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## EMPLOYEE BENEFITS SECURITY ADMINISTRATION

### Chapter 14, Relationship with the Federal Financial and Other Regulatory Agencies

1. **Purpose.** The purpose of establishing relationships with the federal financial and other regulatory agencies is to facilitate EBSA exchange of information and facilities with these agencies. Such exchanges assist in developing and providing more efficient enforcement activities and strategies in investigating employee benefit plans, financial institutions, and other entities providing services to employee benefit plans.

2. **Background.** Section 3004(b) of ERISA provides that the Secretary may utilize the facilities or services of any department, agency, or establishment of the United States, with the lawful consent of such department, agency, or establishment to obtain information and facilities, to the extent permitted by law, as the Secretary may require in the performance of his functions under ERISA.

3. **Federal Financial Institution Regulatory Agencies.** In February 2006, an interagency agreement was signed between DOL and the federal financial institution regulatory agencies<sup>1</sup>, *i.e.*, the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and Office of Thrift Supervision (OTC), whereby those agencies agreed to provide written notification to DOL of possible violations of ERISA of a significant nature which are discovered in the course of their supervision of the fiduciary activities of institutions subject to their respective jurisdictions (Figure 1). The functions of each of the agencies are described in Figure 2.

a. **Scope.** The federal financial institution regulatory agencies will provide written notification to OE of possible violations of ERISA of a significant nature, which are discovered in the course of their supervision of fiduciary activities of institutions subject to their respective jurisdictions. NCUA's responsibility shall be limited to possible violations disclosed in the examination of federal credit unions.

b. **Definition of Significant Violations.** In situations where the financial institution is neither a plan administrator nor a plan sponsor as defined in ERISA section 3(16), a violation will be considered significant when:

- 1) The violation either individually or in combination with other questionable transactions constitutes a potential loss of \$100,000 or more and the violation is related to section 404 of ERISA.
- 2) The potential violation involves the breach of co-fiduciary responsibilities under section 405 of ERISA and the

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<sup>1</sup> This replaces the prior agreement, which was signed in December 1980.

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transaction amounts, individually or in combination with other questionable transactions, constitute \$100,000 or more.

- 3) The potential violation relates to sections 406 and 407(a) except where the threat of loss to plan participants is *de minimis*.
- 4) The potential violation relates to ERISA section 411 (prohibition against certain persons holding certain positions with employee benefit plans).
- 5) The potential violation relates to section 412 of ERISA (relating to bonding requirements) but only as applicable to the financial institution itself.

c. **Definition of Significant Violations where the Financial Institution is the Plan Administrator or Plan Sponsor.** In cases where a financial institution also serves as plan administrator or plan sponsor, in addition to all of the situations listed in Paragraph 4 above, the federal financial institution regulatory agencies will also provide written notification to EBSA of any potential violations of part 1 of Title I of ERISA relating to reporting and disclosure.

d. **Contents of Written Notice.** Any written notice to EBSA by a federal financial institution regulatory agency shall contain the following information:

- 1) The name of the financial institution.
- 2) The name of the plan.
- 3) A brief description of the nature of the possible violation and any corrective action with regard to that violation requested by the federal financial institution regulatory agency.
- 4) Any action initiated by the federal financial institution regulatory agency with regard to that violation. The written notification will, in all cases, be directed to the Director of Enforcement, EBSA.

e. **Confidentiality.** All information received from the federal financial institution regulatory agencies pursuant to this agreement shall be clearly identified as such by OE and, to the extent permissible by law, will be held in strict confidence and only used for investigative purposes. No other use of such information shall be made without the express written authorization of the agency which originally supplied the information. All requests for disclosure of information received pursuant to this agreement shall be immediately referred to OE/DFO, which in appropriate cases will seek permission of the agency which provided the information prior to disclosure.

f. **Regional Requests for Information.** Regional requests for information from a federal financial institution regulatory agency will be made in writing to the Director of Enforcement. OE will be responsible for contacting the appropriate

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agency and obtaining permission for the region to review the agency's file.

g. **Disposition of Referrals.** If a case is opened, pursuant to a referral from a federal financial institution, the RO should inform DFO of the case opening and of the final disposition of that case. When the RO already has a case open at the time of the referral, DFO should be apprised of the case and its predication.

