Fact Sheet

U.S. Department of Labor
Employee Benefits Security Administration
November 16, 2010

Contributory Plans Criminal Project

Background

- Millions of American workers share in the costs of employee benefits by contributing to employer sponsored retirement and health benefit plans. In 2010, the Department of Labor's Employee Benefits Security Administration (EBSA) initiated the Contributory Plans Criminal Project (CPCP) to combat criminal abuse of contributory benefit plans.

- The CPCP focuses on protecting employees who participate in all types of contributory plans – both pension and health.

- Through the CPCP, EBSA is committed to punishing those who defraud these plans, and to deterring others who might contemplate such crimes. The participants in contributory plans are vulnerable to various forms of criminal abuse, so the CPCP was designed to address the panoply of relevant criminal violations.

- There are a number of ways in which contributory plans can be vulnerable to criminal abuse. Employers, or others with authority over plan assets, may convert employee payroll contributions for their own personal use or they may misapply employee contributions to cover business expenses.

- In the case of contributory retirement plans, such as 401(k) plans, the theft of plan assets can deprive employees of their hard-earned retirement savings. Misuse of employee contributions in contributory health plans can result in unpaid health benefits or insurance premiums, leaving workers suddenly without medical coverage.

- Unscrupulous service providers may also target contributory benefit plans for their personal profit. EBSA has uncovered instances where third parties gained access to plan funds and siphoned off the money for their own financial gain. EBSA has uncovered instances where culprits have stolen participants' identity information to gain access to their employee benefit plan accounts.

- EBSA works closely with other federal, state, and local agencies to enforce laws safeguarding contributory plan assets. Criminal prosecution of individuals who abuse their authority or control over contributory plans can result in severe criminal penalties, including imprisonment. Those convicted of embezzling or misappropriating moneys intended to fund pension plans or pay health benefits typically are barred from providing services or acting in any capacity for a period of 13 years.

EBSA Enforcement Efforts

To date, under the CPCP, EBSA has:

- Initiated 191 investigations
- Referred 97 investigations to prosecutors
- Obtained 20 indictments with 7 guilty pleas
- Restored assets of $385,447

Recent Criminal Prosecutions

United States v. Kimberly Hill – Kimberly Hill, the former accounts payable manager for Wildwood Industries, pleaded guilty on March 11, 2010 to conspiracy to commit mail fraud, wire fraud, bank fraud, and theft from an employee benefit plan. Wildwood Industries was owned by Gary and Toni Jo Wilder and was located in Bloomington, Illinois. The company manufactured, among other products, lawn, leaf, and vacuum bags. Wildwood sponsored a 401(k) plan as well as a health, dental, and disability plan for its employees.

Kimberly Hill's theft from the employee benefit plans was part of a larger criminal scheme. The Wilders, along with Hill and several other co-conspirators, engaged in a massive fraud which resulted in 85 banks, lending institutions, and private lenders being defrauded for over $213 million dollars. Only Hill was charged in connection with the theft of employee benefit plan funds. As accounts payable manager, Hill failed to forward funds worth over $200,000 withheld from employees' payroll checks for the benefit of these plans. In addition, Hill's actions left the plans facing approximately $140,000 in outstanding medical claims.

Hill is scheduled to be sentenced on December 9, 2010. EBSA was part of a task force which included the Office of Labor Racketeering and Fraud Investigations, the FBI, Postal Inspectors, IRS-Criminal Investigations Division, and the FDIC. The case was prosecuted by the United States Attorneys Office for the Central District, Illinois.

United States v. Pacesetter Corporation of America – On March 29, 2010, the Pacesetter Corporation of America, located in Omaha, Nebraska, pleaded guilty in the federal District Court of Nebraska to charges that it had stolen employee contributions and COBRA payments intended for the company's medical, group life and accidental death and dismemberment plans. Pacesetter was a manufacturer and direct seller of home improvement products such as windows, siding, and doors and had approximately 2,500 employees. The firm filed for bankruptcy in November of 2005 and ceased operations.

Pacesetter was charged with one count of embezzlement from a health care benefit program and one count of embezzlement from an employee benefit plan. For several months in 2005, Pacesetter kept funds deducted from employees' payroll that were to be used to pay claims covered under the plans. It also continued to accept and deposit COBRA payments from former employees. At the same time, Pacesetter failed to pay its claim obligations. In addition, Pacesetter did not inform employees that they had lost their coverage. Participant employees consequently suffered over $1.4 million in unpaid medical claims. At sentencing, Pacesetter received 12 months of probation and was ordered to pay the participants $67,533, the amount of monies withheld from employees' pay and COBRA payments. As part of the plea agreement, Mark Aloe, a former officer of the company, is prohibited from serving in any capacity that involves decision making authority or custody or control of the assets or property of any employee benefit plan for a period of 14 years.

United States v. Anthony A. James – On September 9, 2010, Anthony A. James, an investment advisor who operated James Asset Advisory, LLC (a Michigan corporation), was sentenced in federal district court to 163 months of imprisonment followed by 60 months of supervised release. The court also ordered James to pay $2,667,762 in restitution to his victims. James had been convicted on April 15, 2010 on seven counts of mail fraud, six counts of wire fraud, and one count of embezzlement from an employee benefit plan.

From 2001 through June 2009, Anthony James received over $5,300,000 from more than 40 investors, among them contributory ERISA-covered employee benefit plans. James's fraud involved meeting with his clients to assess their investment goals and risk tolerances. James told his clients that he would invest their funds in securities, bonds, and mutual funds for their benefit. He would then create individualized asset allocation reports suggesting investment options, backed by bogus quarterly account statements which tracked the investors' money as if it had actually been invested. James used investors' money to operate a Ponzi scheme; instead of investing their money, he spent approximately $2,500,000 for his personal use and paid out around $2,800,000 to prior investors.

This investigation was conducted by EBSA in conjunction with the Department of Labor Office of Inspector General, and the FBI and prosecuted by the United States Attorneys Office, Eastern District of Michigan.

United States v. Gary L. Merritt – On August 26, 2010, Gary L. Merritt, Vice President of Bemcore, Inc., located in Dayton, OH, entered a guilty plea in U.S. District Court, Southern District of Ohio, Western Division, to one count of theft or embezzlement from an employee retirement plan. Bemcore, Inc., a tool and die company owned by Merritt and two family members sponsored the Bemcore, Inc. Employee Incentive Plan, a 401(k) retirement savings plan for which Merritt was the Trustee. Merritt was indicted on May 12, 2010, for failing to forward a terminated participant's 401(k) account balance of $169,488.67 to an IRA account designated by the participant. Instead, Merritt deposited the participant's distribution check in Bemcore, Inc.'s corporate bank account and used the money for business purposes.

The investigation was conducted by EBSA's Cincinnati Regional Office and prosecuted by the United States Attorney Office for the Southern District of Ohio. Merritt is scheduled to be sentenced on November 23, 2010.

How You Can Protect Your Retirement and Health Plans

The Labor Department has published a list of ten warning signs that employees covered by 401(k), health and other benefit plans should be aware of at **http://www.dol.gov/ebsa/Publications/10warningsigns.html**.

Workers and their families who encounter problems with their benefit programs should contact the Employee Benefits Security Administration toll-free at **1-866-444-3272**.