



DELIVERING STRATEGIC SOLUTIONS ACCA'S 2000 ANNUAL MEETING

DOL ENFORCEMENT UPDATE

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P>The views expressed are those of the speaker and do not necessarily represent the official position of the Department of Labor.

A. PWBA National Enforcement Priorities

1. Plan Service Providers

Health Benefit Issues

Defined Contribution Plans

1. Current National Enforcement Projects

1. Employee Contributions Project

The focus of this project, which has been an enforcement priority since October 1, 1995, is to safeguard employee contributions to 401(k) plans and health care plans, particularly where employers fail to remit participant contributions.

One result of this enforcement project was the publication of a revised participant contribution regulation [29 CFR 2510.3-102].

- Pension plan contributions that are withheld from an employee's paycheck must be put into the plan as soon as they can be reasonably segregated from the employer's general assets, but in no event later than the 15th business day of the month following the month in which the amount was withheld.

Another regulation which arose from this enforcement project is the proposed Small Pension Plan Security Regulation, which is designed to enhance the level of security and accountability for assets of small pension plans such as 401(k) plans. This is sometimes referred to as the "Emergi-Lite" regulation, named for the criminal investigation which sparked interest in developing such a regulation.

This initiative was undertaken to improve security and accountability with respect to assets of small employee pension benefit plans by amending the conditions under which small plans would be exempt from the audit requirement.

Under PWBA's proposed regulation, which was published on December 1, 1999, small pension plans would not be required to have an annual audit if they meet certain additional conditions regarding plan assets being held by a regulated financial institution, related improvements in fidelity bonding, and disclosures to plan participants and beneficiaries.

Orphan Plans Project

The Orphan Plans project is a new enforcement project which began in October 1999. It is designed to deal with situations where plans have been abandoned by plan sponsors and fiduciaries, or fiduciaries have abdicated their responsibilities.

b. PWBA has successfully completed one recent lawsuit involving an orphan plan--*Herman v. Carolina Fitness Equipment, Inc., et al.* (S.D. Fla., order filed 4/5/99). Many other investigations have resulted in voluntary compliance.

401(k) Plan Escrow Project

401(k) Plan Fees Project

a. In November 1997, PWBA held a one-day hearing on 401(k) fee practices, inviting representatives from the pension plan sponsor, participant, and 401(k) service provider communities to testify.

While many speakers agreed that plan participants need clear and understandable information including detailed disclosures of plan fees in order to avoid bad investments, there was disagreement as to how much disclosure is necessary and how disclosures should be made.

In July 1998, PWBA released *A Look at 401(k) Plan Fees*, a 19-page educational booklet, to help consumers understand the fees and expenses associated with 401(k) plan accounts. The booklet is available from PWBA's Publication Hotline at 1-800-998-7542 and on PWBA's Web site: <http://www.dol.gov/dol/PWBA>.

PWBA has made available on its Web site the results of research on the subject of section 401(k) plan fees. The document, "Study of 401(k) Plan Fees and Expenses," examines current practices relating to what fees and expenses are paid by employers sponsoring 401(k) plans and/or employees participating in the plan.

During fiscal year 1999, PWBA conducted an enforcement project to examine how 401(k) plan fiduciaries monitor and analyze the plan's investment fees, particularly where the fees are paid by the plan itself rather than the plan sponsor, and how fiduciaries oversee the administration of these types of plans.

Recently, the Department publicized a model disclosure form which employers and fiduciaries can use to understand the investment fees and expenses which are charged to 401(k) plans. The form is the product of a collaboration by the mutual fund, the banking, and the insurance industries. Although the form is designed for smaller plans, it can be used by medium and large plans as well. The form is meant to allow employers and fiduciaries to make "apples to apples" comparisons of the costs of potential service providers.

Health Plan Disclosure and Claims Issues

Because of the critical importance of health benefits, PWBA has in recent years applied substantial enforcement resources to the targeting and investigation of fiduciary issues relating to health benefit issues.

The agency's focus in this area is primarily to ensure that plans which are funded are financially sound and that plan operators run their health plan prudently and in the participants' sole interest.

PWBA routinely reviews health plans' compliance with Part 7 Title I of ERISA, relating to requirements for group health portability, access, and renewability; protections for mothers and newborn children with regard to length of hospital stay following childbirth; protections for individuals who elect breast reconstruction in connection with a mastectomy; and parity of mental health benefits with medical/surgical benefits with respect to the application of aggregate lifetime and annual dollar limits.

