

APPENDIX
CHART OF ALL CHANGES (UPDATES) TO THE EBSA ENFORCEMENT MANUAL

Date of Update	Enforcement Manual Section	Reason for Update
12/30/2019	Statement of Purpose	Section updated to comply with the Federal Plain Language Guidelines (Plain Language Writing Act of 2010).
12/30/2019	Enforcement Manual Maintenance	<p>This new section formalizes the Enforcement Manual Committee (Committee), including the process for recommending, reviewing and approving changes to the manual. The Director of Enforcement appoints and oversees the Committee members, consisting of field and national office personnel. The Committee co-chairs shall be a Senior Enforcement Advisor and a Deputy Regional Director. The Committee reviews and recommends to the Director of Enforcement updates to the manual, as needed, but at least once every two years. EBSA staff can suggest changes through e-mail address posted on the Intranet. Director of Enforcement reviews recommendations with the Deputy Assistant Secretary for National Office Operations, the Deputy Assistant Secretary for Regional Offices, and the Regional Directors. The Office of Solicitor, Plan Benefits Security Division, reviews and clears all proposed changes. A memo to the field summarizes any changes. An Appendix to the manual summarizes all manual updates and changes. Committee maintains the following Enforcement Manual records: change recommendations, all red-lined revisions, appendix of revisions, update memos on changes, and HTML and PDF versions.</p>
12/30/2019	Description of EBSA	Section updated to comply with the Federal Plain Language Guidelines (Plain Language Writing Act of 2010). Section also updated the number of field offices (13) and investigators (approximately 400), and EBSA's responsibilities for protecting the rights and financial security for approximately 143 million participants and beneficiaries.
12/30/2019	Acronyms and Abbreviations	Section updated to add and delete acronyms and abbreviations used throughout the Enforcement Manual.
12/30/2019	Investigative Authority	<p>Section updated to comply with the Federal Plain Language Guidelines (Plain Language Writing Act of 2010). Section also added a summary of health oversight authority. The Health Insurance Portability and Accountability Act of 1996 privacy regulation (Privacy Rules) set forth "permitted uses", "disclosures" or "standards" that allow covered entities to disclose Protected Health Information without patient authorization. The Privacy Rules "health oversight" standard enables EBSA to obtain Protected Health Information from plans, their service providers, and their physicians as is necessary to ensure ERISA compliance. EBSA is a health oversight agency. This section added two entities EBSA maintains agreements, namely the state insurance departments and the National Association of Insurance Commissioners. This section also included a chart summarizing EBSA's investigative authority. Deleted Footnote 5 which referenced the Office of Thrift Supervision that dissolved in 2011, and merged with the Comptroller of the Currency, referenced in the Relationship with Financial Agencies section of the manual.</p>
12/30/2019	Relationship with IRS	Section updated to comply with the Federal Plain Language Guidelines (Plain Language Writing Act of 2010). Section also updated reflect current policies and practices relating to 6103 requests. Updated Paragraph 29 b states that all requests for IRC 6103 (l)(2) should be electronically transmitted to IRS through the "Secure Data Transfer Tool". This section added Paragraph 31 that noted both EBSA and IRS maintain separate voluntary correction programs.

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12/30/2019 Relationship with OIG	Section updated to comply with the Federal Plain Language Guidelines (Plain Language Writing Act of 2010). Section updated to change the name from Office of Labor Racketeering (OLR) to OIG. Paragraph 13 amended to note that the Office of Enforcement's Chief of Criminal Division should intervene in unresolved disputes involving DOJ between EBSA field and OIG.
12/30/2019 Relationship with Financial Agencies	Section updated to comply with the Federal Plain Language Guidelines (Plain Language Writing Act of 2010). Paragraph 4 provides more detail on DOL's MOU with the SEC including periodic meetings between the two agencies, POC designations, and identifying cross-training opportunities. Paragraph 4 also mentions DOL and SEC's intent to honor each agencies' request for certain confidentiality safeguards with shared documents. Paragraph 5 grants regional office authority to directly discuss and make referrals with the Pension Benefit Guaranty Corporation, with a copy to OE. Paragraph 6 discusses the DOL's MOU on MEWAs with the National Association of Insurance Commissioners (NAIC). The MOU notes that DOL may pursue common interest agreements with states agencies to share specific case information.
12/30/2019 Voluntary Fiduciary Correction Program	Section updated to comply with the Federal Plain Language Guidelines (Plain Language Writing Act of 2010). Added Paragraph 13 to note that EBSA's VFCP is separate from the IRS, and that corrections under the IRS' Employee Plans Compliance Resolution System do not grant corrective action under the DOL's VFCP. The applicant must file a separate application for relief with EBSA.
12/30/2019 Release of Information	Section updated to comply with Federal Plain Language Guidelines (Plain Language Writing Act of 2010).
12/30/2019 Files, Case Assignment and Control	Section updated to comply with the Federal Plain Language Guidelines (Plain Language Writing Act of 2010). This section updated to reflect current file maintenance practices. Specifically, this section eliminated outdated practices involving paper case files to reflect current procedures and guidance for electronic case files.
12/30/2019 Complaints	Section updated to comply with the Federal Plain Language Guidelines (Plain Language Writing Act of 2010). Section also deleted sentence indicating regions must send PBGC referrals through OE.
12/30/2019 Conducting and Documenting Interviews	Section updated to comply with the Federal Plain Language Guidelines (Plain Language Writing Act of 2010). Paragraph 12, Third Parties, clarifies that only the interviewee and their representatives may be present during an interview. Paragraph 22, Recording, Transcribing, and Monitoring of Conversations and Statements - Although the last version of the Enforcement Manual stated that Investigators could record interviews, it did not describe the circumstances interviews could be recorded. The current changes identify clearly under what circumstances the Investigators are allowed to record interviews (in person interviews only and with consent). Paragraph 24, Disclosure of Criminal Investigations. Added a reference to the Criminal Investigation section of the manual.

