EMPLOYEE BENEFITS SECURITY ADMINISTRATION

Chapter 12, Relationship with the IRS

1. **Purpose.** The purpose of this chapter is to provide guidance for implementing the agreement for coordination of investigations of employee benefit plans between DOL and IRS (Figure 1).

2. **Background.** The IRS established the Tax Exempt & Government Entities (TE/GE) Operating Division as part of the Internal Revenue Service's reorganization that started in the late 1990s. TE/GE supervises IRS's role in relation to employee pension benefit plans in order to ensure uniform tax treatment of pension plans. TE/GE also administers provisions of the Internal Revenue Code of 1986 (Code) relating to tax-exempt organizations and government entities.

3. **National Office Organization.** There are now four operating divisions in the new organizational structure. The operating divisions are Wage and Investment (W&I), Small Business and Self-Employed (SB/SE), Large and Mid-Size Business, and Tax Exempt and Government Entities (TE/GE). The Tax Exempt & Government Entities Division includes Employee Plans, Exempt Organizations, and Government Entities. Employee Plans and Exempt Organizations are each composed of a Customer Education and Outreach Branch, a Rulings & Agreements Branch, and an Examinations Branch. Government Entities is composed of a Federal, State, Local Entities Branch, an Indian Tribal Governments Branch, and a Tax Exempt Bonds Branch.

4. **Employee Plans.** Employee Plans is split into six geographic examination areas (the Central Mountain, Great Lakes, Gulf Coast, Mid-Atlantic, Northeast, and Pacific Coast Regions). These areas were developed based on customer locations, workforce size, and employee locations. EP Examinations and the six geographic examination areas are listed below:

Office	Location	Jurisdiction
EP Examinations	31 Hopkins Plaza, Room 1650 Baltimore, MD 21201 Phone: (410) 962-4092	(Headquarters)

Office	Location	Jurisdiction
Northeast Area	GPO Box 029162, 625 Fulton St. Brooklyn, NY 11201 Phone: (718) 488-2014 Fax: (718) 488-2405	Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, and New York
Central Mountain Area	MS 4400SO 56 Inverness Dr. East Englewood, CO 80112-5114 Phone: (303) 784-6001 Fax: (303) 784-6029	Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, Kansas, Montana, Wyoming, Colorado, New Mexico, Utah, Arizona, and Nevada
Great Lakes Area	230 S. Dearborn Street Mail Stop 4900 CHI Chicago, IL 60604 Phone: (312) 886-4700 Fax: (312) 886-3275	Michigan, Wisconsin, Ohio, Indiana, Illinois, West Virginia, and Kentucky
Gulf Coast Area	1100 Commerce, MC 4900 DAL Dallas, TX 75242 Phone: (214) 767-3390 Fax: (214) 767-1012	Tennessee, Arkansas, Oklahoma, Georgia, Alabama, Mississippi, Louisiana, Texas, and Florida
Mid-Atlantic Area	1601 Market Street 19th Floor Philadelphia, PA 19103 Phone: (215) 656-7700 Fax: (215) 656-7722	Pennsylvania, New Jersey, Delaware, Maryland, Virginia, North Carolina, and South Carolina
Pacific Coast Area	300 N. Los Angeles St., MS 7000 Los Angeles, CA 90012 Phone: (213) 576-3080 Fax: (213) 576-3081	Idaho, Washington, Oregon, California, Alaska, and Hawaii

5. **EP Determinations.** EP plan qualification groups are centralized in Cincinnati at the address listed below:

Internal Revenue Service – TE/GE
550 Main St.
Room 4106
Cincinnati, OH 45202

(513) 263-3608

6. **Minimum Standards Scope.** Paragraphs 6-23 of this chapter cover part 2 of Title I of ERISA, which establishes minimum standards relating to participation, vesting, and benefit accrual for pension plans, and part 3 of Title I, which establishes minimum standards for funding pension plans. The summary of the provisions of parts 2 and 3 that follows is intended as a guide for use in identifying relevant statutory provisions to assist each Investigator/Auditor in completing the appropriate examination referral checksheets. It does not represent a comprehensive or exhaustive treatment of the statutory provisions and should not be used as a substitute for the statute itself.

7. **Coverage of Parts 2 and 3 of Title I.** Parts 2 and 3 do not apply to welfare plans and Title I of ERISA does not contain "minimum standards" (as opposed, for example, to fiduciary standards) applicable to welfare plans. Welfare plans are generally subject to the reporting and disclosure provisions of part I of Title I, the fiduciary responsibility provisions of part 4, and the enforcement provisions of part 5. Certain types of pension plans are not subject to parts 2 and 3. These types of plans, which are listed in sections 201 and 301, include among others, defined contribution plans and unfunded deferred compensation arrangements for management or highly compensated employees. These latter arrangements are also subject to an administrative reporting and disclosure exemption and a statutory fiduciary responsibility exemption. The Department has not issued regulations on the scope of these exemptions for unfunded high-level deferred compensation arrangements. In the absence of regulations, any statement about the scope of these exemptions (in particular, about the class of employees' plans to which the exemption applies) should be avoided. The question of whether any particular plan is exempt is determined on the basis of all facts and circumstances.

8. **Application of Parts 2 and 3.** Parts 2 and 3 of Title I of ERISA establish minimum standards to which certain plans must adhere; they do not establish standards for individual conduct. While fiduciaries of a plan are required, under section 404(a)(1)(D), to discharge their duties with respect to the plan in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of Title I, they are also obligated to discharge their duties solely in the interest of the participants and beneficiaries of the plan and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan. Therefore, if a plan does not comply with the provisions of parts 2 and 3, fiduciaries may have a duty to take appropriate steps to assure that the plan is brought into compliance.

9. **Qualified Plans.** Under the Code, certain types of retirement plans[1/] may qualify for favorable tax treatment if they meet certain requirements which are set forth primarily in

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[1/] The terminology of the Code is slightly different from that of Title I of ERISA. Under Title I, the terms "employee pension benefit plan" and "pension plan" refer to all retirement plans within the definition in section 3(2). Under the Code, the term "pension plan" is used to refer only to defined

section 401(a) of the Code. These requirements include minimum participation, vesting, benefit accrual, and funding standards that are substantially the same as the standards in parts 2 and 3 of Title I of ERISA. In addition, the requirements for qualification under the Code include requirements generally designed to ensure that qualified plans cover a broad segment of an employer's work force and do not discriminate in favor of highly compensated employees in contributions or benefits. Title I of ERISA does not contain requirements that plans must cover a broad segment of an employer's work force and does not prohibit discrimination in benefits or contributions among employees. The minimum standards of parts 2 and 3 of Title I, however, apply both to qualified retirement plans and to non-qualified retirement plans if they meet the requirements for coverage in other respects.

10. **Jurisdiction.** Because most pension plans are qualified plans under the Code, the IRS has primary authority for the administration of the minimum standards provisions of ERISA. Thus, if the IRS determines that a plan meets the requirements for tax qualification, DOL is required, under section 3001(d) of ERISA, to accept the IRS determination as prima facie evidence of the plan's initial compliance with, among other things, parts 2 and 3 of Title I. Section 3002(a) of ERISA also provides that, in the case of a qualified plan, alleged violations of the participation and vesting standards should generally be referred to the Secretary of the Treasury, and section 101 of Reorganization Plan No. 4 of 1978 transferred most of DOL's responsibilities with respect to the interpretation of parts 2 and 3 to the Department of the Treasury (Figure 2). Since the IRS is the agency within the Treasury Department that is responsible for the administration of the Code, including the provisions dealing with qualified plans, most complaints concerning the minimum standards provisions should be referred to IRS. In some cases, however, it may be necessary for DOL to conduct an investigation or to take enforcement action. For example, such action would be appropriate when a pension plan which is not qualified under the Code may have violated a provision of parts 2 and 3 for which DOL has interpretive responsibility under Reorganization Plan No. 4 of 1978. Matters which appear to be in these categories should be referred through the RO to DFO. DOL has a continuing concern regarding special rules for multiple employer plans. These matters which arise under part 2 of Title I are discussed in paragraph 21 of this chapter.

11. **Participation.** Section 202 of ERISA establishes minimum standards for participation in a pension plan. Generally, such a pension plan must allow an employee to participate no later than the earliest date at which he has completed at least one year of service and is 21 years old. In addition, section 202 prohibits pension plans, with certain exceptions, from excluding employees who have attained a specified age that is not more than five years before the plan's normal retirement age. (Normal retirement age as defined in ERISA section 3(24) may not occur later than either the time a participant attains age 65, or the 5th anniversary of the date the participant commenced participation in the plan, but if a plan provides for an

benefit, money purchase and target benefit plans. Terms such as "profit sharing plans" and "savings and thrift plans" are used in the Code to refer to other types of retirement plans any of which would be called a "pension plan" under Title I.

earlier "normal retirement age" that age will be controlling for such plan.) Different standards, however, apply to certain plans. The minimum participation standards relate only to the requirements regarding age and length of service that a plan may impose on employees as conditions for eligibility to participate. A plan may impose conditions for eligibility to participate based on other criteria, such as salaried employees only, hourly employees only, or members of a specific bargaining unit.

12. **Vesting.** Section 203 of ERISA establishes minimum vesting standards. These standards impose limits on the period of service a plan may require an employee to complete before the employee's accrued benefits become nonforfeitable (i.e., "vesting"). In general, a plan must provide that an employee's accrued benefit derived from employer contributions becomes vested in accordance with one of two vesting schedules set forth in section 203(a)(2). In addition, a plan must provide that an employee's normal retirement benefit--i.e., the accrued benefit payable at normal retirement age--becomes nonforfeitable if the employee reaches normal retirement age while still employed by the employer sponsoring the plan, to the extent that the accrued benefit has not yet become vested before that date. If a plan provides for employee contributions, the portion of an employee's accrued benefit that is derived from the employee's own contributions must be vested immediately (i.e., as soon as the employee contributions are made). Section 204(c) provides rules for separating the portion of an employee's accrued benefit that is derived from employee contributions from the portion derived from employer contributions.

