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Prevention, Detection and Control of Fraud by Pension Fund Administrators (PFA) and Pension Fund Custodians (PFC) Under the Pension Reform Acts 2004 And 2014

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ABSTRACT

This paper examines the challenges of prevention, detection and control of fraud by Pension Fund Administrators (PFAs) and Pension Fund Custodians (PFCs) under the Pension Reform Acts, 2004 and 2014. It holds the view that since the activities of the PFAs and PFCs are critical to the attainment of the objectives of the Acts, their prescribed roles must be sufficiently monitored for compliance. The paper examines the concept of fraud, the roles of PFAs and PFCs and suggests some of the following control measures against fraud in pension fund management: installation of an effective accounting and internal control systems, ensuring that employees understand relevant codes of conduct, establishment of virile internal audit and appointment of audit committee among others. The paper concludes by recommending some for reaching steps to prevent and control fraud in pension funds management. These include; monitoring of RSA opening by senior staff, strengthening of pay procedure, and recruitment of right caliber of staff etc.

Keywords: Internal Control, Compliance, Pension Fund Administrator, Pension Fund Custodians

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1. INTRODUCTION

The Pension Reform Act 2004, an Act of national assembly has automatic binding effect on all tiers of government in the country. The Federal Government in June 2004 introduced a pension system that is sustainable and has the capacity to achieve the ultimate goal of providing a stable, predictable and adequate source of retirement income for each worker in the country. The Pension Reform Act 2004 ushered in a Contributory Pension Scheme (CPS) that is fully funded, privately managed and based on individual accounts for both the public and private sector employees in Nigeria (PENCOM, 2005).

The Act comments as follows in Part 1 (i): "there shall be established for any employment in the Federal Republic of Nigeria, a Contributory Pension Scheme for payment of retirement benefits of employees to whom the Scheme for payment applies under this Act".

An important aspect of the scheme is the provision in section 9 (i) that a mandatory contribution of 7 ½ % monthly of basic salary of employee by the employer and employee respectively be made to a pension fund to be administered by a Pension's Fund Administrators at a profit. This provision has been reviewed under the 2014 Pension Reform Act (PRA) to 18 percent of monthly emoluments. While 8 percent will be contributed by employees, 10 percent will be contributed by the employers. This is by virtue of Part VIII (Section 45 of the Pension Reform Act 2004), after such funds must be have been transferred to the Pension Administrators by the Pension Fund Custodians [Part VIII (Section 46)].Both the Pension Fund Administrators (PFA) and Pension Fund Custodians (PFC) are separate bodies under the scheme and are trustees for a pool of funds for a fee and have to be accountable to the owners.

However, towards bolstering the pension scheme in Nigeria, the government of President Goodluck Jonathan in 2014 enacted a further reform to the 2004 Act. The Act was designed to bring more certainty to the future by ensuring that Nigeria workers have more security in retirement. As such, the Pension Reform Act 2014 made provisions to improve efficiency and accountability in pension administration in the polity by placing further emphasis on protecting pension contributions (Eme & Uche, 2014).Just as directors in public limited liability companies have to submit their records for the scrutiny of the auditors, for possible reason of errors or fraud which would make accounts not to present a true and fair view of the financial position of a company, the Pension Fund administrators and Custodians have to be subject to scrutiny as provided for in Part VIII Section 56 of the2004 Act. The reason for this is not farfetched. When a third party is exposed to the property (money) of another, it is only logical that the activity of such third party be monitored.

A huge stock of funds of employees are in custody of Pension Fund Custodians (PFC) and Pension Fund Administrators (PFA). The problem being addressed by this paper is that there is the likelihood of intentional alteration of records accompanied by the defalcation of assets in order to deceive the pension contributors for their (PFA and PFC) benefit. In effect, there is the possibility of fraud with attendant loss of fund to the contributors and the undermining of the objectives of the Pension Reform Acts. As envisaged, fraud of monumental proportion is happening as we write, ‘a recent National Assembly Public Hearing on pension recalled that six civil servants stole 24 billion Naira from the police pension fund. The same persons were alleged accomplices in the illegal diversion of another 32.8 billion Naira from the same police Pension fund. Similarly, 151 billion Naira and six 6 million pounds were recovered after the conduct of biometric data capture exercise’ Ezenwa and Obiagwu, (2020). In light of the above revelation, this paper intends to highlight possible areas of fraud by Pension Fund Administrators (PFAs) and Pension Fund Custodians (PFCs) and to suggest possible ways of preventing fraud from occurring all to the benefit of stakeholders in the scheme.

