So you think your 401(k) money is safe

The popular accounts have little protection from theft. Smaller companies have raided the funds in hard times.
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Jim Elliott, 55, spends his days clambering onto the tops of houses, taking measurements for the wooden trusses his company sells to support roofs through long, snowy winters.

Not long ago, Elliott thought his ladder-climbing days would soon be over. With a few more years of work, his 401(k) account would be large enough to let him retire at 60 and spend his days with his three grandchildren.

Then Elliott learned that his former employer had looted the company's 401(k) plan. The $230,000 he had saved over three decades was gone.

A government-appointed trustee is trying to recover the money, but workers have been told they can expect to get back perhaps half what they lost.

"I'm going to be up measuring roofs when I'm 75 years old," said Elliott, a husky man with steel-gray hair. "I didn't do a lot of things over the years because I was trying to save for retirement. Now I see I was paying for somebody else's vacations."

If Elliott had a traditional pension, his retirement checks would be guaranteed under a federally backed insurance plan. But no comparable protection exists for 401(k)s, even though they are rapidly replacing pensions as the financial backbone of retirement for most Americans.

By law, all assets in 401(k) plans must be covered by private insurance policies known as fidelity bonds. But the bonds are required to cover just 10% of the retirement plan's assets or $1 million, whichever is less.

At companies with fewer than 100 employees -- such as Elliott's company -- the plans are not subject to annual independent audits that could deter embezzlement.

An estimated 9 million Americans have their savings in 401(k) and profit-sharing plans small enough to be exempt from the annual audit requirement. That's about 20% of the people in defined-contribution retirement plans.

Thefts from 401(k)s at large companies are practically unheard of. These plans generally are run by big investment firms whose reputations could be ruined by pilferage. Employees typically choose their investments from a menu of mutual funds and can monitor their account balances around the clock.

It's a much different picture at many smaller companies. The plans may be overseen by the firm's owner or business manager. Employees often have no say in how their money is invested and no way to monitor their accounts.

When theft occurs, it tends to happen at companies on the edge of bankruptcy. As the firms collapse, there may not be enough assets left to repay workers or enough insurance to cover their losses.

"For many people, this is their only retirement asset," said Karen Ferguson, director of the Pension Rights Center in Washington, D.C. "The fact that it's almost completely unprotected reflects a major shortcoming in the law."

Business groups have generally resisted calls for greater protection for workers at smaller companies, saying theft is rare. Tighter oversight or enhanced insurance would raise costs for small employers, they say, and could lead many of them to abandon their programs.

"Fraud and theft are illegal in all 50 states," said Jim Klein, president of the American Benefits Council, a trade group representing employers. "You can pass all the laws you want, but it doesn't prevent somebody from getting mugged in the street. We need to enforce the laws that we have."

The Department of Labor, which is responsible for safeguarding pension and retirement benefits, says it brings about 1,500 cases a year against employers accused of illegally diverting their workers' retirement money.

But department officials concede that they do not have sufficient staffing to routinely monitor 401(k)s or investigate every complaint.

Attorney Austin Barnes, 41, started working for a small, struggling law firm in Cleveland two years ago and immediately enrolled in his company's retirement savings plan, kicking in about $350 a month. He was the only contributor to the plan.

He started to worry when he didn't get a quarterly statement, but he said his boss told him it was just a clerical delay. Months passed, and his inquiries went unanswered, he said. A year into the job, he cornered the firm's managing partner and accountant.

"They said the account was never set up -- the money was never there," he said. "But $4,327 was taken out of my paychecks."

Barnes sought help from the Upper Midwest Pension Rights Project in St. Paul, Minn., which contacted the Labor Department. Investigators made several calls, he said, but the law firm refused to cooperate and regulators decided not to pursue the case.

"It wasn't worth their resources," said Barnes, who left the firm in disgust. He said he hasn't gotten his money back, and that it wouldn't be worth the time and trouble to sue the firm.

"This won't break me, but if somebody had told me that laws that protect your retirement accounts only apply when you're with a bigger plan, I would have been a lot more careful," he said.

