
EMPLOYEE BENEFITS SECURITY ADMINISTRATION

Chapter 47 – Prohibited Persons

This Chapter addresses two types of Program 47 investigations concerning parties who are disqualified under ERISA section 411. The first type concerns proactive investigations into people who are, or are thought to be, currently disqualified under the statute. The second type involves responses to debarred persons who are seeking relief from the prohibitions of section 411.

Section 411 of ERISA establishes a bar against certain persons serving as employee benefit plan fiduciaries or service providers because they have been convicted of any of a broad range of specified crimes. Prohibited positions and activities include consultants and advisers to plans and any entity whose activities are in whole or substantial part devoted to providing goods or services to employee benefit plans.

As amended by the Comprehensive Crime Control Act of 1984, section 411 of ERISA prohibits individuals convicted of disqualifying crimes from serving in plan-related capacities described in section 411 for a period extending from the date of the disqualifying judgment of conviction (sentence date) until thirteen years after such judgment or the end of imprisonment resulting from a disqualifying conviction, whichever is later. The period may be shortened if the sentencing court, under appropriate circumstances, has reduced the period of prohibition to not less than three years following the judgment or end of imprisonment or a federal district court has exempted the disqualified individual at any time after sentence by determining that service in any of the prohibited capacities would not be contrary to the purposes of title I of ERISA and would be in accordance with the sentencing policy at U.S.S.G § 5J1.1 that the convicted individual has been sufficiently rehabilitated as to not endanger the organization in which he seeks to serve.

I. Proactive ERISA section 411 Investigations

EBSA may investigate persons whom it believes are disqualified under section 411. The purpose of the investigation may simply be to confirm that a person is complying with the debarment, or it may be opened when a person is suspected of violating the statutory bar.

1. **Purpose.** EBSA is responsible under ERISA section 411 for helping to ensure that disqualified parties do not serve in positions or capacities prohibited under the statute. EBSA conducts proactive investigations to monitor the vocational status of disqualified persons. When an initial investigation reveals that such a person is serving in a proscribed capacity, EBSA will seek to have the person vacate the proscribed position or role. However, if EBSA already has an open criminal investigation involving the disqualified person, the office should first speak with the prosecutor before requesting the person to step down. EBSA may undertake to remove the person through either a civil injunction or criminal prosecution.

2. **Source of Cases.** Cases will be initiated based on a review of available data, conviction records, referrals, media reports or other methods. Whether these initial investigations

will lead to criminal investigations (Program 52) will depend on the circumstances of the subjects of the inquiries.

3. **Case Opening.** A Program 47 (proactive investigation) case will be opened when an Investigator/Auditor begins an examination into the working status of a disqualified person. Before opening a Program 47 proactive investigation, the field office should determine whether the crime the subject has been convicted of is a debarment crime. If the crime is not an enumerated crime, then the field office should seek assistance from OE. Once the investigation is open, the Investigator/Auditor should send the disqualified person an opening letter Figure 1.

4. **Conducting the Investigation.** If an investigation is opened based upon a prior investigation conducted by EBSA, the first step should be to determine whether the subject was notified of his or her statutory disqualification. EBSA typically mails a debarment letter by certified mail following the sentencing hearing. However, there are other acceptable methods for delivering debarment letters, such as by hand directly to the person. Other agencies, too, may deliver the debarment notice to the subject. For example, prosecutors may incorporate notification of debarment in a plea agreement, or a judge may include the language in the judgment. Investigators/Auditors should check the criminal file for evidence that a debarment letter was successfully delivered to the subject. If there is no evidence in the file confirming that the subject ever received such a letter, then the Investigator/Auditor should make sure that the subject is given a new debarment letter. See Chapter 52, Figure 6. The Investigator/Auditor must place a copy of the letter together with evidence of its delivery in both the Program 47 file and the original criminal file.

If the Investigator/Auditor discovers that another agency has provided the defendant with a letter mentioning debarment under ERISA section 411, the field office should acquire a copy for its records. If EBSA is not able to obtain a copy of the debarment letter, the field office will deliver a separate debarment letter to the defendant.

