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## EMPLOYEE BENEFITS SECURITY ADMINISTRATION

### Chapter 13, Relationship with the Office of the Inspector General/Office of Labor Racketeering

1. Purpose. The purpose of the Memorandum of Understanding (Figure 1) between EBSA and the Office of the Inspector General [Office of Labor Racketeering (OLR)] is to improve the effectiveness of the Department's enforcement activities in relation to organized crime and racketeer infiltration, control, and influence in the employee benefit plan field, and to strengthen the protection afforded to employee benefit plan participants and their beneficiaries.
2. Background. OLR and EBSA have agreed to exchange information in investigations involving matters of interest to both agencies. The agreement provides a mechanism for EBSA and OLR to cooperate to the maximum extent possible under applicable laws, rules, and regulations to achieve Departmental objectives in connection with administration of ERISA and to remove organized crime and racketeer control, domination, and influence from employee benefit plans.
3. Plans Targeted by OLR. On a quarterly basis, OLR will provide EBSA with a list of all employee benefit plans involved in cases it has targeted for investigation or audit. The sole exception consists of any investigation by OLR in which it has been personally determined by the Deputy Inspector General that the investigation is of a highly confidential nature. It is contemplated that this exception will be rarely used.
4. Plans Targeted by EBSA. EBSA will, on a quarterly basis, provide OLR with a list of all matters currently under investigation by EBSA, which can reasonably be considered to contain matters within the jurisdiction of OLR. Such matters consist of investigations, which involve individuals reputed to be affiliated with organized crime and matters in which OLR has previously expressed some interest.
5. OLR Targeted Industries. EBSA will, through its National Office, provide OLR with a list of all employee benefit plans, which are affiliated with unions within industries, identified by OLR and which are targeted to be audited within the 90 days following the transmittal of the list. EBSA's list will be provided on a quarterly basis after its receipt of OLR's list of targeted industries.
6. Identifying Plans Affiliated with Unions within Targeted Industries. To facilitate gathering information to fulfill EBSA's obligations pursuant to the Memorandum of Understanding, EBSA will identify during the case opening whether a labor organization is involved in the employee benefit plan being investigated. If a labor organization is involved, the LM number of that organization will be included in the case opening information. In addition, the business, product, or service code of the industry will be included in the case opening information. The codes to be inserted are those which are now used by employee benefit plans in completing Form 5500s.

7. Indices Searches and Requests for Information. Upon request, OE and each Regional Office (after consultation with OE) will conduct and furnish to OLR results of any indices searches and information concerning specific individuals or organizations in its files, subject to restriction under Rule 6(e) of the Federal Rules of Criminal Procedure, applicable restrictions of the Internal Revenue Code (IRC), and restrictions of other applicable laws.

Upon request, OLR will furnish EBSA with results of indices searches and information from its files concerning specific individuals or organizations, subject to Rule 6(e), the IRC, or other applicable restrictions. OE and each RO (after consultation with OE) are authorized to transmit such requests to OLR.

8. Other Investigative Aids. When requested by OLR, OE will furnish other materials which may be of investigative assistance, such as computer printouts of reporting employee benefit plans. OLR is under a similar obligation to respond to requests from EBSA. The manner for channeling such requests to OLR shall be the same as in paragraph 7 above.

9. Need for Immediate Action by the Other Agency. If a Regional Office develops or acquires, during the course of an investigation or otherwise, information indicating a possible need for prompt action by OLR, the facts of the matter should be brought to the attention of OE, which will inform OLR. In emergency situations, such notification may be by telephone. This disclosure is subject to the restrictions under Rule 6(e) of the Federal Rules of Criminal Procedure, applicable restrictions of the IRC, and restrictions of other applicable law. OLR is under a similar obligation to promptly provide EBSA with information obtained by it which indicates a possible need for immediate action by EBSA.

10. Potential Criminal Violation in Plans Previously Identified to OLR. OE will inform OLR of information concerning alleged criminal violations obtained in EBSA investigations involving employee benefit plans which have been previously identified to OLR. OE will notify OLR upon receipt of the information from the RO.

