

# Employee Retirement Income Security Act 1998 Report to Congress

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

Jan.	Feb.	Mar.
		Pension Plan Recoveries
Apr.	May	June
The National Summit on Retirement Savings 		
July	Aug.	Sept.
	For Employees... A Look at 401(k) Plan Fees	
Oct.	Nov.	Dec.
 Health Benefits Education		

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# Employee Retirement Income Security Act 1998 Report to Congress

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

Pension and Welfare Benefits Administration  
Richard McGahey, 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 is to administer and enforce 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 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 1986, the Consolidated Omnibus Budget Reconciliation Act (COBRA) was passed, and PWBA was charged with certain notification requirements under the Act. 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, and the Women's Health and Cancer Rights Act of 1998 added new responsibilities in the regulatory and enforcement arenas.

This report details the 1998 accomplishments of the agency in executing its mission.

## 1998 Highlights

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In 1998, the Pension and Welfare Benefits Administration received new leadership with the nomination of Richard M. McGahey as the agency's Assistant Secretary and the appointment of Leslie B. Kramerich as the Deputy Assistant Secretary for Policy. The agency also organized the first National Summit on Retirement Savings that was cohosted by the President and the congressional leadership, and launched in December the National Health Benefits Education Campaign.

In the area of enforcement, many fiduciary issues were settled through negotiations; others required resolution by the courts. In one case, the agency's lawsuit resulted in an agreement to restore \$20 million to a local union's pension plan and in another case our investigation resulted in a temporary restraining order removing officials of a health plan, which involved almost \$25 million in unprocessed claims spanning more than 30 states.

With respect to participant education, PWBA introduced new publications that covered subjects as varied as the benefit coverage concerns of displaced workers, *Pension and Health Care Coverage: Questions & Answers for Dislocated Workers*, to the computer concerns of the new millennium, *The Y2K (Year 2000) Computer Problem: Questions and Answers Relating to Employee Benefit Plans*.

On the regulatory front, the agency took steps to ensure that all participants in ERISA-covered employee benefit plans have access to information that is timely and understandable and that benefit requests are handled more expeditiously. To address these issues, it proposed amendments to its regulations governing summary plan descriptions and proposed amendments to its regulation governing benefit claims procedures.

The agency also issued an interim final rule that provided guidance under the Newborns' and Mothers' Health Protection Act of 1996. The rule outlined provisions concerning protections for mothers and newborn children with regard to hospital stays following childbirth.

PWBA continued its policy initiatives to improve pension security through its legislative proposals to simplify pension rules, improve portability and expand retirement savings opportunities. Under its Policy and Research Studies Program, the agency produced, in conjunction with the RAND Corporation and the Urban Institute, *Health Benefits and the Workforce, Volume 2*.

The agency built on past successes with the continued operation of its Delinquent Filer Voluntary Compliance Program to either encourage plan administrators to file previously unfiled Form 5500 Series Annual Reports or to resolve late-filer penalties.

## Message from the Assistant Secretary

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PWBA can take pride in the agency's 1998 accomplishments in support of its ongoing mission to protect pension, health and employee benefits for American workers.

With respect to enforcement, the agency closed 4,823 civil investigations, an increase of 408 from 1997, as it maintained its efforts to correct fiduciary breaches and stem the incidence of 401(k) plan fraud.

We increased our visibility and enhanced our vital role of educating Americans on the importance of savings for retirement and understanding their health benefit rights in the workplace when we organized the first National Summit on Retirement Savings, and launched the National Health Benefits Education campaign.

Our regulatory efforts provided further guidance on the expanded protections available to mothers and their newborns with respect to hospital stays following childbirth. On the legislative front, we worked to advance the Administration's proposals and to focus on initiatives designed to enhance pension security.

Making the filing process less burdensome for small businesses who voluntarily comply with the requirements to file their annual reports continued to be a focus of the agency's Delinquent Filer Voluntary Compliance Program.

Our efforts in the area of participant assistance entailed expanded public outreach, new initiatives, and the introduction of several new publications, including the very popular booklet *For Employees...A Look at 401(k) Plan Fees*.

The ERISA Advisory Council on Employee Benefit Plans examined the quality of health care disclosure, the practice of premature borrowing from retirement plans, and the establishment of pension plans for small businesses.



*Assistant Secretary  
Richard McGahey, PWBA*

## Overview of PWBA Office Functions

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*PWBA accomplishes its mission through the collective efforts of six major offices and a Health Care Task Force that administer regulations and policies or carry out initiatives in the following areas: enforcement, consumer outreach, assistance and education, exemption determinations, regulatory activities, policy and research, and accounting and auditing. The agency also provides staff to assist the 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 violations 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 that have been improperly denied.

Public education and outreach are also significant components 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. These materials are available on the agency's website and through a toll-free publications hotline. The office coordinates two national education campaigns — the Retirement Savings Education Campaign and the Health Benefits Education Campaign.

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, health and retirement issues. To keep the public informed on PWBA's programs and initiatives, the office updates the PWBA Home Page and "What's New" section of its website regularly.

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



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### ***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 individual 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 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 Research***

The Office of Policy and Research (OPR) provides technical, legislative and research analysis on health and pension benefits legislation proposed by the Administration and pending before the Congress. It also provides leadership and coordination of employee benefit plan policy analyses, prepares congressional and executive departmental briefings, and congressional testimony.

In addition, it is 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 annually in the Private Pension Plan Bulletin to make timely information available to research and policy analysts, and to members of Congress. OPR also regularly compiles and tracks Census Bureau data on pension and health benefits coverage.

### ***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 ensure 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.

### ***Health Care Task Force***

The Health Care Task Force responsibilities involve planning, directing and carrying out a program for providing policy and technical guidance with respect to applying the provisions of Title I of ERISA, as amended by health care laws affecting group health plans and the following laws:

- Health Insurance Portability and Accountability Act of 1996
- Mental Health Parity Act of 1996
- Newborns' and Mothers' Health Protection Act of 1996, and
- Women's Health and Cancer Rights Act of 1998

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 ERISA.

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 November 14 and that no more than eight appointees represent any one political party.

## Enforcement

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In 1998, PWBA opened 4,683 civil and 113 criminal investigations. The closed investigations in 1998 included 4,823 civil cases and 118 criminal cases.\* A total of 110 indictments were also issued. Overall, the enforcement program recovered more than \$260 million for private benefit plans.

The agency investigated several high-profile cases in 1998 that were notable either for the dollar amount involved and recovered or for the number of participants affected. Two of these cases were *Herman v. Fidelity Group, Inc.* (not to be confused with the nationally known investment firm) and *Herman v. Bridge*.

*Herman v. Fidelity Group, Inc.* involved approximately \$25 million in unprocessed health claims and mismanagement of health plan assets that covered approximately 3,600 participants in 32 states. Fidelity Group, Inc. was the third-party administrator of these health plans. To stem the fiduciary breaches, the agency obtained a temporary restraining order that removed the Fidelity Group, Inc. officials and placed the health plan and Fidelity Group, Inc. under the control of an independent fiduciary. The agency's lawsuit also asked that the defendants restore any losses suffered by the plan, return any assets they illegally received, and that they be permanently barred from servicing an ERISA plan.

In the case of *Herman v. Bridge*, the agency filed a lawsuit that resulted in Local 705 of the International Brotherhood of Teamsters agreeing to restore \$20 million that was owed to the local union's pension plan. The dollar amount restored to the pension plan included \$16,511,985, which represented money that the trustees had improperly transferred to the welfare benefit plan, plus lost earnings.

\*The number of closed investigations in 1998 reflect civil and criminal cases that were opened and closed during this calendar year, and those opened during previous calendar years, but closed in 1998.

## Civil Cases

The following is a sampling of the civil cases investigated in 1998.

### ***Herman v. Fidelity Group, Inc.***

*12-24-98*

*Elmont, N.Y.*

The Department obtained a preliminary injunction order to freeze the assets of the trustees of the International Workers' Guild (IWG) health plan, two affiliated organizations and their principals. The order stemmed from allegations that the parties mismanaged the assets of the health plan leaving approximately \$25 million in unprocessed health claims. The health plan covered 3,600 participants in 32 states. The preliminary injunction was served on Fidelity Group, Inc. (Fidelity) because it is the third-party administrator of IWG's health plan.

In a lawsuit, the Department also alleged that both the IWG and the National Association of Business Owners and Professionals (NABOP) were a sham union and association that operated the plan for employers with bogus collective bargaining agreements.

The lawsuit alleged that the trustees had violated ERISA since 1995 by paying excessive administrative fees from health plan assets to Fidelity for its service as the third-party administrator; diverting assets of the health plan to IWG and NABOP under the guise of collecting sham union and association fees; diverting health fund assets to pay the salaries of the wives of NABOP employees and causing the plan's insolvency; and by creating NABOP and IWG primarily to divert

plan assets from the payment of health benefits.

### ***Herman v. Bridge***

*12-10-98*

*Chicago, Ill.*

The Department obtained a consent order and judgment against the trustees of the employee benefit plans of Local 705 of the International Brotherhood of Teamsters. The consent order and judgment, which were filed with a simultaneous lawsuit, alleged the trustees improperly transferred to the welfare benefit plan \$16,511,985, plus interest. The transfers were allegedly made to provide financial support to the welfare plan under the advice of an attorney, but the pension plan participants who were not covered under the welfare plan received no benefit from the transfer and were, in fact, harmed by it.

Local 705 sponsored the pension and welfare plans for as many as 7,130 participants employed by companies subject to collective bargaining agreements with the union.

The consent order and judgment requires the trustees to restore \$20 million owed to the local union's pension plan.

### ***Herman v. The Reinecke Agency, (d.b.a. Dealers Association Plan, et al.)***

*12-16-98*

*Orlando, Fla.*

In Dealers Association Plan (DAP) case, a federal district court ruled the trustees of the health and welfare plan that DAP administered were liable for unpaid health claims after the plan was terminated.