The next step in a proactive investigation is to confirm the subject's recent and current employment in order to determine whether such employment is prohibited under ERISA section 411. Investigators/Auditors must take the necessary investigative steps to determine whether the barred individual may be serving in a prohibited capacity. If Investigators/Auditors are uncertain as to whether a particular employment or service is barred under ERISA section 411, the Investigator/Auditor will request guidance from EBSA's Deputy Director of Criminal Enforcement.

Should an investigation reveal that a barred person is serving in a prohibited capacity, but that the person was apparently unaware that he or she was disqualified under section 411, the field office should ensure that a debarment letter is delivered to the person as previously discussed. This letter should include an explanation that the person is prohibited from working in his or her present capacity. The debarment letter should therefore be provided to the person in a manner that confirms his/her receipt. Possible methods include mailing the letter via certified mail, or arranging for a suitable law enforcement official to hand the letter directly to the person.

Because section 411 also provides that disqualified persons may not be "permitted to serve" in any prohibited capacity, the Investigator/Auditor should promptly notify the employer of the disqualified person's proscribed status, when appropriate. If the person consequently files for relief from debarment under section 411, then the Investigator/Auditor should follow the steps set out in Part II below.

When, however, an investigation discovers that a person is serving in a prohibited capacity despite having been notified of his/her debarment, or simply refuses to depart from a prohibited capacity after being served with a debarment letter, the field office shall seek a civil injunction or open a Program 52 investigation to request criminal prosecution, as appropriate.

Whenever a Program 47 investigation (proactive) reveals that a disqualified person has been serving in a prohibited capacity, the field office should consider opening an investigation on the related plan. This is particularly appropriate if a disqualified person refuses to surrender his/her prohibited position or function. A field office should consider opening a Program 48 Civil Investigation to determine if the plan has been harmed, or a Program 52 Criminal Investigation if there are indications of criminal violations. (Refer to Chapters 48 and 52).

5. **Preparation of Closed ROI.** All ROIs under proactive investigations will be submitted as closed reports modeled after Figure 2.

6. **Regional Director's Transmittal.** If a civil injunction is being sought, ROIs will be transmitted to the RSOL with a cover memorandum from the RD setting forth the steps that the Investigator/Auditor completed for the proactive investigation. In those instances, the ROI, exhibits, and recommendation memo should be directed to the appropriate SOL Counsel. A copy of the recommendation memo and the ROI, without exhibits, should be directed to OE (Deputy Director for Criminal Enforcement). Copies of court filings by the Department and the plaintiff should also be provided to OE (Deputy Director for Criminal Enforcement).

7. If the disqualified person refuses to comply with the civil injunction, or if there is evidence that the person may have engaged in criminal activity while in the prohibited role, the field office should open a Program 52 investigation and refer the matter for criminal prosecution.

II. Requests for Relief from section 411 Debarment

1. **Background.** Section 411(a) of ERISA establishes the procedures for seeking an exemption from the statutory prohibitions. For any disqualifying crime committed prior to November 1, 1987, an Application for Exemption must be directed to the United States Parole Commission. For a disqualifying crime committed on or after November 1, 1987, the Petition for Exemption must be directed to the federal sentencing court, or if the conviction is a state offense, the petition must be directed to the United States District Court for the district in which the disqualifying state offense was committed. A Petition for Reduction of the Length of Disability for disqualifying judgments of conviction entered after October 12, 1984 may be made to the state or federal sentencing judge. No such relief was available prior to October 12, 1984. Pursuant to Section III, of the DOL/DOJ Memorandum of Understanding (MOU) related to criminal investigations (See Chapter 52), EBSA is authorized to conduct investigations and to

provide information at court hearings concerning requests for an exemption to section 411. It is the normal procedure for the Solicitor's Office to represent EBSA in such matters. Requests for reduction of the length of disability should be treated the same as a request for exemption.

2. **Purpose.** When EBSA has been requested to conduct an investigation related to a motion for relief from section 411 (a), the investigation will be for the purpose of providing information to the court or parole commission, rather than to prove a violation of ERISA. The investigation should seek aggravating or mitigating evidence with regard to the following three factors:

- a. The character and gravity of the disqualifying offense;
 - b. The nature of the position for which the applicant is seeking an exemption;
- and
- c. The extent to which the applicant has been rehabilitated to meet the standards of responsibility required.