11. Referral of Cases to SOL. When an ROI is referred to the Office of the Solicitor (either PBSO or RSOL) with a recommendation for enforcement action, OE will furnish a synopsis of the case to OLR. At the request of OLR, OE will make available, subject to relevant legal considerations, the underlying documents and other materials pertaining to the ROI. If OLR determines that it has an interest in investigating any matter brought to its attention through this procedure, OLR will notify OE so that appropriate arrangements for coordination of any such investigation with EBSA enforcement action can be made. Under no circumstances will OLR initiate any contact with plan officials based on information obtained pursuant to this paragraph without prior consultation with EBSA.

12. Closed Cases. When a Regional Office closes, without a recommendation for enforcement action, an investigation which has previously been identified to OLR, OE will be informed of the closing through the Form 215. OE will then notify OLR that the EBSA investigation has been closed.

13. Subpoenas. When a subpoena requiring the production of documents in the possession of an employee benefit plan, service provider, or other party is served by either EBSA or OLR, the investigator shall take all reasonable steps to ensure that those documents or copies of those documents are returned no later than 30 days after the return of the subpoena. If the investigator is unable to comply with this requirement, he/she will make arrangements so that the parties from whom the documents have been subpoenaed can retrieve the originals or copies within a reasonable time thereafter. Under no circumstance may EBSA subpoenas be used for purposes of assisting an OLR investigation.

14. Relations with Other Agencies. OLR does not have the authority to represent EBSA in any matter involving an ongoing investigation with regard to coordination and communication with DOJ, or any other agency. EBSA will communicate directly with such agencies and in the event that a dispute arises which cannot be resolved at the local office level, the matter will be referred by memorandum (or in emergency situations, by telephone) to the Criminal Coordinator, OE who will attempt to resolve the matter with OLR or DOJ.

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MEMORANDUM OF UNDERSTANDING BETWEEN THE OFFICE OF  
INSPECTOR GENERAL AND LMSA

I. PURPOSE

The purpose of this memorandum is to improve the effectiveness of the enforcement activities of the parties to this agreement in relation to organized crime (OC) and racketeer infiltration, control and influence in the employee benefit plan field, and in relation to the protection of employee benefit plan participants and beneficiaries.

II. COVERAGE

This agreement applies to the Office of Inspector General (OIG)/Office of Organized Crime and Racketeering (OOCR) and LMSA Pension and Welfare Benefit Programs and the Special Investigations Staff (hereinafter collectively "PWBP").

III. OBJECTIVE

Enforcement of the civil and criminal provisions of ERISA and related Title 18 statutes is essential to any serious attempt to address the problems of organized crime and racketeer influence in the Employee Benefit Plan field and to the protection of employee benefit plan participants and beneficiaries. It is understood that to the maximum extent permissible under applicable laws, rules and regulations, PWBP and OOCR shall work in concert to obtain the DOL objective of removing OC and racketeer control, domination and influence from Employee Benefit Plans, and to achieve the other objectives of the Department in connection with the administration of ERISA. OOCR and PWBP recognize their responsibilities to exercise their respective investigative powers and perform their duties in a manner that is consistent with the requirements of applicable law. All of the provisions contained herein shall be construed accordingly.

IV. EFFECTIVE DATE

This agreement shall become effective on April 15, 1980.

V. RESPONSIBILITY AND AUTHORITY

1. PWBP is responsible for administering the Department's programs and operations and establishing policy related to ERISA.
2. OOCR is responsible, among other things, for administering the Department's participation in the Organized Crime Strike Force Program.

3. It shall be the mutual responsibility of the parties to this agreement to coordinate activities subject to this agreement in order to determine the most effective strategy in accomplishing the desired objectives. Moreover, pursuant to previous agreements between DOL and the Criminal Division - U.S. Department of Justice, a Work Group has been established involving representatives of both Departments. The Work Group serves as a coordination mechanism for matters of mutual concern. OOCR shall participate in the Work Group as appropriate.