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12/30/2019	Collection and Preservation of Evidence	Section updated to comply with the Federal Plain Language Guidelines (Plain Language Writing Act of 2010). Updated to reflect current policies and practices for receiving and maintaining electronic evidence. Paragraph 1.f: Transmission of Evidence states that all physical evidence (such as paper evidence, removable media, CD/DVD, and USB drives) must be logged and tracked via EBSA/OTIS policies and processes. Paragraph 1.g: Storage of Evidence and Documentation provides guidance on the storage of all criminal/civil related documentation to an internal EBSA shared network. New guidance informs investigator/auditor to shred all physical documentation on all closed civil cases not subject to a litigation hold (or a parallel criminal case). Investigator/Auditor shall shred all physical documentation in all closed criminal cases that have not been referred for prosecution if there is no parallel civil case and after consultation with the Region's Senior Advisor for Criminal Investigations (SACI). Investigator/Auditor shall shred physical documentation in closed criminal cases that have been referred for prosecution if there is no parallel civil case, after consultation with the region's SACI, and with the approval of the prosecutor. Under all circumstances, the Investigator/Auditor records destruction of these materials under established EBSA/OTIS policy and processes. Paragraph 1.h states that Investigator/Auditor does not need to complete Form 202C when they receive records electronically. Paragraph 2.g instructs Investigator/Auditors to secure Workpapers and supporting documentation in accordance with EBSA/OTIS policies and procedures.
12/30/2019	Subpoenas	Section updated to comply with the Federal Plain Language Guidelines (Plain Language Writing Act of 2010). Section also updated subpoena cover letters to request production in electronic form (Electronically Stored Information) if documents are maintained in such manner. Paragraph 5 states that EBSA has discretion to obtain documents by subpoena even prior to attempting to obtain such records through a document request letter. Paragraph 13 instructs Investigator/Auditors to use EBSA's internal systems to process electronic information.
12/30/2019	Voluntary Compliance	Section updated to comply with the Federal Plain Language Guidelines (Plain Language Writing Act of 2010). All Voluntary Compliance/Closing Letter templates updated to reflect plain language examples.
12/30/2019	Penalties	Section updated to comply with the Federal Plain Language Guidelines (Plain Language Writing Act of 2010).
12/30/2019	Participants Rights	Section updated to comply with the Federal Plain Language Guidelines (Plain Language Writing Act of 2010)
12/30/2019	Prohibited Persons	Section updated to comply with the Federal Plain Language Guidelines (Plain Language Writing Act of 2010)
12/30/2019	Fiduciary Investigations	Updated to eliminate any reference to Program 48. Updated to comply with Federal Language Guidelines (Plain Language Writing Act of 2010).

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<p>12/30/2019 Health Investigations</p>	<p>Section updated to comply with the Federal Plain Language Guidelines (Plain Language Writing Act of 2010). Updated to distinguish certain aspects from fiduciary cases--e.g. Part 7 issues. Referenced health cases involving fiduciary issues to the Fiduciary section of the Enforcement Manual. Updated accompanying figures. Modified investigative activity section to include operational reviews, as identified in paragraph 9. 9. <u>Investigative Activity, Full Review</u>. Health investigations should include a review for compliance with all applicable ERISA provisions. This includes review for compliance with the fiduciary provisions, claims procedure rules, and Parts 6 and 7. Generally, the Investigator/Auditor should evaluate every health plan/benefit package option offered for Part 7 compliance. This review will typically include an operational review of claims data, claims listings and/or claims.</p>
<p>12/30/2019</p>	<p>Criminal Investigations section was modified to add: 7. Disclosure of criminal Investigations--Policy and procedures that EBSA civil investigators should follow, when asked if there is a criminal investigation. Civil investigators should answer with a "neither admit nor deny" response. 21. Search and Seizure--Investigators/Auditors may not serve the warrant; on-site search and seizure actions should be coordinated with the law enforcement agencies applying for the warrant. Previously the Enforcement Manual said that the Investigators may serve the warrant. This section also updated to comply with the Federal Plain Language Guidelines (Plain Language Wrting Act of 2010). Accompanying figures in the section updated.</p>
<p>12/30/2019 Case Development and Limited Review Investigations</p>	<p>Section has been updated to comply with the Federal Plain Language Guidelines (Plain Language Writing Act of 2010). This section was updated to provide guidance to investigator/auditors in the handling of case development information. All case development activities must maintain a record in EBSA's database (Zero File). Program 53 was eliminated and replaced by the new Program 77 limited investigations. Limited review investigations are expedited inquiries into one or more specific issue, features, or aspects of the plan, service provider operations and/or an individual to determine whether a potential violation exists and the regional office determines whether to further investigate or close the matter. A table describes the potential disposition of Program 77 cases. The section also provides a sample opening letter and a closing no violation letter.</p>
<p>12/30/2019</p>	<p>Cross Regional Investigations section was updated to reflect new Office 99 cases and comply with the Federal Plain Language Guidelines (Plain Language Writing Act of 2010). Office 99 was added to allow multiple regions to work together on one or more related investigations. Section was updated to describe the differences between an auxiliary and cross-regional investigation.</p>