Fact Sheet

U.S. Department of Labor
Employee Benefits Security Administration
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Rapid ERISA Action Team for Bankruptcy

In carrying out its responsibility to protect participants and beneficiaries' benefits, EBSA has targeted populations of plan participants who are potentially exposed to the greatest risk of loss.

One such group of individuals is participants and beneficiaries of plans whose sponsor has filed for bankruptcy or is in financial peril. In bankruptcy situations, it is common to find employers holding assets that belong to or are owed to plans and occasionally intermingling those assets with the employers' own assets. Unless those assets are identified in a timely manner during bankruptcy proceedings and the appropriate action is taken, employees could permanently lose their right to their unpaid employee contributions.

The REACT project focuses EBSA's response in an expedited manner to protect the rights and benefits of plan participants when the plan sponsor faces severe financial hardship or bankruptcy and the assets of the employee benefit plan are in jeopardy.

Under REACT, when a company has declared bankruptcy EBSA takes immediate action to ascertain whether there are plan contributions that have not been paid to the plans' trusts, to advise all affected parties of the bankruptcy filing, to provide assistance in filing proofs of claim to protect the plans, the participants, and the beneficiaries, and if necessary, to seek the appointment of an independent fiduciary to distribute plan assets to participants and beneficiaries.

EBSA also attempts to identify the assets of the responsible fiduciaries and evaluate whether a lawsuit should be filed against those fiduciaries to ensure that the plans are made whole and the benefits secured.

The Department's investigation of the Castleton Group illustrates the types of assistance the Rapid ERISA Action Team delivers. The North Carolina company offered payroll and human resource services until it closed and filed for bankruptcy protection in 2007. On December 20, 2010, the United States Bankruptcy Court for the Eastern District of North Carolina issued a Consent Judgment and Order approving a settlement agreement between the Department, the 401(k) plan, the health plan and company president Suzanne Clifton. Pursuant to the agreement, participants and beneficiaries are reimbursed $165,000 for employee contributions and loan repayments that were not forwarded to the plan by fiduciaries Clifton and Charles McLamb.

The Department also found that Clifton and McLamb failed to forward health plan contributions to the health plan's claims administrator. The Department obtained a Consent Judgment on January 19, 2011 in the U.S. District Court for the Eastern District of North Carolina. The Order requires the Castleton Group to recognize the priority of a proof of claim for $66,705 the Department filed for the contributions in the bankruptcy. The Judgment also permanently bars Clifton from serving as a fiduciary of any ERISA covered benefit plan.

Another example involves a case where the Department obtained a court order that more than $1 million in plan assets be distributed to participants and beneficiaries of the BlueSky Brands, Inc. 401(k) plan. The January 11, 2011 order also appoints an independent fiduciary to administer the 401(k) plan of the defunct Westerly, Rhode Island company. The independent fiduciary will manage the plan, make the distributions and complete the plan termination process. The Judgment and Order were entered in the U.S. District Court for the District of Rhode Island.

In another example, the Department filed suit on November 12, 2010 in the U.S. District Court of Massachusetts seeking to recover $6.6 million plus interest for participants and beneficiaries of the defunct Northern Rhode Island Anesthesia Associates P.C. and its subsidiaries. The suit alleges that former owner and company president Fathalia M. Mashali failed to forward contributions to the company's pension plan. The Department's suit also seeks to permanently disbar Mashali from serving as a fiduciary to any ERISA covered employee benefit plan.

In Fiscal Year **2011** through **March 31, 2011**, EBSA achieved over **$13.6** million in monetary results through this project.

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.