

**DEPARTMENT OF LABOR****Pension and Welfare Benefits Administration****Pension and Welfare Benefits Administration; Strategic Enforcement Plan**

**AGENCY:** Pension and Welfare Benefits Administration, Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Pension and Welfare Benefits Administration (PWBA) is publishing this Strategic Enforcement Plan (StEP) for the purposes of informing the public of its current goals, priorities, and methods, and promoting compliance with Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). The primary purpose of the StEP is to establish a general framework through which PWBA's enforcement resources may be efficiently and effectively focused to achieve the agency's policy and operational objectives.

**EFFECTIVE DATE:** This Strategic Enforcement Plan is effective on April 6, 2000.

**FOR FURTHER INFORMATION CONTACT:** Virginia C. Smith, Director of Enforcement, (202) 219-8840 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:****I. Statutory Framework**

The Employee Retirement Income Security Act (ERISA), enacted in 1974, prescribes uniform minimum standards to ensure that employee benefit plans are fair and financially sound and provide workers with the benefits promised by their employers. The law covers most private sector employee benefit plans that are voluntarily established and maintained by an employer, an employee organization, or some combination of these. Pension plans—a major type of employee benefit plan—provide retirement income or defer income until the employee stops working or sometime later. Other employee benefit plans are called welfare plans; these provide health, disability, and other similar benefits.

Three federal agencies play a role in administering ERISA. The Internal Revenue Service oversees the tax code provisions of the law. The Pension Benefit Guaranty Corporation (PBGC) administers the federally-sponsored insurance provisions covering defined benefit pension plans. The third agency, the Pension and Welfare Benefits Administration within the Department of Labor, has principal responsibility for administering Title I of ERISA. ERISA

confers substantial law enforcement responsibilities on PWBA, giving PWBA the authority to conduct investigations and to seek appropriate remedies to correct violations of the law, including litigation where necessary.

Title I of ERISA sets forth standards and rules governing the conduct of plan fiduciaries. In general, people who exercise discretionary authority or manage a plan or have authority to dispose of its assets are "fiduciaries" for purposes of Title I of ERISA. Fiduciaries are required, among other things, to discharge their duties solely in the interest of plan participants and beneficiaries and for the exclusive purpose of providing benefits and defraying reasonable expenses of administering the plan. In discharging their duties, fiduciaries must act prudently and in accordance with the documents governing the plan, to the extent such documents are consistent with ERISA. Certain transactions between an employee benefit plan and "parties in interest," which include the employer and others who may be in a position to exercise improper influence over the plan, are prohibited by ERISA.

**II. Organization of PWBA'S Enforcement Program**

PWBA enforces ERISA by conducting investigations through its ten regional offices and five district offices located in major cities around the country.<sup>1</sup> These field offices conduct investigations to gather information and evaluate compliance with ERISA's civil law requirements as well as criminal law provisions relating to employee benefit plans. Except in those cases involving national priorities, projects, enforcement policy, or other designated matters, the field offices generally exercise broad discretion in determining when investigations are to be opened and which entities or individuals are to be investigated. The field offices conduct their investigations in accordance with established enforcement procedures.

Each PWBA field office coordinates civil investigations and case referrals with its local Regional Solicitor's Office (RSOL) or with the Plan Benefits Security Division (PBSD) of the Solicitor's Office in Washington, DC, which are responsible for bringing civil lawsuits on behalf of the agency.

PWBA's Office of Enforcement (OE), located in Washington, DC,

communicates national enforcement policies, priorities, and procedures to PWBA's field offices. OE is responsible for operational review and oversight, enforcement policy direction, program coordination, and technical assistance.

**III. Purpose and Scope of the Strategic Enforcement Plan**

During fiscal year 1999, PWBA had fewer than 400 investigators, the front-line staff who identify and investigate civil and criminal violations relating to employee benefit plans. With over 700,000 pension plans and 4.5 million welfare plans, PWBA must use its investigative staff effectively to protect the more than \$4.3 trillion in assets contained in private employee benefit plans. For this reason, a 1995 report by the Brookings Institution referred to PWBA as probably the most highly leveraged agency in the U.S. government.<sup>2</sup>

The primary purpose of PWBA's Strategic Enforcement Plan (StEP) is to establish a general framework through which PWBA's enforcement resources may be efficiently and effectively focused to achieve the agency's policy and operational objectives. The StEP identifies and describes PWBA's enforcement priorities; the planned allocation of enforcement resources to carry out these priorities is established yearly in an operational plan. PWBA intends to reference this StEP when it exercises its enforcement discretion; however, the StEP does not create or confer any rights, duties, obligations, or defenses, implied or otherwise, on any person or entity.