2. INTERROGATING THE ISSUE OF FRAUD

For a start, fraud is a terminology much in usage in audit practice. Fraud is commonly associated with the audit of financial statements by independent auditors. The term fraud is used to refer to irregularities which means intentional distortions or manipulations of financial statements for whatever purpose or misappropriating of assets involving the use of criminal deception to gain an unjust or illegal advantage (Awe, 2002). In the same vein, Millichamp (1993) observes that the term fraud and irregularities are used for several infractions including: fraud, which involves the use of deception to obtain an unjust or illegal financial advantage, intentional misstatements or omissions of amounts or disclosures from an entity's accounting records or financial statements and theft, whether or not accompanied by misstatements of accounting records or financial statements.

In a documented report, Maina (2014) noted that the Pension office of the Head of Service of the Federation has been collecting five billion naira for the payment of pension every month. However, investigation by the Pension Reform Task Team revealed that only 825million naira was required for the payment of genuine pensioners. In other words, officials of the pension unit has been collecting five billion naira monthly and paying only 825 million naira to pensioners and pocketing nearly N4.2 billion Naira!The tendency for fraud to take place in connection with the roles of Pension Fund Administrators (PFA) and Pension Fund Custodians (PFC) would be better appreciated if a cursory study of the Pension Reform Act 2004 of their responsibilities is undertaken.

2.1 Roles of Pension Fund Administrators (PFA)

Part VIII, Section 44 of the Pension Reform Act 2004 and as retained by the 2014 Act says "As from the commencement of this Act, pension funds shall only be managed by Pension Fund Administrators (PFA) licensed by the Commission under this Act". Section 45 identifies the following as the functions of the Pension Fund Administrators under the Act;

- Open retirement savings account (RSA) for all employees with a Personal Identity Number (PIN) attached.
- Invest and manage Pension Funds and assets in accordance with the provisions of the Act. Maintain books of Account on all transactions relating to pension funds managed by it; Provide regular information on investment strategy, market returns and other performance indicators to the commission and employees or beneficiaries of the retirement savings accounts. Provide customer service support to employees; including access to employees account balances statements on account.
- Cause to be paid retirement benefits to employees in accordance with the provisions this Act. Be responsible for all calculations in relation to retirement benefits; and Carry out other functions as may be directed from time to time by the commission.

The latitude of and enormity of responsibilities assigned by the Act to the PFA could tempt any person to commit fraudulent activity. Roles (b), (c) and (d) in particular expose PFA to temptations of criminal deception to gain an unjust or illegal advantage over the fund of contributors.

2.2 Roles of Pension Fund Custodians (PFC)

Part VIII, Section 46 of the Pension Reform Act 2004, says "As from the commencement of this Act, Pension funds and assets shall be held by the pension funds custodians". Section 47 identified the following functions of the PFC;

- ✓ Receive the total contributions remitted by the employer under section 11 of this Act on behalf of the Pension Fund Administrator within 24 hours of the receipt of contributions from any employer;
- ✓ Notify the Pension Fund Administrator within 24 hours of the receipt of contributions from any employer;
- ✓ Hold pension funds and assets in safe custody on trust for the employee and beneficiaries of the retirement savings account;
- ✓ On behalf of the Pension Fund Administrator settle transactions and undertake activities relating to the administration of pension fund investments including the collection of dividends and related activities;
- ✓ Report to the commission on matters relating to the assets being held by it on behalf of any pension fund administrator at such intervals and as may be determined, from time to time by the commission;
- ✓ Undertake statistical analysis on the investment and returns on investments with respect to pension funds in its custody and provide data and information to the pension fund administrator and the commission; and
- ✓ Execute on behalf of the Pension Fund Administrators relevant proxy for the purpose of voting in relation to the investments.

