




Employee Retirement Income Security Act 1997 Report to Congress



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

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Employee Retirement Income Security Act 1997 Report to Congress

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

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), the Mental Health Parity Act of 1996 and the Newborns' and Mothers' Health Protection Act of 1996 added new responsibilities in the regulatory arena. As a result, the agency established the Health Care Task Force, which is responsible for providing 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 1997 accomplishments of the agency in executing its mission.

1997 Highlights

In 1997 the Pension and Welfare Benefits Administration recorded, among its successes, the following accomplishments:

PWBA reached a milestone in its national enforcement initiative on 401(k) plan fraud. This year, PWBA recovered \$37.5 million for more than 40,000 workers. The agency also participated in a successful multi-agency enforcement initiative that targeted white-collar crimes directed at private-sector employee benefit plans.

In conjunction with the American Savings Education Council (ASEC), the agency increased public/private partnerships in its Retirement Savings Education Campaign to 250 members and expanded its retirement savings educational message and publications to target minority and small business audiences.

The agency's national office public outreach and customer service activities included issuing press releases and publications on: HIPAA interim rules for certification requirements for all employee benefit plans, which took effect on June 1; guidance in interpreting the requirements of ERISA when dividing pension benefits during a domestic relations proceeding; and a set of three pamphlets on small business retirement plan options. The agency also issued Spanish language versions of two pension and retirement savings publications.

In February the agency's new rule, requiring employers to transmit employee contributions into employee benefit plans no later than the 15th business day of the month that immediately follows the month in which the contribution is either withheld by or paid to the employer, became effective.

Message from the Deputy Assistant Secretary

In 1997 PWBA reached numerous milestones with, and expanded the scope of, several of its initiatives. I am proud to cite some of these accomplishments.

The agency's national enforcement project to reduce the misuse of 401(k) plan contributions and ensure pension security for Americans made substantial progress. Most significantly, PWBA recovered \$37.5 million for more than 40,000 workers.

Our Retirement Savings Education Campaign expanded its educational message to target minority groups and small business owners and, in this connection, issued specific publications and public service announcements to address their needs. The campaign also enabled the agency to increase the number of organizations, both public and private, that focus on savings education in their messages to constituents.

Interim rules under HIPAA that addressed certification requirements took effect in June, marking the first phase of providing new health benefit protections for American workers. In this regard the Health Care Task Force issued nine interim final regulations that implemented provisions under HIPAA.

In the area of customer service, new publications were introduced ranging from a series of three pamphlets to educate small business owners on viable retirement options to a booklet that provides guidance for pension practitioners and attorneys on the procedure for dividing pension assets in domestic relations proceedings (i.e. divorce). The agency also published two of its publications in Spanish for the first time.

We continued to work toward the passage of Administration proposals that would simplify pension rules, improve pension portability, and strengthen protections for plan participants and expand retirement savings opportunities.

The agency's Delinquent Filer Voluntary Compliance Program continued to simplify the filing process and reduce the financial burden of voluntary compliance for small businesses by imposing smaller fines.

The steadfast efforts of our entire agency — including the legal and research team, auditors, investigators, accountants, pensions advisors, benefit specialists, and all other professional and support staff members — were instrumental in 1997 in helping us to continue to meet the task of securing pension, health and employee benefit plans for America's workers.



*Deputy Assistant Secretary
Meredith Miller, PWBA*

Overview of PWBA Office Functions

PWBA accomplishes its mission through the collective efforts of six major offices that either administer policies or carry out initiatives in the following areas: enforcement, participant assistance, exemptions, regulatory activities, policy and research, accounting and auditing 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 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 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 benefits if improperly denied.

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; 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.

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 has two divisions. One is responsible for class exemptions. The other administers the program for individuals exemptions.

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 available to anyone who can meet the enumerated conditions.

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 Research

In January 1997, the Office of Policy and Legislative Analysis and the Office of Research and Economic Analysis merged, enabling the agency to improve the coordination of its legislative and applied research activities. The newly created Office of Policy and Research provides expert

technical, legislative and research analysis on health and pension benefits legislation proposed by the Administration and pending before the Congress.

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.

The Health Care Task Force

The Health Care Task Force responsibilities involve planning, directing and carrying out a program for the provision of technical guidance concerning the application of the provisions of Title I of ERISA, as amended by HIPAA, the Mental Health Parity Act of 1996 (MHPA), and the Newborns' and Mothers' Health Protection Act of 1996 (NMHPA), 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, non-discrimination and other provisions of Title I of ERISA relating to group health plans that are administered by the Department of Labor.

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 1997 agency accomplishments.

Enforcement

PWBA continued its efforts to prevent and alleviate abuse in 401(k) and health plans. The agency and the Administration announced that a nationwide crackdown on 401(k) plan abuse had resulted by June 1997 in a year-to-date total of nearly \$37.5 million for more than 40,000 workers.

In May the agency also participated with the Department of Justice in a successful, multi-agency enforcement initiative to crack down on white-collar crimes that targeted the more than \$3.5 trillion in assets held in the nations' private-sector pension and employee benefit plans. The initiative, which was jointly announced by Labor Secretary Robert B. Reich and Attorney General Janet Reno, included more than 70 cases related to pension plans with more than 150,000 plan participants.

In June 1997 the agency won a \$2.7 million judgment against Job Shop Technical Services, Inc., in Farmingdale, N.Y., and Ralph Corace, the former trustee of the company's 401(k) plan funds. Corace had pled guilty to embezzlement of the 401(k) funds in a criminal case in 1996.

PWBA obtains corrections of civil violations, either through voluntary compliance or litigation. In 1997, the agency opened 5,880 civil investigations and 147 criminal investigations. The agency's criminal investigations resulted in 89 indictments. Overall the enforcement program recovered more than \$342 million for private benefit plans.

Criminal Cases

The following is a sampling of criminal cases:

United States v. Casey

1/23/97

Suffield, Conn.

Kevin Casey, owner of Construction Industry Benefits Group, a third party administrator, was charged with wire and mail fraud and with making false statements in documents required by ERISA to cover up a pension fraud scheme. He sent statements to client companies advising them that contributions were made to a Money Purchase Plan covering their employees. More than \$214,000 was involved in the scheme. He pleaded guilty in March and was sentenced in June to 12 months imprisonment and ordered to make restitution of \$96,537. This case was investigated by PWBA and the FBI.

United States v. Lasky

2/06/97

Oceanside, N.Y.

Clark Lasky, who had a prior felony conviction, was charged in February with embezzling \$750,000 of health plan funds. The 12-count indictment alleges that Lasky, president and owner of Employee Health Plan Administrators, Inc., was the designated administrator and collective bargaining representative on behalf of hundreds of employers that had entered into Associate Membership collective bargaining agreements

with Local 119, Brotherhood of Industrial Workers. Allegedly, Lasky collected monthly contributions from the employers, but failed to remit the money to the Brotherhood of Industrial Workers Fund and converted the money to his own use. Action is pending. This case was investigated by PWBA, the U.S. Postal Inspection Service and the Labor Department's Office of the Inspector General, Division of Labor Racketeering.

United States v. Cibellis

3/13/97

Newark, N.J.

Ellen Cibellis, former plan administrator and union office manager for Painters Union District Council 10, was charged in March with embezzling more than \$400,000 from the union's general fund and three employee benefit funds that were sponsored by the union. She had been employed by the union for 18 years. Cibellis was also charged with arson after she allegedly set fire to a storage closet where the records were kept. This case was investigated by PWBA, the Labor Department's Office of the Inspector General, Division of Labor Racketeering, and the Bureau of Alcohol, Tobacco and Firearms.

United States v. Fitzgerald

3/13/97

Bronx, N.Y.