Alan Lebowitz, a deputy assistant secretary of labor, said the department has fewer than 500 investigators to respond to complaints about the nation's 700,000 defined-contribution retirement plans, mainly 401(k)s. The department is forced to practice triage, he said.

Workers often have no idea their savings are being stolen until it is too late, said Mary Browning, director of the Upper Midwest Pension Rights Project. In many cases, she said, the employers raid workers' savings in an attempt to rescue their businesses.

"Our experience is that when there is a problem like this, the company was going down the tubes and the employer was siphoning off cash, desperately trying to keep it going," Browning said.

That appears to have been the case at Rycenga Homes, the company that had employed Jim Elliott for 36 years.

Based in Grand Haven, Mich., Rycenga Homes was a family business founded by Louis Rycenga in the 1950s to manufacture and sell prefabricated homes and related products. Rycenga's daughter Mary wed her high school sweetheart, Ron Retsema, in 1965, and the young man went to work for his father-in- law. By 1984 he was the company's president, and seven years later he became the owner. With that, he also became sole trustee of the company's 401(k), a common scenario at small companies.

Retsema took his first "loan" from the retirement plan in April 1992, borrowing $35,000, according to records in his federal criminal case. Over the next seven months, he borrowed an additional $67,000, repaying $24,000 in two installments.

No one noticed.

"He was the sole trustee and he had the checkbook," said Jeffrey Crampton, an attorney who defended Retsema against the criminal charges and a civil case brought by the Labor Department.

Over the next 12 years, Retsema repeated his pattern of taking out loans and making occasional, partial repayments. Retsema didn't disclose the loans on the annual forms he filed with the IRS and Labor Department listing plan assets, and authorities saw no reason to suspect wrongdoing.

Although Retsema lived comfortably, the money he took from the retirement plan didn't buy Ferraris or yachts. It paid company bills and helped him make payroll.

"At one point, he was worth $3 million, but he put every nickel of that into the company," Crampton said. "Here you've got a guy who, for all the right reasons, did all the wrong things."

Former employees say Retsema ran the business badly, selling prefab homes at prices so low that there wasn't enough revenue to support operations.

"He would take a vacation every year and leave me with a three- page list of what bills would be coming in and the order that I should pay them," said Stacy Plumhoff, a former administrator at the company. "There was never a point where everybody got paid."

But workers said they had no reason to worry about their retirement money. Retsema hired a business services unit of American Express Inc. to handle the paperwork, and each year he sent that company a summary of the account balances. American Express then mailed workers their individual statements under its letterhead.

"He sent these fairy tales to American Express," said former employee Chuck Green, who lost $20,000. "And they'd put it on these nice little statements and sent it off to us."

The 401(k) funds were held by St. Louis-based investment firm Edward Jones & Co., which invested the money at Retsema's direction. Among the investments he chose was a money market account with check- writing privileges, according to court documents.

The scheme began to unravel in mid-2004, when Green and another employee quit to work for a competitor and tried to transfer their 401(k) savings to their new employer's plan. That's when American Express told them their money was gone.

They immediately began contacting other participants, including Elliott, whose $230,000 nest egg was the largest among the accounts held by the 84 plan participants.

"It was just impossible to believe," Elliott said. "They'd told us over and over again how the company couldn't touch this money. How could it be gone?"

The workers hired a lawyer, who began asking questions. Edward Jones suspended Retsema's check-writing privileges. The Labor Department launched an investigation and sued Retsema to recover workers' lost savings.

Retsema pleaded guilty last summer to one count each of pension fraud and bank fraud. He is serving a four-year sentence at the federal prison in Milan, Mich.

Retsema settled the civil case by agreeing to pay restitution to employees. But Rycenga Homes is no longer in business, and its assets were sold to repay $3 million in loans from the company's bank. There are no remaining assets, and Retsema doesn't have the means to repay workers or other creditors, his lawyer said. Both he and his company have filed for bankruptcy protection.

