FOIA Number: 2014-0226-F

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Collection/Record Group: Clinton Presidential Records

Subgroup/Office of Origin: National Economic Council

Series/Staff Member: Ellen Seidman

Subseries:

OA/ID Number: 10392

FolderID:

Folder Title:
Pensions 1996 Legislation: 401(k) / Enf. [Enforcement]

Stack:	Row:	Section:	Shelf:	Position:
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however, does not require timely reporting of serious irregularities that the accountant may find. This bill would require both plan administrators and accountants auditing plans of any size, who discover fraud or other egregious ERISA violations, to report them to the Department immediately. Plan administrators who fail to comply with this requirement may be subject to fines of up to $100,000. Plan accountants, who in many respects are the first line of defense against fraud, will be subject to sanctions if they fail to report such offenses.

Additionally, auditors may now exclude plan assets that are held by regulated institutions, such as banks or insurance companies, from the annual audit. The result of this provision is that almost half of the money held in pension plans (more than $950 billion in plan assets out of approximately $2 trillion subject to the audit requirement) are not subject to inquiry by the plan audit. Under the bill assets in regulated institutions will no longer be excluded from annual audits. (See attached description of the Act)

Examples of Cases & Affected Participants

Greystone Technology 401(k) Plan (San Diego, CA)

The Los Angeles Regional Office opened this case in October 1995 days after it was contacted by a participant in the 401(k) plan. This complainant, a former Greystone employee, learned that her contributions to the plan had not been forwarded for several months. When she terminated, she was told that all outstanding financial issues would be resolved in one week. When the matters were not resolved, she contacted the LARO, which opened a case and recovered a total of $95,988 in employee contributions and interest on behalf of 41 participants.

The participant complainant is Janet Carno. She was contacted by the LARO on March 26, and is willing to speak further. Work number: (619) 931-1771, home: (619) 436-0551.

Data-Mate Inc. 401(k) Plan (Nashua, NH)

This case, investigated by the Boston Regional Office, produced a $155,214 recovery. A participant had complained directly to the Boston Regional Office about possible 401(k) abuse. The plan has 47 participants, and $180,630 in assets. The sponsor was scheduled to discontinue operations, and later did so. The delinquency was paid soon after the initial contact by the Regional Office--the total case time was two days. The case was opened in March 1995, and closed in October 1995.

The Boston Regional Office is retrieving the file from archives tomorrow and will search for names of possible complainant/victims.

D'Elia Pontiac Inc., Profit Sharing Plan (Greenwich, CT)

This plan, which has a 401(k) feature, had 40 participants--one of whom complained to the New York Regional Office. The New York Regional Office investigation disclosed that the trustee John D'Elia had diverted over $54,000 in employer and employee contributions from the plan. The NY RSOL obtained a Consent Judgement against Mr. D'Elia, who filed for bankruptcy protection and did not file a proof of claim on behalf of the Plan. The Consent Judgment requires that Mr. D'Elia provide restitution to participants. The NYRO has been receiving restitution payments and forwarding them to the third party administrator (TPA) firm. A total of $32,000 has been recovered to date. The NYRO has also contacted the TPA and the IRS in an attempt to facilitate termination of this Plan and distribution of its assets.

ECP National Coordinator has spoken on several occasions to Shirley Tyminski (husband is participant) at 203-622-1282, and Mr. and Mrs. Frank Collins (914) 227-5431, who have expressed strong interest in the case and have sympathetic stories.

<u>Lunn Industries, Inc. 401(k) Plan</u> (Glen Cove, NY)

This case was opened based on a participant complaint. The NYRO case disclosed that a total of $79,000 in employer and employee contributions had not been remitted to the TPA. To date, the NYRO has recovered $60,198, and is pursuing the balance. The Plan has 129 participants and $1.6 million in assets.

A participant to contact is Rick Batallaf at (516) 883-8000 x. 751 (work).

401(k) Pension Protection/ERISA Enforcement Improvement Act

The Problem:

401(k) plans may be the best savings vehicle that many employees have. The vast majority of plans are administered honestly, responsibly and safely. But we have found that some employers are using or "borrowing" their employee contributions. The law requires employers who withhold employee contributions to turn the money over to the investment plan as soon as possible, yet some employers have held on to this money too long, using the funds as an interest-free loan or for some other inappropriate purpose.

Corrective Actions Taken To Date:

* The continuing nationwide enforcement effort has uncovered the misuse of millions of dollars of employee contributions. 657 investigations have been opened to date. Over $7 million has already been returned to plans covering over 33,000 workers -- $5.9 million in employee contributions and $1.4 in employer contributions; 457 investigations remain open, and more complaints are being received.

* Draft regulations were published to reduce the current 90-day maximum holding period for employee contributions. The rule, which will be final in two months, should reduce the temptation for employers to misuse the plan funds.