Because of the substantial demands that are placed on PWBA's limited investigative resources, the StEP establishes broad policy criteria to ensure an appropriate balance of priorities while maintaining the highest possible standard of operational efficiency. Within the framework of these criteria, each region may exercise discretion in allocating investigative resources, provided appropriate resources are allocated to implement national projects and other designated items, such as emerging issues and high profile investigations which warrant special attention. National investigative priorities and projects are identified and developed with participation of field office management.

**IV. Enforcement Strategy**

In fiscal year 1997, the Secretary of Labor established three strategic goals

<sup>1</sup> PWBA regional offices are located in Boston, New York, Philadelphia, Atlanta, Cincinnati, Chicago, Dallas, Kansas City, San Francisco, and Los Angeles. PWBA district offices are located in Washington, D.C., Miami, Detroit, St. Louis, and Seattle.

<sup>2</sup> "Cutting Government," A Report of the Brookings Institution's Center for Public Management, May 22, 1995.

for the Department of Labor: A Prepared Workforce; A Secure Workforce; and Quality Workplaces. PWBA's enforcement strategy is designed to support the strategic goal of a secure workforce by deterring and correcting violations of ERISA and related statutes. PWBA supports the goal of a secure workforce by other means as well, such as the development of the ERISA Filing Acceptance System for Form 5500 annual reports, educating the pension and welfare benefits community, and providing individual assistance to participants.

#### A. Targeting

The term "targeting" refers to the PWBA process whereby specific individuals or entities are identified for investigation because of some indication that an ERISA violation may have occurred or may be about to occur. For example, the targeting process could be as simple as opening a single investigation based on information received from a plan participant whose benefits are past due or it could involve opening hundreds of cases based on the computer-generated results of Form 5500 review and analysis.

Because there are over five million private employee benefit plans under PWBA's jurisdiction, targeting is essential to effectively use PWBA's limited investigative resources. Targeting focuses PWBA resources on those situations, issues, individuals, or entities where the most serious potential for ERISA violations is likely to exist.

PWBA strives to establish targeting methods that focus investigative resources in areas that are most likely to uncover abuses. Because evaluating ERISA violations usually involves applying legal standards to complex factual scenarios, the challenge in constructing effective targeting methods is to identify factors that can be used to pinpoint specific plans (e.g., those with delinquent forwarding of employee contributions), individuals, and other entities in violation of the law.

Once the type of conduct and the individual or entity is identified, the field office must decide whether to formally open an investigation. This determination may be based on a number of considerations such as the egregiousness of the conduct, the amount of money or property at risk, or the number of participants potentially affected. Although the 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 OE.

PWBA must apply its investigative resources in a manner that will result in prompt and effective enforcement actions, and timely results. OE and field office managers determine how cases are to be investigated, evaluated, and resolved to achieve this goal. In some cases field office managers must determine whether to pursue an issue civilly, criminally, or both simultaneously. In addition, the investigators are responsible for implementing investigative methods designed to achieve timely monetary or injunctive relief, as appropriate. In some cases, the most effective approach may require referral to another state or federal agency because of the legal issues involved. In determining which course of enforcement action to pursue or which method to apply to prevent, redress, or punish illegal behavior, PWBA will consider all available options and strive to follow the best alternative available.

#### B. Protecting At-Risk Populations

Employee benefit plans provide income and services on which individuals rely for their quality of life, often to a critical degree. The financial security of an individual or a family may be jeopardized if pension, health, or other benefits are not paid as promised. Medical benefit plans provide not only for the physical well-being of individuals, but often provide access to services which individuals might not otherwise be able to afford.

PWBA seeks to identify situations and apply its enforcement resources to protect those employee benefit plan participants and beneficiaries whose security and livelihood are in the greatest danger of being harmed as a result of ERISA violations. Such methods focus on those situations where participants and beneficiaries are most susceptible to actual loss of benefits, or where "populations" of plan participants are potentially exposed to the greatest risk of falling victim to unlawful conduct.