Thomas Fitzgerald, a chiropractor who owned the Medical Diagnostic Testing Company (MDT), was arrested in March based on an indictment charging him with embezzling more than \$100,000 from the Mason Tenders District Council of Greater New York Welfare Fund and with mail fraud in conjunction with the scheme. MDT charged each plan \$901 for

physical examinations, which were required for all plan participants.

In addition to providing physicals, Fitzgerald began referring participants to medical specialists in private practice. To induce the specialists to provide care, Fitzgerald told them they would receive 100 percent of their fees, rather than the percentage of reasonable and customary charges normally paid. The specialists were instructed to send their bills to MDT. The bills were forwarded to the plan for payment. MDT initially paid the bills, but eventually stopped, even though the plan continued to pay MDT for specialists' services and more than \$100,000 was received and used by Fitzgerald for personal expenses.

Subsequently, he was charged in a superseding indictment with tax evasion for failing to report more than \$938,000 in income. He allegedly owes more than \$200,000 in income taxes.

Further action is pending. This case was investigated by PWBA, the FBI and the Criminal Investigation Division of the IRS.

United States v. Susman and Sokolic

3/31/97

Philadelphia, Pa.

Gerald Susman and Stephen E. Sokolic, two attorneys specializing in pension and tax law, were charged with systematically creating false legal documents to facilitate and conceal the embezzlement of more than \$560,000 from an Employee Stock Ownership Plan. The plan was sponsored by a now defunct Newark-based defense contracting firm known as Micro-Products Engineering Co. The defendants pleaded guilty as charged.

Sentencing is pending.

The president and owner of the firm, William Hebling, has been previously charged with conspiracy, embezzlement, making false documents, and mail and wire fraud, in connection with the theft. To cover the theft, Hebling converted the profit sharing plan to an Employee Stock Ownership Plan at a time when he had filed for bankruptcy and the stock was worthless. This allowed him to substitute company stock for misappropriated retirement monies. He used false documents prepared by Susman and Sokolic to create the illusion of a company worth \$4 million while it was in bankruptcy.

This case was investigated by PWBA, the FBI and the Criminal Investigation Division of the IRS.

United States v. Manin

4/08/97

Philadelphia, Pa.

Dr. Lawrence Manin was charged and found guilty of embezzling \$25,766 from his medical practice's profit sharing plan. He elected to go to trial and in July, a jury returned a guilty verdict. This case was investigated by PWBA. Government witnesses called to testify included investigators from PWBA's Philadelphia Regional Office and staff from PWBA's Office of Regulations and Interpretations and the Division of Technical Assistance in Washington, D.C.

United States v. Lampert

5/06/97

Minneapolis, Minn.

John Lampert was charged with embezzling \$82,768 from his company's 401(k) plan. Approximately \$63,000 of the stolen funds

represented employee contributions that were deducted, but never forwarded to the trust. He was also charged with four counts of mail fraud.

He pleaded guilty to the embezzlement charge, and one count of mail fraud, which involved his failure to forward monies withheld from employee paychecks for court ordered child support payments. Restitution was made and he was sentenced in October to 1 year imprisonment. The investigation in this case was conducted by PWBA.

United States v. Daniels

5/14/97

Boston, Mass.

An indictment was returned that charged Alfred Daniels, the owner of H.H. Aerospace, with allegedly embezzling more than \$240,000 from his company's plan, a defined benefit plan, which covered 170 participants and had assets of \$1.2 million. He was also charged with income tax evasion for failing to report his personal use of the embezzled funds as income. He pleaded guilty in November to one count of embezzlement and one count of tax fraud. This case was investigated by PWBA and the Criminal Investigation Division of the IRS.

United States v. Carey

6/10/97

Pacific Palisades, Calif.

Levi J. Carey, the owner of Computer Software Analyst, Inc. was charged with embezzling at least \$450,000 from his company's 401(k) profit sharing plan by failing to forward employee contributions. The plan had \$1.4 million in assets and covered 305 employees

of the U.S. Armed Forces. Carey pleaded guilty as charged in July. At the plea hearing, the prosecutor said that at the time of sentencing, evidence would be presented to show that Carey embezzled more than a million dollars from the plan. Sentencing was scheduled for March 1998.

Carey's company provided technical and engineering services to the U.S. Air Force, U.S. Navy, U.S. Postal Service and NASA. The case was investigated by PWBA with assistance from the U.S. Postal Inspection Service, NASA/IG, the Air Force Office of Special Investigations and the Naval Criminal Investigation Service.

New York v. Lake Construction et al.

6/12/97

New York, N.Y.

Eight individuals and companies were charged in a criminal information with grand larceny in the first degree and offering a false instrument for filing in the first degree. All pleaded guilty as charged. More than \$3 million was stolen.

Lake Construction, one of the charged companies, systematically failed to pay its workers the prevailing wage rate and to make contributions to employee Supplemental Benefits and Pension Funds. The plan covers 47 participants and had assets of \$769,130. The defendants acknowledged that in covering up the larceny, they filed a series of false instruments certifying the company was in compliance with labor law. The defendants agreed to restitution of \$3,829,862 and a fine of \$350,000. The plea agreement sets forth procedures to be followed in making the restitution and paying the fine, including the appointment of an independent audit firm to monitor the payments.

This case was investigated by PWBA, the Manhattan District Attorney's office, New York City's Division of Investigations and Office of Labor Racketeering.

United States v. Carlow

7/17/97

Uniontown, Pa.

A 91-count indictment charged Frank Carlow with pension and health plan fraud, and tax and mail fraud. This has been described as the largest tax fraud case ever brought in the Western District of Pennsylvania. The estimated loss to the plan funds is \$2 million. In the tax evasion counts, Carlow is charged with a conspiracy to systematically under-report employment and coal excise taxes totaling \$10 million. Some of the money was used to fund his personal lifestyle.

Carlow's companies employed 400 miners, and his scheme adversely impacted their pensions and health benefits through the false reporting of wages and hours worked. Additionally, Carlow is charged with providing false reports to the union to conceal his failure to pay medical bills incurred by his employees and payable by him.

Carlow pleaded guilty to charges of tax, mail, pension and environmental fraud. He also pleaded guilty to obstruction of justice for telling a Federal District Court judge in a Mine Workers Union suit to recover unpaid medical claims that the amount involved was \$620,000, when it was approximately \$1.5 million. Sentencing is pending.

This case resulted from an investigation conducted by PWBA, the Labor Department's Office of the Inspector General, Division of Labor Racketeering, the Criminal Investigation Division of the IRS, and the FBI.

United States v. Kelder

9/11/97

New Hampton, N.Y.

William Kelder, former controller for Lloyd's Shopping Centers, Inc. pleaded guilty to participating in a conspiracy with other company officers to falsify records pertaining to Lloyd's employees' pension and 401(k) savings plans. Kelder admitted that to conceal the theft of approximately \$2 million of plan assets, he distributed to employees fictitious 401(k) plan statements reflecting that savings and contributions were available and earning interest, when the money had been used to pay corporate debts. Some of the funds in the fraud involved diverted employee contributions. Sentencing is pending. This case was investigated by PWBA.

United States v. Harmon

9/29/97

Camano Island, Wash.

Phillip Harmon, a Camano Island businessman, pleaded guilty to conspiring to defraud some 230 investors out of some \$14 million and to defrauding hundreds of employees, primarily ministers of various churches and their families, by inducing them to pay millions of dollars in what they thought were premiums for health insurance coverage. In fact no health insurance was purchased.

