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Why Some Ex-Workers at Bed Bath & Beyond Face 401(k) Losses

Federal law generally protects retirement savings when a company files for bankruptcy. But that's not always the case.



By Ann Carrns

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Federal law generally protects savings in workers' retirement plans when a company files for bankruptcy protection or goes out of business. Yet there may still be situations when employees lose money, as some former workers at Bed Bath & Beyond have discovered.

Bed Bath & Beyond, a home furnishings retailer, filed for bankruptcy protection in April and has been closing up shop and selling off assets. It also terminated its 401(k) retirement plan as of Aug. 1.

Some former workers, who had invested in a "guaranteed interest account" that they believed was low risk, saw losses of about 10 percent related to the plan's termination. One saver shared a financial statement showing he had lost about \$10,000 in his guaranteed interest account, while another said he had lost more than \$2,000. The two former workers spoke on the condition of anonymity, saying they were still determining what recourse they may have.

"It's a shame and a real slap in the face, especially since it was likely the more conservative participants who chose that option," said Cheryl Costa, a certified financial planner in Framingham, Mass.

Corporate bankruptcy filings have risen in recent years because of challenging economic shifts. Even if your employer is stable, it's wise to spread your retirement savings among diverse investments to reduce the risk that a loss in one holding will have an outsize impact on your nest egg, said Norman Stein, senior policy adviser and acting legal director at the Pension Rights Center, a nonprofit advocate for retirement security.

It's unclear how widespread guaranteed investment accounts, like the one offered to Bed Bath & Beyond workers, are in company 401(k) plans because that label may be applied to different types of investments, according to a spokeswoman for the Plan Sponsor Council of America, an industry group.

Such accounts are a type of insurance contract. An insurer typically invests funds in a mix of bonds and pays a fixed rate of return for a certain period. But if a retirement plan terminates the contract, the accounts may be subject to "adjustments," or penalties — somewhat similar to what happens with a certificate of deposit that is closed early.

In an update to participants on Aug. 25, Bed Bath & Beyond and the retirement plan's record keeper, Empower, explained that terminating the plan had set off a requirement to transfer money out of the guaranteed interest accounts. Because of the timing, they said, bonds that serve as the underlying investments for the accounts — a type of "group annuity contract" — had to be sold at a loss.

Stephen Gawlik, a spokesman for Empower, said it was overseeing the plan's termination at Bed Bath & Beyond's direction. "We have to follow the instructions given to us by plan sponsors," Mr. Gawlik said, using retirement plan lingo for employers. He said that the losses in the guaranteed interest accounts were "understandably upsetting" for investors, and that he could not say how many participants were affected.

Other investment options in the 401(k) plan were not affected by early-termination adjustments because they were not structured in the same way, Mr. Gawlik said.

Bed Bath & Beyond Inc., in an unsigned email, said, "In connection with the wind-down of all business operations, the company terminated the 401(k) plan in accordance with standard protocols and contractual obligations." (Overstock.com bought the company's brand name and other assets and now operates its website under the Bed Bath & Beyond moniker.)

The former employees said they had learned of the plan's termination only afterward, preventing them from possibly moving their money out of the account to avoid a loss. A letter from Bed Bath & Beyond Inc. informing them of the Aug. 1 termination, which was shared with The New York Times, was dated Aug. 9 — the date the balances were transferred to a money market fund.

The former employees said the losses were identified on their statements as an "expense" or a "fee." But it "is more accurately characterized as an adjustment," the update said, adding, "Due to current market conditions, the adjustment unfortunately is negative."

The participants may not have much recourse. The company and Empower said in their update letter that plan participants had been notified — in retirement plan documents and a fact sheet — of possible risks if the plan was terminated. The language says in part, according to Empower, that there may be "investment risks associated with certain plan sponsor actions."

Participants have until Oct. 13 to instruct Empower what to do with their plan balances. They can roll over their holdings to an individual retirement account or to a different 401(k) at a new employer. They can withdraw the money, but that could result in an income tax bill.

If participants don't act by the deadline, their money will automatically roll over to an Empower I.R.A. in their name, the update said. Financial advisers say it's best to actively make a choice about what to do in such situations.

Here are some questions and answers about 401(k) holdings during a corporate bankruptcy:

How can I protect my workplace retirement savings if my company is struggling?

A federal law known as ERISA, for the Employee Retirement Income Security Act, generally protects funds in a 401(k). Colleen E. Medill, a professor at the University of Nebraska College of Law who is an expert in employee benefits law, said in an email that the bulk of workers' savings in a 401(k) are well protected by ERISA in a bankruptcy. Once an employee's contributions, or an employer's matching contributions, are deposited into the trust that holds the 401(k) plan's assets, "those funds are secure and cannot be reached by creditors of an employer," she said.

It's generally wise, however, to make sure your retirement contributions are deposited into your 401(k) promptly, Ms. Medill said. Sometimes employers on the verge of bankruptcy stop forwarding employee contributions to the 401(k) to conserve cash, she said.

ERISA protects investors in 401(k) plans from creditors, but it doesn't protect them from the risk of losing money in the markets, said Israel Goldowitz, a law partner in Washington specializing in employee benefits for the Wagner Law Group.

Workers may see losses in a bankruptcy if they invested much of their retirement money in their employer's stock or if the employer made matching contributions in company stock, Mr. Stein of the Pension Rights Center said. Employees usually have the right to diversify their investments out of their company's stock, he said, but they often don't, in part because familiarity with their employer may make them overconfident in the stock.

"The most important step someone can take when a company is in turmoil is to update their contact information with the plan," said Anna-Marie Tabor, a visiting professor at the University of Massachusetts School of Law. If you don't get updates, you may not know that you have to take action. If you take a new job and leave your 401(k) behind at your old employer, make sure you continue to update your contact information — and if you don't hear from the plan for a while, get in touch to find out why.

Where can I get help if I have concerns?

If you are having trouble getting information about your retirement plan, or you suspect that contributions have not been properly deposited in your retirement account, you can contact the Employee Benefits Security Administration, part of the Department of Labor, at askebsa.dol.gov or 1-866-444-3272. That is what the Labor Department suggested that former Bed Bath & Beyond workers do.

It can be expensive to hire legal help, especially if the amount of money in question isn't large. Groups like the Pension Rights Center and the Pension Action Center may offer free legal advice or referrals for people with concerns about access to their retirement plans.

Where can I find official information about my 401(k) plan?

If you don't have it already, ask the company for a copy of a summary plan description, which explains details of your retirement plan, including vesting schedules and contact information, said Maria C. O'Brien, a professor at Boston University School of Law who specializes in employee benefits and insurance law. You can also contact the Department of Labor, which may have copies of the document.

Employees should also read the prospectus, or disclosure, for any investment option they will be using, Ms. Costa said. But even if people do request the documents, she said, "they aren't exactly light reading." Words like "guaranteed" in the name of an investment suggest a lack of risk, she said, but guarantees come with conditions, such as a specific period for which an investment must be held.