* The Top 10 Warning Signs that workers should use when monitoring their 401(k) plans were published in an effort to educate workers how to protect their plan contributions from employers who may misuse the money.

* The "Pension Payback Program", a voluntary compliance enforcement program, was implemented in March, allowing eligible employers who agree to restore all delinquent contributions plus lost earnings to their plan within six months to avoid certain civil and criminal sanctions.

Proposed Legislation - The ERISA Enforcement Improvement Act

The ERISA Enforcement Improvement Act would significantly enhance the security of money in pension plans by reforming ERISA's audit requirements. For example, under current law, pension plans with over 100 participants are required to have an annual audit and are required to attach the accountant's opinion when filing their annual report. Current law, however, does not require timely reporting of serious irregularities that the accountant may find. This bill would require both plan administrators and accountants auditing plans of any size, who discover fraud or other egregious ERISA violations, to report them to the Department immediately. Plan administrators who fail to comply with this requirement may be subject to fines of up to $100,000. Plan accountants, who in many respects are the first line of defense against fraud, will be subject to sanctions if they fail to report such offenses.

401(k) Pension Protection/ERISA Enforcement Improvement Act

What are 401(k) Plans:

401(k) plans are individual retirement plans that take their name from the section of the tax code which authorized them in 1978. The plans permit an individual to deduct a portion of his or her pre-tax income every year, invest it, and pay no taxes on the money until it is withdrawn at retirement. Most often the employee's contribution to the plan is matched by the employer. Frequently the employee has an opportunity to direct the investment of the plan assets.

During the past decade, there has been an explosion in the number of 401(k) plans. Nationwide there are 140,000 401(k) plans, covering 22 million people, with combined assets totaling $522 billion.

The Problem:

401(k) plans may be the best savings vehicle that many employees have -- and the 401(k) system is generally sound. The vast majority of plans are administered honestly, responsibly and safely. But investigators have found that some employers are using or "borrowing" their employee contributions. The law requires employers who withhold employee contributions to turn the money over to the investment plan as soon as possible, yet some employers have held on to this money too long, treating the funds as an interest-free loan. While the funds are in the control of the employer, the money can be stolen or used for some other inappropriate purpose. It is hard to estimate the size of this problem; in comparison to the overall universe it may be quite small. Even if the percentage of plans with problems is small, those problems have a devastating effect on the plan participants. Individuals who believe that they have saved for a comfortable retirement find themselves empty-handed.

Actions Taken:

Early 1995, after Labor Department investigators began noticing an increase in the number of complaints about 401(k) plans, an enforcement project was launched to protect employees' 401(k) contributions.

Enforcement Results

To date, the continuing nationwide enforcement effort has uncovered the misuse of millions of dollars of employee contributions. 657 investigations have been opened to date. Over $7 million has already been returned to plans covering over 33,000 workers -- $5.9 million in employee contributions and $1.4 in employer contributions; 457 investigations remain open, and more complaints are being received.

Since the beginning of the project, there have been 35 criminal cases opened -- 32 are still pending. Four cases have resulted in guilty pleas and there has been restitution paid totalling $99,804 in employee contributions. One of the most recent cases in which prosecution was initiated is U.S. v. Brown. On February 27, Thomas Brown (Flint, Michigan), owner of the Winom Tool and Die Company, was sentenced to 5 years probation and was ordered to make as banks or insurance companies, from the annual audit. The result of this provision is that almost half of the money held in pension plans (more than $950 billion in plan assets out of approximately $2 trillion subject to the audit requirement) are not subject to inquiry by the plan audit. Under the bill assets in regulated institutions will no longer be excluded from annual audits. (See attached description)

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Possible 401(k) Fraud Victims

Mr. and Mrs Frank Collins
Waterbury Hill Road, LaGrangeville, New York 12540 (914) 227-5431

These individuals appear to have suffered a great deal of harm arising from diversion of Mr. Collins' employee contributions to the D'Elia Pontiac, Inc. Profit Sharing Plan and the company's self-funded health care plan. Mr. Collins had been employed since 1986 as an automobile body damage estimator at D'Elia, located in Greenwich, Connecticut. He had an approximate $30,000 401(k) account balance with the company, which filed for bankruptcy protection in 1994. His account was tied up during this period and he faced uncertainty whether he would ever see any of his balance. Mrs. Margaret Collins was a beneficiary of the health plan. She incurred over $56,000 in medical bills after a medical emergency. She had sought prior approval for the procedures but she was unaware that her husband's payroll deductions were being used for other purposes. She received nasty letters from doctors seeking payment, and local hospitals refused her family health care. Mr. and Mrs. Collins have repeatedly contacted PWBA for assistance in this matter. The New York Regional Office, working through its Regional Solicitor, obtained a Consent Judgement against the owner of the business. The New York Regional Office has so far recovered $32,000 out of the $54,000 ordered as restitution in the Consent Judgement.