All of PWBA's field offices engage in outreach efforts which are designed to assist potentially vulnerable populations such as participants who might have otherwise lost coverage or benefits (e.g., employees whose benefits are affected by plant closings, or employers who might be victimized by unscrupulous health care promoters) or plans for which benefits are not federally insured, such as 401(k) plans. These outreach efforts may involve speaking at conferences and seminars sponsored by trade, professional, and educational groups or participating in outreach and educational efforts in

conjunction with other federal or state agencies.<sup>3</sup> Educating participants and beneficiaries about their benefits, rights, and the availability of PWBA's enforcement authority helps establish an environment where they can help protect their own benefits through recognizing potential problems or notifying PWBA in appropriate situations.

Although PWBA seeks to protect the benefits of plan participants and beneficiaries that are at actual risk of loss, in some cases an investigation will be conducted even where benefits do not appear to be at risk. For example, a health care service provider may pay a plan fiduciary a "kickback" in exchange for the fiduciary's selecting that entity over another. Enforcement action is warranted in such cases to ensure the integrity of the system even though the plan participants and beneficiaries incurred no actual harm. Situations involving self-dealing, conflicts of interest, and gross imprudence are examples of other types of violations that may warrant investigation even in the absence of demonstrated harm to plan participants.

#### C. Detering Violations

Almost all enforcement programs hope to deter people from violating the law. PWBA seeks to deter illegal conduct through the continuing effectiveness of its civil and criminal enforcement efforts. PWBA actively publicizes its litigation, which has proven useful in encouraging voluntary compliance by others.

While PWBA seeks to recover losses incurred by participants, it also seeks to maintain the financial and operational integrity of the private employee benefit plan system. Doing so has sometimes involved conducting investigations that address potentially abusive practices which may not involve actual losses to the plans or participants.<sup>4</sup> Because such projects are effective at changing certain types of behavior, this approach will

<sup>3</sup>In July 1995, PWBA launched its national pension education campaign to inform and encourage people to make educated choices about retirement planning, especially small business owners, young people, low wage workers, women, and minorities. This information campaign was supplemented in December 1998 by PWBA's national health benefits education campaign, which is designed to help people understand their medical benefits when they experience changes in life and work.

<sup>4</sup>An example of such a project was the enforcement initiative relating to corporate governance issues, known as the Proxy Project. While the Proxy Project did not result in any monetary recoveries on behalf of plans, it was enormously successful in educating the ERISA community regarding their legal responsibilities under ERISA with respect to the voting of proxies.

continue to be used by PWBA under selected circumstances.

PWBA also has responsibilities for enforcing the criminal provisions contained in ERISA and violations under Title 18 of the U.S. Code which affect employee benefit plans. In pursuing criminal violations, PWBA staff work with the local U.S. Attorneys' Offices, as well as other law enforcement agencies, to support effective prosecution and sentencing. After a conviction is obtained, PWBA is diligent in ensuring that the statutory bar provided for in section 411 of ERISA is applied. This section of ERISA generally prohibits any person who has been convicted or imprisoned for any of the enumerated criminal offenses from serving in virtually any capacity relating to an employee benefit plan for 13 years after conviction or completion of imprisonment.

On March 15, 2000, PWBA adopted its Voluntary Fiduciary Correction Program, which encourages the voluntary correction of certain violations of Title I of ERISA. The program allows plan officials to identify and fully correct thirteen transactions, such as prohibited purchases and sales, improper loans, delinquent participant contributions, and improper plan expenses. If an eligible party documents the acceptable correction of a transaction, PWBA will issue a no-action letter, and will not initiate a civil investigation under Title I of ERISA regarding the applicant's responsibility for any transaction described in the no-action letter. PWBA expects this program to 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.

## V. Implementing the Enforcement Strategy

PWBA's enforcement strategy is implemented through the guidance in this document, the STEP, and at a working level through the agency's annual performance goals, developed by the field offices in coordination with OE. The annual performance goals translate the general policy guidance articulated in the STEP into practical application.

### A. Civil Investigations

PWBA's enforcement program is primarily carried out through civil investigations. PWBA organizes its civil investigative program using two main approaches: (i) national projects, which are investigative projects that further more broadly established long-range national investigative priorities, and (ii)

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

#### 1. National Investigative Priorities

PWBA establishes national investigative priorities to ensure that its enforcement program focuses on the areas that are critical to the well-being of employee benefit plans. Types of plans, benefits, or other broad segments of the regulated employee benefit plan universe are identified and designated for emphasis by PWBA's enforcement program. These areas will generally be designated for emphasis over several years. Each year, PWBA identifies specific national investigative projects, within these national investigative priorities, to which it will dedicate enforcement resources. These projects are designed to identify and correct ERISA violations which PWBA believes may be widespread or to focus on possible abusive practices that may affect many plans.