3. **Source of Cases.** Cases may be initiated when information is received pertaining to a request for relief.

4. **Case Opening.** At the time a request for relief is received involving section 411(a), a Program 47 case will be opened. In some instances, opening a Program 47 case may not be warranted. For example, due to the minimal passage of time between a guilty plea or conviction and a request for reduction in the bar, or the shortness of time between a request and the sentencing date, the office may not have new information to contribute. In such instances, opening a case is discretionary with the RD.

In cases where a prohibited person is occupying a prohibited position, steps described in Part I of this chapter (proactive investigations) should be followed.

5. **Investigative Activity.** A Program 47 request for relief investigation requires priority handling and close coordination among the RO, OE (Deputy Director for Criminal Enforcement), the Office of the Solicitor and the Department of Justice. In view of this, when the RO receives information that a request for remedial relief is being sought, an e-mail setting forth the relevant information should be directed to the appropriate PBSO Decentralized Litigation Counsel with a copy to the appropriate RSOL ERISA Counsel and OE (Deputy Director for Criminal Enforcement). The e-mail should describe the party seeking relief, the jurisdiction involved, the nature of the position for which relief is being sought, the crime which caused the bar, and any other relevant information. A determination will then be made as to which SOL office (national or regional) will handle the matter.

6. **Investigation.** The investigation of an application before the Parole Commission focuses upon the verification of information which is required to be included in the application by regulations found at 28 CFR Part 4 (Figure 3). Investigations initiated as a result of court filings should focus upon the three factors described in paragraph 2 above. Because cases are now filed in Federal District Court, not the Parole Commission, a court is not bound by the

regulations governing procedures before the Parole Commission. The Court may choose to adopt certain Parole Commission procedures with respect to its determination. Further, investigations of cases filed in Federal District Court may have to address more than the three areas in which the Parole Commission was interested. Accordingly, the Investigator/Auditor should read the pleadings, address any issues raised, and verify any relevant factual assumptions.

7. **Preparation of Closed ROI.** All ROIs under request for relief investigations will be submitted as closed reports modeled after Figure 4.

8. **Regional Director's Transmittal.** All ROIs will be transmitted with a cover memorandum from the RD setting forth the RO's recommendation as to whether DOL should oppose the motion (Figure 5). The ROI, exhibits, and recommendation memo should be directed to the appropriate SOL Counsel. A copy of the recommendation memo and the ROI, without exhibits, should be directed to OE (Deputy Director for Criminal Enforcement). Copies of court filings by the Department and the plaintiff should also be provided to OE (Deputy Director for Criminal Enforcement).

INITIAL CONTACT LETTER
DRAFT
OFFICE LETTERHEAD

Certified Mail No.
Return Receipt Requested

In reply, please refer to our file no. (47)

[Date]

[Subject]

[Subject's Address]

RE: Investigation pursuant to ERISA § 411

Dear [xxxx]:

The United States Department of Labor is responsible for the administration and enforcement of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA), 29 U.S.C. § 1001 et seq. Investigative authority is vested in the Secretary of Labor by ERISA §§ 504 and 506(b), 29 U.S.C. §§ 1134 and 1136(b), respectively.

Under ERISA § 411, persons who have been convicted of certain enumerated crimes are debarred for a period of thirteen (13) years from serving in various capacities related to employee benefit plans. Among the crimes requiring debarment is [xx U.S.C. § xxxx], of which you were convicted in [year]. The thirteen year debarment period begins on the later of the date of conviction or the end of any imprisonment that may have resulted from the conviction. According to our records, your debarment period began on [date], which is [the date of your conviction] (or) [the date of your release from the imprisonment resulting from your conviction].