13. **Suspension of Benefits.** Section 203 of ERISA provides that a plan may, without violating the vesting requirements, provide for the suspension of benefits after they have commenced for periods during which a participant is employed by an employer who maintains the plan, or, in the case of a multiemployer plan, during periods when the participant is employed in the same industry, trade, or craft, and in the same geographic area covered by the plan, as when the benefits commenced. DOL's authority to interpret this provision was not transferred to the Department of the Treasury pursuant to Reorganization Plan No. 4 of 1978 (Figure 2), and DOL has issued a regulation to define when benefit payments may be suspended. See 29 C.F.R. 2530.203-3 for interpretive guidance in this area.

14. **Benefit Accrual.** Section 204 of ERISA requires a defined benefit pension plan to meet one of three tests which are designed to ensure that benefits are accrued at a relatively uniform rate over a participant's entire career in order to prevent excessive "backloading," *i.e.*, the pre-ERISA practice of deferring the accrual of all or most of an employee's benefits under a pension plan until the latter years of an employee's career. In general, these tests specify the accrued benefit with which an employee must be credited (if the employee leaves employment before reaching normal retirement age). Also, section 204 generally prohibits retroactive reductions in participants' accrued benefits. Finally, section 204 requires a separate accounting for each participant's accrued benefit under an individual account plan and separate accounting for the portion of each participant's accrued benefit derived from a participant's voluntary employee contributions under a defined benefit plan which permits such contributions.

15. **Early Retirement Benefits.** The minimum vesting standards set forth in section 203 and the benefit accrual requirements set forth in section 204 apply to an employee's accrued benefit commencing at normal retirement age. In general, a defined benefit plan may provide an early retirement benefit (*i.e.*, a benefit that employees may begin to receive at an age earlier than normal retirement age) that does not become vested in accordance with the benefit accrual requirements, provided that the plan also provides for employees who do not begin to receive benefits before normal retirement age, a benefit that meets the statutory standards and that is not less than the early retirement benefit in terms of the dollar amount of annual benefit payments. Before ERISA, many plans contained rules regarding eligibility for benefits that did not meet the ERISA minimum standards, but provided for payment of benefits at an age earlier than the latest normal retirement age permitted under section 3(24) (age 65 in the case of employees who began participation in the plan at age 60 or earlier). Some of these plans were amended to comply with ERISA merely by adding a benefit subject to eligibility rules that meet the statutory requirements, without dropping the pre-ERISA benefit subject to the more restrictive eligibility rules. It should be noted that these plans do not necessarily violate the ERISA minimum standards because the pre-ERISA benefits can be characterized as early retirement benefits if they do not exceed the benefit which is subject to eligibility rules that meet the statutory standards.

16. **Commencement of Benefits.** Under section 206(a) of ERISA, a pension plan generally must provide for the commencement of benefits at the latest of the time the participant reaches age 65, the 10th anniversary of his/her participation in the plan, or the date of the participant's termination of service with his/her employer. However, a plan may provide for a normal retirement age which is less than 65, and may provide for an early retirement benefit, subject to certain conditions.

17. **Assignment of Benefits.** Under section 206(d) of ERISA, a pension plan must provide that benefits may not be assigned or alienated. However, certain voluntary assignments of an amount not exceeding 10 percent of a benefit payment, and most irrevocable assignments executed before the date of enactment of ERISA, are not required to be taken into account for purposes of that section. Further, a loan made by a plan to a participant or beneficiary under the circumstances described in section 408(b)(1) of ERISA, which is secured by the participant's accrued nonforfeitable benefit, may not be considered to be an assignment or alienation. IRS's regulations under section 401(a)(13) of the Code [26 C.F.R. 1.401(a)-13], which is essentially the same as section 206(d) of ERISA, describe what constitutes an alienation or assignment of benefits, and also describe certain arrangements which do not constitute such an assignment or alienation. Most significantly, these regulations provide that a participant's direction that the plan pay all, or any portion, of a benefit payment to a third party does not constitute an assignment or alienation if such direction is revocable at any time, and the recipient of the directed payments files a written acknowledgement with the plan administrator that he/she has no enforceable right to any benefit payment or portion thereof.

18. **Joint and Survivor Annuity.** Joint and survivor annuity benefits apply to all plans except certain defined contribution plans in limited circumstances. In the case of a

participant with a vested benefit, a qualified joint and survivor annuity must be provided; in the case of a vested participant (irrespective of age) who dies before the annuity starting date (the first period for which an amount is received as an annuity, whether by reason of death or disability and who has a surviving spouse), a qualified preretirement survivor annuity shall be provided to the participant's surviving spouse. For defined benefit plans a qualified preretirement survivor annuity (QPSA) is defined as a survivor annuity for the life of the surviving spouse of the participant that meets the following requirements. The payments to the surviving spouse under the annuity must not be less than the amount which would be payable as a survivor annuity under the qualified joint and survivor annuity under the plan if (1) in the case of a participant who dies after the date on which the participant attained the plan's earliest retirement age, such participant has retired with an immediate qualified joint and survivor annuity on the day before the participant's date of death, or (2) the participant dies on or before the date on which he would have reached the plan's earliest retirement age, such participant had separated from service on the date of death, survived to the earliest retirement age, retired with an immediate qualified joint and survivor annuity at the earliest retirement age, and died on the day after the day on which such participant would have attained the earliest retirement age.

For defined contribution plans a QPSA is defined as an annuity for the life of the surviving spouse, the actuarial equivalent of which is not less than 50% of the account balance of the participant as of the date of death.

The joint and survivor annuity rules are subject to further qualifications which are spelled out in section 205 and in regulations issued by the IRS under section 401(a)(11) and section 417 of the Code, which are similar to section 205 of ERISA.

19. **Recordkeeping and Reporting.** Section 209 of ERISA generally requires employers to maintain records from which benefits due or to become due to participants under pension plans may be determined, and requires pension plan administrators to provide individual benefit reports to participants under certain circumstances. DOL's authority to interpret this provision was not transferred to the Department of the Treasury under Reorganization Plan No. 4 of 1978.

20. **Funding.** Part 3 of Title I of ERISA establishes minimum funding standards for defined benefit pension plans, money purchase pension plans, and target benefit plans. In the case of defined benefit pension plans, the minimum funding standards are generally designed to ensure that sufficient assets are accumulated during employees' working careers to pay their benefits when they retire. To this end, the statute requires defined benefit plans to be funded in accordance with appropriate actuarial techniques. Certain defined benefit plans funded exclusively through insurance contracts (generally annuity contracts) are exempt from the minimum funding standards, as long as all premium payments are made when due. In the case of a money purchase or target benefit plan, the minimum funding standards require only that employer contributions specified under the plan be made when due.

21. **Special Rules for Multiple Employer Plans.** Section 210 of ERISA provides rules for determining what service is required to be taken into account for purposes of participation, benefit accrual, and vesting in the case of multiple employer plans. Under this section and DOL's regulations, for purposes of determining eligibility for participation and vesting, all of an employee's service in a job classification covered by a multiple employer plan for an employer maintaining the plan and all "contiguous non-covered service" must be taken into account. Generally, contiguous non-covered service is service with an employer maintaining a multiple employer plan, while the employer is maintaining the plan, if such service is performed before or after a period of covered service and no quitting, discharge, or retirement occurs between the periods of covered and noncovered service. For example, if an employee is hired by an employer maintaining a multiple employer plan in a non-covered job classification without a termination of the employment relationship, service in the non-covered job classification is deemed "contiguous non-covered service" and must be taken into account for the purpose of determining the employee's eligibility to participate in the plan and for vesting. See paragraph 22 of this chapter for the rule regarding crediting of service for benefit accrual purposes when an employer fails to make required contributions.

22. **Failure of Employer to Make Required Contributions to a Multiple Employer Plan.** A multiple employer pension plan *must* grant an employee credit for purposes of benefit accrual, as well as for purposes of eligibility for participation and vesting, for service which is otherwise required to be credited, even if the employee's employer fails to make contributions to the plan which are required under a collective bargaining agreement. This rule is a matter of continuing concern to DOL because some multiple employer pension plans do not credit service for benefit accrual purposes under these circumstances. In some instances, denial of credit may represent a practice on the part of the plan administrator that is not contemplated by the terms of the plan. In other cases, however, the plan itself may provide for denial of credit if an employer fails to make required contributions and some of these plans may (by oversight) have obtained favorable tax qualification letters from IRS offices. Any report relating to violations of this nature should contain information regarding the plan's tax qualification status, including the dates of the plan's most recent submission of a determination request, and the IRS response, if any. The report should also indicate whether the plan's denial of benefits is based on express language in the plan's documents.

23. **Controlled Groups.** Under section 210, a plan maintained by a business entity which is under common control with one or more other business entities must generally credit all service with any of the entities for purposes of eligibility to participate and vesting, except that a multiemployer plan is not required to credit service with entities that are under common control with entities maintaining the plan but which are not themselves maintaining the plan.