The ruling stemmed from a November 1994 lawsuit filed by the Department against DAP alleging the company, which administered 12 multiple employer welfare arrangements (MEWAs), violated the federal pension law and contributed to the failure of some of the health plans it represented.

According to the lawsuit, DAP made no attempt to establish premiums sufficient to pay benefits and other plan expenses, performed no actuarial studies, maintained no asset reserves and paid excessive administrative expenses. DAP also allegedly collected billing and delinquent fees from employers and commissions on the sale of life insurance.

The lawsuit alleged DAP collected premiums and provided routine claims-paying services to a variety of association plans that included the Miami Valley plan, and similar plans of the Georgia and Carolinas Independent Automobile Dealers Associates.

The Miami Valley plan, which was never formally terminated, ceased paying claims in 1991 and left outstanding unpaid claims of at least \$215,000. The trustees resigned in November 1991. When the plan failed, there were 38 dealers enrolled in the plan and only 67 insured members.

***Herman v. Giordano, et al.***  
*11-5-98*  
*Little Falls, N.J.*

A consent order and judgment requiring \$1.5 million to be restored to the Teamsters Local 125 Retirement Fund (Fund) was obtained by the Department. It was part of a global resolution that included third-party lawsuits filed by the plan trustees and separate federal

and state court actions that had been initiated by the Fund.

The court alleged that the defendants breached their fiduciary responsibilities by permitting the plan to invest \$2 million in a loan without conducting an independent, adequate investigation of the recipient's ability to repay it. The defendants also failed to review the security on the loan and to pursue steps to collect on it after the recipient defaulted.

The consent judgment and order stipulated that an immediate payment of \$1.1 million be paid to the Fund from various third-party defendants. It also permanently barred the defendants from serving in a fiduciary capacity to any ERISA-covered plan.

***Herman v. Time Warner, Inc.***  
*10-26-98*  
*New York, N.Y.*

The Department sued Time Warner, Inc., Time, Inc., its subsidiaries, and officials of nine corporate pension and health plans for wrongly denying plan coverage to hundreds of employees. Time Warner had misclassified a group of workers as independent contractors or temporary employees, rather than as full-time employees.

The lawsuit alleged that the plan fiduciaries regularly failed to identify or inform all employees of their rights to participate in the plans. Consequently, the employees were prevented from obtaining retirement and health benefits.

The workers were employed by Time, Inc., wholly owned by Time Warner, Inc. and its subsidiaries, which include *Time* magazine,

*Sports Illustrated, Fortune, Life, Money, People, Entertainment Weekly, Time Life, Inc., Book-of-the-Month Club and Time Distribution Services.*

The lawsuit seeks a court order appointing an independent fiduciary to audit Time, Inc. and to account for all employees who were misclassified and prevented from participating in the plans and obtaining benefits.

***Herman v. Miletus Associates, Inc.***  
*10-7-98*  
*Albuquerque, N.M.*

Miletus Associates Inc. and its president agreed to fully reimburse the company's 401(k) plan for all improper transfers and a loan made from the 401(k) plan to the defendants under a consent order and judgment obtained by the Department. Miletus Associates is an engineering firm that manufactures airborne surveillance equipment. The company's 401(k) plan covered 29 participants and had \$371,052.57 in assets as of February 1996.

As a result of the consent order and judgment, the company and its president, Donald Trone, agreed to reimburse the plan for a total of \$227,110.84, which includes lost principal and interest. A lawsuit filed on June 26 also alleged Miletus Associates and Trone violated their duties under ERISA when they transferred \$79,444.21 of plan assets to the company for their own use, loaned \$48,713.19 to Trone, which was not repaid in accordance with the loan document, and distributed retirement benefits to plan participants based on an outdated valuation of plan assets.

Trone was barred from serving in a position of trust for any plan governed under ERISA, and both defendants could be assessed a civil penalty based on \$153,549.81 in improper transactions with the plan.

***Herman v. Mercy-Douglass Corp., et al.***  
*5-4-98*  
*Philadelphia, Pa.*

Mercy-Douglass Corp. (MDC), trustees of the company's pension plan and its subsidiaries agreed to repay the company pension plan \$432,137, plus interest, resulting from a consent judgment obtained by the Department. The consent judgment also requires the individual defendants to: resign their positions as plan trustees, be barred for a total of 13 years from serving in any capacity to plans governed by ERISA, and participate in comprehensive training on managing ERISA plans before re-assuming any fiduciary duties with the plan. The consent judgment also requires that an independent trustee be appointed to manage the plan.

The trustees allegedly pledged more than \$500,000 of plan money as collateral on a series of loans to a MDC division; made a \$65,000 loan to an MDC affiliate and pledged as collateral real estate purchased with the proceeds; failed to collect fees owed to the plan as a condition of the collateralized loans; made a \$53,996 loan to a client of a MDC affiliate in order to repay debts owed to MDC; used plan money to make a \$13,800 loan to a MDC consultant; and failed to collect more than \$600,000 in contributions owed to the plan by the subsidiaries.

Mercy-Douglass is the parent holding company for four nonprofit subsidiaries that serve elderly residents in the Philadelphia area. The services include managing two nursing homes, and providing medical services, recreational activities and transportation. MDC and its subsidiaries sponsored the pension plan for as many as 429 participants. In 1994, the plan had approximately \$1.2 million in assets.

***Herman v. Illinois Vehicle Insurance Agency, Inc.***  
3-12-98  
*Chicago, Ill.*

The Illinois Vehicle Insurance Agency, Inc. (IVIA) and Roger Wolf, owner and a trustee to the company's pension and 401(k) plans, agreed to be removed as plan officials, permanently barred from servicing any ERISA plan, and to repay \$24,841 in outstanding interest owed to the IVIA pension plan. The agreement resulted from improper loans and transfers made by IVIA and its officials, according to a judgment obtained by the Department. IVIA is an insurer providing automobile insurance primarily to Illinois residents. IVIA's pension and 401(k) plans covered as many as 575 employees as of Dec. 31, 1995 and had combined assets of \$1.2 million.

According to the lawsuit, the defendants made more than \$2 million in improper loans from the pension plan to Wolf's companies, including \$350,000 in loans to IVIA and \$1,939,230 in loans to the Illinois Vehicle Premium Finance Co. It also alleged the defendants transferred \$82,511.20 in participant benefit and loan payments from the 401(k) plan to the account of Lincoln Towers

Insurance Agency, another company wholly owned by Wolf, prior to making distributions to participants.

Prior to the entry of the judgment, the defendants restored more than \$2.8 million to the pension plan as restitution for the improper loans, transfers made, and interest owed for those transactions. The payments were made both prior to and after receipt of a notice of violation sent to them by the Department.

***Herman v. Cipolla***  
3-2-98  
*Bowsmansville, N.Y.*

The Bella Vista Group, Inc. of Bowsmansville, N.Y., and company president and plan trustee Pasquale Cipolla have agreed to repay \$1,638,867 to the company's profit sharing plan as restitution for substantial losses on a series of loans made by the pension plan to companies owned by Cipolla, under a consent judgment and order obtained by the Department.

In addition, the company and Cipolla agreed to appoint an independent plan administrator to manage the plan. Cipolla agreed to be barred from serving in a position of trust to any plan governed by ERISA.

In 1994, the Department sued Bella Vista Group (BVG), its parent Innovative General Contractors (IGC), and plan trustee Cipolla for making \$1.3 million in loans to BVG, IGC and others from 1988 to 1993. The lawsuit alleged that Cipolla failed to conduct credit checks and to require security for the loans, resulting in numerous loans being defaulted on and ultimately resulting in losses being suffered by the plan.

***Herman v. Blue Cross/Blue Shield  
of Massachusetts***

*1-30-98*

*Boston, Mass.*

A U.S. federal judge ordered Blue Cross/Blue Shield of Massachusetts to repay \$10 million to participants and sponsors of private-sector health plans covered under ERISA. The Department alleged that the health care provider failed to make refunds to participants and beneficiaries regarding fee reductions for hospital services performed between 1988 to 1992 for residents of Massachusetts. Blue Cross/Blue Shield also may be required to pay up to \$2 million in civil penalties and must notify affected employers of any restitution owed to them under the settlement.

A lawsuit filed in November 1995 alleged that Blue Cross/Blue Shield of Massachusetts was refunded approximately \$180 million from area hospitals on behalf of customers because Massachusetts state law limited the amount hospitals could charge Blue Cross/Blue Shield for services rendered. The insurer was required to refund a proportionate share of the money to each of the self-insured plans covered by ERISA, but failed to pass along this money.

The lawsuit alleged that Blue Cross/Blue Shield improperly benefitted by not refunding the savings and by failing to take steps to reduce the copayments of participants and beneficiaries to reflect the reduced amounts.

***Herman v. Hull***

*10-19-98*

*Syracuse, N.Y.*

In a consent judgment obtained by the Department, Hull Corporation (the Corporation) and John E. Hull, the trustee of its employee stock ownership plan (ESOP), were ordered to pay \$541,667 in restitution to the plan, and to pay civil monetary penalties to the federal government, and were barred from serving as fiduciaries to any plan governed by ERISA. The ESOP was established on Jan. 1, 1991, and contained fixed and variable contribution components and a 401(k) plan. The fixed and variable components were designed to invest primarily in the Corporation's stock.

In a lawsuit filed simultaneously with the consent judgment, the Department alleged the Corporation and its board of directors voted to transfer assets of a corporate retirement plan to the ESOP. The board also approved an agreement under which the ESOP purchased 40,000 shares of the Corporation's capital stock for more than \$2 million.

According to the lawsuit, the defendants violated ERISA by executing the transactions to benefit the Corporation and its shareholders; failing to conduct an independent, good faith analysis of the Corporation's financial condition; paying more than fair market value to purchase the corporate stock; and by not retaining an independent trustee to advise them about the prudence of converting the retirement plan into an ESOP.