4. **Securities and Exchange Commission.** On July 29, 2008, DOL and the Securities and Exchange Commission (SEC) entered into a Memorandum of Understanding (MOU) to facilitate the exchange of information between the two agencies (Figure 3). Under the MOU, the SEC grants DOL standing access to non-public examination of information with respect to examinations that SEC staff determine are relevant to DOL's mission, with certain safeguards. See Figure 4 for the SEC Access Request letter.

a. RO requests for non-public information from the SEC national office will be made in writing to the Director of Enforcement. OE will be responsible for contacting the SEC and obtaining permission for the RO to review the agency's file.

b. Requests for non-public information from the SEC Regional Offices should be made in writing directly to the appropriate office. Public information may be obtained directly from the appropriate SEC office.

5. **Pension Benefit Guaranty Corporation.** RO investigators, with the approval of the Regional Director, may contact Pension Benefit Guaranty Corporation (PBGC) representatives directly to discuss PBGC referrals. Regional requests for PBGC non-public documents must be submitted by RO memorandum to OE for review and processing to PBGC. Any formal referrals to the PBGC must be done through DFO.

6. **State Agencies.** On May 14, 1990, the Secretary wrote to each State Insurance Commissioner underscoring the Department's commitment to strengthen efforts to ensure maximum cooperation and coordination of enforcement with the States.

a. **Scope.** Both federal and state laws regulate multiple employer welfare arrangements (MEWAs). The 1983 amendments to ERISA specifically granted authority to the states to regulate MEWAs even though a particular arrangement may be an ERISA covered plan.

b. **Regional Coordination.** The Region will pursue cooperative arrangements with appropriate agencies pursuant to which the Regions will share and discuss information relating to open and closed MEWA cases. The Region may also make documents, including documents obtained by voluntary production or civil subpoena, available to the state agency involved. Refer to Chapter 20 for further guidance in the release of investigative material.

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## INTERAGENCY AGREEMENT

### Procedures for Cooperation Between the Federal Financial Institution Regulatory Agencies and the Department of Labor in the Enforcement of the Employee Retirement Income Security Act of 1974

The Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, Office of the Comptroller of the Currency and Office of Thrift Supervision (the federal financial institution regulatory agencies) as part of their supervision of the institutions regulated by them, conduct examinations and perform other functions which occasionally disclose possible violations of the Employee Retirement Income Security Act of 1974 (ERISA). The Department of Labor (DOL) is charged with the administration, interpretation and enforcement of standards of conduct and responsibility of fiduciaries of employee benefit plans under ERISA.

Section 3004(b) of ERISA provides that the Secretary of Labor may utilize the facilities or services of any department, agency, or establishment of the United States, with the lawful consent of such department, agency, or establishment, and each department, agency or establishment of the United States is authorized and directed to cooperate with the Secretary of Labor and, to the extent permitted by law, to provide such information and facilities as the Secretary may request for his assistance in the performance of his functions under ERISA. This agreement is executed pursuant to that authority.

1. To the maximum extent consistent with law and dependent upon the availability of resources, the federal financial institution regulatory agencies shall provide written notification to the DOL of possible violations of ERISA of a significant nature, which are discovered in the course of their supervision of institutions subject to their respective jurisdiction.