24. **General Coordination of Examination Programs.**

a. The procedures established in the coordination agreement (Figure 1) shall apply to all civil examinations conducted by EBSA and IRS. However, nothing contained in the

agreement shall preclude the agencies from agreeing to use special procedures, including joint investigations, in appropriate cases.

b. EBSA Regional Offices will notify the IRS of the names of plans selected for civil investigation at the beginning of each week (for case opening activity for the prior week). Regional Offices will utilize an Oracle Discoverer report to generate the listing of plans selected for investigation, and fax the list to the IRS. Generally, the Regional Office will not begin its investigation of a plan until 10 workdays after the date the information was provided to the IRS. As unscheduled investigations are conducted, EBSA should notify IRS of that action as soon as possible.

25. **Examination Referral Program.** IRS and DOL have developed checksheets for determining whether issues presented in an examination/investigation by one agency should be referred to the other agency. The checksheets can be three-part snapout forms or computer generated forms (respectively known as Checksheets A and B, or Forms 6212A and B). These checksheets can be viewed on IRS' website. See http://www.irs.gov/pub/irs-pdf/f6212a.pdf and http://www.irs.gov/pub/irs-pdf/f6212b.pdf. In every examination/investigation the referring agency will complete the appropriate checksheet on the basis of query or information readily available, and the following procedure shall apply.

a. EBSA Investigators/Auditors will complete Checksheet A during their investigations. IRS examiners will complete Checksheet B during their examinations. Any checksheets with answers circled in the right column will be referred to the other agency. IRS will also send a copy of Form 5500 with any Checksheet B referrals.

b. These exchanges will be made between the Employee Plans (EP) Classification Unit in Baltimore and the EBSA RO having jurisdiction over the plan being examined.

c. The initiating agency will complete the checksheet during an examination/investigation. If a referral is required, the agency initiating the checksheet will transmit two copies to the EP Classification Unit in Baltimore and maintain a copy for its records. Referrals should be sent to the Internal Revenue Service, ATTN: Manager, Employee Plans Classification, 31 Hopkins Plaza, Room 1550, Baltimore, MD 21201. The IRS EP Classification Unit will forward the referral to the appropriate EBSA or IRS office. The agency receiving the form will retain one copy of the referral and will return a copy to the initiating agency.

d. After receiving a referral, an agency may request additional information with respect to the plan involved. Such a request should be made within 15 workdays from the date the referral was sent. The request should not require the initiating agency to conduct an additional investigation or examination. EBSA requests for tax information must comply with the requirements of section 6103(l)(2) of the Code. A form letter has been prepared which may be used for that purpose (See Chapter 20, Figure 4).

26. **IRS-Initiated Examinations.**

a. IRS examiners will complete Checksheet B as soon as possible in all IRS field examinations of pension benefit plans.

b. When an entry on a Checksheet B requires the referral of the checksheet to EBSA, IRS will refer the checksheet in accordance with paragraph 25 of this chapter.

c. EBSA will review Checksheet B, complete the "Action Taken" block, and return a copy to IRS within 20 workdays of the date of the memorandum or other document transmitting the checksheet to EBSA. Checksheet B will be transmitted by EBSA using EBSA Form 217.

d. When EBSA returns a copy of Checksheet B to IRS with an entry in the Action Taken block indicating that DOL is taking no action, IRS will continue its examination in accordance with its existing procedures.

e. When EBSA returns a copy of Checksheet B with an entry indicating that it is taking action, EBSA will contact IRS to coordinate the activities of the agencies in the case.

f. If IRS refers a Checksheet B to EBSA with an entry indicating that a violation of the fiduciary standards under Title I of ERISA or a violation of the ERISA prohibited transaction requirements has occurred, the referral will constitute a notice to DOL within the meaning of section 3003(a) of ERISA.

g. If IRS refers a Checksheet B to EBSA indicating that a violation of the minimum funding requirements of section 412 has occurred, the referral will constitute a notice to the Department of Labor within the meaning of section 3002(b).

h. If IRS refers a Checksheet B to EBSA with an entry indicating that a fiduciary violation under Title I of ERISA has occurred with respect to an employee pension benefit plan and that IRS is considering action to disqualify the plan because the plan is also in violation of the exclusive benefit rule under the Code, the agencies will process the case in accordance with section 104 of Reorganization Plan No. 4 of 1978.

i. If IRS defers action in a case as a result of a referral of a checksheet between the agencies, the EBSA Regional Office with jurisdiction over the plan involved in the case will advise the Manager, EP Classification (Baltimore) in writing when the RO transfers the case to the RSOL or DOL National Office. IRS will not take further action in the case until the earlier of (a) the date when RO notifies the Manager, EP Classification of EBSA's final action in the case or (b) the collection of a tax is in jeopardy, the running of the statute of limitations is imminent, or plan assets or the interests of participants must be protected.

27. **EBSA-Initiated Investigations.**

a. EBSA Investigators/Auditors will complete Checksheet A for pension benefit investigations during all civil investigations.

b. If an entry on a completed checksheet requires a referral to IRS, the referral will be made not later than the earlier of the time when (1) the investigation is closed by the RO (but at least 20 days before the closing letter is issued) or (2) the case is referred to the RSOL or DOL National Office. EBSA will refer checksheets in accordance with paragraph 25 of this chapter using EBSA Form 217.

c. IRS will review any checksheet referred by EBSA, complete the "Action Taken" block, and return a copy to EBSA within twenty workdays of the date of the memorandum or other document transmitting the checksheet to IRS.

d. If IRS returns a copy of Checksheet A to EBSA with an entry in the "Action Taken" block indicating that IRS is taking no action in the case, EBSA will continue its investigation in accordance with its existing procedures.

e. If IRS returns a copy of Checksheet A to EBSA with an entry indicating that IRS plans to take action with respect to the referral, IRS will contact EBSA to obtain any additional information that IRS needs to complete its examination. If EBSA requested that IRS participate in the examination, the agencies will coordinate their activities in the case.

f. If IRS defers action in a case as a result of a checksheet referral between the agencies, the EBSA Regional Office will notify the Manager of EP Classification of any referral of the case to the RSOL or DOL National Office in accordance with paragraph 26.i of this chapter. If the RO makes such a referral, the IRS will defer further action in accordance with that paragraph.

g. When EBSA refers a Checksheet A to the IRS involving issues other than prohibited transactions, only the Form 5500 series return must be attached to the checksheet.

h. When EBSA refers a Checksheet A to the IRS that involves prohibited transactions of twenty thousand dollars or more, the following items must accompany the checksheet:

1) Copy of Form 5500 series returns for all years in which a prohibited transaction was in effect.

2) Available information about taxpayer/disqualified person, including particularly the EIN or SSN, address, educational level, and possible name changes.

3) Copy of plan and trust documents, including restatements and amendments (only if IRS has not issued a determination letter on the plan and amendment). If the prohibited transaction is a loan to a plan participant, a copy of the loan provisions of the plan should be included.

4) Copy of all EBSA correspondence related to the referred issue.

5) Copy of the Report of Investigation (ROI) completed by the EBSA Investigator/Auditor and related work papers. The work papers should include financial statements of trust, specific details of the prohibited transaction, including copies of sale or transfer documents, repayment documents, contracts, and agreements.

6) A description of the current status of the prohibited transaction, including possible correction.

7) EBSA draft closing letter or, if applicable, the voluntary compliance letter. The closing letter will advise the taxpayer (a) that a prohibited transaction has occurred, (b) that the disqualified persons are required to file Form 5330, Return of Excise Tax Related to Employee Benefit Plans, and (c) where assistance in completing Form 5330 can be obtained.

8) A description of the disqualified person's position regarding the prohibited transaction (if not contained in the ROI).

9) Any other information that documents the reasons for the referral.

10) Information in EBSA's possession concerning the fiduciary/disqualified person's filing or intent to file for bankruptcy.

i. When EBSA refers a Checksheet A to the IRS that involves prohibited transactions of less than twenty thousand dollars, only a copy of EBSA's closing letter or the voluntary compliance letter (prepared in accordance with 27(g) above) that describes the transaction, and a copy of the Report of Investigation (without attachments) need to be transmitted.

28. **IRS Appeals Office Procedures.** The following procedures apply to all cases received by IRS Appeals Offices involving examinations of employee benefit plans:

a. The applicable Appeals Area Director (or designee) will notify, in writing, the EBSA Regional Director that a case has been received in his or her office. When applicable, the form letter will be considered the notice required by IRC sections 4971(d) and 4975(h).

b. The Appeals Area Director will not take final action to settle the case, concede any government issue, enter into a closing agreement with any taxpayer, issue any notice of deficiency with respect to taxes under sections 4971(a) and/or (b) or 4975 that are not in jeopardy, or proceed with any action to revoke the favorable determination or qualification letter of any plan prior to the earlier of the date when the Appeals Area Director receives a response from EBSA or 60 days after the date of the Appeals Area Director's letter to EBSA.

c. EBSA will, within 60 days of the date of the letter from the Appeals Area Director, reply to the Appeals Area Director in writing if EBSA is taking any action concerning the referred case. If EBSA is taking action with respect to the case, the Appeals Area Director will coordinate with EBSA before taking any of the actions described in paragraph 28.b above.

d. If the IRS Appeals Area Director and the EBSA Regional Director are unable to reach agreement regarding disposition of the case, the matter will be forwarded to the IRS National Chief, Appeals, to coordinate final resolution with the EBSA Director of Enforcement.

29. **Notification of Litigation.**

a. Litigation Involving IRS and Relating to the Administration of Title I of ERISA:

1) The Division Counsel/Associate Chief Counsel (TE/GE) (or designee), will forward to the DOL Solicitor (Attention: Associate Solicitor, Plan Benefits Security Division), and Director of Enforcement, EBSA, at the earliest possible date, a copy of any complaint or other opening pleading in litigation to which the IRS, the Treasury, the United States or any official thereof is a party, either in the Tax Court, Claims Court or in district court, and that presents issues relating to the administration of Title I of ERISA. Further pleadings in such matters will be furnished upon request.