There are three current national investigative priorities: plan service providers, health care plans, and defined contribution pension plans.

a. *Plan Service Providers.* The term "plan service provider" refers to any person or entity which provides a direct or indirect service to an employee benefit plan for compensation. Third party administrators, accountants, attorneys, and actuaries are plan service providers. Plan service providers also include financial institutions such as banks, trust companies, investment management companies and insurance companies as well as others that manage or administer, directly or indirectly, funds or property owned by employee benefit plans.

Investigations of plan service providers offer the opportunity to address abusive practices that may affect more than one plan, and by focusing investigative resources on plan service providers, PWBA can address violations involving many plans. Because such investigations generally result in larger recoveries for more plans and more participants, this approach provides a mechanism whereby PWBA can leverage its resources and obtain the maximum impact for the benefit of plan participants and beneficiaries.

When investigating plan service providers, PWBA generally focuses on the abusive practices committed by the specific service providers rather than the plans. For example, where a third party administrator has systematically retained an undisclosed fee, generally the focus will be on the third party administrator rather than the plan that contracted for the services. Because the

investigation of plan service providers offers the opportunity to leverage available staffing, the field offices are encouraged to allocate appropriate resources to the targeting and investigation of these issues or entities.

b. *Health Benefit Issues.* The Department has estimated that there are a total of 2.6 million ERISA-covered health plans, covering approximately 122 million participants and beneficiaries. In recent years several factors have combined to make the management and administration of ERISA-covered health plans a matter of vital national importance, including increased health care costs (due in part to improved technology and accessibility); changes in the health care delivery and funding systems; and the evolution of the legal standard under which health plans and their service providers must operate. As the cost of health care has increased, the methods for delivering that care have changed. In general, the increase in health care costs is regarded as a key factor in the move toward managed care which is designed to control access to health care and its related costs.

PWBA seeks to ensure that plans and the benefits of their participants and beneficiaries are protected. The application of available remedies under ERISA is critical in those cases where federal preemption leaves participants with no other effective statutory or common law cause of action. PWBA seeks to apply the full extent of ERISA's remedies and to promote a legal standard that will increase the availability of appropriate remedies to protect plans and their participants and beneficiaries.

Because of the critical importance of the health benefits area, PWBA has in recent years applied substantial resources to addressing abusive practices that violate ERISA, pursuing enforcement actions involving multiple employer welfare arrangements (MEWAs), and insurers and service providers who receive hidden discounts. PWBA's role in the health care area has also expanded as a result of the enactment of new legislation that includes regulatory and enforcement requirements to be implemented by PWBA, including:

- The Health Insurance Portability and Accountability Act of 1996 (HIPAA), which amended ERISA to provide for, among other things, improved portability and continuity of health insurance coverage provided in connection with employment;
- The Newborns' and Mothers' Health Protection Act of 1996 (NMHPA), which amended ERISA to establish minimum

requirements for hospital stays relating to childbirth;

- The Mental Health Parity Act of 1996 (MHPA), which amended ERISA to establish certain minimum requirements relating to mental health coverage; and
- The Women's Health and Cancer Rights Act (WHCRA), which amended ERISA to provide new protections for patients who elect breast reconstruction in connection with a mastectomy.

In the wake of these and other legislative amendments to ERISA, PWBA will continue to devote substantial enforcement resources to the targeting and investigation of fiduciary issues relating to health benefit issues.<sup>5</sup>

c. *Defined Contribution Plans.* There are two major types of pension plans under ERISA. In a defined benefit plan, the plan sponsor makes contributions to a fund and those contributions are intended to provide a promised level of benefits upon retirement. The amount of benefits paid is usually based upon a formula. With this type of plan the plan sponsor is responsible for managing the assets in the fund to ensure the amount is sufficient to pay benefits in the future. If the amount of funding in the plan is not sufficient to pay future benefits the plan sponsor is responsible for the short fall. These types of plans are also covered by termination insurance issued by the PBGC.