2. A possible violation shall be considered significant when, in the view of the appropriate federal financial institution regulatory agency, it falls within the following circumstances:

a. Where the financial institution does not serve as plan administrator or plan sponsor, as those terms are defined in ERISA Section 3(16), possible violations of:

- (1) Title I, part 4, Section 404, relating to fiduciary duties (including transactions directed by named fiduciaries or qualified investment managers), except where the transaction amounts, individually or in combination with

(Figure 1)

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- other questionable transactions, constitute less than \$100,000;
- (2) Title I, part 4, Section 405, relating to liability for breach of co-fiduciary duties (including transactions directed by named fiduciaries or qualified investment managers), except where the transaction amounts, individually or in combination with other questionable transactions, constitute less than \$100,000;
  - (3) Title I, part 4, Sections 406 and 407(a), relating to prohibited transactions, except where the threat of loss to the plan participants is de minimis;
  - (4) Title I, part 4, Section 411, relating to prohibition against certain persons holding certain positions;
  - (5) Title I, part 4, Section 412, relating to the bonding requirements as applicable to the financial institution itself.

b. Where the financial institution, in respect to a plan, also serves as plan administrator or plan sponsor, the agencies shall provide written notification of possible violations of the ERISA sections enumerated in a. above and, in addition, shall provide written notification of possible violations of Title I, part 1, of ERISA relating to reporting and disclosure.

3. The written notification to the DOL shall include the following:

- a. The name of the financial institution.
- b. The name of the plan.

c. A brief description of the nature of the possible violation, and any corrective action requested by the federal financial institution regulatory agency and/or initiated by the federal financial institution regulatory agency.

4. The DOL agrees that any information received from the federal financial institution regulatory agencies pursuant to this agreement shall, to the extent permitted by law, be held in strict confidence and may be used for investigative purposes only; and that no other use of such information shall be made without the express authorization of the agency that supplied such information, except as required by law.

5. The written notification shall be sent to the Director of Enforcement, Employee Benefits Security Administration, U.S. Department of Labor, Washington, D.C. 20210.



**THE FEDERAL FINANCIAL INSTITUTIONS REGULATORY AGENCIES  
AND THEIR SUPERVISED INSTITUTIONS**

**THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM (FRB)**

- examines, supervises, and regulates state member banks, bank holding companies, and Edge and agreement corporations; approves or denies applications for mergers, acquisitions and change in control by state member banks and bank holding companies; and
- approves or denies applications for foreign operations of member banks and has residual supervisory responsibility for U.S. offices of foreign banks.

Implementation of policy decisions is carried out by the FRB and by the twelve Federal Reserve Banks, each of which has operational responsibility within a specific geographical area. Each Reserve Bank has a president and other officers and employs a staff of bank examiners who examine state member banks and inspect bank holding companies located within the Reserve Bank's district. All national banks must be members of the Federal Reserve System. State-chartered banks may apply and be accepted for membership.

**THE FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC)**

- provides deposit insurance for commercial banks, certain federal savings banks, and state-chartered savings banks;
- supervises FDIC-insured, state-chartered commercial and savings banks that are not members of the Federal Reserve System; and
- serves as receiver or liquidator of all closed national banks and as receiver of closed insured state-chartered banks.

The bank supervision functions of the FDIC are shared with state and other federal authorities. All national banks and state banks that are members of the Federal Reserve System must be insured by the FDIC. Nonmember state banks may apply for FDIC deposit insurance. The FDIC examines and supervises those banks under its purview, approves or denies applications for structural or corporate changes, and rules on applications for insurance.

The FDIC is organized geographically into six regions, each of which is headed by a regional director.

**THE OFFICE OF THRIFT SUPERVISION (OTS)**

The OTS, pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, succeeded the FHLBB. Established by Congress as a bureau of the Department of the Treasury on August 9, 1989, OTS charters, examines, supervises and regulates Federal savings associations insured by the Federal Deposit Insurance Corporation (FDIC). OTS also examines, supervises and regulates state-chartered savings associations insured by the FDIC and provides for the registration, examination and regulation of savings and loan holding companies and other affiliates. OTS is the only Federal banking agency that both charters depository institutions and supervises their holding companies.

The mission of the Office of Thrift Supervision is to supervise savings associations and their holding companies in order to maintain their safety and soundness and compliance with consumer loans and to encourage a competitive industry that meets America's financial services needs.

