Civil and Criminal Enforcement

The US Department of Labor (DOL) recently published its Fiscal Year 2018 “Fact Sheet” documenting the criminal and civil enforcement activities of its Employee Benefits Security Administration (EBSA) under the Employee Retirement Income Security Act of 1974 as amended (ERISA). Total monetary recoveries increased for the third year in a row, due to historically high recoveries from EBSA’s civil enforcement actions. Although civil enforcement recoveries reached a historic high—the third largest in over a decade—the trend of increased criminal investigations and decreased civil investigations continued in FY 2018.

Criminal Investigations Remain High

In FY 2018, DOL, working in conjunction with the Department of Justice, closed 268 total criminal investigations, aligning with the rolling 15-year average. Despite a minor decline from FY 2017, FY 2018 saw a continuation of heightened criminal investigation efforts since DOL’s 2009 announcement that it would emphasize enforcement of the criminal provisions applicable to ERISA plans.

The rate of criminal investigations closed with guilty pleas or convictions increased over FY 2017. In FY 2018, 87 criminal investigations were closed—up
from FY 2017’s total of 79—representing a substantial increase in the rate of results when compared to the decreased total number of investigations closed, which is slightly greater than the average annual fluctuation in the rate of results over the last 15 fiscal years.

Civil Investigations Continue to Decrease

In FY 2018, the total number of civil investigations closed, as well as the number of civil investigations closed with results, decreased for a fourth consecutive year. DOL closed a total of 1,329 civil investigations—the lowest number since FY 2001—and of those, 860 were closed with results.
The percentage of civil investigations closed with results in relation to the total number of civil investigations closed evidences the continued decline of civil enforcement investigation activity since FY 2014.

Monetary Results Increased

The total monetary results for all EBSA enforcement and compliance activities continued to increase since FY 2014’s historic low.
In FY 2018, EBSA reported total monetary recoveries of approximately $1.6 billion, an increase of $500 million over FY 2017. That represents a 39% increase—well above the average annual fluctuation of approximately 10%. And for the first time in almost half a decade, that amount is higher than the rolling 15-year average for total monetary recoveries of $1.3 billion.

**Sustained Impact of the Informal Complaint Resolution System**

Recoveries from the Informal Complaint Resolution System increased over FY 2017—reaching the second highest level since FY 2001. Recoveries from Prohibited Transactions Corrected and Plan Assets Protected similarly increased over FY 2017. While a significant increase in Prohibited Transactions Corrected and Plan Assets Protected of approximately $100 million was reported, that figure is still dramatically lower than the rolling 15-year average for such recoveries.
In terms of total monetary results, recoveries from the Informal Complaint Resolution System represented approximately 28% of the total recoveries for FY 2018, which was a significant drop from 37% in FY 2017. While this FY 2018 figure is greater than the 15-year average of approximately 24%, it represents a decreased share of total recoveries for the fourth year in a row. Recoveries from Prohibited Transactions Corrected and Plan Assets Protected also decreased, to approximately 25% of the total monetary recoveries for FY 2018. Those figures fall well below the average for the past 15 years when accounting for the anomaly in FY 2009. In a continuing departure from the historically inverse relationship between the informal complaint resolution system and the investigation of prohibited transactions, the trend of recoveries from the informal complaint resolution system gradually replacing recoveries from the prohibited transaction investigations appears to be reversing itself—moving toward more proportionate levels of the total monetary recoveries.

**Budget for Enforcement and Assistance Remains Level**

It is worth noting that DOL’s budget for ERISA enforcement and assistance, as reported in supporting materials for its annual federal budget request, has been relatively level for the past several fiscal years.
After the program budget was reduced and then rebuilt in the three fiscal years following the economic downturn, it received a material increase in FY 2012 and, starting in FY 2014, has annually been in the $144 to $147 million range. (By way of comparison, in FY 2018 this budget was about 27% of the budget for the SEC’s Division of Enforcement.) In recent years, at least $3 million of this DOL budget has been rolled over annually to future fiscal years for expert witness fees in litigation.

*Includes over $8 million from Economic Recovery Act.

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