In spite of stiff requirement for licensing of PFA and PFC, and despite the prescription of audit by external auditors, the operations of the PFA and PFC, the possibility of dishonest dealing by them may manifest in the following ways:

3. POSSIBLE AREAS OF FRAUD BY PENSION FUND ADMINISTRATORS AND PREVENTION

Manipulation, falsification or alteration of records or documents. Apoti (2005) opines that since "the PFA is expected to maintain an up to date record on contribution by employer/employee as well as interest/ income arising from investment of such contribution, it is possible for the PFA not to record actual contribution by intentionally omitting and/or understating the amount. Section 58 of the 2004 Act provides for appointment of external auditors by PFA, proper record keeping and communication by the employers of all remittance to provide a basis for reconciliation of records by the employee. The PFA should be made to disclose the investee organizations and the income received from them. The employee as beneficiary should take more than casual interest in his accounting records with the PFA and if he is not sufficiently literate in accounting, he ought to employ the services of a competent accountant. The contributors can do this by coming together as a group in the same work place or office.

Conversion of Dividend Warrants

The law does not mandate the PFA to invest in individual employee's name, obviously, the dividend warrant would be issued by the investee company in favour of PFA. There is no guarantee that this cannot be converted and paid into PFAs personal account. To overcome this constraint, the National Pensions Commission (NPC) could request investee companies where PFAs invest funds to send particulars of dividend warrants dispatched to PFA to it for record purposes.

Computer Fraud

A problem with computer fraud is that the quantum of such fraud can be enormous and may remain undetected for a long time. Apoti (2005) identified the following causes of such fraud to include:

- ✓ Abuse of the use of overriding password to gain access to RSA and other files;
- ✓ Inadequate controls built into the system
- ✓ Corruption of the programmer application packages
- ✓ Diskettes can be tampered with e.t.c.
- ✓ The National Pension Commission should request all PFAs to send to it on weekly basis, status of beneficiaries' accounts held by them.
- ✓ Forgery of Retirement Savings Account

Through the connivance of the accounts officers of the PFA, there may be forging of beneficiary's signature which if successfully passed to managers for payment would lead to loss of money by a beneficiary.
To solve this problem, all PFAs should install a security alert system like the Central Security and Clearing System (CSCS) whereby the beneficiaries would be alerted through SMS or other means of notification of withdrawals from his RSA.

Retirement Savings Account (RSA) Opening Fraud

This involves the opening of retirement savings account and subsequent withdrawal from it. Remittance into the account should be intentional deductions from genuine retirement savings account. To prevent this, PFA should be made to open RSA only if the employee presents letter of introduction from his employer and the file for this is made available for inspection by the National Pension Commission (NPC).

Wrong Debit to Retirement Savings Account

The Pension Funds Administrators may be debiting wrong charges or withdrawals to the RSA of a beneficiary with a view to reducing the credit balance.
To prevent this, employee should periodically update his retirement savings account from pension funds administrator and reconcile with his employer.

Investment in Ghost and Non-Approved Companies

The pension funds administrator (PFA) is allowed by law to invest pension funds in approved areas of investment. However, due to insufficient monitoring, PFA may invest in a non existing company or even in unapproved investment options. However, when the PFA and PFC collude, which possibility cannot be ruled out. This would be a form of fraud. A way out would be for the PFC to send returns of investment made on the order of PFA to National Pension Commission.

Possible Areas of Fraud by Pension Fund Custodians (PFC) and Prevention

The Pension Fund Custodian is a licensed financial institution by law with power to hold pension funds and assets, acting as an intermediary between pension funds administrators and the contributing employers. The following are likely areas of fraud in the operations of Pension Fund Custodians in connection with pension funds.

Money Transfer Fraud

This occurs when genuine request made by Pension Fund Administrators is altered by changing the beneficiary's name, or account number or changing the amount of the transfer. In order to prevent this kind of fraud, there should be confirmation of transfer instructions by pension fund administrators via fax or text messages.