This office is conducting an investigation to determine your compliance with the bar imposed by ERISA § 411. In doing so, we hope to protect your privacy to the extent possible while fulfilling our responsibilities under the statute. Accordingly, we seek your voluntary cooperation with our inquiry. Specifically, we request that you promptly furnish the documentation listed in the attachment to this letter, and that you subsequently agree to be interviewed, possibly via telephone, regarding your employment history as it pertains to the § 411 bar. We may also request that, after you have had an opportunity to review a written summary of the information obtained in our investigation, you sign under oath a declaration that the information contained in the summary is correct.

If the information and documentation you provide is sufficient to establish your compliance with the bar, it may eliminate altogether our need to seek or to corroborate this information with third parties (e.g., employers, neighbors, etc.)

Attached to this letter is the documentation we request at this time. Please deliver these items to the undersigned within three weeks of your receipt of this letter. You may provide the documentation in paper form or electronically in PDF format.

Finally, we ask that you provide a telephone number and time of day when you would prefer that we call you, when necessary, to discuss this inquiry.

Thank you in advance for your cooperation. If you have any questions, please do not hesitate to contact me at [tel. no.] or [email address]

Sincerely,

Case Investigator

Please Provide the Following Documentation as Discussed in the Accompanying Letter
(Additional documentation may be required)

1. Documents sufficient to establish your full name, date of birth, and Social Security Number.
2. Documents sufficient to establish your current home address and all prior home addresses dating back to the effective date of your debarment* but no more than 3 years.
3. Documents sufficient to establish the names and addresses of all current and former employers, including documents identifying all supervisors, dating back to the effective date of your debarment but no more than 3 years. Identify all periods of self-employment and unemployment. Account for all periods of time.
4. Copies of all federal tax returns dating back to the effective date of your debarment but no more than 3 years.
5. Copies of all Form W-2s and all employment-related Form 1099s dating back to the effective date of your debarment but no more than 3 years.
6. Copies of all employment contracts and personal service contracts dating back to the effective date of your debarment but no more than 3 years.
7. For each position or job held, provide the job title and a complete description of the work actually performed in the position or job. To the extent any work directly or indirectly involved any employee benefit plan, fully describe the exact nature of the work you performed with respect to the employee benefit plan.

* This date is set forth in the accompanying letter.

REPORT OF INVESTIGATION
U.S. DEPARTMENT OF LABOR
EMPLOYEE BENEFITS SECURITY ADMINISTRATION

This document is the property of the Employee Benefits Security Administration. It is not to be disclosed to unauthorized persons.

File No. (47)

Subject: (Name and Address of Prohibited Person)

Date:

By:

Investigator/Auditor

Approved by:

EIN/PN:

Status: Closed

- I. **Predication** - State the reasons for case opening and conducting the investigation.
- II. **Issues and Findings** - Cite the facts which show:
 - a. **Disqualifying Offense** - Describe the offense for which the subject was convicted and consequently barred from employment in employee benefit plans under section 411 of ERISA.
 - b. **Notification of Disbarment** - Describe any known notifications of disbarment, including proof of receipt. If the subject indicates non-receipt, describe the actions taken to officially notify the subject of debarment, including proof of receipt.
 - c. **Nature of Current Employment of Applicant** - Include a description of any employment position. Be specific about all duties and authority for which the subject may be responsible as they relate to employee benefit plans. Provide sufficient facts showing that the employment was or was not prohibited.
 - d. **Actions Taken** - In cases where prohibited employment is found, cite the facts showing that VC was achieved, if applicable, or that other dispositive action was taken.
- III. **Other Findings** - This section can be used to present facts or any other investigative activity not previously mentioned.

[To be used at the discretion of the Regional Director]

Distribution:

National Office _____

Approved By:

PART 4 – PROCEDURE GOVERNING APPLICATIONS
FOR CERTIFICATES OF EXEMPTION UNDER
THE LABOR-MANAGEMENT REPORTING AND
DISCLOSURE ACT OF 1959, AND THE
EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Sec.