Multiple Employer Welfare Arrangements (MEWAs)

MEWAs provide health and welfare benefits to employees of two or more unrelated employers who are not parties to bona fide collective bargaining agreements. In concept, MEWAs are designed to give small employers access to low cost health coverage on terms similar to those available to large employers.

Although MEWAs can be provided through legitimate organizations, they are sometimes marketed to employers by unscrupulous entrepreneurs who establish programs with actuarially unsound and below market rate premium structures together with large administrative fees for the promoters. In addition, certain promoters will set up arrangements which they claim are sponsored by a labor union and, therefore, are not MEWAs but legitimate union-sponsored plans free from state insurance regulations. Often, however, these "unions" are nothing more than shams designed to avoid state insurance regulation.

- PWBA has undertaken a negotiated rulemaking project which will result in the release of a proposed rule aimed at providing a fair, workable process for distinguishing fraudulent MEWAs from legitimate, collectively-bargained arrangements.

Since the early 1980s, the Department has devoted significant resources to investigating and litigating issues connected with abusive MEWAs created by unscrupulous promoters who sell the promise of inexpensive health benefit insurance, but default on their obligation. Particular emphasis has been put on identifying ongoing abusive and fraudulent MEWAs, and working to shut down such operations.

On February 11, 2000, the Department published a new Form M-1 annual report for MEWAs and certain collectively-bargained arrangements. Under the new reporting requirement, the one-page Form M-1 is generally required to be filed once a year.

Administrative Services Only Project

In October 1995, PWBA began investigating insurance companies which provide administrative services only to self-funded health plans to determine whether fee reductions or discounts obtained from service providers have been passed on to the plans or their participants. PWBA uncovered many situations where discounts negotiated with hospitals and other medical service providers were not passed on to the plans and their participants.

In October 1999, the agency decided to expand the project to determine whether there are more widespread problems with the practices employed by insurance companies in billing plans and compensating service providers who render services to plans.

1. Regional Enforcement Projects

Regional projects are localized investigative projects undertaken by individual PWBA regional offices.

Currently, there are numerous regional projects in a variety of different categories, including health plans, bankruptcy, financial institutions, ESOPs, insurance industry practices, real estate, employee leasing, demutualization, and others.

2. Trends in PWBA's Enforcement Statistics

Number of case openings and closings is down.

Number of investigations in which violations of ERISA are found is up.

Amount of monetary recoveries on behalf of plans and participants is up.

Litigation activity is up.

E. Voluntary Fiduciary Corrections Program

3. Although PWBA continues to protect vulnerable populations from harm through its traditional enforcement methods, we are interested in finding new and innovative ways to encourage compliance.
4. On March 15, 2000, PWBA published in the Federal Register its Voluntary Fiduciary Correction Program. Under the VFC Program, plan officials who have identified certain violations of Title I part 4 of ERISA may take corrective action to remedy the breaches and voluntarily report the violations to PWBA, without becoming the subject of a PWBA enforcement action. The program has been in effect since April 14.
5. PWBA expects the VFC Program will help to obtain corrective action quickly, restore losses to plans and participants, facilitate corrections by plan officials who want to come into compliance with the law with respect to their past practices, and promote better compliance in the future.
6. There are thirteen transactions covered by the VFC Program, involving delinquent employee contributions, loans, certain purchases, sales, and leases, benefit payments without properly valuing plan assets, and plan expenses.

H. Outreach and Technical Assistance

7. PWBA is committed to providing a uniformly high level of customer service to the employee benefit plans community. The following are telephone contacts at PWBA:
 - (202) 219-8770 Reporting Compliance/DFVC
 - (202) 219-8818 PWBA Help Desk
 - (202) 219-8794 ERISA Related Accounting/Auditing Issues
 - (202) 219-8521 ERISA Plan Coverage Issues
 - (202) 219-8515 General Reporting and Disclosure
 - (202) 219-8776 General Public Information
8. The public may call toll-free at 1-800-998-7542 to request one of PWBA's free brochures in the following broad categories:
 - Pension and Retirement Savings;
 - Employee and Pension Plan Participants;

Employee and Pension Plan Participants;

Employers and Pension Plan Officials;

Health Benefits Information; and

About PWBA.

9. PWBA's Internet Address. Members of the public may wish to contact PWBA at our Web site: <http://www.dol.gov/dol/pwba>. The Web site provides information on PWBA's organizational structure, current regulatory activities, and customer service and public outreach efforts.

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