As part of the investment scheme, he sold unregistered securities in the form of promissory notes and marketed the notes to friends and other acquaintances, promising them a return better than the prevailing rate. Quarterly statements were sent to customers reflecting not only their investment amount but the interest at the promised rate. However,

there were no investments. Harmon used the investments to pay his overhead and salaries for himself and other business associates. He also used some of the money to pay off investors who demanded payment.

Likewise, in the health program scam, he and his associates induced employer groups of various church organizations to pay millions of dollars in health insurance premiums to two trusts that he set up. In fact, no insurance was purchased. Rather, the money went to benefit Harmon and other co-conspirators and affiliates. Some of the premium dollars were also used to pay off investors who demanded their money back.

The total amount collected by Harmon by means of the schemes may be as high as \$40 million. The investigation into this matter was conducted by the FBI, the Criminal Investigation Division of the IRS, PWBA, the state of Washington's Department of Financial Institutions and the Washington State Insurance Commissioner.

United States v. Riedy

10/15/97

Lebanon, Mo.

Pharmacy owner Stephanie Riedy pleaded guilty to a one-count criminal information charging her with mail fraud. She admitted that between January 1994 and September 1996 she submitted false bills to ALTA Health Strategies, Salt Lake City, an agent for the St. Louis Graphic Arts Joint Health and Welfare Fund, for prescription drugs which were never dispensed, and fraudulently obtained \$42,943 in plan money from the fund. Riedy was sentenced to 6 months house arrest and fined \$10,000. This case was investigated by PWBA.

***United States v. Judith Peterson,
Ph.D., et al.***

10/29/97

Houston, Texas

Judith Peterson, a psychologist, and four other co-defendant medical professionals, were indicted on charges alleging that they devised a scheme to bilk private insurers, including a self-insured ERISA health plan, out of payments for medical benefits. The indictment alleges that they relied on false diagnosis based on the use of mind-control techniques in which suggestions were made to patients that they had been subjected to abuse, including satanic cult abuse. Allegedly, over \$800,000 is involved in the fraud.

Co-defendants are Richard E. Seward, M.D., Gloria Keraga, M.D., Sylvia Davis, M.S.W., and George Mueck, administrator at the Spring Shadows hospital, where patients were treated. Peterson was clinical director of the Dissociative Disorders Treatment Program and claimed expertise in treating multiple personality disorders; Seward was board certified in general adult and child psychiatry; Keraga specialized in psychiatry; and Davis is a licensed psychotherapist.

This case is being investigated by the FBI. PWBA's assistance was requested in view of the alleged use of false records to enable the defendants to obtain insurance coverage under COBRA.

United States v. Hutner

11/06/97

Hartford, Conn.

Edward Hutner, an account administrator with the Life Insurance Company of North

America, CIGNA Retirement and Investment Services, pleaded guilty to a mail fraud scheme through which he obtained over \$1 million. He perpetrated the scheme by creating fictitious pension plan participants and submitting requests on their behalf for distribution of pension benefits. He would then approve the requests. Hutner also established money market accounts for the fictitious participants at brokerage houses. Checks for more than \$900,000 were mailed to the brokerage houses. This case was investigated by PWBA and the FBI.

United States v. Williams

12/03/97

Ketchikan, Alaska

Evelyn Williams was charged with falsifying company records to make it appear that rebate checks from vendors received by the company were payments she was making on amounts she and her husband owed the company. Twenty-eight percent of the company was owned by the company-sponsored Employee Stock Ownership Plan. She pleaded guilty as charged and admitted mischaracterizing the purchase of gifts, personal items and construction services in company records. Sentencing is pending. This case was investigated by PWBA, the FBI and the Criminal Investigation Division of the IRS.

United States v. Andrew and Angela Fanelli

12/16/97

New Hope, Pa.

A four-count indictment charged Andrew Fanelli, D.O. and Angela Fanelli with conspiring to embezzle funds from Regional

Gastroenterological Associates (RGA) Pension and Profit Sharing Plan and money laundering. Allegedly, their actions caused losses in excess of \$1 million. Andrew Fanelli was a partner in the firm that provided RGA's accounting services. Ms. Fanelli was the firm's business administrator.

The plan covered seven participants and had \$804,000 in total assets in 1995. The defendants withdrew plan assets and deposited the funds into the accounts of RGA that they used for themselves. They instructed banks and brokerage firms to send statements to their home addresses, denied financial information to participants, and instructed the firm not to furnish financial information to anyone besides the defendants, unless the defendants instructed them otherwise.

This case was investigated by PWBA, the Labor Department's Office of the Inspector General, Division of Labor Racketeering, and the Criminal Investigation Division of the IRS.

Civil Cases

The following is a sampling of the civil cases investigated in 1997. Specific agency initiatives that a case targets are identified, where applicable, in parenthesis at the end of the narrative.

Metzler v. Carlow

8/04/97

Pittsburgh, Pa.

The Department sued Michael Carlow, U.S. Cement, SME Industries and other companies controlled by Carlow alleging that the defendants failed to make employer contributions to the U.S. Cement Employees Benefit Plan.

Under the plan's rules, sponsoring employers were required to contribute 50 cents to the plan for every hour worked by participants up to 40 hours per week. However, the employers failed to make approximately \$1.3 million in contributions and made false statements regarding contributions being deposited.

The defendants also improperly created a new vesting schedule for the plan, causing participants to lose vested benefits.

Carlow and his companies were ordered to pay \$2,692,574 in restitution. The defendants were also permanently barred from serving as fiduciaries of an ERISA plan in the future.

Herman v. Lupo

9/23/97

New York, N.Y.

As part of a consent judgment with the Department, James Lupo and four individuals, former trustees of the Mason Tenders District Council Annuity Fund, have agreed to be barred for 5 years from overseeing or exercising control over any plan governed by ERISA.

The Mason Tenders District Council covers some 7,000 workers throughout New York City and Long Island. The Council jointly administers seven funds, including the annuity fund, which are funded through employer contributions.

The judgment resolves a lawsuit filed in September 1997 by the Department alleging the trustees allowed the fund's investment manager, William Mason & Co., Inc. to

invest more than \$27.8 million of plan money in risky mortgage-backed securities that resulted in substantial losses.

Prior to the date of the consent judgment, the fund settled for \$5 million claims similar to those asserted by the Department.

Reich v. American National Can Company

6/26/97

Chicago, Ill.

Under a settlement with the Department, American National Can Company agreed to contribute \$1.34 million to a new pension plan created by the settlement. The company also agreed to post a \$1 million irrevocable letter of credit to guarantee benefits of plan participants. The company also agreed to set up an escrow account with \$60,000 to pay benefits owed to participants who chose to receive lump sum payments instead of monthly annuity payments.

The Department and private litigants alleged in lawsuits that the company and its pension benefits committee failed to consider the financial stability, credit-worthiness or ability to pay claims before purchasing group annuity contracts from Executive Life Insurance Company.

Approximately \$22 million in plan assets were used to purchase annuity contracts that provided retirement benefits to 747 participants and beneficiaries. When the plan was terminated, the company received more than \$30 million in surplus assets.

The settlement with the Department guarantees that current and future retirees, and their beneficiaries, will continue to receive 100

percent of the benefits they were promised under the terms of their pension plan.

(Annuity Project)

Herman v. Ashiotes

6/06/97

Carle Place, N.Y.

The Department obtained a temporary restraining order freezing the assets of the International Brotherhood of Trade Unions Local 122 health trust. The restraining order was requested because excessive amounts of money were being diverted from the trust.

The trust was created by Ashiotes and three individuals to provide health benefits to members of Local 122, which purported to be a union although it has never negotiated for any employment terms other than health benefits, nor filed reports required of a union under federal labor law.