- 4.1 Definitions
- 4.2 Who may apply for Certificate of Exemption
- 4.3 Contents of application
- 4.4 Supporting affidavit; additional information
- 4.5 Character endorsements
- 4.6 Institution of proceedings
- 4.7 Notice of hearing; postponements
- 4.8 Hearing
- 4.9 Representations
- 4.10 Waiver of oral hearing
- 4.11 Appearance; testimony; cross examination
- 4.12 Evidence which may be excluded
- 4.13 Record of decision. Receipt of documents comprising record; timing and extension
- 4.14 Administrative law judge's recommended decision; exceptions thereto; oral argument before Commission
- 4.15 Certificate of Exemption
- 4.16 Rejection of application
- 4.17 Availability of decisions

Authority: Secs. 504, 606, Stat. 536, 540 (29 U.S.C. 504, 526): and Secs. 411, 507A. 88 Stat. 887, 894, (29 U.S.C. 1111, 1137).

Source: 44 FR 6890, Feb. 2, 1979, unless otherwise noted.

Cross Reference: For Organization Statement, U.S. Parole Commission, see Subpart V of Part O of this chapter.

§ 4.1 Definitions

As used in this part:

- a. Labor Act means the Labor-Management Reporting and Disclosure Act of 1959 (73 Sta. 519).
- b. Pension act means the Employee Retirement Income Security Act of 1974 (Pub. L. 94-406)(88 Sta. 829)
- c. Act means both of the above statutes.
- d. Commission means the United States Parole Commission.
- e. Secretary means the Secretary of Labor or his designee.

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- f. For proceeding under the "Labor Act".
 - 1. Employer means the labor organization or person engaged in an industry or activity affecting commerce, or group or association of employers dealing with any labor organization, which an applicant under Section 4.2 desires to serve in a capacity for which he is ineligible under section 504(a) of the "Labor Act".
 - 2. All other terms used in this part shall have the same meaning as identical or comparable terms when those terms are used in the "Labor Act".
 - g. For proceedings under the "Pension Act"
 - 1. Employer means the employee benefit plan with which an applicant under § 4.2 desires to serve in a capacity for which he is ineligible under section 411(a) of the "Pension Act" (29 U.S.C. section 1111).
 - 2. All other terms used in this part shall have the same meaning as identical or comparable terms when those terms are used in the "Pension Act".

§ 4.2 Who may apply for Certificate of Exemption

Any person who has been convicted of any of the crimes enumerated in section 504(a) of the "Labor Act" whose service, present or prospective, as described in that section because of such a conviction or a prison term resulting therefrom; or any person who has been convicted of any of the crimes enumerated in section 411(a) of the "Pension Act" (29 U.S.C. section 1111) whose service, present or prospective, as described in that section is or would be prohibited by that section because of such a conviction or a prison term resulting therefrom, may apply to the Commission for a Certificate of Exemption from such a prohibition under the applicable Act.

§ 4.3 Contents of applications

A person applying for a Certificate of Exemption shall file with the Office of General Counsel, U.S. Parole Commission, 5500 Friendship Boulevard, Chevy Chase, Maryland 20815-7286, a signed application under oath, in seven copies, which shall set forth clearly and completely the following information:

- a. The name and address of the applicant and any other names used by the applicant and dates of such use.
- b. A statement of all convictions and imprisonments, which prohibit the applicant's service under the provisions of the applicable Act.
- c. Whether any citizenship rights were revoked as a result of conviction or imprisonment and if so the name of the court and date of judgment thereof and the extent to which such rights have been restored.
- d. The name and location of the employer and a description of the office or paid position, including the duties thereof, for which a Certificate of Exemption is sought.
- e. A full explanation of the reasons or grounds relied upon to establish that the applicant's service in the office or employment for which a Certificate of Exemption is sought would not be contrary to the purposes of the applicable Act.
- f. A statement that the applicant does not, for the purpose of the proceeding, contest the validity of any conviction.