Cashier's Collusion

This happens when a cashier decides to breach the inbuilt controls in the system because of his commitment to the success of the fraud. Apoti (2005) averred that a cashier may decide not to regiscope the beneficiary of a forged RSA or vandalize the regiscope camera by either covering the lens when taking the photographs of the beneficiary at the point of payment or pour some chemicals into it .To prevent this kind of fraud, it is suggested that a senior officer of the Pension Fund Custodians should ensure the authentication of RSA and directive from Pension Fund Administrators before cashier makes payment.

Delay in Communication of Receipt of Pension Fund

The Act prescribes that within 24 hours of lodgment of funds with the custodian due notice of this fact should be given to the PFA of such transfer. When this rule is violated, the intention may be to use the funds for private purpose and pocket any profit arising there from.
To prevent this, the National Pension Commission should ensure compliance with the time frame of communication of such receipts as well as penalty for its violation.

Teaming and Ladding

This is a situation whereby the Pension Fund contributors use the receipts from one employer to cover the receipt of previous employer earlier not communicated to PFA. This practice may continue for a long time especially where pension fund custodian deals with many PFAs. To prevent this, employer should send to PFA photocopy of the acknowledgement copy of contributions remitted to PFC.

Ghost Pensioners

This is the term used to describe a pensioner who though receives all benefits and entitlements of pensioners but never existed in real life. The2004 Act places the responsibility of payment of benefits to a beneficiary on pension funds custodians (PFC) but on the order of pension funds administrators unscrupulous PFC can create ghost pensioners and be making payments to them. To prevent this, the Act mandates the PFA and PFC to send reports on status of their record to National Pensions Commission (NPC) apart from routine inspection by it.

Control Measures Against Fraud in Pension Funds Management

Any serious control to prevent fraud cannot be totally divorced from usual control against fraud in financial statement audit by an external auditor. So in line with the audit procedures against fraud in accounting, the following control measures are prescribed:

- ✓ installation of an effective accounting internal control systems
- ✓ ensuring that employees understand relevant codes of conduct
- ✓ monitoring legal requirement and ensure compliance
- ✓ establishment of virile internal audit
- ✓ appointment of audit committee.

4. CONCLUSION

The problem of payment of pension promptly to retiring officers motivated the enactment of the Pension Reform Act 2004 and subsequent amendment of 2014. However, if the objective of the law is to be achieved, the challenge of prevention, detection and control of fraudulent practices in the administration of pension funds must be taken seriously. This is necessary because the activities of the pension Fund Administrators and custodians are critical to the attainment of the objectives of the law. These two bodies no doubt hold vast funds and if there are no sufficient regulatory mechanisms, such funds could be converted to personal use and retiring officers would end up being loser as is the case presently.

5. RECOMMENDATIONS5

The paper examined prevention, detection and control of fraud by pension fund administrators and pension fund custodians under the Pension Reform Act 2004. On the strength of a review of the relevant law in relation to the role of PFA and PFC, the following measures are recommended to prevent fraud in pension funds management.

- ✓ Opening of any new Retirement Savings Account (RSA) should be approved by a very senior officer.
- ✓ To strengthen pay procedure, more than one person should authorize payment to beneficiary from Retirement Saving Account.
- ✓ Recruitment of right caliber of staff with adequate academic and professional qualifications matched with relevant experience.
- ✓ Training of staff should be a continuous activity. This would ensure update in knowledge and acquisition of new development and technology.
- ✓ There should be daily balancing of all accounts by those in charge and their out-put should be confirmed by senior officers.
- ✓ Job rotation will make for improvement in knowledge for all grades of staff and make substitution or deployment of staff to any area in the organization possible.
- ✓ As a way of discouraging fraudulent practices among-staff, adequate incentives and rewards must be in place.
- ✓ Staff must be permitted to go on annual leave. This would permit a break in routine duty by staff and permit a different person from coming to take the assignments of the staff on leave.

- ✓ Since the law expects every PFA and PFC to report any fraud, forgery or theft occurring in their organization to National Pension Commission (NPC), and to make a list of dismissed and terminated staff available to NPC, such lists should be circulated to other PFA and PFC by the NPC in order to flush out all undesirable elements in the pension fund circle.

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