The Department's lawsuit alleges the defendants and John Hyde, who operated an organization that provided administrative services to the trust, diverted approximately 51 percent of plan assets to themselves under the guise of paying association fees, union dues and consulting fees. They also engaged in self-dealing by diverting the bulk of trust assets of approximately \$737,798 to themselves or to entities under their control.

The Department's lawsuit asked the court to require the defendants to restore to the trust any losses and funds received as a result of their actions; sought removal of the defendants from their positions with any ERISA covered plan, and the appointment of an independent fiduciary to manage the Local 122 trust; and sought to bar the defendants from serving in positions of trust or receiving compensation,

other than benefit payments, from any employee benefit plan. **(MEWA Project)**

Herman v. Windle

6/04/97

New York, N.Y.

A consent order obtained by the Department removed the trustees of the George F. Kolsch, Inc. pension and 401(k) plans from their positions with the plans. The order also required the trustees to distribute the plans' assets to all participants except themselves. Under the order, the trustees agreed to pay benefits from their personal assets and to waive their rights to benefits in order to pay 100 percent of both plans' benefits to participants.

The Department sued the company, and trustee Douglas H. Windle, for allegedly failing to remit \$116,298 in employee contributions to the 401(k) plan. Later, the suit was expanded to include a charge that more than \$400,000 in assets of the defined benefit pension plan was transferred to the company to pay expenses, including taxes owed to the IRS.

The company repaid \$98,000 of diverted funds to the plan. Windle and another individual will pay more than \$130,000 from personal assets. **(Employee Contributions Project)**

Reich v. Devine

5/07/97

New York, N.Y.

A consent judgment obtained by the Department will provide three employee benefit funds of the New York District Council of Carpenters with more than \$50 million to reimburse them for improper transfers to the union's welfare fund. Collectively, the funds

had in excess of \$1 billion in assets at the end of September 1993.

The Department's lawsuit alleges fund trustees transferred more than \$37.6 million from the pension, annuity and vacation funds to the welfare fund; paid leases and insurance on luxury vehicles; didn't enter into leases and collect rent owed to the pension and apprenticeship funds by the District Council, union locals and other funds; and compensated two employees without monitoring services they provided to the funds and failed to obtain reimbursements for services performed for the Council at plan expense.

As part of the judgment, fund trustees must institute procedures to assure that expenses are properly paid by the funds for vehicles, telephones and other expenses. They must also ensure that records are maintained and that expenses are properly apportioned among the funds. Finally, the judgment stipulates that the pension fund shall execute leases with its district councils and locals for rental property.

Metzler v. Bennett

4/08/97

Alexandria, Va.

The Department reached an agreement with Dynamic Systems, Inc. and officials of its 401(k) plan to recover \$525,000 for plan participants. The recovered funds will be allocated among all plan participants other than the defendants who included plan official David Bennett and others.

The Department alleged that Bennett and the other plan officials caused the plan to suffer a loss by improperly investing in guaranteed investment contracts (GICs) issued by the now defunct InterAmerican Insurance Company of

Illinois. The defendants allegedly failed to evaluate the financial stability, credit-worthiness and claims-paying ability of InterAmerican before investing plan assets with the company. The lawsuit also alleged that the defendants did not monitor the investments to determine whether the plan should continue to hold them. **(Employee Contributions Project)**

Reich v. Haworth Home Health Care Agency, Inc.

3/10/97

Vicksburg, Miss.

The Department reached a settlement with Haworth Home Health Care Agency, Inc. and its chief operating officer, in which more than \$2.1 million will be paid to the agency's money purchase plan.

The complaint alleged the defendants violated ERISA when they failed to make promised contributions to the plan beginning in 1984. In failing to collect required contributions, the defendants effectively granted the company an extension of credit.

The plan was established in 1981, and solely funded by annual employer contributions based upon employees' salaries. Under plan rules, contributions ranged from 14 percent of employees' gross annual salaries to 9 percent in 1987. The Department estimated the loss of contributions to the plan at \$1.6 million, plus an estimated loss of interest through 1994 of \$498,828. There were 191 employees participating in the plan in December 1994, and its assets were \$1.8 million.

Metzler v. Bennett

2/06/97

Syracuse, N.Y.

The Department filed a lawsuit against Bennett Funding Group, Inc. and the trustees of its pension and profit sharing plans for making more than \$3 million in improper plan loans. Collectively, the plans had approximately \$3.6 million in assets at the end of 1995.

The lawsuit alleges that Edmund Bennett and his son, Patrick, violated their duties as trustees and administrators of the pension and profit sharing plans for employees of Bennett Funding Group.

The Bennetts allegedly used plan money to make loans to Bennett Funding Group and two other companies owned by Patrick Bennett. The trustees also made unsecured loans totaling \$250,000 to Hemlock Associates, a firm unrelated to them. Additionally, the trustees allegedly transferred a \$539,087 investment certificate owned by the pension plan to Bennett Funding group. The firm and the trustees also were charged with failing to collect the money owed to the plans.

Herman v. Lee

10/14/97

Orange County, Calif.

The Department sued the partners in the medical practice of Lee, Selin and Grimes for making \$995,000 in improper investments from pension plans sponsored by the practice. The physicians served as trustees of the profit sharing plan and its predecessor plans, which covered as many as 15 employees and had approximately \$2.3 million in assets at the end of 1995.

The Department's lawsuit alleged the trustees made improper loans to defendant Lee and another individual. The defendants also allegedly concentrated \$570,000 in assets of the money purchase plan in a single real estate loan. The investment was later assumed by the profit sharing plan. The profit sharing plan has allegedly lost \$400,000 including interest on the investment. Finally, defendant Lee allegedly authorized the imprudent investment of \$200,000 in a limited partnership joint venture. The other defendants were alleged to have knowingly participated in the improper real estate investment made by Lee.

The Department's lawsuit seeks a court order requiring the trustees and the estate of Lee, who is now deceased, to restore all losses suffered by the plan, and to remove Selin and Grimes from their positions with the plan.

Reich v. Archina

10/14/97
Troy, N.Y.

The Department obtained consent judgments that will provide three employee benefit plans of the Laborers' International Union with \$491,123 in restitution. Plan officials also agreed to implement procedures on payment of plan expenses in order to prevent future abuses of plan assets.

The judgments resolve a 1996 lawsuit alleging that trustees of Construction and Laborers' Workers Union Local 452 C, sponsors of pension, health and training plans under collective bargaining agreements with participating employers, allowed more than \$490,000 to be misappropriated for personal

and unauthorized expenses. The funds collectively had assets of \$17.2 million and covered as many as 400 participants in 1992. As a result of the Department's lawsuit, and criminal actions brought by the Justice Department, the plans will receive full restitution. **(Multiemployer Project)**

Herman v. Burnett

11/17/97
Englewood, Colo.

Pursuant to a temporary restraining order obtained by the Department, a federal district court in Denver froze the assets of the president and owner of PROSERA CMI, Inc. and appointed an independent fiduciary to oversee the company's welfare benefit plan.

PROSERA purports to be an employee leasing firm even though client employers retained complete control over their employees. The leasing company provided for a fee a package of benefits which included payroll services, health benefits, and workers compensation or occupational injury insurance coverage. The company's services were marketed to Denver employers. However, premiums paid by employers and workers for health and workers compensation benefits were commingled with the assets of the company and diverted to the use of Burnett.

The lawsuit seeks a court order requiring Burnett and the defendants to reimburse the plan for any losses or illegal profits received as a result of their misconduct in managing the plan, and to post a bond to insure the plan against past and future losses. The

Department also asked the court to remove Burnett and PROSERA from their positions with the plan, to permanently bar them from serving any ERISA-covered plan in the future, and to prohibit Burnett from receiving compensation, other than for benefits payments owed to him. **(MEWA Project)**

Herman v. Bertin Steel Processing, Inc.