(28 U.S.C. 509 and 510, 5 U.S.C. 301)

(44 FR 6890, Feb. 2, 1979, as amended at 46 FR 52354, Oct. 27, 1981)

§ 4.4 Supporting affidavit; additional information

- a. Each application filed with the Commission must be accompanied by a signed affidavit, in 7 copies, setting forth the following concerning the personal history of the applicant:
 1. Place and date of birth. If the applicant was not born in the United States, the time of first entry and port of entry, whether he/she is a citizen of the United States, and if naturalized, when, where and how he/she became naturalized and the number of his Certificate of Naturalization.
 2. Extent of education, including names of schools attended.
 3. History of marital and family status, including a statement as to whether any relatives by blood or marriage are currently serving in any capacity with an employee benefit plan, or labor organization, group or association of employers dealing with labor organizations or industrial labor relations group, or currently advising or representing any employer with respect to employee organizing concerted activities or collective bargaining activities.
 4. Present employment, including office or offices held with a description of the duties thereof.
 5. History of employment, including military service, in chronological order.
 6. Licenses held at the present or at any time in the past five years, to possess or carry firearms.
 7. Veterans' Administration claims number and regional office handling claim, if any.
 8. A listing (not including traffic offenses for which a fine of not more than \$25 was forfeited) by date and place of all arrests, convictions for felonies, misdemeanors, or offenses and all imprisonment or jail terms resulting therefrom, together with a statement of the circumstances of each violation which led to arrest or conviction.
 9. Whether applicant was ever on probation or parole, and if so the names of the courts by which convicted and the dates of conviction.
 10. Names and location of all employee benefit plans, labor organizations or employer groups with which the applicant has ever been associated or employed, and all employers or employee benefit plans which he has advised or represented concerning employee organizing, concerted activities, or collective bargaining activities together with a description of the duties performed in each such employment or association.
 11. A statement of applicant's net worth, including all assets held by him or in the names of others for him, the amount of each liability owed by him or by him together with any other person and the amount and source of all income during the immediately preceding five calendar years plus income to date of application.
 12. Any other information that the applicant feels will assist the Commission in making its determination.
- b. The Commission may require of the applicant such additional information as it deems appropriate for the proper consideration and disposition of his application.

§ 4.5 Character endorsements

Each application filed with the Commission must be accompanied by letters or other forms of statement (in three copies) from six persons addressed to the Chairman, U.S. Parole Commission, attesting to the character and reputation of the applicant. The statement as to character shall indicate the length of time the writer has known applicant, and shall describe applicant's character traits as they relate to the position for which the exemption is sought and the duties and responsibilities thereof. The statement as to reputation shall attest to applicant's reputation in his community or in his circle of business or social acquaintances. Each letter or other form of statement shall indicate that it has been submitted in compliance with procedures under the respective Act and that applicant has informed the writer of the factual basis of his application. The persons submitting letters or other forms of statement shall not include relatives by blood or marriage, prospective employers, or persons serving in any official capacity with an employee benefit plan, labor organization, group or association of employers dealing with labor organizations or industrial labor relations groups.

§ 4.6 Institution of proceedings

All applications and supporting documents received by the Commission shall be reviewed for completeness by the Office of General Counsel of the Parole Commission and if complete and fully in compliance with the regulations of this part the Office of General Counsel shall accept then for filing. Applicant and/or his representative will be notified by the Office of General Counsel of any deficiency in the application and supporting documents. The amount of time allowed for deficiencies to be remedied will be specified in said notice. In the event such deficiencies are not remedied within the specified period or any extension thereof, granted after application to the Commission in writing within the specified period, the application shall be deemed to have been withdrawn and notice thereof shall be given to applicant.

§ 4.7 Notice of hearing postponements

Upon the filing of an application, the Commission shall: (a) Set the application for a hearing on a date within a reasonable time after its filing and notify the applicant of such date by certified mail; (b) Give notice, as required by the respective Act, to the appropriate State, County or Federal prosecuting officials in the jurisdiction or jurisdiction in which the applicant was convicted that an application for a Certificate of Exemption has been filed and the date for hearing thereon; and (c) Notify the Secretary that an application has been filed and the date for hearing thereon and furnish him copies of the application and all supporting documents. Any party may request a postponement of a hearing date in writing from the Office of General Counsel at any time prior to ten (10) days before the scheduled hearing. No request for postponement other than the first for any party will be considered unless a showing is made of cause entirely beyond the control of the requester. The granting of such requests will be within the discretion of the Commission. In the event of a failure to appear on the hearing date as originally scheduled or extended, the absent party will be deemed to have waived his right to a hearing. The hearing will be conducted with the parties present participating and documentation, if any, of the absent party entered into the record.