### ***Herman v. Hyde***

8-4-98

*Novato, Calif.*

The Department obtained a temporary restraining order freezing the assets of Interstate Services, Inc. (ISI), Thorndyke International, Inc. (TI) and numerous other fiduciaries and service providers to health plans operated by ISI. The order was issued after more than \$1 million in health plan assets were diverted to ISI, TI and others affiliated with a health care scheme known as The ERISA Advantage Program. Instead of paying benefits, the money was used to pay administrative fees, marketing fees, commissions and other nonbenefit expenses.

The lawsuit further alleges that Hyde and other defendants allowed assets of the individual health trusts to be commingled in direct contradiction of a commitment to maintain separate trusts to fund promised benefits of enrolled employers.

The temporary restraining order placed The ERISA Advantage Program under the control of an independent fiduciary and removed the defendants from their positions with the Program.

## **Criminal Cases**

This selection of criminal case summaries investigated by PWBA and prosecuted by the U.S. Attorney's Office reflects a continuing effort on the part of the agency to send a message that stealing and engaging in fraud involving private-sector employee benefit plans will not be tolerated. The offenders cover a wide cross section of society ranging

from business owners to plan trustees and service providers. Theft and fraud occurred in both health and pension plans, large and small ones, 401(k)s and employee stock ownership plans (ESOPs).

### ***United States v. Carlow***

2-3-98

*Uniontown, Pa.*

Frank Carlow was sentenced to 87 months imprisonment, and ordered to pay restitution of \$4,550,679 for engaging in illegal activities that included pension and health plans, tax, and mail fraud. Estimated loss to the plans is \$2 million, making it the largest tax fraud case in the western district of Pennsylvania. On the tax evasion counts, Carlow was charged with a conspiracy to systematically under report employment and coal excise taxes that totaled \$10 million. He used some of the money to fund his personal lifestyle.

Carlow's companies employed 400 miners, and his scheme adversely impacted their pension and health benefits through the false reporting of their wages and the number of hours worked. In addition, Carlow was 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 in November 1997 to employee benefit plan, tax, mail and environmental fraud. He also pleaded guilty to obstruction of justice for falsely telling a federal district court judge, trying to recover unpaid medical claims in a mine workers' union lawsuit, that the amount involved was \$620,000, when, in fact, it was \$1.5 million.

This case was investigated by PWBA, the FBI, the Criminal Investigation Division of the Internal Revenue Service, and the Department of Labor's Office of the Inspector General.

***United States v. Sharpe***

2-6-98

*Boca Raton, Fla.*

Thomas Sharpe, the former president of Blue Chip Health Care, was sentenced to 90 days' imprisonment and fined \$2,000 in February 1998 for embezzling from his company-sponsored 401(k) plan. The company, a home health care agency, was based in Boca Raton and operated in Florida and Ohio. An indictment was returned against Sharpe in September 1996, charging him with embezzling \$6,840 of employee 401(k) contributions. He was convicted as charged in 1997. Forty-three employees were covered by the company plan. Sharpe restored \$13,966 to the plan prior to sentencing. This case was investigated by PWBA and the FBI.

***United States v. Harmon***

5-4-98

*Camano Island, Wash.*

Phillip Harmon, a 61-year-old Camano Island businessman, was sentenced to 8 years in prison, and ordered to make restitution of up to \$27 million. He was also ordered to refrain from self-employment activities following his release from prison, and was forbidden to sell insurance or securities without the permission of the probation department. His sentence resulted from a massive fraud scheme that he and others perpetrated upon investors and hundreds of employees, primarily ministers of various churches and their families. Harmon

and his associates induced them to pay millions of dollars for nonexistent premiums for health insurance coverage.

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 better return than the prevailing rate. Quarterly statements were sent to customers reflecting not only their investment amounts but the interest at the promised rate. However, 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.

Similarly, in the health program scam, he and his associates induced employer groups of various church organizations to pay millions of dollars in insurance premiums to two trusts that he set up. No insurance was purchased; rather, the money went to benefit Harmon and others. Some of the premium was also used to pay off investors who demanded their money back. The total amount collected by Harmon through the schemes was approximately \$40 million.

This case was investigated by the FBI, the Criminal Investigation Division of the Internal Revenue Service, PWBA, the State of Washington's Department of Financial Institutions and the Washington State Insurance Commissioner.

It is estimated that 6,500 health care customers were left uncovered nationwide. On the pension side, plans affected covered 120 participants. There were about 230 investors affected by the investment scheme.

***United States v. Taylor***

5-6-98

*Dallas, Texas*

*Pikesville, Ky.*

James Taylor, a former Dallas insurance entrepreneur, was sentenced in absentia to 10 years of imprisonment, ordered to make restitution of \$2 million and to forfeit other assets totaling \$480,484. He is a fugitive believed to be living outside of the United States. Jurors convicted Taylor in February 1998 on 107 counts, charging him with mail and wire fraud, and money laundering relating to the theft of millions of dollars from workers' compensation programs. Taylor's indictment in 1997 was obtained in Pikesville and transferred, at his request, to Dallas for trial.

Taylor was an official of a nonprofit Irving, Tex., group known as the International Association of Entrepreneurs of America (IAEA). In a court affidavit and at trial, a PWBA investigator stated that Taylor and others connected with IAEA diverted more than \$10 million in employer and employee contributions that were earmarked for workers' compensation claims. IAEA had 333 employer members that provided benefits to approximately 16,000 employees. This case was investigated by PWBA and the FBI.

***United States v. Hook***

5-26-98

*Galesburg, Ill.*

George Hook, a Chicago attorney, was sentenced to 84 months' imprisonment and ordered to make restitution of \$735,566 for his role in stealing more than \$700,000 from

employee benefit pension plans covering approximately 200 workers. He was indicted in 1996, along with Carmen Viana, a Brazilian national, on charges of pension plan embezzlement, wire fraud and money laundering. The parties schemed to defraud the pension funds of Wittek, Industries, Inc., which had plants in North Carolina and Illinois. Viana was the company president and served as trustee for the plans. She retained Hook to provide her legal counsel with respect to financial problems involving the company and questions that she had regarding the plans. Pension funds were laundered through shell corporations used by Viana.

In May 1997, after a four-week trial, a federal jury found Hook guilty as charged. Viana is a fugitive and is presumed to be living in Brazil. This case was investigated by PWBA and the Criminal Investigation Division of the Internal Revenue Service.

***United States v. Helbling***

6-4-98

*Newark, N.J.*

William Helbling, president and sole shareholder of now defunct electronic firms, Micro Products and Scranton Electronics, was found guilty by a federal jury on charges of looting more than \$560,000 from a company-sponsored pension plan. It covered seven participants. Helbling was charged in an indictment returned in December 1996 with embezzlement, conspiracy, mail and wire fraud, and falsifying documents required by ERISA. He had served as the administrator of Micro-Products Profit Sharing Plan until 1992, but was required under a court order to sever all ties with the plan and appoint an independent trustee. The companies filed for

Chapter 11 protection in May 1990 and filed financial statements with the bankruptcy court disclosing a total negative net worth of minus \$3 million.

According to the indictment, Helbling took \$560,000 from the plan and deposited the money to the company accounts in order to prop up the companies. He then attempted to cover the transactions by converting the profit sharing plan to an employee stock ownership plan with the company stock, thereby substituting stock for the misappropriated plan funds. He concealed the theft from his employees by providing phony annual statements reflecting cash balances that didn't exist.

To further perpetrate the fraud, Helbling, knowing that ERISA required a stock appraisal as an ESOP sale precondition, contacted an appraiser to conduct a preliminary valuation.

The appraiser advised Helbling, that while in bankruptcy, the companies had no value, and that any valuation would be premised on successful emergence from Chapter 11.

When the companies failed to emerge from bankruptcy and it became clear that Helbling was unwilling to produce the data that would allow for the valuation, the appraiser withdrew. Despite the absence of an appraisal, Helbling executed ESOP documentation (including the stock purchase agreement and stock certificates), substituting a one-page letter in which he represented that, in his "estimate," the companies were worth \$4 million.

The ESOP documents prepared in October 1991 were backdated to March and July 1991,

so that it would appear that the documentation was in place prior to, or contemporaneously with, the withdrawal of plan funds. He was assisted in the scheme by lawyers who practiced in the field of taxation and employee benefit plans. Helbling was sentenced in January 1999 to 8 years and one month in prison, 3 years probation and \$12,500 in restitution. The defendants that assisted Helbling were sentenced in March 1999. This case was investigated by PWBA and the FBI.

***United States v. Krimsky***

*7-15-98*

*Allendale, N.J.*

*Cleveland, Ohio*

Leonard Krimsky allegedly embezzled more than \$3 million from the IAM Kent Worldwide Retirement Income Plan, a defined benefit pension plan sponsored by the Kent Worldwide Machine Works in Stow, Ohio.

Kent was purchased in 1990 by Worldwide Process Technologies, a company solely owned and controlled by Krimsky. The plan covered 299 participants. In 1993, Krimsky acquired 100 percent of the stock of the financially troubled Kent from its parent corporation. Krimsky named himself as the plan's sole trustee and began to make a series of "loans" from the plan to Kent.

According to the indictment, the plan had more than \$3.4 million in assets before Krimsky began these financial transactions. When he finished, the plan had lost almost 90 percent of its assets. Kent is also charged with false statements and concealment regarding the financial transactions. This case was investigated by PWBA.

A parallel civil action was brought by the Department of Labor's Regional Office of the Solicitor to recover the lost assets. This action is pending in the federal district court in Cleveland, Ohio.

***United States v. Huppe***

7-23-98

*Syracuse, N.Y.*

*Ontario, Canada*

Canadian national Allen Huppe was indicted on charges of pension plan embezzlement and wire fraud. He was arrested after attempting to enter the United States from Canada. Huppe is accused of embezzling \$750,000 from the Highland Nursing Home of Massena, N.Y., pension plan. The plan covered 115 participants.