2) The Division Counsel/Associate Chief Counsel (TE/GE) (or designee), will notify the DOL Solicitor (Attention: Associate Solicitor, Plan Benefits Security Division), at the earliest possible date, whenever IRS determines that it will seek to intervene in any action in which the Secretary of the Treasury is entitled to do so under the provisions of ERISA section 502(h). The initial pleadings submitted on behalf of the Secretary will be forwarded to the Associate Solicitor. Further pleadings in such matters will be furnished upon request.

b. Litigation Involving DOL and Relating to Employee Benefit Plans.

1) The Solicitor of Labor (or designee) will notify the Division Chief/Associate Chief Counsel (TE/GE) and the Director, EP Examinations T:EP:E, when it is determined that litigation by DOL relating to employee benefit plans is warranted. Copies of the proposed complaint (or other opening pleading and supporting documents) will be furnished to the Chief Counsel for review and to the Department of Justice for its assignment of primary litigative responsibility under the Memorandum of Understanding of February 11, 1975.

2) The Solicitor of Labor (or designee) will forward to the Division Counsel/Associate Chief Counsel (TE/GE) a copy of any pleading filed naming the Secretary of Labor as a defendant and presenting issues relating to employee benefit plans. Further pleadings in such matters will be furnished upon request.

3) The Solicitor of Labor (or designee) will notify the Division Counsel/Associate Chief Counsel (TE/GE) at the earliest possible date whenever DOL determines that it will seek to intervene in any action in which the Secretary of Labor is entitled to do so under the provisions of ERISA section 502(h). The initial pleadings submitted on behalf of the Secretary will be forwarded to the Director. Further pleadings in such matters will be furnished upon request.

30. **Tracking/Feedback.**

a. EBSA Regional Offices and the designated IRS contacts will reconcile their listings of pending referrals at least once a quarter.

b. IRS personnel, upon closure of an examination initiated as the result of a referral from EBSA, will forward to the EBSA Regional Office Form 6212-A (or a copy of Form 6212-A) indicating the amount of IRC section 4971(a) and/or (b) or 4975 proposed or assessed excise tax. If IRS will not propose or assess excise taxes, then the reasons will be entered in the "Remarks" section of Form 6212-A.

c. IRS EP Examinations Headquarters and DOL National Office personnel will meet at least quarterly to resolve any referrals on which the appropriate enforcement action is in dispute. These quarterly meetings will also be used as a medium for resolving problems encountered by EBSA Regional Offices and IRS EP Examinations in following the provisions of this Agreement.

31. **Requesting Information from IRS.**

a. In general, IRS is prohibited from disclosing any tax information to anyone outside IRS. IRC section 6103 lists the exceptions to this general rule. IRC section 6103(l)(2) allows the IRS to furnish information to DOL and PBGC for the enforcement of Titles I and IV of ERISA. This includes requests for tax return information.

b. If during any investigation, the RO believes that information in the possession of the IRS will help in carrying out the provisions of Title I, a request will be made to the IRS for such information (See Chapter 20, Figure 4). Requests for IRC 6103(l)(2) information should be sent to the following address:

Internal Revenue Service
Manager, EP Classification
31 Hopkins Plaza
Room 1550
Baltimore, MD 21201

c. Do not request any information under IRC section 6103(l)(2) which is authorized to be disclosed under IRC section 6104. IRS section 6104 provides that any application for tax-qualified status of a pension, profit sharing, stock bonus, annuity, bond

purchase, individual retirement account, or individual retirement annuity plan, any application filed with respect to the tax-exempt status of an organization forming part of such plan or account, any papers submitted in support of any such application, and any letter or other document issued by the IRS in connection with such tax qualification or tax exemption is to be open for public inspection; however, if a plan does not have more than 25 participants, this right of public inspection is open only to a plan participant. The places and times for the right of public inspection are specified in the regulations issued under IRC section 6104. Materials or documents from which an individual's compensation may be ascertained are not open to public inspection. This right of public inspection applies to applications filed and documents issued after September 2, 1974.

d. Unauthorized inspection and disclosure of information received from the IRS may subject the individual to a penalty as provided for by IRC sections 7213 and 7213A. Therefore each Investigator/Auditor must become familiar with the proper procedures for securing the information received in the performance of his/her duties. See PWBA Notice No. 97-2 and Chapter 20, paragraph 7.d.2.

32. **Examinations Pursuant to HIPAA.** The Health Insurance Portability and Accountability Act of 1996 (HIPAA), was enacted on August 21, 1996. Titles I and IV of HIPAA amended the Internal Revenue Code, ERISA, and the Public Health Service Act to add provisions to improve access, portability, and continuity of health insurance coverage in the group and individual market.

Section 104 of HIPAA directed the Secretary of Treasury, the Secretary of Labor, and the Secretary of Health and Human Services to enter into an interagency memorandum of understanding to ensure that regulations, rulings, and interpretations relating to the changes made by HIPAA over which two or more Secretaries have responsibility ("shared provisions") are administered so as to have the same effect at all times. Further, the agencies were required to coordinate policies relating to enforcing the shared provisions in order to avoid duplication of enforcement efforts and to assign priorities in enforcement. An Interim Memorandum of Understanding (See Figure 3) to that end was entered into by the three agencies in December 1999.

The terms of the Interim MOU also apply, to the extent appropriate, with regard to interpretations and enforcement of the Newborns' and Mothers' Health Protection Act of 1996, the Mental Health Parity Act of 1996, and the Woman's Health and Cancer Rights Act of 1998.

MEMORANDUM OF UNDERSTANDING

Internal Revenue Service/Department of Labor

Coordination Agreement

In order for the IRS and DOL to fulfill the mandates of the Employee Retirement Income Security Act of 1974 (ERISA) Sections 3003 and 3004 and in accordance with ERISA Section 506, the IRS and DOL have executed the Internal Revenue Service/Department of Labor Coordination Agreement (Agreement).

The attached Agreement reflects changes resulting from the Modernization of the IRS, the change in name of the Department of Labor's benefit plan regulatory agency from the Pension and Welfare Benefits Administration (PWBA) to the Employee Benefits Security Administration (EBSA), and other revisions identified from the agencies' experiences under the prior Agreements.

Although an essential component of the Agreement is timely coordination and emphasis on the need to eliminate duplicative investigative efforts, the agencies recognize there may be situations that require both agencies to become involved. The IRS and DOL agree to identify past situations where both agencies have had an examination/investigation on the same subject and to determine when it may be beneficial for the agencies and the public for examinations/investigations to be conducted jointly.

In reviewing the Agencies' experiences under the prior Agreements, it was determined that both agencies are devoting resources to the coordination of welfare plan investigations that appear to be unnecessary. In that regard, case opening notification (EBSA Form 205) and referral checksheet completion (IRS Form 6212-C) for welfare plans have been eliminated. DOL can make referrals to the IRS for tax matters outside EP jurisdiction in the form of a letter.

DOL will continue to refer Checksheet A to IRS (Form 6212-A) to IRS for pension benefit plans in accordance with the requirements of Article II, D., of the Agreement. IRS will continue to make referrals to DOL on Checksheet B (Form 6212-B) in accordance with the requirements of Article II, C. of the Agreement. Both forms have been revised. See Appendices B and C.

Under the Modernization of the IRS, Employee Plans and Exempt Organizations are separate units under the Tax Exempt/Government Entities Operating Division. The Employee Plans Examinations Headquarters is located in Baltimore. The Director, EP Examinations, supervises six Area Managers located around the country and the Manager of EP Examinations, Programs and Review. The IRS Key District concept was eliminated. Referrals made by EBSA personnel are now made to the IRS through the Manager, EP Examinations Classification in

Baltimore.

In accordance with Article V.C of the Agreement, representatives of the IRS and DOL will meet quarterly.

/s/ 6-3-03
Carol Gold
Director, Employee Plans
Tax Exempt and
Government Entities Division
Internal Revenue Service

/s/ 6-3-03
Alan D. Lebowitz
Deputy Assistant Secretary for
Program Operations
Employee Benefits Security
Administration

(Figure 1)

IRS/DOL Coordination Agreement
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[Note: Some of the above listed appendices are not included in the current version of the Enforcement Manual.]

This document provides the procedures for the coordination of examination and litigation activities involving employee benefit plans between the Employee Benefits Security Administration (EBSA) of the Department of Labor (DOL) and the Employee Plans (EP) of the Internal Revenue Service (IRS).

I. Notification of Examinations

A. General

For the agencies to avoid unnecessary duplication in examinations, the EBSA Regional Offices will notify the IRS Employee Plans Classification Unit in Baltimore weekly of the names of pension benefit plans selected for civil investigation. Generally, a Regional Office will not begin its investigation of a plan until 10 workdays after the date the information was provided to the IRS. However, nothing contained in this agreement shall preclude the agencies from agreeing to use special procedures, including joint or concurrent investigations/examinations in appropriate cases.

B. IRS Action on Notification

Within 9 workdays after the date that the listings of plans are provided to the Employee Plans Classification Unit in Baltimore, the Classification Unit will determine whether the investigation would duplicate an examination by IRS and, if the investigation is duplicative, advise, the appropriate EBSA Regional Director.

1. For purposes of notifying EBSA of examinations in process by IRS, a plan will be considered under examination if: (1) an examination was closed by IRS with respect to the plan within 12 months of the date of receipt from EBSA; (2) an examination case with respect to the plan is in inventory in EP Examinations but not yet assigned; or (3) an examination with respect to the plan is currently assigned within the EP Examinations.