Note that another victim available to speak is Mrs. Shirley Tyminski, whose husband is a participant in the same plan. Telephone number is (203) 622-1282.

Janet Carno
W: (619) 931-1771; H: (619) 436-0551

Ms. Carno was the complainant for the Los Angeles Regional Office investigation of the Greystone Technology 401(k) Plan, of San Diego, California, opened in October 1995. The Plan had approximately 40 participants. Ms. Carno, a former Greystone employee, learned that her contributions to the plan had not been forwarded for several months. When she terminated, she was told that all outstanding financial issues would be resolved in one week. When these matters were not resolved, she contacted the Los Angeles Regional Office, which opened a case and recovered $95,988 in employee contributions and interest.

Roger Lindsay
(708) 358-4875

Mr. Lindsay contacted the Atlanta Regional Office regarding the Regina Company 401(k) Plan and the Regina Company Health Plan. The plan sponsor is located in Long Beach, Mississippi, and had 612 employees. The company made vacuum cleaners but filed for bankruptcy protection in March 1995. He complained that the company had deducted employee health care and 401(k) contributions but did not forward the withholdings. He was left with $150,000 in unpaid medical bills and uncertainty about retirement savings for his family of six. The Atlanta Regional Office has pressed for recovery in the bankruptcy proceeding.

Dave Fuller
(303) 781-2256

After contacts from participants of the Concord Employees Savings and Investment Plan (Denver), the Kansas City Regional Office conducted an investigation. The case revealed that the employer had failed to forward employee contributions and participant loan repayments for January 1995. In February 1995, the sponsor filed for Chapter 11 bankruptcy protection. As a result of the investigation, the sponsor has paid $475,000 in unremitted employee contributions and employer matching contributions (approximately $330,000 in matching). The recoveries affect 1,098 participants.

Fred Bjornson
(515) 964-8754

The Kansas City Regional Office received complaints from participants of the Iowa Express Distribution, Inc. 401(k) Plan (Des Moines, Iowa) that employee contributions were not being forwarded to the trustee. An investigator confirmed that from January 1993 through July 1995, the plan sponsor failed to forward $52,000. The company president allegedly used the withholdings to fund company operations. On August 9, 1995 the company president paid $65,000 to the Plan for the unremitted contributions plus earnings. He had to sell the company to make up the delinquency. Thirty-two participants were affected by the recovery.

Penny Roberts
(702) 331-1324

The San Francisco Regional Office opened a case on a 401(k) plan sponsored by First Commercial Title, Inc. of Reno, Nevada. The Regional Office had received a letter from participants which had been forwarded by a Member of Congress. The Plan had 11 participants. Within days, the Regional Office opened a case and began interviewing participants and company officials. The investigator found that participant payroll deductions were being held up to 183 days. The company later went out of business but not before the Regional Office obtained a full recovery of $37,000 in unremitted withholdings.

Rick Batallaf
(516) 883-8000 x751

The New York Regional Office opened a case on the Lunn Industries, Inc. 401(k) Plan. The company is located in Glen Cove, New York, and has 129 participants and $1.6 million in assets. The investigation disclosed that a total of $79,000 in employer and employee contributions had not been remitted to the third party administrator. To date, the Regional Office has recovered $60,198 and it is pursuing the balance.

Vladimir Suchanek
H: (404) 641-0836
W: (800) 229-2119

Several participants in the Clinical Medical Equipment, Inc. 401(k) Plan (Roswell, Georgia) contacted the Atlanta Regional Office after difficulty in obtaining benefits. The Plan covered 80 participants. The company provided servicing for hospital radiological equipment. The company president and sole plan trustee, James Todd, was convicted in November 1994 of embezzling $122,000 in employee contributions from the Plan. Todd used the money to pay personal and business expenses, such as hunting trips, credit card debt, and company cars.

Unfortunately, the company filed for bankruptcy protection in 1992 and it has not paid any benefits or returned employee contributions. On August 3, 1995, Todd was sentenced to five years probation, thirty months of house arrest, and 300 hours of public service. He was ordered to make restitution of $122,000, and is making payments of $50 per month.

Demetro and Victoria Karvetski
(540) 888-4465

The Atlanta Regional Office opened a case on the R&E Electronics 401(k) Plan (Wilmington, NC), based on a participant complaint that the plan trustee had taken money from the Plan and not made distributions to participants. One trustee had sole authority over the assets of the Plan, which had 118 participants and $507,484 in assets. The trustee allegedly deposited distributions (i.e., rollovers) due to participants into the operating account of the company. The trustee also allegedly failed to transfer $31,000 to the plan's investment companies. Instead, this amount was deposited into the operating account of the company. The trustee further allegedly failed to contribute $75,000 in employer matching contributions.

