percent from 35.8 million in 1991 to 38.9 million in 1992, with all of the increase due to growth in 401(k) plan participants.

PWBA supported, with several other federal agencies, the Panel on Retirement Income Modeling of the Committee on National Statistics of the National Academy of Sciences. The panel was established to review the state-of-the-art of retirement income modeling and make recommendations to inform policy-making entities on retirement income security. As part of its work, the panel commissioned papers reviewing such topics as individual labor supply and savings behavior. These were published in 1996 in a volume titled *Assessing Knowledge of Retirement Behavior*.

PWBA's research program supported studies on employee health benefits that produced two papers. One, on medical savings accounts, was published in the *Journal of the American Medical Association* and a second, on self-insured plans that analyzed the effects of the Kennedy-Kassebaum provisions on portability, was published in *Health Affairs*.

PWBA initiated a national survey to measure the health insurance benefits of workers and retirees to be fielded as a module of the Survey on Income and Program Participation (SIPP). Under its small research contracts program, nine final reports were received and 12 new contracts were awarded.

### Research Studies

- The Effect of Taxes in a Nested Logit Model of 401(k) Offer and Participation Rates
- Health Insurance Coverage of the Unemployed
- Macroeconomic Determinants of ERISA Plan Investment Policies
- The Effects of Public Pension Fund Investments on Employment: A Few Empirical Estimates
- Does 401(k) Introduction Affect Defined Benefit Plans?
- Employer-Provided Health Benefits Among Middle-Aged Americans: Coverage Patterns and Transitions
- Asymmetric Information in Health Care and Health Insurance Markets: Evidence from the National Medical Expenditure Survey
- Health Insurance Coverage of Children of Working Parents
- An Evaluation of the Retirement Income Prospects of Divorced Women



## Health Care Task Force

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PWBA's Health Care Task Force was established in September 1996 in response to the enactment of several significant health care laws during the 104th Congress. The Health Care Task Force was established to plan, direct and carry out a program for providing technical guidance on the provisions of Title I of the Employee Retirement Income Security Act of 1974 (ERISA), as amended by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Mental Health Parity Act of 1996, the Newborns' and Mothers' Health Protection Act of 1996, as well as other health care laws affecting group health plans. The Health Care Task Force is responsible for providing regulations, interpretive bulletins, opinions, rulings, forms, training, technical assistance and other guidance to facilitate compliance with and enforcement of the health care portability, nondiscrimination and other provisions of Title I of ERISA relating to group health plans that are administered by the Department of Labor.

Following is a summary of the most significant regulatory issues developed by the Health Care Task Force during 1996.

### ***Technical Bulletin 96-1***

PWBA issued a technical bulletin describing changes that HIPAA made to the continuation coverage requirements of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) and provided a model notice that employers and plan administrators could use to comply with HIPAA's requirements. Plan sponsors and employers could comply with the statute by simply mailing out the model notice.

### ***Requests for Information***

PWBA issued a Request for Information (RFI) in the *Federal Register* on how best to implement the portability, access and renewability provisions under HIPAA. The RFI provided the public with the opportunity to submit comments and provide input prior to the promulgation of compliance-related guidance on HIPAA's statutory provisions. PWBA carefully considered the public comments received on behalf of employees, dependents and others seeking health coverage, as well as employers, plan administrators and insurance issuers in developing the interim compliance-related guidance under HIPAA.

## ERISA Advisory Council

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In 1996 the Advisory Council on Employee Welfare and Pension Benefit Plans focused on the following initiatives: the utilization of third-party trustees to protect plan participants, the impact of alternative tax proposals on ERISA employer-sponsored plans and guidance in selecting and monitoring service providers.

The following are final recommendations presented by these three working groups.

*The views of the working groups do not necessarily reflect those of the Department.*

### ***Exploring the Utilization of Third-Party Trustees to Protect Plan Participants***

- Take necessary steps to implement a requirement of automatic issuance of periodic ERISA plan participant statements.
  - Amend Department regulations to provide for mandatory reconciliation of participant records and trust records in defined contribution plans, and a certification to that effect in summary annual reports (SARs).
  - Assure, where legally required financial statements are not filed or are deficient, that the Department has sufficient resources available to investigate and remedy the noncompliance.
  - Direct the Department to study special issues and concerns in the reporting and administration of plans with less than 100 participants.
- Continue to support the Pension Audit Improvement Bill, S1490, to require specific training for auditors of qualified plans.
  - Direct the Department to study the advisability of limiting the amount of employer securities held in defined contribution plans.

### ***The Impact of Alternative Tax Proposals on ERISA Employer-Sponsored Plans***

- Asked the Secretary to encourage congressional committees and leaders to actively seek out a wide range of views on how such reform might affect pensions and saving for retirement.
- Recommended that the Secretary raise issues relating to the impact of tax reform on the private pension system within the Administration and with the public at large. A majority of the committee recommended formation of a national commission on retirement policy to study private pension and benefit issues.
- Asked the Secretary to direct the Department to conduct an analysis of the regulatory and legal issues that would arise if tax laws are changed to eliminate the tax preference for employer contributions to qualified pension plans.
- Asked the Secretary to consider sponsoring research and public discussion, alone or in conjunction

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with academic experts and nongovernmental organizations, on the many questions that have only partly been researched and analyzed.

***Guidance in Selecting and Monitoring Service Providers***

The Department should develop and disseminate educational materials to plan sponsors, participants and service providers that include information on:

- The duties of fiduciaries;
- The legal effect of a plan fiduciary's delegation of responsibilities to service providers;
- Sample questions a fiduciary should ask potential service providers; and
- Sources concerning various types of service providers.

## ERISA Advisory Council 1996 Members

### Accounting

*Marilee Lau*

KPMG Peat Marwick, LLP

### Investment Management

*Jim Hill*

Treasurer, State of Oregon\*

### Actuarial Counseling Field

*Zenaida M. Samaniego*

Equitable Life Assurance Society  
of the United States

### Employee Organizations

*David G. Hirschland*

International Union United Automobile,  
Aerospace and Agricultural Implement  
Workers of America, United Auto  
Workers\*

### Employer Organizations

*Richard McGahey*

Neece, Cator, McGahey & Associates, Inc.

*Carl S. Feen*

CIGNA Financial Advisors

### General Public

*Edward B. Montgomery*

University of Maryland  
Department of Economics\*

*Victoria Quesada*

Attorney-at-Law

*James O. Wood*

Louisiana State Employees'  
Retirement System (LASERS)

### Employer Organizations (Multiemployer Plans)

*Glenn W. Carlson*

Arthur Andersen & Co.\*

### Insurance Field

*Kenneth S. Cohen*

Massachusetts Mutual Life Insurance

### Corporate Trust

*Judith Mares*

Mares Financial Consulting, Inc.\*

### Employee Organizations (Multiemployer Plans)

*Vivian Lee Hobbs*

Arnold & Porter

### Employee Organizations (Multiemployer Plans)

*Joyce A. Mader*

O'Donoghue & O'Donoghue

### Investment Counseling

*Thomas J. Healey*

Goldman, Sachs, Co.

\*Terms for these members expired in November 1996.