12/02/97

Wickliffe, Ohio

The Department sued Bertin Steel Processing, Inc. corporate officers and providers of services to the company's welfare plan for misusing more than \$1.1 million of the plan's assets to make improper loans and transfers to themselves and others.

The plan provides health, death, long-term disability, prescription drug and holiday/sick benefits to employees of Bertin Steel Processing. At the end of 1995, the plan covered 120 participants and had assets of approximately \$1.4 million.

The lawsuit alleges company officers and plan trustees Bernard and Samuel D'Ambrosi loaned \$251,705 to the plan's service provider under a promissory note collateralized by property, failed to collect money owed on the promissory note, and failed to ensure compliance with the note's terms.

The lawsuit also alleges that the D'Ambrosis transferred \$320,907 of plan money to Bertin Steel to pay employee bonuses in 1994, including \$134,627 in bonuses to themselves. They also allegedly concentrated 40 percent of plan assets in loans, transfers and guarantees with Richmond Industries; caused the plan to guarantee two loans totaling \$773,319 made to

Richmond Industries through the Small Business Administration; and made plan loans of \$68,000 to Richmond Industries on which the company has never made a payment. Additionally, the defendants allegedly failed to pay death benefits to the beneficiaries of a deceased employee in accordance with plan terms. As administrator of the plan, Bertin Steel is alleged to have failed to take steps to correct the fiduciary breaches of the other defendants.

The Department's lawsuit seeks restoration of all plan losses by the defendants, and seeks replacement of the trustees with an independent trustee.

Herman v. Maggio

12/17/97

Towson, Md.

The Department sued Maggio-Onorato and Associates, Inc. and its owners, Andrew Maggio and Richard Onorato, as benefit plan administrators, for improperly receiving commissions on policies sold to the plans.

The company markets death and severance pay benefits to home health care agencies. Under agreements signed by the home health agencies, MOA is plan administrator of all the plans, which are funded with whole life insurance policies selected by MOA.

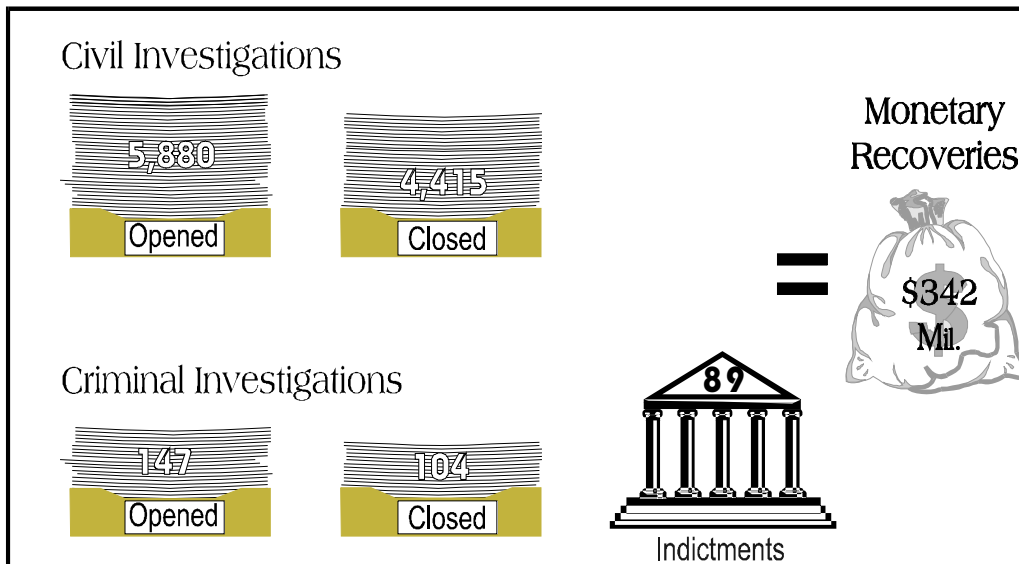
The Department's lawsuit alleges that the company and its owners received illegal commissions in their role as insurance agents for the plans and also failed to disclose those commissions in annual financial reports required by the government.

The lawsuit seeks a court order removing the defendants from their positions with the plans

and the appointment of an independent fiduciary to manage the plans. It also asks the court to require that the defendants return all illegal commissions received by them on

account of the plans. Finally, the lawsuit asks that the defendants be permanently barred from serving in positions of trust to any plan governed by ERISA.

Civil and Criminal Cases/Recoveries



Both civil and criminal cases and recoveries or indictments may continue from one calendar to the next (i.e., a case opened in 1997 may not be settled until 1998). The numbers in the chart above represent totals for the 1997 calendar year.

Participant Assistance/Public Education

In 1997 public education efforts continued to provide participants with information on their rights and protections under ERISA with a goal of increasing public awareness of basic pension and retirement planning issues, including the importance of personal savings, ways for employees to protect their benefits and general information on pension investing.

PWBA's public outreach and customer service activities included planning and coordinating major press events that involved the preparation of press releases, statements, talking points, fact sheets and pamphlets in addition to the logistical planning of making advance press calls and handling follow-up inquiries. In 1997, the agency publicized:

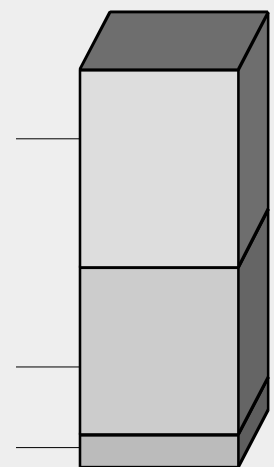
- A \$22 million recovery for more than 40,000 workers due to the 401(k) plan fraud crackdown.
- HIPAA regulations and addendum to the HIPAA booklet, *Questions and Answers: Recent Changes in Health Care Law*.
- A pension abuse initiative with the Department of Justice.
- Information on small business retirement plan options in conjunction with the Office of the Vice President and the Small Business Administration.
- A Chicago event in which the Secretary of Labor unveiled *QDROs: The Division of Pensions through Qualified Domestic Relations Orders* to help clarify how to divide pension assets mandated by domestic relations court orders. The QDRO publication

provided long-awaited guidance on the rules that apply when couples facing divorce wish to divide pension benefits.

- Three events held in Nashville during Labor Day 1997 to promote retirement savings in which Labor Secretary Alexis Herman reinforced the message of saving for retirement.

In the area of public disclosure, the agency converted to a new filing system using microfiche. The agency provided 17,252 documents in response to 4,890 individual requests, and closed 204 of the 227 Freedom of Information Act requests received; three requests were appealed.

Calendar Year 1997



CY 1997 Inquiries Summary

Total: 155,035

Telephone	135,286	Visitors	873
Written	18,814	Electronic Mail	62

Benefit Recoveries

\$30.9 Million

Fiscal Year 1997

NOTE: Data is annualized - based upon data available.

Women and minorities were identified because of their low participation rates in pension plans and because traditionally they have earned lower wages than white males. Small businesses, which employ 40 percent of the private-sector workforce, often do not offer any type of retirement plan. Of the 340 million workers in businesses

with 100 or fewer employees, 32 million do not receive any type of employer-sponsored retirement benefit.

Retirement Savings Education

In 1997, PWBA continued its high-profile Retirement Savings Education campaign, with the goal of increasing public awareness of basic savings and retirement planning issues. The campaign has grown from 65 public-private partnerships when it began in 1995 to more than 250.

Through its partners, which formed the American Savings Education Council (ASEC), PWBA has continued to leverage support and resources to expand the national effort for retirement security. The amount of education and public interest in retirement savings has grown tremendously. The agency, acting as a catalyst, has managed to build and maintain momentum for this outreach campaign that is having a positive impact on the quality of the futures of American workers.