OTS is headquartered in Washington D.C. with four regional offices located in Jersey City, Atlanta, Dallas and San Francisco. The headquarters office develops nationwide policies and programs for the agency and coordinates the operations of OTS. The regional offices examine and supervise institutions and process most applications.

**THE NATIONAL CREDIT UNION ADMINISTRATION (NCUA)**

The National Credit Union Administration (NCUA) is the independent federal agency that charters and supervises federal credit unions. NCUA, backed by the full faith and credit of the U.S. government, operates the National Credit Union Share Insurance Fund (NCUSIF) insuring the savings of 80 million account holders in all federal credit unions and many state-chartered credit unions.

The major responsibilities of the NCUA are:

- chartering, supervising, and examining federal credit unions;
- administering the NCUSIF; and
- managing the Central Liquidity Facility.

The NCUA also has statutory authority to examine and supervise NCUSIF-insured, state-chartered credit unions, which it does in coordination with state agencies.

**THE OFFICE OF THE COMPTROLLER OF THE CURRENCY (OCC)**

The OCC is the regulator and supervisor of the national banking system. The OCC is the only federal banking agency with authority to charter commercial banks. The OCC has authority to approve or deny applications for new bank charters, the establishment of branches, and mergers of national banks.

The principal supervisory tools of the OCC are on-site supervisory activities and detailed off-site analysis of national bank operations. As appropriate, the OCC issues rules and regulations concerning bank lending, bank investment, and other aspects of bank operations.

The OCC is organized geographically into six districts, each headed by a Deputy Comptroller.

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MEMORANDUM OF UNDERSTANDING  
CONCERNING COOPERATION BETWEEN  
THE U.S. SECURITIES AND EXCHANGE COMMISSION AND  
THE U.S. DEPARTMENT OF LABOR

To facilitate the ongoing consultation and communication between the U.S. Department of Labor's Employee Benefits Security Administration (DOL) and the U.S. Securities and Exchange Commission (SEC) concerning matters of mutual interest, the agencies have reached this Memorandum of Understanding (MOU) setting forth a framework for consultation and exchange of information. By this MOU, the agencies formally recognize their effective and informal working relationships and their expectation of continued cooperation.

1. **Regular Meetings:** The DOL and SEC staffs shall have periodic meetings to discuss matters of mutual interest, including for example, regulatory requirements that impact each agency's responsibilities, examination findings and trends, enforcement cases, and any other matters that the SEC and DOL staffs believe would be of interest to the other regulator in fulfilling their respective regulatory responsibilities.

2. **Points of Contact:** To facilitate communications between the SEC and DOL staffs in the agencies' field offices, the DOL and SEC staffs shall designate persons to serve as points of contact for each regulator in each of the SEC and DOL regional offices and respective headquarters office. Points of contact will assist the SEC and DOL staffs in communications with respect to matters of mutual interest.

3. **Training:** The agencies recognize that it is worthwhile to cross-train appropriate staff in order to enhance each agency's understanding of the other's mission and investigative jurisdiction so that our resources can effectively protect the public. Each agency will seek to identify periodic internal training opportunities which may be appropriate for the other agency's staff to attend. These training programs may be non-public, and participants may be obliged to maintain the confidentiality of program materials.

4. **DOL Access to Non-Public SEC Examination Information:** To facilitate the exchange of examination-related information concerning investment advisers or other firms of mutual interest to the SEC and the DOL, the SEC grants DOL standing access to non-public examination information with respect to examinations that SEC staff determine are relevant to DOL's mission, pursuant to the following safeguards:

- **DOL Assurances of Confidentiality:** To the extent permitted by law, the DOL staff will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of the files to which access is granted and information derived therefrom. The files and information may, however, be used for the

purpose of the DOL's investigation and/or proceeding and any resulting proceedings. They also may be transferred to criminal law enforcement authorities. The DOL staff will notify SEC staff in writing of any such transfer and use its best efforts to obtain appropriate assurances of confidentiality. The DOL staff will: make no public disclosure of the files or information without the prior written approval of the SEC staff; notify SEC staff in writing of any legally enforceable demand for the files or information prior to complying with the demand and assert all such legal exemptions or privileges on the SEC's behalf as SEC staff may request; and not grant any other demand or request for the files or information without prior written notice to, and lack of objection by, SEC staff.