2. If the EP Classification Unit determines that a plan on the EBSA listing is not under examination, the EP Classification Unit will take action to associate the EBSA notification with the IRS administrative file relating to the plan. If the EP Classification Unit subsequently assigns

such a plan for examination, the EP Classification Unit will, prior to examining the plan, contact the appropriate EBSA Regional Director concerning the status and/or result of DOL's investigation.

C. EBSA Action After Positive Feedback

Generally, EBSA will not begin an investigation of a plan if IRS advises the Regional Director that the investigation would be duplicative. If IRS has selected a plan for examination but has not yet initiated contact with the plan, the EBSA Regional Office and the EP Examinations Area Office with jurisdiction over the plan will decide which agency will examine/ investigate the plan. Any jurisdictional disputes will be resolved in accordance with section A.6. of Part II below.

II. Examination Referral Program

A. General

1. The agencies have developed checksheets for determining whether issues presented in an examination/investigation by one agency should be referred to the other agency. The checksheets can be three-part snap out forms or computer generated forms (respectively known as Checksheets A and B, or Forms 6212A and B – see Appendices). When either agency completes a checksheet during an examination/investigation, an entry in the right hand column with respect to any item on the checksheet will indicate that referral of the checksheet to the other agency may be required. The checksheets completed by the IRS contain confidential tax return information provided by the IRS and must be safeguarded by EBSA.

2. For purposes of the Examination Referral Program (Part II) and IRS Appeals Office Procedures (Part III), the term "examination" means:

(a) In the case of an examination of an employee benefit plan conducted by IRS, any field examination by EP specialists of the books and records of an employee benefit plan. An examination described in this paragraph will be subject to the referral procedures without regard to whether the examination is an on-site examination or an office correspondence/interview examination.

(b) In the case of an investigation of an employee benefit plan conducted by EBSA, any investigation or audit of the books and records of an employee benefit plan; and

(c) In the case of an examination/investigation of an entity other than a plan by either agency, any examination/investigation the purpose of which is to determine compliance with the Employee Retirement Income Security Act of 1974 (ERISA), related sections of the Internal Revenue Code, or both.

(d) Consideration pursuant to a correction program described in Rev. Proc. 2002-

47 or its successors is not an examination within the meaning of section 7605(b) of the Code.

3. An agency initiating a referral may request that the receiving agency participate in the examination. These requests will be made by checking the "Participation Requested" box on the referral checksheet and obtaining the signature of the Regional Director or the EP Area Manager. The agency requesting the assistance will not generally take dispositive action on the investigation or examination until a response is received from the other agency. However, an agency may take dispositive action if collection of a tax is in jeopardy, the running of the statute of limitations is imminent, or plan assets or the interests of plan participants must be protected. In such a case, the agency taking the dispositive action will immediately notify the other agency of the action by telephone and confirm the notification in writing within five workdays.

4. Except as stated in 3. above, an agency initiating a referral is generally not required to postpone taking dispositive action on an examination.

5. If the agency receiving a referral checksheet indicates an interest in the case, the agencies will coordinate in accordance with the procedures described in Sections B., C. and D. of Part II.

6. Disagreement concerning appropriate enforcement action in a specific case will generally be resolved jointly by the EP Examinations Area Office and the appropriate EBSA Regional Office. If the EP Examinations Area Office and the EBSA Regional Office are unable to reach agreement in a case, they will consult with EP Examinations and the Office of Enforcement for final resolution.

B. Referral Procedures

1. EBSA investigators/auditors will complete Checksheet A during their investigations. Checksheets referred to the IRS will be sent to the Manager, EP Classification in Baltimore using Document Transmittal Form 217 (see Appendix D) on the last workday of each week.

2. IRS examiners will complete Checksheet B during their examinations. Checksheets requiring referral to EBSA will be sent (along with copies of 5500 Series returns relating to the plans subject to the referral) to the EP Classification Unit in Baltimore. The EP Classification Unit will send this information to the appropriate Regional Director on the last workday of each week.

3. The initiating agency will complete the appropriate checksheet during an examination/investigation. If a referral is required, the agency initiating the referral will retain a copy of the checksheet (maintained in the EP Classification Unit and in each EBSA Regional Office). The agency making the referral will transmit two copies to the other agency. The receiving agency will complete the "Action Taken" portion of the referral checksheet, retain a copy and return the other copy to the initiating agency to be included in the appropriate plan administrative/case file.

(Figure 1)

4. After receiving a referral, an agency may request additional information from the initiating agency (EBSA Regional Office or IRS EP Classification Unit) with respect to the plan involved. Such a request should be made within 15 workdays of the date the referral was mailed. The request should not require the initiating agency to conduct additional investigative work or examination. A request for additional information by DOL must comply with the requirements of Section 6103(l)(2) of the Code.

5. An agency initiating a referral where participation is not requested will generally not take dispositive action on the investigation or examination until 20 days after the date of the referral. However, an agency may take dispositive action if collection of a tax is in jeopardy, the running of the statute of limitations is imminent, or plan assets or the interest of plan participants must be protected. In such a case, the agency taking the dispositive action will immediately notify the other agency of the action by telephone and confirm the notification in writing within five workdays.

C. Examinations Initiated by the IRS

1. IRS examiners will complete Checksheet B during all IRS field examinations.

2. When an entry on a Checksheet B requires the referral of the checksheet to EBSA, IRS will refer the checksheet in accordance with section B.2. of this Part.

3. EBSA will review Checksheet B, complete the "Action Taken" portion of the referral checksheet, and return a copy to IRS EP Classification Unit within 20 workdays of the referral. Checksheet B will be transmitted by EBSA using Document Transmittal Form 217 (see Appendix D).

4. When EBSA returns a copy of Checksheet B to the IRS EP Classification Unit with an entry in the "Action Taken" portion of the referral checksheet indicating that EBSA is taking no action, IRS will continue its examination in accordance with its existing procedures.

5. When EBSA returns a copy of Checksheet B to the IRS EP Classification Unit with an entry indicating that it is taking action, EBSA will also contact the IRS EP Area Office to obtain information that EBSA needs to complete its planned action.

6. In all unagreed IRS cases involving Internal Revenue Code section 4971(a) and/or (b) or 4975, Form 6212-B (or a copy of Form 6212-B) will be completed with an entry in the box for "DOL Participation Requested." A copy of the report to the taxpayer (including a copy of the proposed 30-day letter) will be sent with a copy of the Form 6212-B by the IRS EP Mandatory Review Unit. The Form 6212-B should be sent to the EBSA Regional Director at least 30 days prior to sending the report, including the 30-day letter, to the taxpayer. If EBSA declines to participate in the examination, the case file will be documented accordingly. Generally IRS should not close a case until 30 days from the date the Form 6212-B is sent to the Regional Director.

(Figure 1)

7. If IRS refers a Checksheet B to the EBSA Regional Director with an entry indicating that a violation of the fiduciary provisions under Title I of ERISA or a violation of the ERISA prohibited transaction requirements has occurred, the referral will constitute a notice to the Department of Labor within the meaning of section 3003(a) of ERISA and 4975(h) of the Code.

8. If IRS refers a Checksheet B to the EBSA Regional Director indicating that a violation of the minimum funding requirements of section 412 has occurred, the referral will constitute a notice to the Department of Labor within the meaning of section 3002(b) of ERISA and 4971(d) of the Code.

9. If IRS refers a Checksheet B to the EBSA Regional Director with an entry indicating that a fiduciary violation under Title I of ERISA has occurred with respect to an employee benefit plan and that IRS is considering action to disqualify the plan because the plan is also in violation of the exclusive benefit rule under the Internal Revenue Code, the agencies will process the case in accordance with section 103 of Reorganization Plan No. 4 of 1978. (See Appendix E.)

10. IRS will defer action in a case when, as a result of a referral of a checksheet between the agencies, the EBSA Regional Office advises the Manager, EP Classification, in writing that the case has been referred to the DOL National Office. IRS will not take further action in the case until the date when EBSA notifies the EP Classification Unit of EBSA's final action in the case, unless the provisions of Part II A.3. become applicable.

D. Investigations Initiated by EBSA

1. EBSA investigators/auditors will complete Checksheet A during all civil pension benefit investigations.

2. If an entry on a completed checksheet requires a referral to the IRS, the referral will be made not later than the earlier of (1) the date the investigation is closed by the Regional Office (but at least 20 days before the closing letter is issued) or (2) the case is referred to the EBSA National Office. EBSA will refer checksheets in accordance with section B.1. of this Part, using Document Transmittal Form 217 (see Appendix D).

3. The IRS will review any checksheet referred by EBSA, complete the "Action Taken" portion of the referral checksheet, and return a copy to the Regional Director within 20 workdays of the date of the Document Transmittal Form 217 memorandum or other document transmitting the checksheet to the IRS.

(a) If the IRS returns a copy of Checksheet A to the Regional Director with an entry indicating that IRS is taking no action in the case, EBSA will continue its investigation in accordance with its existing procedures. However, see Part V below regarding the information IRS must provide to DOL.

(b) If the IRS returns a copy of Checksheet A to the Regional Director with an

entry indicating that IRS is taking action with respect to the referral, IRS will contact EBSA to obtain any additional information that IRS needs to complete its examination. If EBSA completes the checksheet with an entry in the "IRS Participation Requested" block, the agencies will coordinate their activities in the case. However, see Part V below regarding the information IRS must provide to DOL when the case is closed.