The indictment alleges that a series of transfers of the plan's assets were made to banks in Canada and Bermuda, and then transferred to other banks and partnerships in Nigeria, Japan and other parts of the world. Huppe informed plan trustees on several occasions that deposit balances at his company, Navy Street Bancorp, were in excess of \$750,000, when in fact, he had disbursed the funds and spent them for his personal use.

This case was investigated by PWBA and the FBI with assistance from the Department of Labor's Office of the Inspector General.

***United States v. Mays, et al.***

8-12-98

*St. Louis, Mo.*

*San Diego, Calif.*

Kathy Lindsey, a former claims processor for the District 9 International Association of

Machinists and Aerospace Workers Welfare Fund, and three co-conspirators were indicted in June 1998 by a U.S. District Court grand jury in St. Louis for her part in conspiring to defraud the health plan. More than \$300,000 was involved in the fraud. All defendants have entered guilty pleas. The plan covered 6,849 participants. Lindsey used her position to file fictitious claims under the instructions of Michael Mays, a resident of San Diego, and co-conspirator. As a result of the filing of these false claims, checks were mailed to various addresses in the San Diego, Calif., metropolitan area. Individual checks were made payable to Jack Jackson, Richard Fenster, both residents of San Diego.

The proceeds from the checks were then split between the defendants. Lindsey was sentenced January 1999 to 6 months in prison, to be followed by 5 years probation and was ordered to make restitution of \$245,546. This case was investigated by PWBA and the U.S. Postal Inspection Service.

***United States v. Sims***

9-4-98

*Seattle, Wash.*

David Sims, former president of a Seattle business known as Waterfront Reprographics and an ex-NFL football player, pleaded guilty to one count of pension plan embezzlement and one count of bank fraud. He had been indicted in June 1998 in a 30-count indictment charging him with conversion of pension plan funds, mail fraud, money laundering, concealment of material facts, obstruction of justice, bank fraud, and making false statements to a bank.

Sims was the trustee of the Waterfront Reprographics, Ltd. 401(k) Plan and Trust that covered 55 participants. He was accused of making false oral statements and providing false plan information, including false statements to plan participants. The statements showed that participant funds were deposited in a money market account, when in fact no money market account existed. Sims was charged with stealing \$103,999 from the 401(k) plan that includes diverted employee contributions of \$40,000. The indictment further charged he submitted forged documents to a bank to obtain loans in excess of \$850,000 to be used for the purchase of properties. He also made false statements when alleging he had rented property that had already been sold.

The indictment also charged that the company filed for bankruptcy protection in April 1994. Sims, as president and majority shareholder of the company, represented the company in matters before the U.S. Bankruptcy Court and U.S. Trustee's Office. During these proceedings, he presented false, misleading, and evasive information to the court examiner. Sims was sentenced in January 1999 to five years probation.

This case was investigated by PWBA and the Criminal Investigation Division of the Internal Revenue Service.

***United States v. Carlisle***

*9-4-98*

*New Orleans, La.*

Andrew Carlisle, a former employee of the Operating Engineers and Pipeline Health Plan, was charged with embezzling from a health care plan that covered 2,846 union members.

He is accused of stealing \$26,423. He perpetuated the theft by simply falsifying claims. This was discovered by a plan participant who complained that the plan had filed a claim for her husband that had never been incurred. The plan trustees obtained a court order freezing and seizing the assets in Carlisle's personal account of \$17,274. Carlisle was sentenced in February 1999 to 16 months in prison. The investigation in this case was conducted by PWBA. It represents the first PWBA investigation that focused on health care crimes following the passage of the Health Insurance Portability and Accountability Act (HIPAA).

***United States v. Selman***

*9-10-98*

*Charlottesville, Va.*

Joe Selman and his wife Eleanor Selman were tried in March 1999 on charges stemming from an 18-count indictment. The indictment alleged that they made false reports in health care matters; made false statements in documents required by ERISA; embezzled from an employee benefit plan and from programs that received federal funds; engaged in wire, mail and bank fraud; money laundering; and obstructed correspondence. The Selmans also were accused of embezzling 401(k) employee contributions from the company-sponsored pension plan.

The Selmans were former officers of the now defunct Duke Benefit Services, Inc. (DBSI), a company designed to administer health care benefit plans for a number of different client companies. The Selmans allegedly realized more than \$2.3 million from the embezzled funds.

Joe Selman was a Chartered Life Underwriter and a Chartered Financial Consultant, who engaged in the business of designing, administering, managing and consulting for group medical insurance plans for his clients. He was licensed by the Commonwealth of Virginia, Bureau of Insurance, to act as a consultant with regard to life insurance, annuity contracts, accident and sickness insurance. Five plans were involved covering 2,400 participants. Virginia Selman pled guilty in July 1999 on the multiple count indictment.

This case was investigated by PWBA, the U.S. Postal Inspection Service, and the Virginia State Police.

***United States v. Weinlein***

*10-9-98*

*Albany, N.Y.*

Laurie Weinlein, the owner of American Payroll Network, Inc. (APN), an employee leasing business, was convicted by a federal jury for embezzling health plan funds, affecting 517 employees, and bank fraud involving \$1 million. She had been charged with the violations on May 26, 1998, in a two-count indictment.

An employee leasing company such as APN acquires the payrolls of small companies, paying the employees of the small companies as leasing company employees and then leasing the employees back to the small employers. In return for handling the payroll taxes, insurance and workers compensation, the employee leasing company typically charges and receives a fee based on the amount of the small employers' payroll. Sentencing is pending. The APN case was investigated by PWBA and the FBI.

***United States v. Moore***

*10-10-98*

*Hartford, Conn.*

Gary Moore was sentenced to 51 months imprisonment and ordered to restore \$1 million for stealing from an employee benefit plan that covered 85 workers. He pleaded guilty in June 1998 to embezzling \$1.5 million from the Emergi-Lite, Inc. Saving and Security Plan, and to making false statements in documents required to be filed under the Employee Retirement Income Security Act.

Moore was president of Moore Benefit Systems, Inc., a Connecticut corporation that provided recordkeeping services for employee pension benefit plans. Between October 1986 and November 1997, Moore Benefit Systems served as recordkeeper and trustee for the Emergi-Lite pension plan. Emergi-Lite manufactured emergency lighting fixtures and exit signs.

The case was investigated by PWBA, the FBI, and the Department of Labor's Office of the Inspector General. In a parallel civil case, PWBA recovered \$2,031,000 for the plan.

***United States v. Pappas***

*11-9-98*

*Long Island, N.Y.*

Dennis Pappas, an attorney who has been described as the financial advisor for the Columbo organized crime family, was sentenced to 46 months imprisonment and ordered to make restitution of \$1.5 million. The sentence resulted from a guilty plea in June 1998 for violating the Racketeer Influenced and Corrupt Organization Act

(RICO) by engaging in extortion and pension fund embezzlement. He was fined \$250,000. The fine will be paid at a rate of 15 percent of adjusted gross income.

In addition to his law practice, he established companies that dealt with insurance brokerage, real estate investments and the administration of pension funds for companies and physicians. According to court documents, Pappas looted about \$1 million from four private pension funds and diverted the money for the Colombo crime family's loan sharking operations. More than 50 participants were in plans affected by the scheme. This case was investigated by PWBA, the FBI, the Criminal Investigation Division of the Internal Revenue Service and the U.S. Postal Inspection Service.

***Indiana v. Brownstein***

*12-2-98*

*Topeka, Ind.*

Arnold Brownstein, owner of the Carib-Tech company, was charged with stealing from a company-sponsored 401(k) plan. The plan covered 30 employees and Brownstein served as its plan trustee. The complaint alleges that money withheld from employee paychecks for contributions to the 401(k) plan were never forwarded to the investment account with the Aetna Life Insurance and Annuity Company, nor was the employer's portion of the contribution made.

The company filed for bankruptcy in 1996. The amount involved in the alleged theft totals \$10,000. Brownstein now resides in Springdale, Utah, and has not yet made a court appearance in Indiana. This case was investigated by PWBA and the Indiana State Police.

***United States v. McKendree***

*12-2-98*

*Santa Rosa, Calif.*

Michael McKendree, a San Mateo mortgage broker employed by the American Mortgage Company (AMC) in Santa Rosa, Calif., was the subject of an 11-count indictment returned in December 1998 charging him with embezzling \$430,000 from the Richmond Wholesale Meat Company Profit Sharing Plan. There were 89 participants in the plan. AMC was a sole proprietorship owned and operated by Mrs. Glenn McKendree, who employed her son, Michael, to solicit lenders and borrowers for loans secured directly or collaterally by liens on real property.

The indictment alleges that the embezzled money consisted of loans made to various real estate owners by the plan. Part of the money was diverted for his own use and the rest was channeled into a variety of other financial activities. He allegedly covered up the embezzlement by filing papers that made it look as if the funds had been properly invested. The criminal case was investigated by PWBA, the FBI and the Criminal Investigation Division of the Internal Revenue Service.

***United States v. Hagmaier***

*12-7-98*

*San Luis Obispo, Calif.*

Carlton Hagmaier, a general agent of The Guardian Life Insurance Company of America in San Luis Obispo, Calif., pleaded guilty to charges of mail fraud, pension plan embezzlement, making a false statement to a federally insured financial institution, and filing a false tax return. Hagmaier was



sentenced in April 1999 to 57 months in federal prison.

In December 1989, Hagmaier became a career development manager for Guardian and in January 1993 he became a Guardian general agent, using the name Pacific Financial Group. In this capacity, he was authorized to supervise other agents and brokers selling life, health, and disability insurance policies, as well as other Guardian financial products. He schemed through a series of false statements representing funds invested by client.