The campaign, which targets the general public, has also taken specific steps to reach specific audiences including women, minority populations and small businesses.

In June as part of Small Business Week activities, the Vice President, Secretary of Labor Alexis Herman and Small Business Administrator Aida Alvarez encouraged small companies to start pension plans for their workers by unveiling a five-step plan. These steps included encouraging small businesses to: learn more about retirement plan options by using PWBA's toll-free publication hotline, in which consumers can obtain free more than 25 brochures on retirement savings and health and pension benefit issues (the hotline averages 1,557 calls weekly); establish a plan by considering one of the simpler retirement savings plans, such as SIMPLE or SEP, that the agency publicized; and educate their employee about retirement planning and their investment options.

Educating small business owners and their workers about the importance of retirement savings is helping to increase the overall retirement savings rate in the country. The

campaign also encourages small businesses to explore all of their options for providing a retirement plan and, in particular, the simplified pension plans designed to meet their needs.

For minorities the statistics are also bleak. For example, 32 percent of Hispanic Americans aged 55 and above receive pensions, compared to 40 percent of African-Americans and 52 percent of white Americans. Throughout the year hundreds of thousands of copies of retirement savings material targeting these groups were printed and distributed by mail and at public events. The agency also recognized there is a significant number of Hispanics that do not speak English. To reach these individuals, two of the most popular retirement savings brochures were translated into Spanish: *Top Ten Ways to Beat the Clock and Prepare for Retirement* and *Women and Pensions: What Women Need to Know and Do*.

The agency has also supported passage of the new Savings Are Vital to Everyone's

Retirement Act of 1997 (also known as SAVER), which was signed into law by President Clinton in November. In complementing the Retirement Savings Education Campaign, this law echoes the agency's efforts to increase retirement savings education. It identifies PWBA as the lead agency and the coordinator of three national summits on retirement savings. In the latter part of the year, PWBA began planning the first such event while maintaining several other campaign activities.

The agency continued to distribute public service announcements (PSAs). A series of seven PSAs were distributed nationally and placed in more than 8,000 magazines and newspapers. The agency distributed two million copies of its retirement saving 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 a variety of groups to keep the retirement savings message in the forefront.

Exemptions

In 1997, PWBA granted a class exemption for the conversion of collective investment funds (CIFs) into mutual funds. As a result, employee benefit plans can purchase shares of a registered investment company in exchange for plan assets transferred in-kind from a bank-maintained CIF in situations where the bank serves both as a fiduciary to the plan and an investment adviser for the registered investment company.

The agency also granted a class exemption that permits the receipt of services at reduced or no cost by an individual for whose benefit an IRA or Keogh Plan is established or maintained by a broker-dealer.

Additionally, the agency proposed a class exemption that would permit certain foreign exchange transactions between banks or broker-dealers and plans according to standing instructions.

The agency also processed more than 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.

During the past year, PWBA received 46 applications submitted pursuant to the Class Exemption to Permit Certain Authorized Transactions between Plans and Parties-in-Interest (EXPRO), a 1996 class exemption that permits certain prospective routine transactions where such transactions are specifically authorized by the agency and are substantially similar to two exemptions previously granted by the agency. During this period, the agency granted 26 submissions, rejected 15, and four withdrew.

A significant individual exemption was granted to Morgan Stanley and Company

(MSC). This exemption permits the British affiliate of MSC to engage in principal transactions on behalf of plans in the same manner permitted for U. S. registered broker dealers under Section II of Prohibited Transaction Exemption (PTE) 75-1. Additionally, the exemption permits the lending of securities that are plan assets to the British affiliate in the same manner as permitted for U.S. registered broker-dealers (under PTE 81-6) and the extension of credit to plans to permit the settlement of securities transactions (provided the subject transactions satisfy the conditions found in PTE 75-1).

The agency also additionally granted an individual exemption to the Chase Manhattan Bank (Chase). This exemption permits: 1) the proposed granting to Chase, the representative of lenders participating in a credit facility, of certain security interests in limited partnership interests owned by certain employee benefit plans with respect to which some of the lenders are parties-in-interest; and, 2) the proposed agreements by the plans to honor capital calls made by Chase in lieu of the partnership's general partner.

The agency also granted an exemption that resulted in the amendment of more than 40 previously granted individual exemptions involving the origination and operation of certain asset pool investment trusts and the acquisition, holding and disposition of certain asset-backed pass-through certificates representing undivided interests in those investment trusts.

In addition, the agency granted a significant exemption to the UNUM Life Insurance Company of America (UNUM). This exemption permits a wide variety of transactions resulting from the sharing of equity investments between UNUM-sponsored

Significant EXPRO grants

97-06E February 24
Banc One Corporation (Banc One). Permits Banc One to offer supplemental interest sensitive whole life insurance (the Policy) to its employees and reinsure all or part of the risk under the Policy through an affiliated reinsurance company in exchange for a portion of the premiums received from the participating employees.

97-13E April 4
KeyCorp and the Key Trust Company of Ohio (KeyCorp), and the KeyCorp 401(k) Savings Plan (the Plan). Permits the sale of two mortgage loans acquired by the Plan through the Plan's merging with other plans to KeyCorp, the Plan's sponsor.

97-21E September 10
Credit Lyonnais. Permits transactions involving the investment by employee benefit plans in pass-through certificates or debt instruments representing interests in certain categories of investment trusts, the trustee or servicer of which may also be a trustee or servicer of the plan.

Significant proposals

MS Commodity Investments Portfolio II, L.P. (MS). This proposed exemption would permit plans that receive financial services from MS or its affiliates to acquire or redeem units in a partnership with respect to which MS is the general partner.

Metropolitan Life Insurance Company (MetLife). This proposed exemption would permit: 1) the prospective purchase or

retention by an employee benefit plan (the Plan) and, 2) the sale or continuation by MetLife or an affiliate of a synthetic guaranteed investment contract (GIC) entered into between the Plan and MetLife under which MetLife guarantees certain amounts and thereby becomes a creditor to the Plan.

PNC Capital Markets, Inc. (PNC). This proposed exemption would provide relief for the operation of certain asset pool investment trusts and the acquisition and holding by plans of certain pass-through certificates representing undivided interests in those trusts.

National Rural Utilities Cooperative Finance Corporation (CFC). This proposed exemption would apply to the following transactions relating to the refinancing by CFC of various loans made to the Kansas Electric Power Cooperative, Inc. (KEPCO) and certain notes issued by KEPCO in connection with such loans that are assigned to trusts for which CFC acts as a servicer: 1) the operation of the asset pool investment trust containing the notes; and 2) the acquisition and holding of the certificates representing undivided interests in the trust.