(c) The IRS will defer action in a case when as a result of a checksheet referral between the agencies, the EBSA Regional Office notifies the IRS EP Classification Unit of any referral of the case to the DOL National Office in accordance with section C.10. of this Part.

4. When EBSA refers a Checksheet A to the IRS involving issues other than prohibited transactions, only the Form 5500 series return must be attached to the checksheet.

5. When EBSA refers a Checksheet A to the IRS that involves prohibited transactions of twenty thousand dollars or more, the following items must accompany the checksheet:

(a) Copy of Form 5500 series returns for all years in which a prohibited transaction was in effect.

(b) Available information about taxpayer/disqualified person including, particularly the EIN or SSN, address, educational level and possible name changes.

(c) Copy of plan and trust documents including restatements and/or amendments (only if IRS has not issued a determination letter on the plan and/or amendment). If the prohibited transaction is a loan to a plan participant, a copy of the loan provisions of the plan should be included.

(d) Copy of all EBSA correspondence related to the referred issue.

(e) Copy of the Report of Investigation (ROI) completed by EBSA investigator/auditor and related work papers. The work papers should include financial statements of trust, specific details of the prohibited transaction including copies of sale/transfer documents, repayment documents, contracts and agreements.

(f) A description of the current status of the prohibited transaction, including possible corrective action.

(g) EBSA draft closing letter and if applicable, the voluntary compliance letter. The closing letter will advise the taxpayer that (a) a prohibited transaction has occurred, (b) the disqualified person(s) is/are required to file Form 5330, Return of Excise Tax Related to Employee Benefit Plans and where assistance in completing Form 5330 can be obtained.

(h) A description of the disqualified person's position regarding the prohibited transaction (if not contained in the ROI).

(Figure 1)

(i) Any other information that documents the reason for the referral.

(j) Information in EBSA's possession concerning the fiduciary/ disqualified person's filing or intent to file for bankruptcy.

6. When EBSA refers a Checksheet A to the IRS that involves prohibited transactions of less than twenty thousand dollars, only a copy of EBSA's closing letter or the voluntary compliance letter (prepared in accordance with 5(g) above) that describes the transaction, and a copy of the Report of Investigation (without attachments) needs to be transmitted.

7. When an EBSA Regional Office refers a checksheet to the EP Classification Unit concerning a violation of the prohibited transaction provisions, the EP Classification Unit/EP Examinations Area Office will generally take action to assess the excise tax under IRC section 4975 if: (1) the tax under section 4975(a) for any taxable year is at least equal to the amount specified in Part VII of the IRS Law Enforcement Manual; (2) 180 days or more remain before the expiration of the statute of limitations with respect to the prohibited transaction; and (3) the information described in section D.5. of this Part is attached to the checksheet when it is referred. If a case referred to EP satisfies the foregoing requirements and action is not taken to assess the tax under section 4975(a), the case file will be annotated to reflect the reason for such failure and the remarks section of the checksheet returned to the DOL will contain an explanation why the assessment was not made.

III. IRS Appeals Office Procedures

The following procedures apply to all cases received by IRS Appeals Offices involving examinations of employee benefit plans within the meaning of section A.2. of Part II.

A. The applicable Appeals Area Director (or designee) will notify, in writing, the EBSA Regional Director's Office as listed in Appendix A that an employee plans case has been received in their office. To ensure that notice has been given to DOL as required by Sections 4971(d) and 4975(h) of the Internal Revenue Code, the Appeals Office shall follow the procedures of B. and C. of this part.

B. The Appeals Area Director will not take final action to settle the case, concede any Government issue, enter into a closing agreement with any taxpayer, issue any notice of deficiency with respect to taxes under section 4971(a) and/or (b) and 4975 that are not in jeopardy, or proceed with any action to revoke the favorable determination or qualification letter of any plan prior to the earlier of the date when the Appeals Area Director receives a response from EBSA or 60 days after the date of the Appeals Office's letter to EBSA.

C. EBSA will, within 60 days of the date of the letter from the Appeals Area Director, reply to the Appeals Area Director in writing if EBSA is taking any action concerning the referred case. If EBSA is taking action with respect to the case, the Appeals Area Director will coordinate with EBSA before taking any of the actions described in Section B. of this Part.

D. If the Appeals Area Director and the EBSA Regional Director are unable to reach agreement regarding disposition of the case, the matter will be forwarded to the National Chief, Appeals to coordinate final resolution with the Director, EBSA Office of Enforcement, DOL.

IV. Notification of Litigation

A. Litigation Involving IRS and Relating to the Administration of Title I of ERISA

1. The Division Counsel/Associate Chief Counsel (TE/GE) (or designee), will forward to the DOL Solicitor (Attention: Associate Solicitor, Plan Benefits Security Division), and Director, Office of Enforcement, EBSA, at the earliest possible date, a copy of any complaint or other opening pleading in litigation to which the IRS, the Treasury, the United States or any official thereof is party, either in Tax Court, Claims Court or in district court, and that presents issues relating to the administration of Title I of ERISA. Further pleadings in such matters will be furnished upon request.

2. The Division Counsel/Associate Chief Counsel (TE/GE) (or designee), will notify the DOL Solicitor (Attention: Associate Solicitor, Plan Benefits Security Division), at the earliest possible date, whenever IRS determines that it will seek to intervene in any action in which the Secretary of the Treasury is entitled to do so under the provisions of ERISA section 502(h). The initial pleadings submitted on behalf of the Secretary will be forwarded to the Associate Solicitor. Further pleadings in such matters will be furnished upon request.

B. Litigation Involving DOL and Relating to Employee Benefit Plans

1. The Solicitor of Labor (or designee) will notify the Division Chief/Associate Chief Counsel (TE/GE), and the Director, EP Examinations T:EP:E, when it is determined that litigation by DOL relating to employee benefit plans is warranted. Copies of the proposed complaint (or other opening pleading and supporting documents) will be furnished to the Chief Counsel for review and to the Department of Justice for its assignment of primary litigative responsibility under the Memorandum of Understanding of February 11, 1975.

2. The Solicitor of Labor (or designee) will forward to the Division Counsel/Associate Chief Counsel (TE/GE) a copy of any pleading filed naming the Secretary of Labor as a defendant and presenting issues relating to employee benefit plans. Further pleadings in such matters will be furnished upon request.

3. The Solicitor of Labor (or designee) will notify the Division Counsel/Associate Chief Counsel (TE/GE) at the earliest possible date whenever DOL determines that it will seek to intervene in any action in which the Secretary of Labor is entitled to do so under the provisions of ERISA section 502(h). The initial pleadings submitted on behalf of the Secretary will be forwarded to the IRS counsel. Further pleadings in such matters will be furnished upon request.

V. Tracking/Feedback

A. EBSA Regional Offices and IRS EP Classification Unit will reconcile their listings of pending referrals at least once a quarter.

B. IRS EP Classification, upon closure of an examination initiated as the result of a referral from DOL, will forward to the EBSA Regional Director Form 6212-A (or a copy of Form 6212-A) indicating the amount of Internal Revenue Code section 4971(a) and/or (b) or 4975 proposed or assessed excise tax. If the IRS does not propose or assess excise taxes, then the reasons will be entered in the "Remarks" section of Form 6212-A.

C. IRS EP Examinations and DOL National Office personnel will meet at least quarterly to resolve any referrals on which the appropriate enforcement action is in dispute. These quarterly meetings will also be used as a medium for discussions of issues encountered by EBSA Regional Offices and IRS EP Examinations in following the provisions of this Agreement.

VI. EBSA Requests for Tax Return Information from the IRS

A. In general, IRS is prohibited from disclosing any tax information to anyone outside of the IRS. IRC section 6103 lists the exceptions to this general rule. IRC section 6103(l)(2) allows the IRS to furnish information to the DOL and PBGC for the enforcement of Titles I and IV of ERISA. This includes requests for tax returns and tax return information.

B. If during any investigation, the Regional Office believes that information in the possession of the IRS will help in carrying out the provisions of Title I, a request will be made to the IRS for such information. Requests for IRC 6103(l)(2) information should be sent to the following address:

Internal Revenue Service
Manager, EP Classification
31 Hopkins Plaza
Room 1550
Baltimore MD 21201

C. Information that can be disclosed under IRC section 6104 should not be requested under this procedure. IRC section 6104(a)(1)(B) provides that any application for tax-qualified status of a pension, profit sharing, stock bonus, annuity, individual retirement account, or individual retirement annuity plan, any application filed with respect to the tax-exempt status of an organization forming part of such plan or account, any papers submitted in support of any such application and any letter or other document issued by the IRS in connection with such tax qualification or tax exemption is to be open for public inspection; however, if a plan does not have more than 25 participants, this right of public inspection is open only to a plan participant. The places and times for the right of public inspection are specified in the regulations issued under IRC section 6104. Materials or documents from which an individual's compensation may

be ascertained are not open to public inspection. This right of public inspection applies to applications filed and documents issued after September 2, 1974.

D. EBSA personnel will employ proper procedures for obtaining and safeguarding the information received from the IRS. Unauthorized disclosure of information received from the IRS may subject the individual disclosing such information to both civil and criminal penalties as provided for in the Internal Revenue Code.