In contrast, defined contribution plans are plans where the plan sponsor and/or the participant makes contributions to an account and the amount paid to the participant upon retirement is determined by the amount of funds that have accumulated in the account. Participants in defined contribution plans bear the risk of investment loss, whereas in defined benefit plans that risk is borne primarily by the plan sponsor or the PBGC and only secondarily by the participant, if on plan termination the sponsor is bankrupt and PBGC insurance does not cover the benefit. Because defined contribution plans are not covered by PBGC insurance, if a plan experiences losses due to a fiduciary breach the plan participants are directly affected and, unless the funds can be recovered through enforcement or other legal actions, that loss will be irrevocable.

In recent years there has been a tremendous growth of 401(k) type of defined contribution plans in terms of the number of plans, number of participants, and amount of assets in

these type plans. This growth and the related administrative and investment practices which have developed to accommodate these plans warrant scrutiny to ensure the safety of this large volume of assets.<sup>6</sup> PWBA has identified defined contribution plans as a national enforcement priority because the risk of loss in such plans rests entirely on the plan participants.

## 2. National Projects

National projects are investigative projects focusing on a selected issue or group of related issues which fall within the established national enforcement priorities. Once an issue or group of issues has been designated as a national project each PWBA field office generally must give priority to conducting investigations and dedicating appropriate resources to the project during the fiscal year. Although national projects are intended to focus on issues of national scope and significance, specific projects may on occasion address issues that are not necessarily prevalent in all areas of the country and the participation of only a selected group of PWBA field offices may be required.

The issues selected for implementation as national projects are determined (or reviewed, since an individual national project may extend over more than one fiscal year) with the input of PWBA's field offices in annual planning sessions. National projects may originate as an expansion of a successful regional project or arise in connection with field office investigations. For example, one national project which has been ongoing for a number of years is the investigation of multiple employer welfare arrangements (MEWAs).

Coordination and enforcement policy determinations for national projects are generally directed through OE. Such direction is conducted with substantial participation and opportunity to comment by the field office managers. OE's involvement in national projects includes monitoring and evaluating the project's progression and, where appropriate, issuing procedural directives and technical guidance.

## 3. Regional Projects

Enforcement initiatives are also conducted as projects by individual regions. Each year the field office managers submit their project proposals to OE for review and approval. The subjects selected for regional projects

are generally topics that have been identified by a particular region as constituting an enforcement issue that may be unique or particularly problematic within its geographic jurisdiction. Because the field staff may be able to identify potential issues through their investigative activities, the regions have the unique opportunity to observe industry practices first hand and select issues for development as regional projects which may ultimately be appropriate for adoption as national projects. Normally, an issue selected as a regional project will be:

- Well-defined both in terms of scope and focus rather than couched in terms of broad categories, such as "small plan issues";
- Identified in the context of a type of transaction or industry practice; or
- An emerging concern or involving a legal position that is precedential in nature.

In addition a regional project should be amenable to the development of an effective targeting method so that an appropriate number of subjects can be identified for investigation. As noted previously, any number of targeting methods may be used.

Regional projects that satisfy these criteria provide a foundation for identifying cutting-edge issues that may be found to involve matters of national scope and importance. If subsequently selected as a national project, the experience and insight gained at the field office level will provide a substantive basis for guiding other field offices in conducting similar investigations. Some regional projects address practices that are more localized in their scope and impact. Because the demographics of each region differ in the concentrations of various types of plans and service providers, the same strategy is not optimal for all offices.

## B. Criminal Investigations

Section 506(b) of ERISA gives the Department responsibility and authority to detect and investigate and refer, where appropriate, criminal violations related to Title I of ERISA and other federal laws, including the detection, investigation, and appropriate referrals of related violations of the federal criminal code. The number of criminal investigations and prosecutions pursued by PWBA has increased substantially in recent years and it is expected the number of cases and indictments will continue to grow. In particular, PWBA's role in investigating criminal violations involving health care plans is expected to grow with the recent addition of several new criminal provisions relating to health care plans.

<sup>5</sup>In December 1999, PWBA created the Office of Health Plan Standards and Compliance Assistance to develop regulations, interpretive bulletins, opinions, forms, and rulings relating to health care portability, non-discrimination requirements, and other related health provisions.

<sup>6</sup>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 prosecution of criminal acts relating to employee benefits plans is a critical part of PWBA's enforcement program. PWBA is committed to maintaining a strong criminal enforcement program by conducting criminal investigations to detect violations that affect employee benefit plans and to assist United States Attorneys and state prosecuting attorneys in their prosecution of such cases. Each of the PWBA field offices maintains on-going involvement in criminal investigative activity.

