

**MEMO# 11802**

April 11, 2000

## **DOL PUBLISHES ""STRATEGIC ENFORCEMENT PLAN""**

[11802] April 12, 2000 TO: PENSION COMMITTEE No. 24-00 PENSION OPERATIONS  
ADVISORY COMMITTEE No. 27-00 RE: DOL PUBLISHES "STRATEGIC ENFORCEMENT PLAN"

The Department of Labor's Pension and Welfare Benefits Administration (PWBA) has published a "Strategic Enforcement Plan (StEP)" identifying its current enforcement goals, priorities and methods, and the manner in which it promotes compliance with Title I of ERISA. The release specifically identifies defined contribution plans and plan service providers as areas of PWBA investigative priority. The PWBA enforcement strategy includes targeting specific individuals or entities identified for investigation because of some indication that an ERISA violation may have occurred or may be about to occur. The targeting process is conducted, for example, by opening a single case based on plan participant information or opening "hundreds" of cases based on computer-generated results of Form 5500 review and analysis. Field offices are generally responsible for identifying potential investigative targets and determining which cases are to be opened; in certain cases, these activities may be coordinated with the national PWBA Office of Enforcement. The StEP release states that PWBA seeks to apply its enforcement resources to protect those participants and beneficiaries whose security and livelihood are in the greatest danger of being harmed as a result of ERISA violations. As part of this effort, all PWBA field offices are engaged in outreach efforts designed to assist "potentially vulnerable populations." Examples provided in the release include employees whose benefits are affected by plant closings and "plans for which benefits are not federally insured, such as 401(k) plans." The release also notes, however, that enforcement action is warranted to "ensure the integrity of the system," regardless of whether any actual harm incurred. Specifically, situations involving self-dealing, conflicts of interest and gross imprudence are examples of violations that may warrant investigation even in the absence of demonstrated harm to a plan or plan participants. As noted above, of the three national investigative priorities identified in the release, one is defined contribution plans and another plan service providers. (The third area of focus is health care plans.) With respect to defined contribution plans, the release notes the tremendous growth of 401(k) plans and explains that because such plans are not covered by PBGC insurance the risk of loss due to a fiduciary breach is irrevocable unless funds can be recovered through enforcement or other legal action, and the risk of loss in such plans is borne entirely by the plan participants. With respect to plan service providers, the release states that investigations of service providers offer the opportunity to address abusive practices that may effect more than one plan and generally result in larger recoveries for more plans and more participants. In these investigations, the PWBA notes that it generally focuses on abusive practices committed by the specific service providers rather than the plans. One example provided in the release is the case of a third party

administrator systematically retaining an undisclosed fee. 2A copy of the Strategic Enforcement Plan is attached. Russell G. Galer Senior Counsel Attachment

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