According to court records, the 84 participants in the 401(k) plan are owed nearly $2

million -- $985,000 in direct losses and $861,000 for "lost opportunity," or what they would have earned if their savings had been properly invested.
The Labor Department appointed Ellis Management Services Co., a Michigan investment firm, to try to recover the money. Ellis negotiated a $180,000 payment by American Express, according to court records, and has filed a civil suit against Edward Jones.
Ellis also has sued Hanover Insurance Co., which issued a $250,000 bond for the Rycenga 401(k) plan. Hanover has acknowledged that it is obligated to pay that amount, but Ellis contends the company is liable for losses of as much as $250,000 a year for each of at least six years that the policy was in force.
To date, none of Retsema's former employees has recovered any of the looted savings.
When traditional pension plans fail, the Pension Benefit Guaranty Corp. steps in to ensure that retirement checks keep flowing. The plan would pay 100% of the promised retirement benefits, up to a ceiling of $47,659 per year, for people whose pensions collapse this year.
There is no comparable program for 401(k)s. Benefit experts say that's partly because government oversight has not caught up with the massive shift from traditional pensions, in which retirees are guaranteed a regular benefit, to defined-contribution plans such as 401(k)s, in which workers provide for their own retirement.
"It's only recently that people are finally recognizing that the size and scope of the defined contribution system warrants the same kind of attention as the defined benefit system," said David Wray, president of the Profit Sharing/401(k) Council in Chicago.
Brokerage firms that hold investments in stocks and mutual funds are insured against the theft of assets under an industry-funded program, the Securities Investor Protection Corp. If a similar plan was created for 401(k) accounts, employers could pass on the costs to employees.
Raymond Reinheimer, 76, wishes he'd had the option to insure his retirement savings. He retired from his job as an engineer at Chicago Spectro Service Laboratory Inc. in 1999 with $230,448 in his profit-sharing plan, enough to provide payments of at least $3,000 a month for the rest of his life, he calculated.
But when he retired, the money wasn't there. Chicago Spectro owner Richard Goldblatt had fabricated the account statements given to Reinheimer and six other workers, and the money probably was never deposited, said Alan Bruggeman, an attorney for Reinheimer.
In a 2005 settlement with the Labor Department, Goldblatt agreed to restore $470,045 to the plan. Reinheimer contends that the $180,597 he received fell far short of what he would have had if the money had been invested properly. Goldblatt refused to comment.
Reinheimer has sued Goldblatt, seeking at least an additional $100,000.
"I never thought it would go on this long," he said. "One of the things you're robbed of is a sense of security. I should have plenty of money right now, but I don't."
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Times researcher Scott Wilson contributed to this report.
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What you can do to protect your money
Here are ways to help ensure your retirement money is there when you need it:
* Check the balance on your 401(k) account at least once every three months and double-check it against your payroll deductions. If you get statements just once a year, ask your employer to issue quarterly reports. Watch for late or irregular statements.
* Be alert for a sudden drop in your account balance that can't be explained by market conditions. Watch for investments in funds that you did not authorize.
* Stay in touch with former employees. If they say they are having problems getting access to their 401(k) assets, it could be a sign of trouble.
* Stay abreast of your company's financial health. If your employer is experiencing difficulties, there may be a threat to your retirement savings. Also be on guard if there are frequent or unexplained changes in investment managers or 401(k) consultants.

* If you have concerns, contact your employer or benefits administrator. If you are unsatisfied or want more information, call the Labor Department's employee benefit security administration toll- free at (866) 444-3272. For online information, go to www.dol.gov and look for "retirement plans" under the topics heading.
* The Pension Rights Center offers information by phone at (202) 296-3776) or online at www.pensionrights.org.
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About this series
This is one in a continuing series of Times articles about threats to the retirement security of Americans. Previous articles are available at latimes.com/ retire.

[Illustration]

Caption: GRAPHIC: Pensions vs. 401(k)s; CREDIT: Los Angeles Times; PHOTO: LOST SAVINGS: Jim Elliott, 55, had put $230,000 in a 401(k) retirement account, but his employer took the money. Pensions come with federal insurance, but 401(k)s have no such protection. Elliott, who had hoped to retire at 60, now has another job.; PHOTOGRAPHER: Adam Bird For The Times

Credit: Times Staff Writer