## VI. WORKING RELATIONS

1. PWBP and OOCR will cooperate in an effort to control organized crime and racketeer influence in employee benefit plans through civil and/or criminal enforcement, and to achieve the other objectives of the Department in connection with the administration of ERISA.
2. It is anticipated that some matters of mutual interest to OOCR and PWBP may be coordinated, and any differences resolved, at the local field level. In the absence of agreement as to the strategy to employ in any given case, the matter should be referred to the Work Group.
3. Within 30 days after the effective date of this agreement, and quarterly thereafter, PWBP will provide OOCR with a list of all benefit plans targeted for audit within the following 90 days which are affiliated with unions within industries which have been identified by OOCR, and of all other matters presently under investigation which reasonably can be considered to be within the jurisdiction of OOCR.

Within 30 days after the effective date of this agreement, and quarterly thereafter, OOCR, will provide PWBP with a list of all employee benefit plans involved in matters which it has targeted for investigation or audit; provided however, that this provision does not apply in the case of any investigation determined by the Deputy Inspector General to be of a highly confidential nature.

4. Each office will, upon request, conduct and furnish to the other, results of any indices search.
5. Each office will, upon request, furnish to the other information concerning specific individuals or organizations in its files, subject to restrictions under Rule 6(e) of the Federal Rules of Criminal Procedure, applicable restrictions of the Internal Revenue Code and other applicable law.

6. Each office will, upon request, furnish to the other matters which may be of an investigative aid, such as available computer printouts of reporting benefit plans, etc.
7. Subject to the restrictions under Rule 6(e) of the Federal Rules of Criminal Procedure, applicable restrictions of the Internal Revenue Code and other applicable law, if either office develops or acquires, during the course of an investigation or otherwise, information indicating a possible need for prompt action by the other, the facts of the matter should be brought to the attention of the other as quickly as possible. PWBP will also inform OOCR of alleged criminal violations involving benefit plans previously identified to OOCR pursuant to paragraph 3 above.
8. At the time PWBP refers a report of investigation to the Office of the Solicitor with a recommendation for enforcement action, PWBP will furnish to the Office of Organized Crime and Racketeering a synopsis of that report of investigation. With respect to any such synopsis, at the request of OOCR, PWBP will make available, subject to relevant legal considerations, the underlying documents and other materials pertaining to the report of investigation. In the event that OOCR determines that it has an interest in investigating any matter brought to its attention through this provision, OOCR shall first notify the Division of Enforcement, PWBP, so that appropriate arrangements for the coordination of any such investigation with the PWBP enforcement action can be made.
9. Whenever PWBP closes, without recommendation for enforcement action, an investigation previously identified to OOCR pursuant to paragraph 3 above, notice of such closing shall be furnished to OOCR.
10. When in the course of an investigation conducted by OOCR at the direction of a grand jury, or conducted by PWBP, a subpoena is executed for documents in the possession of an employee benefit plan, service provider or other party doing business with a plan, the investigators of the agency involved in the execution of the subpoena shall take all reasonable steps to ensure that, not later than 30 days after the commencement of the execution of the subpoena, the party from whom such documents were subpoenaed has available either the originals (returned) or copies of the original documents, or will otherwise make arrangements so that the parties from whom the documents have been subpoenaed can retrieve the originals or copies upon request and within a reasonable time thereafter.

11. Notwithstanding any provision of paragraph 7 supra, neither OOCR nor PWBP has the authority to represent the other in any matter involving an ongoing investigation with regard to coordination and communication with local strike forces, the Department of Justice or any other agency. PWBP or OOCR, as applicable, will communicate directly with such agencies and, in the event any dispute arises which cannot be resolved at the local office level the matter will be referred to the Work Group.

Signed this 24-day of March 1980.

For the Office of Organized  
Crime and Racketeering  
Office of Inspector General

/s/ \_\_\_\_\_  
Ronald Goldstock  
Deputy Inspector General

For the Pension and Welfare  
Benefit Programs  
Labor-Management Relations Service

/s/ \_\_\_\_\_  
Ian D. Lanoff  
Administrator