The U.S. Criminal Code includes several provisions that specifically address violations relating to ERISA-covered pension and health plans. The three major criminal provisions applicable to both pension and health plans are:

- Section 664, relating to theft or embezzlement from an employee benefit plan;
- Section 1027, relating to false statements and concealment of facts relating to documents required by ERISA; and
- Section 1954, relating to the offer, acceptance, or solicitation to influence operations of an employee benefit plan.

The federal criminal code contains several other provisions that have been applied in connection with criminal acts involving employee benefit plans, such as the mail and wire fraud provisions (sections 1341 and 1343) and money laundering prohibitions (sections 1956 and 1957).

HIPAA created four new federal crimes specifically relating to health care benefit programs. The four new provisions establish criminal penalties relating to general health care fraud (section 1347); theft or embezzlement relating to health care (section 669); false statements relating to health care (section 1035); and obstruction of criminal investigations of health care offenses (section 1518). HIPAA also amended the federal criminal code sections relating to money laundering and racketeering to address health care offenses. Amendments to the criminal asset forfeiture provisions now establish a process for restoring funds to ERISA-covered health plans.

Criminal cases are targeted in various ways, including systematic methods

(such as the analysis of computer data), information obtained through a civil investigation, leads from individuals (such as plan participants, plan officials, or informants), media sources, or information obtained from other government agencies. The field offices are encouraged to maintain effective working relationships with other law enforcement agencies, such as the local U.S. Attorneys' offices, the Federal Bureau of Investigation and the Office of the Inspector General. PWBA maintains close contacts and coordinates with these and other federal and state law enforcement agencies both in connection with identifying potential investigative targets as well as in the course of conducting investigations and pursuing prosecution, when appropriate.

Once such leads have been identified and illegal conduct is indicated or suspected, the field office managers are responsible for determining whether an investigation should proceed criminally, civilly, or both simultaneously. Because the same facts giving rise to fiduciary violations in civil investigations may also give rise to criminal violations, as a matter of course, PWBA determines whether there are criminal issues to be pursued in connection with its civil investigations. If such issues are believed to potentially exist, a criminal investigation will be pursued and, as appropriate, the cases will be coordinated with the appropriate U.S. Attorneys' offices to seek indictments and convictions. Regardless of whether a criminal investigation has been formally opened, evidence obtained by PWBA indicating a potentially criminal act will be referred to the appropriate U.S. Attorney's office.

#### VI. Measurement of Program Results

The Government Performance and Results Act of 1993 (GPRA) requires the federal government to improve its performance and increase its results. Under GPRA, all federal agencies are required to develop multi-year strategic plans, prepare annual performance plans to implement the strategic plans, and provide annual reports that compare actual performance with stated goals. The StEP is designed to help achieve GPRA's mandates by structuring

PWBA's general policies in a manner that will improve compliance results though the timely, efficient, and effective operation of its enforcement program.

GPRA requires the establishment of measurable goals against which performance can be evaluated. In the ERISA enforcement area the measurement of performance in terms of improved compliance is complicated by the absence of an established base level of non-compliance. With over 700,000 pension plans and four million welfare plans, no such baseline of compliance has been established. Like other enforcement and regulatory agencies, PWBA has struggled with this issue for some time. The establishment of pure baseline data regarding the incidence of violations remains a major obstacle. Therefore, PWBA has selected performance measures which highlight the most important activities of the enforcement program, measures that challenge the agency to improve the efficiency and effectiveness of its ongoing programs as well as to address new and important initiatives.

PWBA has made significant progress assembling baseline data for these performance measures which are included in the PWBA Strategic and Annual Performance Plans. For example, the agency has established baselines for measures such as the number of fiduciary investigations closed where plan assets are restored and where prohibited transactions have been corrected, closed investigations where plan assets have been protected from mismanagement and risk of future loss is reduced, and the ratio of closed civil cases with corrected violations to total civil cases closed.

The PWBA Strategic Plan for FY 1997-FY 2002 is located on PWBA's web site at [www.dol.gov/dol/pwba/public/gpra/main.htm](http://www.dol.gov/dol/pwba/public/gpra/main.htm). For a hard copy, contact PWBA's Public Disclosure Room, at 202-219-8771.

Signed at Washington, D.C., this 3rd day of April, 2000.

**Leslie B. Kramerich,**

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