Regulatory Activities

During 1997 PWBA published:

- A proposed and a final regulation harmonizing the rules under Title I of ERISA concerning when participant contributions will be considered assets of a plan with amendments of the Internal Revenue Code enacted by the Small Business Job Protection Act of 1996.
- A notice of proposed rulemaking relating to the provision of guidance concerning 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.
- An interim final rule amending the agency's summary plan description and related regulations to implement various amendments of Title I of ERISA affected by HIPAA.
- A proposed and a final rule relating to the adjustment of civil monetary penalties under Title I of ERISA pursuant to the requirements of the Debt Collection Improvement Act of 1996.
- A request for public comments on the burdens, costs and benefits of accounting for post-retirement welfare benefits in accordance with Statement of Position 92-6 (SOP 92-6) of the American Institute of Certified Public Accountants (AICPA). Under SOP 92-6, the AICPA modified generally accepted accounting principles to require health and other welfare plans to calculate and disclose as part of their financial statements the present value of their post-retirement benefit obligations.
- A booklet providing guidance to the public regarding the application of the qualified domestic relations order provisions of Title I of ERISA and the Internal Revenue Code.
- A Request for Information soliciting input from the public regarding the need for amending existing regulations under Title I of ERISA that set forth minimum requirements for employee benefit plan claim procedures.
- An advance notice of proposed rulemaking concerning the development of guidance with respect to the ERISA Title I provisions that set forth the notice requirements for continuation of coverage by group health plans.
- A proposal, in conjunction with the Internal Revenue Service and the Pension Benefit Guaranty Corporation, to streamline and simplify the annual return/report forms (the Form 5500 Series) filed for employee pension, welfare and fringe benefit plans under ERISA and the Internal Revenue Code. The agency's goal in this initiative was to eliminate reporting requirements for information that is not needed to discharge its statutory responsibilities, while ensuring that participants and beneficiaries have access to the information they need to protect their rights and benefits under ERISA.

Policy and Research

In 1997, the legislative activity continued to focus on passage of legislation to enhance pension security by advancing the Administration's proposals not enacted as part of the Small Business Job Protection Act (SBJPA) of 1996. These proposals would simplify pension rules, improve portability, expand retirement savings opportunities and enhance pension security by strengthening participant protections, penalties for violations of the law and auditing of ERISA plans. The agency continued to expend substantial resources to provide analytical support for the agency's role in the interdepartmental task force to develop the regulatory provisions of HIPAA.

Several significant portions of the President's Retirement Savings and Security Act of 1996 were enacted in 1997 as part of the Taxpayer Relief Act of 1997 (P.L. 105-34), including the elimination of the requirement that Summary Plan Descriptions and Summary Material Modifications automatically be filed with the Secretary of Labor. The agency assisted in the development of this legislation and worked for its enactment.

The agency's Retirement Savings Education Campaign received legislative support with the enactment of the Savings Are Vital to Everyone's Retirement Act, (also known as SAVER). The agency provided assistance to Congress in the development of this legislation, which also directed the President to convene a National Summit on Retirement Income Savings.

PWBA's research activity focused on American workers and families who are not participating in employment-sponsored health and pension plans. A special module of the Survey on Income and Program Participation

measuring pension participation and retirement income adequacy among America's workers and retirees is being designed and is scheduled to be fielded in 1998. A feasibility study of methods for modeling the retirement security of families will be initiated. The program will also initiate studies assessing the performance of participant-directed retirement savings accounts and evaluating the experience of group purchasing arrangements for employee health benefits. PWBA will publish a summary volume of studies to mark the completion of its long-term contract with the RAND Corporation.

The agency's *Private Pension Plan Bulletin* covering Form 5500 annual reports for the plan year 1993 was published. Statistical highlights showed that the rapid growth in 401(k)-type plans occurring over the past decade continued in 1993, with a 10 percent increase from 140,000 plans in 1992 to 154,500 plans in 1993. In contrast, the number of defined benefit plans decreased 6 percent in 1993 to 84,000, and the number of non-401(k) defined contribution plans decreased 3 percent to 464,000.

Under its small research contracts program nine new contracts were awarded in 1997.

The Panel on Retirement Income Modeling of the Committee on National Statistics of the National Academy of Sciences, supported by PWBA and several other federal agencies, published a volume titled *Assessing Policies for Retirement Income: Needs for Data, Research, and Models*.

Key Testimony

February

Assistant Secretary Olena Berg appeared before the Senate Labor and Human Resources Committee to testify on the Department's implementation of HIPAA.

April

Assistant Secretary Berg appeared before the House Appropriations Subcommittee on Labor, Health and Human Services to testify on budgetary issues.

June

PWBA's activities were discussed in an oversight hearing held by the House Government Reform and Oversight Committee's Human Resources Subcommittee on the Labor Department's mission and performance.

September

Deputy Assistant Secretary Meredith Miller appeared before the Health Subcommittee of the House Ways and Means Committee and testified on the Department's implementation of HIPAA.

October

Assistant Secretary Berg appeared before the Senate Labor and Human Resources Committee and testified on issues pertaining to S. 729, legislation entitled the Expansion of Portability and Health Insurance Coverage Act (known as EPHIC), and other voluntary efforts to increase health insurance coverage for working adults and dependents.

Accounting and Auditing

During 1997, PWBA continued its multifaceted program to improve enforcement of ERISA's reporting and disclosure requirements and to encourage timely compliance with the law. The agency continued to emphasize proactive voluntary compliance with the law, to coordinate efforts with the accounting profession, and to offer educational outreach seminars. It continued to review ways to assess the quality of employee benefit plan audits and to implement traditional enforcement initiatives involving civil penalties.

Reporting Compliance Program

The reporting compliance program is divided among three groups: 1) deficient filers, 2) late filers and 3) nonfilers. Penalties are imposed on plan administrators for their failure to submit complete and accurate Form 5500 Series annual reports with the Department. In 1997, approximately \$8 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 nonfilings.

The agency's Delinquent Filer Voluntary Compliance (DFVC) Program continued to encourage 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 permitted to submit statements and elect an alternative method of compliance in lieu of annual reports.

DFVC simplifies the filing process and reduces the financial hardship for voluntary

compliance for small business through smaller fines. In 1997, nearly 2,900 plans chose to take advantage of the DFVC program, which resulted in the collection of 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) and worked with this organization to revise the 1997 AICPA guide for auditing employee benefit plans. The updated guide published in May 1997 incorporated new audit and accounting requirements issued by the Financial Accounting Standards Board (FASB). The AICPA issued the guide to encourage compliance with ERISA's audit, reporting and disclosure provisions.

Educational Outreach

Under the auspices of the International Foundation of Employee Benefit Plans, PWBA continued its series of educational outreach workshops, presenting both the Form 5500 filing requirements and an overview of the Department's enforcement program. Through December 1997, PWBA conducted 13 such workshops in Atlanta, Boston, Chicago, Dallas, Denver and San Francisco. An additional four workshops are planned for 1998.

Referral of Substandard Audit Work

Through December 1997, PWBA referred 285 cases of potential deficient accounting and auditing work to the American Institute of Certified Public Accountants' Professional Ethics Division. Eighty-four resulted in either a referral to the AICPA's trial board or a settlement agreement. One hundred thirty-two

cases resulted in remedial corrective action letters. No violations were found in 13 cases, while 24 cases were closed for other reasons.

Seventy-two cases have been 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 On-site Workpaper Reviews

The agency continued the quality control program for improving the audit work performed by independent qualified public accountants. OCA performed 59 on-site reviews and analyses of audit workpapers that support the accountant’s report.

The Department’s regulations permit an independent qualified public accountant to exclude from his/her examination and report some or all of a plan’s assets prepared and certified as complete and accurate by a bank, or similar institution, or an insurance carrier regulated and supervised and subject to periodic examination by a state or federal agency (limited-scope audit exception). In 1997, the agency initiated an informal study to assess the validity and reliability of unaudited assets carrying values certified to by such financial institutions. In order to make its assessment, the agency focused its efforts on certain hard-to-value assets.

Thrift Savings Plan Audits

PWBA conducted approximately 25 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 \$61 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.