As a result of the fraudulent action, clients were led to believe they owned policies that never existed, or were significantly reduced in value, or which ceased to exist. One of the clients affected was the PIC Manufacturing Company that sponsored a defined benefit plan. In his plea agreement, Hagmaier acknowledged that he misappropriated approximately \$2 million and used the funds for his own personal and business expenses. This involved about \$500,000 that he said he embezzled from the pension plan, which covered 67 participants.

This case was investigated by PWBA, the FBI, the Criminal Division of Investigation of the Internal Revenue Service and the California Division of Insurance.

***United States v. Frazier & Uwakwe***

*12-7-98*

*Marietta, Ga.*

*Norcross, Ga.*

Cheryl Frazier, of Marietta, Ga., pleaded guilty in December 1998 to engaging in a conspiracy to defraud her company's pension plans of more than \$326,000. Frazier and co-

defendant, Chinaka Uwakwe of Norcross, who pleaded guilty in October 1998, conspired to use false names and Social Security numbers, causing false computer input and false statements, in order to systematically steal and convert monies belonging to retirement funds sponsored by the United Parcel Service (UPS). They were the subjects of a 22-count indictment filed in October 1998 that charged them with conspiracy, embezzlement and money laundering.

Frazier was employed as an administrative specialist in the corporate benefits accounting group of UPS. The plans covered 78,533 employees. She authorized the issuance and paid to third parties more than \$326,000 in employee benefit checks. Most of the checks were deposited into accounts controlled by Uwakwe, who would write checks to Frazier for 50 percent of the ill-gained amounts and keep the rest for himself.

Frazier was sentenced in August 1999 to 2 years, 10 months in federal prison, ordered to pay restitution of \$371,183 and was ordered to serve 3 years supervised release. This case was investigated by PWBA and the United States Secret Service.

Uwakwe was sentenced in April 1999 to one year, 18 months in federal prison, and ordered to pay more than \$327,000 in restitution.

***United States v. Mangiardi***

*12-10-98*

*Williamsport, Pa.*

Paul Mangiardi, a South Williamsport, Pa., businessman, who was convicted by a federal jury in June 1998 on conspiracy and mail fraud relating to a health insurance fraud, was

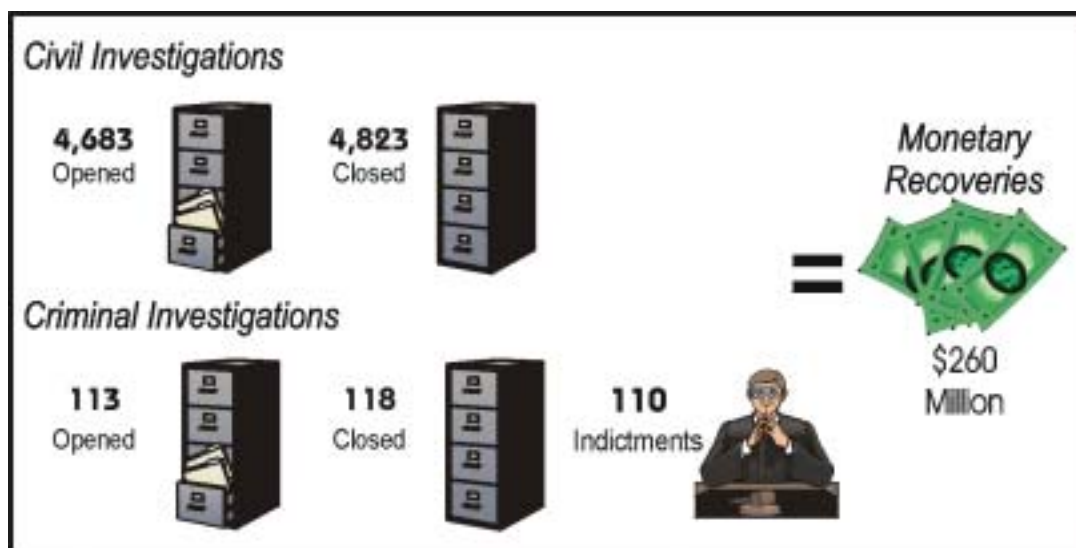
sentenced to 151 months' imprisonment, followed by 3 years supervised release, and fined \$1,600. No restitution was ordered since he had no assets.

The government charged that in 1995 Mangiardi and others engaged in a scheme to defraud employers and employees out of health benefits. They failed to obtain appropriate reinsurance for the plans, commingled premiums contributed to the plans, falsely represented that the plans were fully funded and self-insured, provided full health benefit coverage, and were reinsured for excess claims through Lloyds of London and other reinsurers. They were accused of collecting \$4.4 million in premiums from employers. There were unpaid claims of \$1.1 million.

Companies operated by Mangiardi administered health plans to approximately 5,000 employees in Pennsylvania, Delaware, New York, New Jersey, West Virginia, North Carolina and Ohio.

This case was investigated by PWBA, the U.S. Postal Inspection Service and the Department's Inspector General's Office, with assistance from the Pennsylvania and Delaware Departments of Insurance.

### Civil and Criminal Cases/Recoveries



*Both civil and criminal cases and recoveries or indictments may continue from one calendar year to the next (i.e., a case opened in 1998 may not be settled until 1999). The numbers in the chart above represent totals for the 1998 calendar year.*

## Participant Assistance/Public Education

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The agency wrote and issued *For Employees . . . A Look at 401(k) Plan Fees*, which has become one of the most requested publications. The booklet is an educational resource to help consumers understand the fees and expenses associated with 401(k) plan accounts.

In addition, the agency issued *The Y2K Computer Problem: Questions and Answers Related to Employee Benefits Plans*, a revision of *PWBA's Customer Service Standards*, and a revision of a popular *Pension and Welfare Brief, Can the Retiree Health Benefits Provided by Your Employer Be Cut?* A new brief was produced, *The Department of Labor Outlines the Process for State-Registered Investment Advisers*. The Division of Public Affairs also coordinated the production and publication of several other issuances (mentioned in other sections of this report).

The agency continued to distribute its publications through the toll-free Publication Hotline, 1-800-998-7542, and copies of most publications are available on the PWBA website. To facilitate ordering, the agency designed and distributed a promotional card encouraging consumers to use the 1-800 number for brochure requests.

### ***Health Benefits Education Campaign***

In December the agency launched the National Health Benefits Education Campaign. Its goal is to arm Americans with information that makes them informed consumers when they are faced with life and work events affecting their health care decisions.

The campaign is directed to the 120 million Americans who receive job-sponsored health benefits and alerts them to their rights and to

situations either at home or at work that may require changes in health care benefits.

Three new brochures were unveiled during the campaign: *Top Ten Ways to Make Your Health Benefits Work for You*, which offers tips that consumers should follow to ensure they have adequate health care coverage; *Life Changes Require Health Choices . . . Know Your Benefit Options*, which outlines the basics of health care law and events that can trigger a need to reevaluate coverage; and *Work Changes Require Health Choices . . . Protect Your Rights*, which contains information about health benefits and laws workers should be aware of throughout their careers.

Public service announcements (PSAs), a column and radio spots on the Health Insurance Portability and Accountability Act were also released during the campaign. The column and PSAs were distributed to approximately 1,100,000 readers. Radio PSAs were distributed to 503 radio station nationwide, reaching 48,433,900 listeners.

### ***Retirement Savings Education Campaign***

The agency's Retirement Savings Education campaign continued to maintain high visibility in 1998 targeting additional populations to increase public awareness of the importance of saving and planning for retirement. Since its inception, the multi-faceted campaign has sparked a national movement to create and disseminate more information to help individuals plan for a secure retirement.

More than 250 partners representing federal agencies, savings groups, trade and professional associations, labor unions, community groups and private-sector

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organizations form the partnership's unique collaborative effort. The groups have targeted special efforts to minorities, women, youth and small businesses — populations that historically have low savings and pension participation rates.

In June PWBA was instrumental in convening the first National Summit on Retirement Savings, which was cohosted by the White House and Congress.

The Savings Are Vital to Everyone's Retirement Act of 1997, known as the SAVER Act, directed PWBA under the auspices of the Department of Labor to continue its series of outreach programs on retirement savings and to begin a national dialogue on savings issues.

The two-day summit was launched by Labor Secretary Alexis Herman and attended by 250 Summit delegates who examined the state of retirement savings in this country and discussed problems Americans are having with savings and explored ways to educate them about the need to save for a secure retirement. Delegates represented a wide cross-section of groups including Fortune 500 companies, labor unions, government, the pension industry and academia. They identified some of the barriers workers meet when trying to save and how to eliminate them. They also addressed issues such as how to spread the saving message to children to teach them the importance of saving throughout their lives.

Several new materials and publications were developed and unveiled at the National Summit and distributed as part of the 1998 Retirement Savings Education Campaign. Four specific retirement savings publications included: the Spanish translation of the *Women and Pensions* and *Top Ten Ways* brochures; the booklet *For*

*Employees...A Look at 401(k) Plan Fees*, which was announced for the first time by then-Assistant Secretary Olena Berg at the Summit; and the *Retirement Savings Education Campaign* brochure, which described the campaign and the various target groups and initiatives undertaken by the agency.

In addition, during the week of the Summit, a special supplement in the *Washington Post* highlighted the Summit and various retirement savings issues. The blueprint for the supplement was developed with PWBA's assistance.

*The Final Report on the National Summit on Retirement Savings* was released on Sept. 3 by Labor Secretary Alexis Herman.

The agency's new or revised publications were a vital part of the Retirement Savings Education Campaign. Prior to the SAVER Summit, the agency printed the booklet *About Retirement Savings*, which looked at facts about savings in the United States, and a brochure about the campaign's accomplishments, *At a Glance ... Retirement Savings Campaign*. After the Summit, the agency released the final report of the National Summit on Retirement Savings. In addition, it revised the campaign's signature brochure, *Top 10 Ways to Beat the Clock and Prepare for Retirement. Women and Pensions*, another campaign piece, also was revised during the year.