The company's creditors forced the company into involuntary bankruptcy. The Atlanta Regional Office followed up on the participant complaint, and contacted the trustee in bankruptcy for the sponsor. The bankruptcy trustee agreed to remove the plan trustee. The Atlanta Regional Office, through its Regional Solicitor, also instructed the investment companies that they should not honor the plan trustee's requests for withdrawals of funds, fearing that more money would be misappropriated. The Regional Office estimates that it prevented about $80,000 from misappropriation.

Susan Weny
(404) 963-2100, 979-3652

Ms. Weny was employed by Construction Systems Associates, Inc. (Marietta, GA), which sponsored a 401(k) plan for 36 participants. The company makes computer models for nuclear stations. The Plan had $234,000 in total assets. The Atlanta Regional Office opened its case based on a participant complaint that Plan trustees had not remitted employee contributions to the trust fund.

Ms. Weny had written to the Atlanta Regional Office to complain that a 401(k) statement from the Plan administrator (a third party) did not include two months of her contributions. Ms. Weny contacted the company's human resources manager, who readily admitted that contributions had not been forwarded in a timely manner. The manager stated that the owner of the company decided to use the money for salaries.

The Regional Office contacted the owner, who agreed to remit delinquent employee and employer contributions along with interest totalling $32,604.

Brian Edwards
Flint, Mich.
Home: (810) 742-6492
Work: (810) 629-5395

In 1987, Edwards enrolled in the employer's 401(k) plan at Winom Tool and Die Inc. of Flint, Michigan. The 36-year-old tool and die maker deposited $12,000 to $15,000 into his plan in the almost seven years he worked at the company. After the first year, he and other employee participants received an annual statement. Edwards became suspicious when he stopped receiving 401(k) statements and began investigating the company's 401(k) plan. He has lost all the money he put into his account. A father of four, he had hoped to borrow against his investment to buy a larger home and put his children through college. His eldest son is a freshman at Saginaw Valley University and his three other children are in high school.

Thomas Brown, the owner of Winom, Tool and Die, pleaded guilty on Nov. 21, 1995 to making false statements about the 401(k) plan. He will be sentenced in February and faces a maximum sentence of six months in jail and a maximum fine of $10,000, or both.

Robert Fisher
Flint, Mich.
Home: (810) 787-2846
Work: (810) 629-5395

Fisher, 39, worked for Winom Tool and Die Inc. (Flint, Michigan) for more than eight years as a machine repairman. He deposited approximately $75 each week into the 401(k) plan, saving over $25,000. Fisher and the 14 other Winom, employees who were enrolled in the 401(k) plan discovered their employer had stolen their combined pension savings of over $200,000. Fisher, who had intended to use the money to put his three children through college, says he is devastated.

Charles Bell
4001 Brownwood Lane
Arlington, Texas 76017
Home: (817) 572-0527
Work: (817) 280-4697

Bell worked as a reliability maintainability engineer for International Technical Services

(ITS)in Farmingdale, NY for two years. During that period, he put $13,000 to $14,000 into his 401(k) and transferred approximately $12,000 from another plan. By the time it was discovered the company was taking money out of his 401(k), he had lost $26,000.

Byron Williams
Fort Worth Texas
W: (817)935-3380

Williams worked as an engineering designer for International Technical Services, of Farmingdale, NY, for two years. He put approximately $18,500 into a 401(k) plan and cannot retrieve it. He now works for Resource Management International (RMI), which acquired ITS Management Company in late 1994. He says that RMI only bought certain assets of ITS, and this did not include the 401(k) plans.

Leonard Cummings, Jr.
Arlington, Texas
W:(214)266-8046
H:(817)468-8869

Cummings worked as a contract engineer for Resource Management International on and off for five years. He found he had lost between $10,000 to $15,000 when he tried to transfer his 401(k) funds. According to his figures, he and his 300 fellow employees have lost $2 million to $3 million as a result of this company's raid on their employees' pension plans, and that some of these employees had over $50,000 in the plan.

Vicki Taylor
Reno, Nevada
W:(702)359-2129
H:(702)688-4848

Taylor, a title officer with First Commercial Title in Reno for over 15 years, had only been enrolled in her employer's 401(k) plan for six months. her paychecks always reflected contributions being made into her 401(k) retirement plan. As employees left, and tried to roll over their 401(k) accounts, they realized the money deducted from their paychecks was not available to them. Ms. Taylor lost $1,000, and employees who had been in the plan longer lost thousands more.

When the Department of Labor intervened, money the employees lost before the company went out of business was reimbursed.