§ 4.8 Hearing

The hearing on the application shall be held at the offices of the Commission in Washington, D.C., or elsewhere as the Commission may direct. The hearing shall be held before the Commission, before one or more Commissioners, or before one or more administrative law judges appointed as provided by section 11 of the Administrative Procedure Act (5 U.S.C. 3105) as the Commission by order shall determine. Hearings shall be conducted in accordance with sections 7 and 8 of the Administrative Procedure Act (5 U.S.C. 556, 557).

§ 4.9 Representation

The applicant may be represented before the Commission by any person who is a member in good standing of the bar of the Supreme Court of the United States or of the highest court of any State or territory of the United States or the District of Columbia and who is not under any order of any court suspending, enjoining, restraining or disbaring him from, or otherwise restricting him in, the practice of law. Whenever a person acting in a representative capacity appears in person or signs a paper in practice before the Commission, his personal appearance or signature shall constitute a representation to the Commission that under the provisions of this part and applicable law he is authorized and qualified to represent the particular person in whose behalf he acts. Further proof of a person's authority to act in a representative capacity may be required. When any applicant is represented by an attorney at law, any notice or other written communication required or permitted to be given to or by such applicant shall be given to or by such attorney. If an applicant is represented by more than one attorney, service by or upon any one of such attorneys shall be sufficient.

§ 4.10 Waiver of oral hearing

The Commission upon receipt of a statement from the Secretary that he does not object, and in the absence of any request for oral hearing from the others to whom notice has been sent pursuant to §4.7 may grant an application without receiving oral testimony with respect to it.

§ 4.11 Appearance; testimony; cross-examination

- a. The applicant shall appear and except as otherwise provided in §4.10. shall testify at the hearing and may cross-examine witnesses.
- b. The Secretary and other to whom notice has been sent pursuant to §4.7 shall be afforded an opportunity to appear and present evidence and cross-examine witnesses, at any hearing.
- c. At the discretion of the Commission or presiding officer, other witnesses may testify at the hearing.

§ 4.12 Evidence which may be excluded

The Commission or officer presiding at the hearing may exclude irrelevant, untimely, immaterial or unduly repetitious evidence.

§ 4.13 Record for decision, receipt of documents comprising record; timing and extension

- a. The application and all supporting documents, the transcript of the testimony and oral argument at the hearing, together with any exhibits received and other documents filed pursuant to these procedures and/or the Administrative Procedures Act shall be made parts of the record for decision.
- b. At the conclusion of the hearing the presiding officer shall specify the time for submission of proposed findings of fact and conclusions of law (unless waived by the parties), transcript of the hearing and supplemental exhibits, if any. He shall set a tentative date for the recommended decision based upon the timing of these preliminary steps. Extensions of time may be requested by any party, in writing from the Parole Commission. Failure of any party to comply with the time frame as established or extended will be deemed to be a waiver on his part of his right to submit the document in question. The adjudication will proceed and the absence of said document and reasons thereof will be noted in the record.

§ 4.14 Administrative law judge's recommended decision; exceptions thereto; oral argument before Commission

Whenever the hearing is conducted by an administrative law judge, at the conclusion of the hearing he shall submit a recommended decision to the Commission, which shall include a statement of findings and conclusions as well as the reasons therefore. The applicant, the Secretary and others to whom notice has been sent pursuant to §4.7 may file with the Commission, within 10 days after having been furnished a copy of the recommended decision, exceptions thereto and reasons in support thereof. The Commission may order the taking of additional evidence and may request the applicant and others to appear before it. The Commission may invite oral argument before it on such questions as it desires.

§ 4.15 Certificate of Exemption

The applicant, the Secretary and others to whom notice has been sent pursuant to §4.7 shall be served a copy of the Commission's decision and order with respect to each application. Whenever the Commission's decision is that the application be granted, the Commission shall issue a Certificate of Exemption to the applicant. The Certificate of Exemption shall extend only to the stated employment with the prospective employer named in the application.