The agency successfully engaged the Consumer Information Clearinghouse to promote the pamphlet *Women and Pensions* in *Parade* magazine, the Sunday supplement to many newspapers.

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In October 1998, the campaign also took its message to more than 100 Hispanic radio stations throughout the country during Hispanic Heritage Month. Public service announcements and talk shows on basic concepts for planning for a secure retirement were translated into Spanish broadcasts during the entire month. Thousands of listeners responded by requesting the two publications that the agency had translated into Spanish.

The campaign also aggressively targeted in 1998 African-Americans aged 25 to 65 with a print public service announcement that was distributed to 140 African-American newspapers.

Women continued to be a major focal point of the campaign. The agency conducted a major mass mailing in January of retirement savings literature that targeted 9,000 women business owners when it launched a joint campaign with the National Association of Women Business Owners. This special campaign educated this important group about retirement savings and simplified pension plan options for small business.

In addition, in September the agency cosponsored along with the State Treasurers' Office and other organizations, the Every Woman's Money Conference in Oregon. This was the first of a series of conferences that is being held in states throughout the country. The conferences are designed to educate, motivate, inspire and equip women to take control of their financial futures.

### ***Dislocated Worker Outreach Initiative***

The Dislocated Workers Program began as an outreach service offered by the Cincinnati Regional Office in response to a perceived need for timely, specific information on the part of workers who become unemployed.

The purpose of the Dislocated Workers Program is to inform employee benefit plan participants who are at risk, namely, dislocated workers who face job loss and associated benefit losses, in understanding not only their rights under ERISA, but also how their employment status may affect their pension and health benefits as well as related matters.

Many dislocated workers are unaware of their rights and/or responsibilities of their pension and health plans under ERISA. Although various local federal, state, civic and social organizations provide employment, training, and monetary aid, the dislocated workers needed additional information on pension plans, COBRA, and HIPAA. The Dislocated Workers Program was initiated in response to that need.

Since 1998, the program was expanded to all 10 PWBA Regional Offices. The Dislocated Workers Program is playing a major role in educating the public about ERISA and PWBA's role in enforcing workers' benefit rights. As local centers for information on employee benefit plans, regional offices are taking a pro-active role in acquainting the public with the program.

### ***Participant Assistance***

The success of the agency's education and outreach activities have increased the volume of consumer inquiries. In CY 1998, the agency's benefit advisors handled over 150,000 inquiries — an overall increase of 57 percent since 1995. And, the benefit advisors continued to provide the highest quality service to consumers recovering more than \$46.7 million on behalf of individual participants — more than four times the dollars recovered in 1995.

#### ***Summary of Inquiries CY 1998***

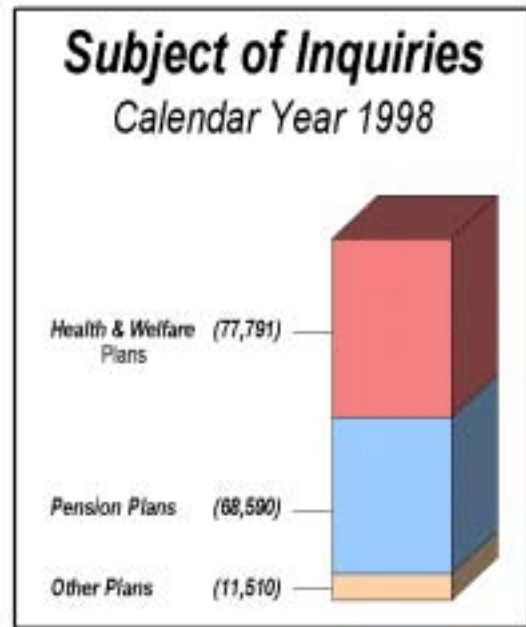
**150,772**

<b><i>Telephone</i></b>	130,522
<b><i>Written</i></b>	19,328
<b><i>Visitor</i></b>	782
<b><i>E-mail</i></b>	140

#### ***Benefit Recoveries***

**\$46.7 million**

Much of the growth in volume of participant inquiries has been in the health area. Prior to 1995 the agency handled more inquiries about pensions than health. In 1998, the agency received 13 percent more health inquiries than pension inquiries.



## Exemptions

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In 1998, PWBA received 162 individual exemption applications, granted 76, denied or withdrew 68, and had 179 pending by year's end. The agency also granted a class exemption that would permit certain foreign exchange transactions between banks or broker-dealers and plans, pursuant to standing instructions.

In addition, in the past year the agency received 58 applications in accordance with a class exemption granted in 1996 (EXPRO) which permits certain authorized transactions between plans and parties-in-interest. This exemption permits certain prospective routine transactions that are specifically authorized by the agency, and are substantially similar to two individual exemptions previously granted by the agency. During this period, the agency granted 31 submissions, rejected 8, and 12 withdrew. The EXPRO class exemption significantly expedites the processing of routine transactions that generally can be entered into 78 days after the Department acknowledges receipt of the submission.

The agency also processed 59 good-faith waivers from the 20 percent civil penalty imposed under section 502(1) of ERISA.

A significant individual exemption was granted to U S West, Inc. (U S West). This exemption permits voluntary in-kind contributions by U S West and its affiliates of certain shares of U S West stock to welfare benefit plans maintained by U S West in order to pre-fund the plans against future post-retirement expenses incurred by the plans' members.

The agency also granted an individual exemption to Barclays Bank PLC. This

exemption permits the purchase or sale of securities between Barclays or an affiliate of Barclays that is a bank or broker-dealer subject to British law (the Foreign Affiliate) and plans with respect to which Barclays or the Foreign Affiliate is a service provider; and the extension of credit to a plan by Barclays or the Foreign Affiliate to allow the settlement of securities transactions, or in connection with the writing of options contracts or the purchase or sale of securities; and the lending of securities that are assets of a plan to Barclays or the Foreign Affiliate.

In addition, the agency granted an individual exemption to MS Commodity Investments Portfolio II, L. P. (the Partnership) and Morgan Stanley Commodities Management, Inc. (MSCM). This exemption permits certain plans to acquire or redeem units in the Partnership where MSCM, the general partner in the Partnership, and/or its affiliates, are service providers to the plans.

Throughout the year, a number of employers sponsoring plans that invested in guaranteed investment contracts (GICs) requested permission to engage in various transactions with these plans under circumstances where the insurer was insolvent. As a result, the agency granted two exemptions, and gave final authorization to one EXPRO submission, for employers to purchase GICs from plans to prevent losses or delays in benefits.

In addition, the agency granted five exemptions, and gave final authorization to two EXPRO submissions, for a plan to lend securities to a plan service provider if certain conditions were met. The agency also granted five exemptions, and gave final authorization to two EXPRO submissions, for a plan to

acquire and hold asset-backed securities that were issued by the plan's service provider.

***Exemptions for GICs***

98-04 <i>Pentair Retirement Savings and Stock Incentive Plan</i>	January 26 Sale by Plan to Sponsor
98-06 <i>CoreStates GIC and BIC Fund</i>	January 26 Sale by Fund to Sponsor of Plans Invested in Fund

***EXPRO grants for GICS***

98-01E <i>Hi-Plains Hospital Employee Thrift Plan</i>	January 26 Sale by Plan to Sponsor
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***Exemptions for securities lending***

98-23 <i>Bankers Trust Co.</i>	May 29
98-24 <i>Goldman Sachs &amp; Co.</i>	May 29
98-32 <i>Union Bank of Switzerland</i>	July 8
98-40 <i>Morgan Stanley &amp; Co., Inc.</i>	August 31
98-41 <i>Lehman Brothers, Inc.</i>	August 31

***EXPRO grants for securities lending***

98-07E <i>Merrill Lynch Porfolio Services, Inc.</i>	April 17
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***Exemptions for asset-backed securities***

98-08 <i>PNC Capital Markets, Inc.</i>	February 19
98-11 <i>National Rural Utilities Financial Corporation</i>	March 16

98-13 <i>MBNA America Bank, National Association</i>	April 7
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98-14 <i>Citibank (South Dakota), N.A., Citibank (Nevada), N.A., and Affiliates</i>	April 7
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98-56 <i>Toyota Motor Credit Corporation and Certain Affiliates</i>	November 25
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***EXPRO grants for asset-backed securities***

98-08E <i>ABN AMRO, Inc.</i>	April 27
98-24E <i>Capital One Bank</i>	October 28



### ***Other significant exemptions***

98-02 January 13  
*First Bank System, Personal Retirement Account (the Plan)*. Permits U.S. Bancorp, formerly First Bank System, Inc., to contribute to the Plan of U.S. Bancorp's interest in two limited partnership funds and also permits U.S. Bancorp to grant an option to the Plan. With respect to the option, the Plan has the discretion to require U.S. Bancorp to repurchase its interests provided that certain conditions are met.

98-17 April 22  
*Metropolitan Life Insurance Company (MetLife)*. Permits an employee benefit plan to purchase or retain a synthetic guaranteed investment contract (GIC) entered into between the plan and MetLife.

98-23 May 29  
*Bankers Trust Company (Bankers Trust)*. Permits plans to loan certain securities to affiliates of Bankers Trust when Bankers Trust and certain of its affiliates act as a directed trustee or custodian and securities lending agent or subagent. It also permits Bankers Trust and certain of its affiliates to receive compensation in connection with the above transactions.

98-35 June 9  
*Amalgamated Bank of New York (the Bank)*. Permits the provision of certain banking services by the Bank to plans having an ownership interest in the bank; the purchase by the plans of certificates of deposit issued by the Bank; and the deposit of the plans' assets in money market or other deposit accounts established by the Bank.

98-38 August 6  
*Individual Retirement Accounts for William Albright, et al (the IRAs)*. One in a series of similar cases. Permits the sale of stock in First Community Bancshares Corp. (First Community) by the IRAs to the IRAs' participants, each participant a president or director of First Community or its subsidiary, due to First Community's election to be taxed as a Subchapter S corporation, with respect to which IRAs are prohibited from owning stock.