Plan Audit Reviews - 1997	
Number of reporting compliance cases	2,190
Reviews of auditor’s work papers	59
<i>Plan Audit Reviews Cumulative through 12/31/97</i>	
Total audits referred	357
State licensing boards	72
AICPA	285
Resolutions - AICPA	253
Referred to AICPA trial board or settlement	84
Letters for corrective action	132
No deficiencies	13
Closed for other reasons	24

Health Care Task Force

Following is a summary of the most significant regulatory issues developed by the Health Care Task Force during 1997:

Interim Final Rulemakings

- PWBA issued nine interim final regulations implementing provisions under HIPAA. HIPAA's provisions set forth federal requirements relating to portability, access and renewability of group health plans and group health insurance coverage. The provisions also include several other protections, including special enrollment rights for individuals that relate to employment-based health coverage. HIPAA's provisions are included in Part 7 of Subtitle B of Title I of ERISA, and parallel statutory provisions are set forth in the Public Health Service Act and the Internal Revenue Code.
- PWBA issued an interim final rule providing guidance under the Mental Health Parity Act of 1996 (MHPA). This interim rule provides guidance on MHPA's provisions, including provisions concerning parity in the application of dollar limits on certain mental health benefits with dollar limits on medical and surgical benefits. MHPA provisions are included in Part 7 of Subtitle B of Title I of ERISA and parallel statutory provisions are set forth in the Public Health Service Act and the Internal Revenue Code.
- PWBA issued an interim final notice clarifying the application of the nondiscrimination provisions under HIPAA to individuals who, prior to the effective date of HIPAA, were denied group health plan coverage based on a health-status-related factor. This notice clarifies that an employee (and any dependent) who was previously denied coverage must be given an opportunity to enroll in the plan and cannot be treated as a late enrollee for purposes of applying any preexisting condition exclusion period.
- PWBA issued an interim final notice clarifying the application of the portability provisions under HIPAA to flexible spending arrangements (FSAs). This notice clarifies that it is appropriate to treat benefits under a health FSA as excepted benefits if the health FSA is offered in conjunction with another group health plan and if the employer contributions do not exceed a specified amount.

Requests for Information

- PWBA issued a Request for Information in the *Federal Register* on how best to implement the provisions of MHPA and the Newborns' and Mothers' Health Protection Act of 1996 (NMHPA). The agency received more than 100 comments. It also carefully considered public comments received on behalf of employees, dependents and others seeking health coverage, as well as employers, plan administrators, and health insurance issuers in developing the interim compliance-related guidance under MHPA. The agency is continuing to consider such comments in the development of future NMHPA guidance.

ERISA Advisory Council

In 1997, the Advisory Council on Employee Welfare and Pension Benefit Plans focused on the following initiatives: employer assets in ERISA employer-sponsored plans, the merits of defined contribution vs. defined benefit plans with an emphasis on small business concerns, and soft dollars/commission recapture.

Following are the final recommendations presented by the three working groups.

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

Employer Assets in ERISA Employer-Sponsored Plans

- ***For Employer Real Property***
Limit on the investment of defined contribution plan assets in employer real property equal to 10 percent of the market value of the plan assets.

Revoke the exemption from diversification for the holding of qualifying employer real property by eligible individual account plans and the exemption from prohibited transactions for certain acquisitions of qualifying employer real property that are in excess of the 10 percent limitation.

- ***For Publicly Traded Employer Securities***
Extend the ESOP diversification rules to all participants in defined contribution plans except employee stock ownership plans (ESOPs). Such participants, who have reached age 55 with at least 10 years of plan

participation, would be able to diversify up to 50 percent of their account balances over a 6-year period under diversification rules similar to ESOPs. (The majority wanted stronger measures and a majority recommended that all participants in defined contribution plans except ESOPs be given the right to diversify their account balances into securities or real property other than employer assets when they become vested.)

- ***For Nonpublicly Traded Employer Securities***
Limit the investment of defined contribution assets in nonpublicly traded employer securities to an amount equal to 10 percent of the market value of plan assets or that the plan follow the ESOP rules with respect to employer securities.
- ***Disclosure***
Establish rules for disclosure to plan participants about company stock and performance and risk.

The Merits of Defined Contribution vs. Defined Benefit (DB) Plans With an Emphasis on Small Business Concerns

Have the Secretary support legislative and regulatory changes to restore the viability of defined benefit plans, and:

- Repeal the 150 percent of Current Liability Limit;

- Change the limits on benefits for DB plans to include:
 - 1) the maximum dollar increased to at least the 1982 levels as indexed;
 - 2) double the \$10,000 minimum annual cap for lower paid employees and index it;
 - 3) restore the \$75,000 floor for actuarial reductions at age 55 and older; and
 - 4) eliminate the requirement of actuarial reductions in benefits that commence between age 62 and the Social Security retirement age.
- Permit pretax contributions to defined benefit plans;
- Remove IRS regulatory delay and uncertainty about cash balance plans (Asked for guidance from Treasury for such plans, which combine features of both defined benefit and defined contribution plans);
- Create a Simplified DB Plan for small employers (Explicitly recommended the SAFE proposal by Reps. Pomeroy, Johnson and Fawell as a starting point for such a plan);
- Increase the maximum compensation limits for defined benefit plans, recommending the compensation limit for these be increased to at least \$235,000 to encourage more plan formation;
- Ask for further study of in-service distributions (Because of the growing use of pre-retirement distributions, the group requested a further study on “leakage” from the system);
- Amend ERISA so that mandatory annual disclosure of benefits be required in defined benefit plans on participants’ projected retirement and vested accrued

benefits;

- Have the Pension Benefit Guaranty Corporation assume an educational role in recommending the formation of defined benefit plans.

Soft Dollars/Commission Recapture

- ***Recommendations for DOL***
Modify Form 5500 requiring plan sponsors to list all fees greater than \$5,000 paid with directed brokerage.

Add to the Form 5500 a question that requires plan sponsors to certify they are complying with requirements of ERISA Technical Release 86-1 in using directed brokerage services.

- ***Recommendations for the Securities and Exchange Commission (SEC)***
Tighten Section 28(e) definition of “research” to better determine what can justifiably be purchased with soft dollars.

Prepare a specific list of which brokerage and research services are acceptable purchases with soft dollars.

Require investment managers to provide to each client full disclosure of all trades for that client involving soft dollars and that the benefits investment

managers receive from those soft dollars. Require that investment managers provide a description of their policies involving soft dollars.

Disclose external research provided to investment managers in a summary form on Form ADV filed with the SEC.

- ***Recommendations from a Minority of the Members***

Repeal Section 28 (e) for employee benefit plans only, thereby eliminating the safe harbor for research purchases.

Eliminate the use of soft dollars for employee benefit plans. This would require brokerage firms to unbundle their services and investment managers to pay separately for execution and research with hard dollars.

- ***Recommendations Involving Plan Sponsor Guidance***

(The following individual recommendations were included in the report and were designed to further educate plan sponsors on their fiduciary responsibilities.)

- Avoid soft dollar conflicts of interests by hiring only consultants with no financial arrangements with brokerage firms.
- Have an independent accountant audit soft dollar income disclosure to plan sponsors by investment managers and consultants as long as it is cost beneficial.
- Have plan sponsors obtain copies

of brokers' and investment managers' projected directed brokerage budgets and, if applicable, soft dollar budgets.

- Provide for monitoring of soft dollar brokerage by parties with sufficient expertise and independence, with no vested interests to protect.
- Require written disclosure of potential conflicts of interest for all contracts with investment managers and consultants.
- Require disclosure in contracts with consultants of all compensation received from investment managers either through the sale of services or through directed brokerage arrangements.
- Require disclosure of investment managers' contracts to plan sponsors of how managers pay for research and how the pension plan benefits from this research.
- Have consultants and investment managers acknowledge to plan sponsors their fiduciary status in writing.
- Obtain written confirmation of oral representations of brokerage arrangements made by consultants and investment managers.
- Have plan sponsors create specific guidelines for responsible soft dollar and directed brokerage programs.

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