REORGANIZATION PLAN NO. 4 OF 1978

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, August 10, 1978, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

EMPLOYEE RETIREMENT INCOME SECURITY ACT TRANSFERS

SECTION 101. Transfer to the Secretary of the Treasury

Except as otherwise provided in Sections 104 and 106 of this plan, all authority of the Secretary of Labor to issue the following described documents pursuant to the statutes hereinafter specified is hereby transferred to the Secretary of the Treasury:

(a) regulations, rulings, opinions, variances and waivers under Parts 2 and 3 of Subtitle B of Title I and subsection 1012(c) of Title II of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001) (hereinafter referred to as "ERISA"), EXCEPT for sections and subsections 201,203(a)(3)(B), 209, and 301(a) of ERISA;

(b) such regulations, rulings, and opinions which are granted to the Secretary of Labor under Sections 404, 410, 411, 412, and 413 of the Internal Revenue Code of 1986, as amended (hereinafter referred to as the "Code"), EXCEPT for subsections 411(a)(3)(B) of the Code and the definitions of "collectively bargained plan" and "collective bargaining agreement" contained in subsections 404(a)(1)(B) and (a)(1)(C), 410(b)(2)(A) and (b)(2)(B), and 413(a)(1) of the Code; and

(c) regulations, rulings, and opinions under subsections 3(19), 3(22), 3(23), 3(24), 3(25), 3(27), 3(28), 3(29), 3(30), and 3(31) of Subtitle A of Title I of ERISA.

SECTION 102. Transfers to the Secretary of Labor.

Except as otherwise provided in Section 105 of this Plan, all authority of the Secretary of the Treasury to issue the following described documents pursuant to the statutes hereinafter specified is hereby transferred to the Secretary of Labor:

(a) regulations, rulings, opinions, and exemptions under section 4975 of the Code,

EXCEPT for (i) subsections 4975(a), (b), (c)(3), (d)(3), (e)(1), and (e)(7) of the Code; (ii) to the extent necessary for the continued enforcement of subsections 4975(a) and (b) by the Secretary of the Treasury, subsections 4975(f)(1), (f)(2), (f)(4), (f)(5) and (f)(6) of the Code; and (iii) exemptions with respect to transactions that are exempt by subsection 404(c) of ERISA from the provisions of Part 4 of Subtitle B of Title I of ERISA; and

(b) regulations, rulings, and opinions under subsection 2003(c) of ERISA, EXCEPT for subsection 2003(c)(1)(B).

SECTION 103. Coordination Concerning Certain Fiduciary Actions.

In the case of fiduciary actions which are subject to Part 4 of Subtitle B of Title I of ERISA, the Secretary of the Treasury shall notify the Secretary of Labor prior to the time of commencing any proceedings to determine whether the action violates the exclusive benefit rule of subsection 401(a) of the Code, but not later than prior to issuing a preliminary notice of intent to disqualify under that rule, and the Secretary of the Treasury shall not issue a determination that a plan or trust does not satisfy the requirements of subsection 401(a) by reason of the exclusive benefit rule of subsection 401(a), unless within 90 days after the date on which the Secretary of the Treasury notifies the Secretary of Labor of pending action, the Secretary of Labor certifies that he has no objection to the disqualification or the Secretary of Labor fails to respond to the Secretary of the Treasury. The requirements of this paragraph do not apply to the case of any termination or jeopardy assessment under sections 6851 or 6861 of the Code that has been approved in advance by the Commissioner of Internal Revenue, or, as delegated, the Assistant Commissioner for Employee Plans and Exemption Organizations.

SECTION 104. Enforcement by the Secretary of Labor.

The transfers provided for in Section 101 of this Plan shall not affect the ability of the Secretary of Labor, subject to the provisions of Title III of ERISA relating to jurisdiction, administration, and enforcement, to engage in enforcement under Section 502 of ERISA or to exercise the authority set forth under Title III of ERISA, including the ability to make interpretations necessary to engage in such enforcement or to exercise such authority. However, in bringing such actions and in exercising such authority with respect to Parts 2 and 3 of Subtitle B of Title I of ERISA and any definitions for which the authority of the Secretary of Labor is transferred to the Secretary of the Treasury as provided in Section 101 of this Plan, the Secretary of Labor shall be bound by the regulations, rulings, opinions, variances, and waivers issued by the Secretary of the Treasury.

SECTION 105. Enforcement by the Secretary of the Treasury.

The transfers provided for in Section 102 of this Plan shall not affect the ability of the Secretary of the Treasury, subject to the provisions of Title III of ERISA relating to jurisdiction, administration, and enforcement, (a) to audit plans and employers and to enforce the excise tax provisions of subsections 4975(a) and 4975(b) of the Code, to exercise the authority set forth in subsections 502(b)(1) and 502(h) of ERISA, or to exercise the authority set forth in Title III of ERISA, including the ability to make interpretations necessary to audit, to enforce such taxes, and to exercise such authority; and (b) consistent with the coordination requirements under Section 103 of this Plan, to disqualify, under section 401 of the Code, a plan subject to Part 4 of Subtitle B of Title I of ERISA, including the ability to make the interpretations necessary to make such disqualification. However, in enforcing such excise taxes, and, to the extent

applicable, in disqualifying such plans the Secretary of the Treasury shall be bound by the regulations, rulings, opinions, and exemptions issued by the Secretary of Labor pursuant to the authority transferred to the Secretary of Labor as provided in Section 102 of this Plan.

SECTION 106. Coordination for Section 101 Transfers.

(a) The Secretary of the Treasury shall not exercise the functions transferred pursuant to Section 101 of this Plan to issue in proposed or final form any of the documents described in subsection (b) of this Section in any case in which such documents would significantly impact on or substantially affect collectively bargained plans unless, within 100 calendar days after the Secretary of the Treasury notifies the Secretary of Labor of such proposed action, the Secretary of Labor certifies that he has no objection or he fails to respond to the Secretary of the Treasury. The fact of such notification, except for such notification for documents described in subsection (b)(iv) of this Section, from the Secretary of the Treasury to the Secretary of Labor shall be announced by the Secretary of Labor to the public within ten days following the date of receipt of the notification by the Secretary of Labor.

(b) The documents to which this Section applies are:

(i) amendments to regulations issued pursuant to subsections 202(a)(3), 203(b)(2) and (3)(A), 204(b)(3)(A), (C) and (E), and 210(a)(2) of ERISA, and subsections 410(a)(3) and 411(a)(5), (6)(A), and (b)(3)(A), (C), and (E), 413(b)(4) and (c)(3) and 414(f) of the Code;

(ii) regulations issued pursuant to subsections 204(b)(3)(D), 302(c)(8), and 304(a) and (b)(2)(A) of ERISA, and subsections 411(b)(3)(D), 412(c)(8), (e), and (f)(2)(A) of the Code; and

(iii) revenue rulings (within the meaning of 26 CFR Section 601.201(a)(6)), revenue procedures, and similar publications if the rulings, procedures and publications are issued under one of the statutory provisions listed in (i) and (ii) of this subsection; and

(iv) rulings (within the meaning of 26 CFR Section 601.201(a)(2)) issued prior to the issuance of a published regulation under one of the statutory provisions listed in (i) and (ii) of this subsection and not issued under a published Revenue Ruling.

(c) For those documents described in subsections (b)(i), (b)(ii) and (b)(iii) of this Section, the Secretary of Labor may request the Secretary of the Treasury to initiate the actions described in this Section 106 of this Plan.

SECTION 107. Evaluation.

On or before April 30, 1980, the President will submit to both Houses of the Congress an evaluation of the extent to which this Reorganization Plan has alleviated the problems associated

with the present administrative structure under ERISA, accompanied by specific legislative recommendations for a long-term administrative structure under ERISA.

SECTION 108. Incidental Transfers.

So much of the personnel, property, records, and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this Plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate agency, or component at such time or times as the Director of the Office of Management and Budget shall provide, except that no such expended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for terminating the affairs of any agencies abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purpose of this Reorganization Plan.

SECTION 109. Effective Date.

The provisions of this Reorganization Plan shall become effective at such time or times, on or before April 30, 1979, as the President shall specify, but not sooner than the earliest time allowable under Section 906 of Title 5, United States Code.

**MEMORANDUM OF UNDERSTANDING AMONG
THE U.S. DEPARTMENT OF THE TREASURY,
THE U.S. DEPARTMENT OF LABOR, AND
THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES**

Article I

Introduction and Purpose

The Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Pub. L. No. 104-191, was enacted on August 21, 1996. Titles I and IV of HIPAA amended the Internal Revenue Code, the Employee Retirement Income Security Act of 1974, and the Public Health Service Act to add provisions to improve access, portability and continuity of health insurance coverage in the group and individual health insurance markets.

Section 104 of HIPAA directs the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services to enter into an interagency memorandum of understanding. Section 104 requires that the memorandum of understanding ensure that regulations, rulings, and interpretations relating to the changes made by Subtitle A of Title I and section 401 of Title IV of HIPAA over which two or more Secretaries have responsibility ("shared provisions") are administered so as to have the same effect at all times. Section 104 also requires the coordination of policies relating to enforcing the shared provisions in order to avoid duplication of enforcement efforts and to assign priorities in enforcement. This memorandum of understanding (MOU) is adopted pursuant to section 104 of HIPAA.

This MOU formally establishes an interagency agreement among the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services to ensure coordination in the manner and for the purposes set forth in section 104 of HIPAA. The Departments also intend to follow the process set forth in this MOU, to the extent appropriate, with regard to interpretations and enforcement of the provisions of the Newborns' and Mothers' Health Protection Act of 1996, the Mental Health Parity Act of 1996, and Subsequent Legislation. In addition, the Departments of Labor and HHS agree to follow the process set forth in this MOU, to the extent appropriate, with regard to interpretations and enforcement of the provisions of the Women's Health and Cancer Rights Act of 1998.

Article II

Authority

This MOU is entered pursuant to the authority set forth in section 104 of HIPAA, Pub. L. No. 104-191.