98-53 November 9  
*Pacific Income Advisers (PIA)*. Permits the acquisition of units in certain trusts (the Trusts) by plans and IRAs; and the payment of fees by the Trusts to PIA where PIA is both a fiduciary or other party-in-interest with respect to a plan investing in a Trust and the investment adviser to each Trust.

98-61 December 24  
*John Hancock Mutual Life Insurance Company (JHMLIC)*. Permits the purchase and sale of certain timber assets between various separate accounts that are maintained or managed by JHMLIC or an affiliate, or with respect to which JHMLIC or an affiliate is an investment adviser and have plan assets.

### ***Significant EXPROs***

98-09E  
*Lehman Brothers, Inc. (Lehman Brothers) and Lehman Brothers International (LBEI)*. Permits principal transactions and extensions of credit between LBEI and plans with respect to which LBEI is a service provider.

98-22E  
*Commerzbank AG, London Branch, and Commerzbank AG Affiliates*. Permits the

purchase and sale of securities, and extensions of credit in connection with the settlement of securities transactions or in connection with the writing of option contracts, to a plan by a foreign broker-dealer which is, or is an affiliate of, a service provider to the plan.

### ***Significant proposals***

*Salomon Smith Barney Inc. (SSB).* This exemption would permit, as of June 7, 1996, any purchase or sale of securities between certain affiliates of SSB that are foreign broker-dealers or banks (the Foreign Affiliates) and employee benefit plans (the Plans) with respect to which the Foreign Affiliates are service providers to the Plans. The exemption also permits extensions of credit to the Plans by the Foreign Affiliates to permit the settlement of securities transactions; and securities loaned to the Foreign Affiliates by the Plans.

*Bankers Trust Company (BTC).* This exemption would permit plans to which Bankers Trust Company (BTC) or its affiliates provide fiduciary or other services and plans established or maintained by BTC or its affiliates to sell fractional amounts of certain fixed-income instruments (Financial Amounts) to the plans in connection with the redenomination of the securities into euros. As an alternative to the sale of the Fractional Amounts, this exemption would permit the receipt by the plans from BTC of cash equal to the amount that BTC or its affiliates receive from the issuer of the fixed-income instrument in lieu of the Fractional Amount, exclusive of transaction costs, plus accrued interest.

*Merrill Lynch, Inc. (Merrill Lynch).* This exemption would permit the sale of debt instruments issued by Merrill Lynch to plans in which Merrill Lynch or an affiliate is a service provider.

## Regulatory Activities

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During 1998 PWBA published:

- Proposed amendments to the regulations governing the contents of Summary Plan Descriptions. The proposal would implement recommendations of the President's Commission on Consumer Protection and Quality in the Health Care Industry and is intended to ensure that all participants in group health plans are provided with understandable and useful information concerning their plans.
- An interim final rule, with a request for comments, amending the Summary Plan Description and related regulations under Title I of ERISA to implement statutory changes to ERISA effected by the Health Insurance Portability and Accountability Act of 1996.
- Proposed amendments to the regulation governing the establishment and maintenance of benefit claims procedures by employee benefit plans covered by Title I of ERISA. The proposal is intended to ensure more timely benefit determinations, enhanced access to information on which a benefit determination is based, and give greater assurance that participants and beneficiaries will be afforded a full and fair review of denied claims.
- Proposed amendments to regulations relating to the annual reporting and disclosure requirements under Part 1 of Title I of ERISA. The amendments would make the technical and conforming regulatory changes necessary to streamline and simplify the Form 5500 Series annual return/report for employee benefit plans and the methods by which such information is filed and processed.
- An announcement of the Department's decision not to adopt an annual reporting enforcement policy for multiemployer benefit plans that had been proposed in 1997. Under the proposed policy, annual reports filed by multi-employer welfare benefit plans would not have been rejected solely because the accountant's opinion accompanying them was "qualified" or "adverse" due to a failure to comply with the financial statement disclosure requirements of the American Institute of Certified Public Accountants' (AICPA) Statement of Position 92-6.

## Policy and Research

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PWBA's research activities in 1998 covered a broad spectrum of retirement and health benefit issues. These included tracking patterns and trends that pertained to plan sponsors and plan coverage, the design and adequacy of benefit plans, the costs of maintaining a plan and the behavior and attitudes associated with retirement decisions.

A PWBA-designed survey of households' employment-based pension benefits was also fielded by the U.S. Census Bureau. The data from this survey will be available for the agency's analysis in 2000.

The agency published its *Private Pension Plan Bulletin*, which covers Form 5500 Annual Reports for the 1994 plan year. The bulletin reports that the number of 401(k)-type plans increased by 13 percent to 175,000 from 154,500 plans while the number of active participants in these plans increased by 9 percent to 25.2 million. The increase in 401(k)-type plans resulted not only from new plans being established, but also from existing defined contribution plans being amended to include a cash or deferred arrangement.

PWBA also published in 1998 *Health Benefits and the Workforce, Volume 2*, a compendium of 16 studies prepared under contract during the previous 2-year period by the RAND Corporation and The Urban Institute. Study topics include an examination of the demand for, and supply of, health insurance coverage, the effect of alternative tax policies on health benefit plans, health insurance mandates, health portability reforms, and the connection between health benefits and retirement behavior.

The agency initiated or completed under existing, multiyear contracts a number of major health and pension benefit studies. Topics addressed include group purchasing of health insurance by small employers, 401(k) plan fees and expenses, pre-retirement cash-outs of retirement benefits and women's retirement behavior. The agency also awarded eight new, single-project research contracts under its small research contracts program.

In the policy area, the agency continued to: develop legislative proposals that would simplify pension rules and improve portability; expand retirement savings opportunities and enhance pension security by encouraging contributions to IRAs through payroll deduction; provide a tax credit for small businesses that establish pension plans; create a new, simplified defined benefit plan for small businesses; require faster vesting of 401(k) employer matching contributions; and strengthen participant protections and penalties for violations of the law and auditing of ERISA plans.

PWBA health policy initiatives included advancing the Patients' Bill of Rights, and the enactment of the Women's Health and Cancer Rights Act of 1998.

The agency also provided assistance to Congress and the Administration with respect to logistical and policy issues in convening a National Summit on Retirement Savings.

## **Key Testimony**

### ***February***

Former Assistant Secretary Olena Berg appeared before the House Committee on Government Reform and Oversight, Human Resources Subcommittee, to testify on enforcement issues and H.R. 2290, legislation entitled "Security and Enforcement Compliance for Retirement under ERISA."

### ***June***

Former Assistant Secretary Berg testified before the House Committee on Education and the Workforce, Employer-Employee Relations Subcommittee, and the Senate Special Committee on Aging in a joint hearing on "Preparing Americans for Retirement: The Roadblocks to Increased Savings."

Deputy Assistant Secretary for Program Operations Alan Lebowitz testified before the House Subcommittee on Oversight and Investigations, Committee on Education and the Workforce, in a hearing relating to security of multiemployer plan assets.

### ***September***

Deputy Assistant Secretary for Program Operations Lebowitz appeared before the Senate Special Committee on the Year 2000 Technology Problem to explore the preparedness of the pension and mutual fund industries for the Year 2000 date change.

## Accounting and Auditing

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PWBA continued to operate a versatile program in 1998 to improve timely compliance with ERISA's reporting and disclosure requirements. Components of the program included instituting traditional enforcement initiatives to assess civil penalties; encouraging pro active voluntary compliance; coordinating agency efforts with the accounting profession; engaging in educational outreach; and assessing the quality of employee benefit plan audits.

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

Deficient, late- and non-filers constitute the three groups in the agency's Reporting Compliance Program. Plan administrators are penalized for failure to submit complete and accurate Form 5500 Series Annual Reports with the Department. In 1998, approximately \$15 million in civil penalties were assessed under the program against plan administrators for filing unsatisfactory Form 5500 Series Annual Reports. More than \$8 million was assessed for late- and non-filings.

Plan administrators are either encouraged to file previously unfiled Form 5500 Series Annual Reports or to resolve late filer penalties through the agency's Delinquent Filer Voluntary Compliance (DFVC) Program. In addition, administrators of special plans, such as "top hat," apprenticeship and training plans, who missed their filing deadlines may submit statements and choose an alternative method of compliance in place of the annual report filing.

By levying smaller fines, DFVC simplifies the filing process and reduces the financial hardship of voluntary compliance for small business. Approximately 2,800 plans chose to take advantage of the DFVC program in 1998, and the program collected more than \$8 million in civil penalties.

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

The agency continued to work with the American Institute of Certified Public Accountants (AICPA) to revise the AICPA's guide for auditing employee benefit plans. New audit and accounting requirements issued by the Financial Accounting Standards Board were included in the revised guide, which was published in May 1998. The guide offers assistance on how to comply with ERISA's audit, reporting and disclosure provisions.

### ***Statement of Position (SOP) 92-6 Decision***

PWBA announced in a public notice on Nov. 25, 1998, that it would not adopt for annual reports a proposed nonenforcement policy that was filed by multiemployer welfare benefit plans.

The Statement of Position, also known as SOP 92-6, amends generally accepted accounting principles to require that a plan's audit report include the projected future costs of providing retiree health benefits for current retirees and post-retirement health benefits for active employees.

The agency also exempted multiemployer plans that submitted annual reports in 1998 from complying with SOP 92-6, and extended the exemption through the plan year covering 1999 filings. The agency will not enforce compliance with the SOP's requirements until the plan year covering year 2000 filings.

### ***Educational Outreach***

PWBA continued its Educational Outreach Program under the sponsorship of the International Foundation of Employee Benefit Plans. In 1998, the agency conducted a total of 16 workshops in Atlanta, Boston, Chicago and Los Angeles, which presented the Form 5500 requirements and an overview of the

agency's enforcement program. In 1999, an additional four workshops are planned.

