Fact Sheet

U.S. Department of Labor
Employee Benefits Security Administration
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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

As of September 30, 2011, under the CPCP, EBSA has:

- Initiated 406 investigations
- Referred 258 investigations to prosecutors
- Obtained 74 indictments with 29 guilty pleas/convictions
- Restored assets of $2,068,884

Recent Criminal Prosecutions

United States v. Jeffrey Bazinet - On September 29, 2011, Jeffrey Bazinet was sentenced to three years' probation and six months home confinement, and payment of restitution to victims, in the U.S. District Court for the Northern District of New York. He had pleaded guilty on April 20 to embezzling from an Employee Benefit Plan, in violation of Title 18 U.S.C. § 664. Bazinet was the owner of Intelligent System Solutions, and later of Cipher Associates. ISS and Cipher, now both out of business, were computer companies in Albany. Bazinet was the Plan Trustee of the companies' respective 401(k) retirement plans.

On four separate occasions between August 2008 and February 2009, Bazinet fraudulently represented to the Plan Custodian that Plan participants desired to close out his or her pension account and to receive a lump sum disbursement of the proceeds. On each occasion, Bazinet directed and caused the Plan Custodian to close out the pension account for the respective participant, to issue a lump sum check for the proceeds payable to Bazinet's business, and to mail the check to Bazinet. In each instance, he then took the pension account funds that belonged to participants and kept them for his own use, depositing the disbursement check into one of his business accounts. In fact, none of the four employees had requested a distribution, signed any distribution paperwork, or had any knowledge of Bazinet's actions regarding their pension accounts. The amount of plan assets Bazinet unlawfully converted to his own use amounted to around $ 11,915.50. Although he ultimately paid some of the pension proceeds to two participants, in response to their repeated demands, he failed to pay them the total proceeds and interest to which they were each entitled, and never paid any pension funds to the two other participants. The case was investigated by the Boston Regional Office and the U.S. Department of Labor Office of the Inspector General and prosecuted by the United States Attorney's Office for the Northern District of New York.

The State of Texas v. Laura Aguirre - On September 12, 2011, Laura Aguirre was sentenced in the 399th Judicial District Court, Bexar County, Texas to 12 years in prison, ordered to make $451,913 in restitution and pay a $2,500 fine. Aguirre had previously pled guilty on July 29, 2011, to 1 count of Misapplication of Fiduciary Property greater than $100,000 (Texas Penal Code 32.45) and 1 count of Theft greater than 100,000 (Texas Penal Code 31.03).

Aguirre had been the Star Card Accountant in the Accounting Department of Verity National. Verity National is a TPA firm that provides professional administrative and consulting services to businesses, associations and brokerages across the country, and manages Flexible Spending Accounts. She had been responsible for transmitting the bank ACH file generated from the debit card to Verity's bank account in order for the funds to be sent directly to the employees' bank account and initially was hired to audit and correct administration deficiencies with the Flexible Benefit Accounts. From January 2005 through February 2009, Aguirre stole approximately $452,000 from the Flexible Spending Accounts. She would enter fake transactions for employees who had terminated employment and change their bank account information to that of her own bank accounts. In addition, Aguirre would falsify her own FSA account by inflating the reimbursement amount (a $20 dollar reimbursement would become a $2,000 reimbursement).

The investigation was conducted by the Dallas Regional Office and the San Antonio Police Department; and was prosecuted by Assistant District Attorney Kevin Terrill of the Bexar County District Attorney's Office.

United States v. Delroy Sands, Jr. - On September 8, 2011, Delroy Sand, Jr. was sentenced in Federal District Court in Minnesota to 41 months in federal prison and three years of supervised release for pleading guilty to one count of embezzlement from an employee benefit plan. Sand was trustee of the Hecla, Inc. Employees Retirement Savings Plan.

Sand had pleaded guilty on March 24, 2011 to one count of theft or embezzlement from an employee benefit plan, in violation of 18 U.S.C. § 664, for stealing $642,166.81 from the Hecla, Inc. Employees Retirement Savings Plan. Hecla, Inc. provided adult foster care as well as group home and mental health services in Minnesota. Sand, Hecla's founder and owner, was a licensed psychologist and longtime businessman active in Minnesota. He appointed himself the retirement plan's trustee and promptly began to steal from the plan, continuing until September 2009. During the time Sand was the plan’s trustee, he made numerous transfers from the plan’s trust accounts to company accounts he controlled, and gained illegal access to his employees’ pension fund money in this manner.

The criminal case was investigated by EBSA's Kansas City Regional Office and prosecuted by the United States Attorney's Office in Minneapolis, Minnesota.