Article III

Definitions

"Agency" refers to a component of a Department. For purposes of the MOU, this includes the Internal Revenue Service (IRS) within the Department of the Treasury, the Pension and Welfare Benefits Administration (PWBA) within the Department of Labor, and the Health Care Financing Administration (HCFA) within the Department of Health and Human Services.

"Code" refers to the Internal Revenue Code of 1986.

"Committee" refers to the Coordinating Committee described in Article V.

"Department" refers to each of the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services.

"Departments" refers collectively to the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services.

"ERISA" refers to the Employee Retirement Security Act of 1974.

"HCFA" refers to the Health Care Financing Administration.

"HHS" refers to the Department of Health and Human Services.

"Interpretations" refers to any written Agency or Departmental statement, guidance ruling, pronouncement, or explanation regarding a statute described in Article I of the MOU that is not a Regulation. Interpretations include statements such as Revenue Rulings, Technical Bulletins/Releases, Advisory Opinions, and similar Agency or Departmental releases that are binding on the issuing Agency or Department. Interpretations also include policy guidance, such as information letters, bulletins and policy letters, whether or not such guidance is binding on the issuing Agency or Department.

"IRS" refers to the Internal Revenue Service.

"Labor" and "DOL" refer to the Department of Labor.

"MHPA" refers to the Mental Health Parity Act of 1996.

"NMHPA" refers to the Newborns' and Mothers' Health Protection Act of 1996.

"PHS Act" refers to the Public Health Service Act.

"PWBA" refers to the Pension and Welfare Benefits Administration.

"Regulations" refers to rules that are promulgated in accordance with the provisions of the Administrative Procedure Act applicable to substantive rules and that are published in the Federal Register and codified in the Code of Federal Regulations.

"Related Acts" refers to MHPA and NMHPA.

"Subsequent Legislation" refers to future federal legislative enactments concerning health care which result in two or more of the Departments having shared jurisdiction.

"Treasury" refers to the Department of the Treasury.

"WHCRA" refers to the Women's Health and Cancer Rights Act of 1998.

Article IV

Background

Subtitle A of Title I and section 401 of Title IV of HIPAA are intended to improve the availability of private health insurance by increasing portability, access and renewability in the

group market. HIPAA establishes limits on the imposition of preexisting condition exclusions and generally prohibits group health plans and health insurance issuers from discriminating against individuals based on health status when determining eligibility to enroll in a group health plan or to obtain related insurance or in deciding the amount of premium to be charged to similarly situated individuals. Employers may not be denied continued access to multiemployer plans, or multiple employer welfare arrangements, except for certain reasons set forth in HIPAA.

HIPAA and Related Acts amended three federal statutes: the Code, administered by the Treasury through IRS; ERISA, administered by DOL through PWBA; and the PHS Act, administered by HHS through HCFA. Under the Code, as amended by HIPAA and Related Acts, the Treasury has authority over group health plans (including church plans) and their sponsors, and IRS enforced the requirements of HIPAA and Related Acts through the imposition of an excise tax. Under ERISA, as amended by HIPAA and Related Acts, DOL has increased authority over group health plans that are subject to Part 7 of subtitle B of Title I of ERISA. Health insurance issuers offering health insurance coverage in connection with such plans are also subject to Part 7. However, in accordance with the provisions of HIPAA, only participants and beneficiaries (and not DOL) may bring an enforcement action against health insurance issuers under Part 7.

Under the PHA Act, as amended by HIPAA and Related Acts, HCFA has authority over health insurance issuers and nonfederal governmental plans. If a State fails to substantially enforce Parts A and B of Title XXVII of the PHS Act, or requests that HCFA enforce the provisions or requirements, HCFA enforces the group and individual market requirements by imposing a civil monetary penalty on issuers that fail to comply with HIPAA's requirements in that State.

There are differences in some of the amendments that HIPAA and Related Acts made to the three statutes. In some instances, changes were made to only one of the federal statutes with no counterpart in the other two statutes. Section 104 of HIPAA requires the Secretaries of the Treasury, Labor and HHS to coordinate in the areas of parallel responsibility relating to the share provisions of HIPAA.

Article V

Scope of Work

The Departments agree to assign representatives to work closely to ensure that all Interpretations, Regulations and enforcement strategies relating to shared provisions of Subtitle A of Title I and section 401 of Title IV of HIPAA and Related Acts will be developed and implemented in a coordinated manner. All such Interpretations, Regulations and enforcement strategies will be administered in a manner that promotes consistency in effect, that avoids duplication of enforcement efforts, and that reflects consideration of the appropriate priorities in enforcement.

(Figure 3)

In this regard, the Departments will continue to work together closely through regular joint meetings and frequent consultation, consistent with the process (*i.e.*, by mutual consent) that has been used in developing existing Regulations and Interpretations under HIPAA and Related Acts. Similarly, DOL and HHS will continue to work together closely through regular joint meetings and frequent consultation to develop Regulations and Interpretations under WHCRA.

In order to further effectuate this coordination, the Treasury, IRS, DOL, and HHS each will name a "Department Designee" to serve on a Coordinating Committee. The Committee's task will be to ensure the identification and coordination of policies involving areas of shared responsibility under HIPAA and Related Acts to maintain consistency in the application of these provisions that amend the Code, ERISA, and the PHS Act.

The Committee also will take steps to maximize the efficiency of Agency enforcement efforts, including developing the terms of further agreement(s), as necessary. The Committee members shall meet, quarterly, or at such times as they may agree, to review and discuss relevant pending Regulations and Interpretations to evaluate whether the position(s) set forth therein reflect a coordinated position. Committee meetings will be held at locations agreed to by the Committee members. Upon agreement of the Committee members, such meetings may be held by conference call. Each Department will assume the costs associated with the participation of its respective Committee members.

Timely and prompt consensus will be sought in the development and administration of all Interpretations affected by this MOU. Any Department Designee can bring any matter subject to the MOU before the Committee. The Department Designees serving on the Committee will attempt to reach consensus on issues within 45 days (except in unusual circumstances) after such issues have been formally presented (including a written summary) at a meeting of the Committee. If consensus on particular issues is reached by the members of the Committee, appropriate clearance will be initiated within each Department.

Article VI

Coordinated Enforcement Strategy

Generally, the Departments intend to continue the current informal arrangements that have developed for cooperation and collaboration in the handling of inquiries arising under HIPAA, MHPA, NMHPA, and WHCRA. In addition, pursuant to Section 104(2) of HIPAA and this MOU, the Committee, and any appropriate individuals designated by the Agencies or Departments, shall develop a coordinated enforcement strategy that avoids duplication of enforcement efforts and assigns priorities in enforcement. The Agencies or Departments shall first designate, within six months of the execution of this MOU, individuals who are to work with the Committee in developing the enforcement strategy. This group shall also devise a written operational agreement for the sharing of information that is related to enforcement cases among the Departments. Moreover, the operational agreement may address procedures for the

referral of cases, the development of audit checklists and training materials, and the coordination of public affairs information. The operational agreement may also describe the individuals within each Department who are responsible for implementing the sharing of information.

Subject to applicable legal restrictions (including section 6103 of the Code), the Departments agree, absent exigent circumstances, to notify each other in writing (through the Department Designee) prior to the commencement of any administrative or judicial proceeding on matters within the scope of this MOU and to inform each other of the final action resulting from such proceeding.

Nothing in this section shall be construed to affect the enforcement authority that HIPAA or Related Acts confers on any Department, including enforcement concerning a matter as to which a Department has given or received the information or notice described herein, nor shall this paragraph be construed to preclude the Departments from agreeing to different arrangements on a case by case basis.

Article VII

Confidentiality of Information

The Departments agree that any information shared or disclosed pursuant to this MOU will be held in strict confidence and may be used only for purposes consistent with this MOU or as otherwise permitted by law. All requests by parties other than the Departments for disclosure of information shall be coordinated with the Agency that initially compiled or collected the information, provided that no Agency shall disclose information initially compiled by another Agency to the public without the approval of the appropriate Agency or Department unless the Agency is required by law to do so (*e.g.*, Freedom of Information Act (FOIA), 5 U.S.C. 552; Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2), in which event it will notify the appropriate Department or Agency in writing of its intent to disclose such information. Nothing in this MOU shall be deemed to confer rights on any party other than the Departments as a result of any act or omission by any Agency or Department with respect to its obligations under this MOU.

Article VIII

Duration of Agreement

This MOU will become effective upon the date of the final signature and may be amended by written agreement of the undersigned. It will remain in effect until amended by the parties, or until terminated by any of the parties upon 30 days written notice to the other parties and, upon the agreement of the Departments, shall apply to Subsequent Legislation.

Article IX

(Figure 3)

Officials Responsible for MOU

The appropriate Departmental officials will appoint their respective Department Designees to the Committee within 30 days after the signing of this MOU and will appoint any successors in a timely manner.

We, the undersigned, do hereby agree to the foregoing provisions of this MOU.

Dated: April 8, 1999.
Donald C. Lubick,
Assistant Secretary for Tax Policy, Department of the Treasury.

We, the undersigned, do hereby agree to the foregoing provisions of this MOU.

Dated: April 21, 1999.
Robert E. Wenzel,
Deputy Commissioner, Internal Revenue Service, Department of the Treasury.

We, the undersigned, do hereby agree to the foregoing provisions of this MOU.

Dated: March 17, 1999.
Richard M. McGahey,
Assistant Secretary, Pension and Welfare Benefits Administration, Department of Labor.

We, the undersigned, do hereby agree to the foregoing provisions of this MOU.

Dated: March 30, 1999.
Nancy-Ann Min DeParle,
Administrator, Health Care Financing Administration, Department of Health and Human Services.