- Right to Financial Privacy Act of 1978 ("RFPA"): The files and information provided by the SEC staff to the DOL staff pursuant to this standing grant of access may from time to time contain "financial records" of "customers" of "financial institutions," as those terms are defined in RFPA [12 U.S.C. §§ 3401-22]. In the event the files and information shared pursuant to this standing grant of access contain such information, the DOL will represent that it has reason to believe that the files and information are relevant to its examination, investigation, and/or proceeding.

5. SEC and DOL Access to Non-Public SEC and DOL Enforcement Information: To facilitate the exchange of enforcement-related information concerning investment advisers or other firms of mutual interest to the SEC and the DOL, the agencies intend to honor each other's requests for enforcement information to the extent permitted by law and in accordance with the following procedures:

- In order to streamline the access request process, the SEC and DOL staffs will provide each other with a form letter to request access to investigative files and enforcement information of the other agency ("access request letters"). These access request letters will specify the specific enforcement matter and will contain the same assurances of confidentiality as contained in this Section 5.

- SEC and DOL Assurances of Confidentiality: To the extent permitted by law, the SEC and DOL staffs will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of the files to which access is granted and information derived therefrom. The exchange of such files and information is not a public disclosure under the Freedom of Information Act (5 U.S.C. §552). The files and information may, however, be used for the purpose of the SEC's and DOL's investigation and/or proceeding and any resulting proceedings. The SEC may transfer files and information to criminal law enforcement authorities and self-regulatory organizations subject to the SEC's oversight. The DOL may transfer files and information to criminal law enforcement authorities. The SEC and DOL staffs will notify the other agency's staff in writing of any such transfer and use their best efforts to obtain appropriate assurances of confidentiality. The SEC and DOL staffs will: make no public disclosure of the files or information without the prior written approval of the other agency; notify the other agency's staff in writing of any legally enforceable demand



## SEC ACCESS REQUEST LETTER

Re: [Name of investigation]

Dear \_\_\_\_\_ :

We request access to the investigative and other non-public files of the U.S. Securities and Exchange Commission (the "Commission") related to the captioned matter. This request is made in connection with an ongoing lawful investigation or official proceeding inquiring into a violation of, or failure to comply with, a criminal or civil statute or regulation, rule or order issued pursuant thereto, being conducted by the [insert region or district] Office of the Employee Benefits Security Administration.

[We understand that the files in this matter contain "financial records" of "customers" as those terms are defined in the Right to Financial Privacy Act 011978 (12 U.S.C. §§3401-22). We have reason to believe that that information is relevant to our investigation and/or proceeding.]<sup>2</sup>

We will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of files to which access is granted and information derived therefrom. The files and information may, however, be used for the purpose of our investigation and/or proceeding, and any resulting proceedings. They also may be transferred to criminal law enforcement authorities. We shall notify you of any such transfer and use our best efforts to obtain appropriate assurances of confidentiality.

Other than as set forth in the preceding paragraph, we will:

- make no public use of these files or information without prior approval of your staff;
- notify you of any legally enforceable demand for the files or information prior to complying with the demand, and assert such legal exemptions or privileges on your behalf as you may request; and
- not grant any other demand or request for the files or information without prior notice to and lack of objection by your staff.

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<sup>2</sup> This paragraph is necessary only when the files contain RFPA material.

April 2009

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[We recognize that until this matter has been closed, the Commission continues to have an interest and will take further investigatory or other steps as it considers necessary in the discharge of its duties and responsibilities.]<sup>3</sup>

Should you have any questions, please contact [insert contact name].

Sincerely,

Regional Director

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<sup>3</sup> This paragraph may be omitted if the Commission's case is closed.  
(Figure 4)