United States v. William D. Pyle, IV - On July 28, 2011, the U.S. District Court for the District of Colorado sentenced William D. Pyle, IV to three years' probation and a $2,000 fine. The court further ordered Pyle to undergo a mental health evaluation. Pyle, a CPA and the owner of William D. Pyle & Associates, P.C. in Boulder, CO, provided tax preparation and accounting services. He had pleaded guilty on April 25, 2011 to three counts of embezzling (Title 18 U.S.C. § 664) payroll contributions that were intended for the William D. Pyle & Associates P.C. SIMPLE IRA Plan. The majority of the funds Pyle embezzled, over $20,000, were from a former employee who has cancer. The employee had tried repeatedly to obtain distributions from her IRA plan account to meet her accumulating medical expenses. Despite her repeated requests for her funds, the plan did not provide her with the money she was owed. Because Pyle ended up repaying $34,402 to the plan shortly after his criminal indictment, the court did not order him to pay restitution at sentencing. Kansas City Regional Office (KCRO) investigated the case. The case was prosecuted by the United States Attorney’s Office for the District of Colorado.

United States v. Alexandria West - On December 22, 2010, Alexandria West pleaded guilty in federal district court to one count of theft or embezzlement from an employee benefit plan (18 U.S.C. § 664). West operated two businesses, the West Financial Group in Bethesda, Maryland, and West Pension Solutions in Towson, Maryland. Employees of the firms participated in the West Agency 401(k) Profit Sharing Plan, to which they contributed through payroll deductions. Between August 2008 and November 2009, Alexandria West failed to remit $76,608.66 in employee contributions to the plan, and instead used these funds for personal expenses. Twelve employees were affected.

The case was prosecuted by the United States Attorney's Office in Greenbelt, Maryland, and investigated by the Washington District Office of EBSA.

United States v. Sherry Lynn Hill - On December 13, 2010, in the Federal District Court for Northern District of West Virginia, Sherry Lynn Hill entered a plea of guilty to embezzlement of $31,766.20 from the Stinger Sheet Metal, Inc. SIMPLE IRA Plan from January 1, 2006, through December 31, 2008. A fiduciary to the company's SIMPLE IRA employee benefit plan, Hill had failed to remit the voluntary employee payroll deductions to the plan. As part of her plea, Hill was required to make restitution to the plan in the amount of $31,766.20. The investigation was conducted by the Washington District Office of EBSA and was prosecuted by the United States Attorney's Office for the Northern District of West Virginia.

United States v. Kimberly Hill - Kimberly Hill, the former accounts payable manager for Wildwood Industries, was sentenced on December 9, 2010 to 40 months' incarceration, with a subsequent three years of supervised release. The sentence, issued by the Federal District Court for the Central District of Illinois, requires Hill to restore $76,894.06 to 174 individual employees. These employees had contributed to their benefit plans through payroll deductions but did not receive their plan benefits. In addition, the court directed Hill to pay, jointly and severally with other defendants, $172,092,689.59 in restitution to the Wildwood Industries employee benefit plans.

Hill had pleaded guilty in March 2010 to federal charges of conspiracy to committing 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 which manufactured, lawn, leaf, and vacuum bags as well as other products, sponsored a 401(k) plan and 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 with actual theft of employee benefit plan funds. As the accounts payable manager, she had 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.

EBSA Kansas City Regional Office investigated the case with the Department of Labor's 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 Attorney's Office for the Central District, Illinois.

United States v. Bryon Goldizen – On January 25, 2011 Bryon Goldizen, the president of Bryco Bore & Pipe, Inc., was sentenced to 5 years' probation and pursuant to a court order made restitution of $32, 321.82 to plan participants of the company's SIMPLE IRA Plan. Goldizen had previously pleaded guilty on November 1, 2010 to embezzlement of said funds by failing to forward employee contributions to the company's SIMPLE IRA Plan in violation of 18 U.S.C. § 664. The criminal investigation of Byron Goldizen was conducted by the Washington District Office of EBSA. The case was prosecuted by the United States Attorney's Office for the Northern District of West Virginia.

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 Attorney's Office, Eastern District of Michigan.

United States v. Gary L. Merritt - On November 23, 2010, Gary L. Merritt, Vice President of Bemcore, Inc., located in Dayton, OH, was sentenced in U.S. District Court, Southern District of Ohio, Western Division. For his sentence, the court ordered Merritt to serve five years of probation and to pay $182,070.56 in restitution within the year. Merritt had pled in August 2010 to one count of theft or embezzlement from an employee retirement plan, in violation of 18 U.S.C. § 664. Merritt co-owned Bemcore, Inc., a family-run tool and die company. The company sponsored the Bemcore, Inc. Employee Incentive Plan, a 401(k) retirement savings plan for which Merritt was the Trustee. From the beginning of 2009 until the spring of 2010, Gary Merritt embezzled employee money from the Bemcore 401(k) plan. He transferred the money to Bemcore, Inc.'s corporate bank account and used the funds for business purposes.

The investigation was conducted by EBSA's Cincinnati Regional Office and prosecuted by the United States Attorney's Office for the Southern District of Ohio.

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.

This fact sheet has been developed by the U.S. Department of Labor, Employee Benefits Security Administration, Washington, DC 20210. It will be made available in alternate formats upon request: Voice phone: 202-693-8664; Text telephone: 202-501-3911. In addition, the information in this fact sheet constitutes a small entity compliance guide for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.