***Referral of Substandard Audit Work***

PWBA has referred 301 cases of potential deficient accounting and auditing work to the American Institute of Certified Public Accountants' Professional Ethics Division. Of these cases, 88 were either referred to the AICPA's trial board, or the accountant reached a voluntary settlement agreement; 147 cases resulted in remedial corrective action letters; 15 resulted in no violation; and 24 were closed for other reasons.

In addition, 77 cases have been referred to state boards of accountancy in instances where the AICPA lacked enforcement jurisdiction over the accountant or the accountant was not properly licensed.

***Performance of On-site Workpaper Reviews***

The agency continued its quality control program for improving the audit work performed by independent qualified public accountants, performing 62 on-site reviews and analyses of audit workpapers during 1998.

***Thrift Savings Plan Audits***

PWBA conducted audits on fiduciaries who monitor the Thrift Savings Plan (TSP), as

required by the Federal Employees' Retirement System Act. Audit procedures are designed to strengthen the security of more than \$74 billion held in 2.3 million TSP accounts of federal workers. Audits of the thrift plan can also increase the opportunities for greater net earnings by participants, due to the agency recommendations for improvements in the TSP system.

<b><i>Plan Audit Reviews - 1998</i></b>	
Number of reporting compliance cases	2,592
Reviews of auditor's work papers	62
<i>Plan Audit Reviews Cumulative through 12/31/98</i>	
Total audits referred	378
State licensing boards	77
AICPA	301
Resolutions - AICPA	274
Referred to AICPA trial board or settlement	88
Letters for corrective action	147
No deficiencies	15
Closed for other reasons	24

## Health Care Task Force

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Following is a summary of the most significant regulatory issues developed by the Health Care Task Force during 1998:

- PWBA issued an interim final rule providing guidance under the Newborns' and Mothers' Health Protection Act of 1996 (the Newborns' Act). This interim rule provides guidance on the Newborns' Act's provisions, including provisions concerning protections for mothers and their newborn children with regard to hospital stays following childbirth. The Newborns' Act 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.
- The agency updated its 1997 reference booklet, *"Questions and Answers: Recent Changes in Health Care Law,"* which will be published in 1999. The updates contain additional questions and answers that address issues pertaining to the interim final regulations issued under the Mental Health Parity Act of 1996 and the Newborns' and Mothers' Health Protection Act of 1996. The updates also contain questions and answers that address issues under the Women's Health and Cancer Rights Act of 1998. To date, more than 300,000 copies of this reference booklet have been distributed to the public.
- PWBA also established a contact person network between individuals in its field offices and in the various State Insurance Commissioners' Offices who are the "point-people" responsible for coordinating responses on the provisions of the Health Insurance Portability and Accountability Act of 1996, the Mental Health Parity Act of 1996, the Newborns' and Mothers' Health Protection Act of 1996, and the Women's Health and Cancer Rights Act of 1998, as well as other health care laws affecting group health plans.



## ERISA Advisory Council

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In 1998, the Advisory Council on Employee Welfare and Pension Benefit Plans focused on the following issues: addressing the problem of preserving retirement funds, obtaining disclosure on the quality of health care, and enhancing and establishing pension plans for small businesses. The following listing includes a synopsis of the final recommendations presented by the Advisory Council's three working groups.

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

### ***Retirement Plan Leakage\****

- Ask that the Census Bureau and other governmental entities conduct fundamental research to provide analyses and data on all aspects of plan leakage.
- Require the Labor Department to utilize the *Current Population Survey* to identify the magnitude and trends of all aspects of plan leakage.
- Require that all defined contribution plans offer annuities as the primary form of benefit for all distributions in excess of \$5,000, and comply with the joint survivor rules, including spousal consent.
- Require that lump sum distributions in excess of \$2,000 be rolled over directly to an IRA or other qualified plan; in the case of a financial hardship, allow the lump sum distribution to be paid directly to the recipient. To the extent such distributions consist of assets other than cash, a qualified plan or IRA would not be required to accept such assets.
- Require all defined contribution plans to be amended to accept rollovers from other plans, provided that the rollovers are made in the form of cash.
- Permit rollovers of post-tax contributions to qualified plans and IRAs in the form of cash.
- Conduct further study of the rules permitting in-service withdrawals of employee after-tax contributions and vested company contributions for appropriate limitations.
- Modify the mandatory cash-out provisions so that any benefits or balances valued in excess of \$2,000 must be rolled over to an IRA or other qualified plan or used to purchase an annuity.
- Eliminate Pension Benefit Guaranty Corp. premiums (but not PBGC coverage) for defined benefit plans that retain the benefits of separated participants whose vested pension benefit has a value of less than \$5,000.
- Require that all plans that permit participant loans be required to accept

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\*Leakage is that money in tax-deferred retirement saving vehicles which leaves the system before the participant actually retires. Reasons include participant loans, hardship withdrawals and lump sum distributions not forwarded to other employer-sponsored pension plans or individual retirement accounts.

outstanding loans as part of a rollover by new participants.

- Require that plans permit former participants who chose to leave their account balance in their former employer's plan to continue to repay the installments of their outstanding loan balances after termination of employment. (This rule would not apply if the total account balance is less than \$5,000.)
- Require the IRS to monitor Form 5500 filings and Form 1099-R filings to identify the magnitude and trends of qualified plan distributions attributable to defaulted loans.
- Eliminate the Suspension of Participation rule for hardship withdrawals.
- Allow portability of balances under all types of defined contribution plans so that balances under plans offered by for-profit organizations, by nonprofit organizations, and by state and local government entities can be combined in any one defined contribution plan.
- Expand the use of IRAs as rollover vehicles.
- Require participant education on the harmful effects of leakage. Specifically, require plan sponsors to provide plan participants with an explanation of the impact on a participant's retirement security of spending the distribution currently versus rolling the distribution into a tax-qualified savings vehicle.

- Require the Department of Labor to issue a pamphlet on leakage illustrating the adverse effect of leakage on retirement savings and retirement lifestyle, and a report of the societal and individual advantages of defined benefit plans, particularly with respect to leakage, to plan sponsors, plan participants and Congress.

### *Health Care Quality Disclosure*

- Provide consumers with effective outlets for obtaining quality information on all health care providers, including individual practitioners.
- Provide employees, benefit plan participants and consumers with adequate, reliable and usable information on commercial health coverage programs and plans.
- Require a legislated time frame for phasing in health care quality disclosure. This time frame should include:
  - Disclosure and dissemination of relevant information that is readily available to the provider, including any formal discipline approved against the provider by licensing authorities in any state.
  - Collection, disclosure, and dissemination of consumer satisfaction data, including the consumer satisfaction survey results.

- Collection, disclosure, and dissemination of clinical quality data, based on evolving standards as indicated by medical research.
- Create a new federal entity or quality board to spearhead and help finance the development of health quality measures, communication vehicles and formats. The board would be similar to the Advisory Council on Health Care Quality, but play a more substantive standard-setting role.
- Assign to the board the task of developing uniform quality measurement and reporting criteria for health care quality disclosure.
- Mandate universal quality measurement and reporting requirements.
- Develop training materials and templates — health care guides — to instruct those who offer assistance in health care quality issues.
- Protect employers, plan fiduciaries and commercial health plans who comply in good faith with the new, health quality disclosure requirements from liability suits.
- Encourage the Department of Labor to take interim steps to assist employers and employees in understanding health care quality indicators and to demand information from providers.
- Institute a disclosure provision that requires benefit plan sponsors and commercial health plans to report

significant, basic health quality information identified by the quality board.

### ***Establishment of Pension Plans for Small Businesses***

- Repeal of the “top-heavy” rules. A plan is top-heavy if key employees have accumulated 60 percent or more of the contributions and benefits under the plan.
- Eliminate user fees. The IRS has for many years issued determination letters to employers opining that their retirement plan conforms to the rules established under the Internal Revenue Code for qualified retirement plans. As part of the Revenue Act of 1987, Congress directed the IRS to collect user fees for these determination letters.
- Increase the limits on benefits and contributions.
- Increase the limits on includable compensation. Under ERISA, there was no dollar limit on the amount of annual compensation taken into account for purposes of determining plan benefits and contributions.
- Develop a national retirement policy.
- Promote the development of coalitions to offer pooling vehicles for small employers.
- Offer tax incentives for employers without a qualified plan to adopt a plan.

- Restate support of the recommendations made by the 1997 Working Group on Defined

Contribution vs. Defined Benefit Plans to create a simplified defined benefit plan.

## ERISA Advisory Council 1998 Members

### Accounting

*Marilee P. Lau* \*  
KPMG Peat Marwick

### Investment Management

*J. Kenneth Blackwell*  
Treasurer, State of Ohio

### Actuarial Counseling Field

*Michael Gulotta*  
Actuarial Sciences Associates

### Employee Organizations (Multiemployer Plans)

*Michael R. Fanning*  
Central Pension Fund, International Union of Operating Engineers and Participating Employers

*Judith F. Mazo*  
The Segal Company

*Judith Ann Calder*  
Abacus Financial Group, Inc.

### Employer Organizations

*Janie Greenwood-Harris*  
Mercantile Bancorporation

*Neil M. Grossman*  
William M. Mercer

*Rose Mary Abelson*  
Northrop Grumman Corp.

### General Public

*Dr. Thomas J. Mackell, Jr.*  
Simms Capital Management, Inc.

### General Public (Pensioners)

*Richard "Dick" Tani*  
(retired from) William M. Mercer

*James O. Wood*  
Louisiana State Employees' Retirement System (LASERS)

### Investment Counseling

*Eddie C. Brown*  
Brown Capital Management

### Insurance Industry Field

*Kenneth S. Cohen* \*\*  
Massachusetts Mutual Life Insurance Co.

### Corporate Trust

*Barbara Ann Uberti*  
Wilmington Trust Company

\* Named Chair of Council for 1998.

\*\* Named Vice Chair of Council for 1998.