§ 4.16 Rejection of application

No application for a Certificate of Exemption shall be accepted from any person whose application for a Certificate of Exemption has been withdrawn, deemed withdrawn due to failure to remedy deficiencies in a timely manner, or denied by the Commission within the preceding 12 months.

§ 4.17 Availability of decisions

The Commission's Decisions under both Acts are available for examination in the Office of the U.S. Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815-7286.

Copies will be mailed upon written request to the Office of General Counsel, U.S. Parole Commission, at the above address at a cost of ten cents per page.

(28 U.S.C. 509 and 510, 5 U.S.C. 301);(44 FR 6890, Feb. 2, 1979, as amended at 46 FR 52354, Oct. 27, 1981)

REPORT OF INVESTIGATION
SAMPLE FORMAT

U.S. DEPARTMENT OF LABOR
EMPLOYEE BENEFITS SECURITY ADMINISTRATION

This document is the property of the Employee Benefits
Security Administration.
Its contents are not to be disclosed to unauthorized persons.

File No.

Date

Subject:
(Name and Address of Applicant)

By Investigator/Auditor

Name and address of Plan

Approved By

EIN/PN

Status

I. Predication

State the reason for the case opening and for conducting an investigation.

II. Issues and Findings

Cite the facts, which show:

a. Nature of Employment Sought by Applicant

Include a description of the position, including the duties for which the Certificate of Exemption is sought.

Establish the validity or lack of validity of the reasons or grounds relied on to show the applicant's employment (for which the Certificate of Exemption is sought) would not be contrary to the purpose of ERISA. Include a statement concerning what access, if any, the applicant will have to plan funds and the degree of authority and discretion he/she will have in the position.

b. Arrests, Convictions and Rehabilitations

Verify applicant's statements in his/her supporting affidavit as to his/her history of arrests and convictions, which prohibit applicant's service to an employee benefit plan under Section 411 of ERISA.

Under this heading, report views of the prosecuting officials, arresting officers, and judges, regarding the application for a Certificate of Exemption and include

as exhibits. Include details of any mitigating or aggravating circumstances which might have been involved with regard to the factors listed in paragraph 2 of this Chapter.

c. **Disqualifying Offense**

Describe the offense for which the subject was convicted and consequently barred from employment in employee benefit plans under section 411 of ERISA.

Discuss the subject's involvement in the offense. Include the extent of the subject's participation. Establish information such as whether the subject was an accessory or the principal perpetrator.

d. **Nature of the Employment Offered**

Describe the position for which the applicant is seeking an exemption. Be specific about the duties and authority for which the subject will be responsible as they relate to employee benefit plans.

e. **Personal Information**

Under this heading, report the results of the investigation into the accuracy of the sworn statements made by the applicant in his/her supporting affidavit and not previously mentioned in the report. This should include but not be limited to: birth date, extent of education, marriage and family status, present employment, past employment, military service, licenses issued, criminal record and probation or parole (if not previously reported in Part B above), labor organizations (with which applicant has been associated or employed), and financial background including net worth.

f. **Neighborhood Investigation**

Include statements of neighbors, landlord and superintendent (where applicable) as to applicant's status in the neighborhood and to verify applicant's residence.

g. **Credit Check**

Include reports of local credit bureaus and results of investigations at county clerk's offices regarding judgments against the applicant.

h. **Character References**

Include as exhibits interviews conducted with individuals who supported the applicant's application for exemption.

Exhibits

All significant facts presented in the report should be supported with exhibit citations. The following procedure should be used in submitting exhibits:

1. State the name of the individual who is the subject of an RI or signed statement and the date of the interview.
2. Documents, schedules, etc., should be precisely identified.
3. Each supporting document should be a separate exhibit.
4. Multiple page exhibits should be numbered.
5. Exhibits should be identified by number.
6. All copies must be legible.
7. All plan documents (trust agreements, etc.) must be included as exhibits.

List of Documents and Workpapers Available in RO but Not Used as Exhibits

List documents, schedules, RIs, etc., in the RO file that were not included as exhibits. Identify each document by the date(s) covered.

FORMAT FOR REGIONAL DIRECTOR'S
COVER MEMO FOR AN ROI IN A PROHIBITED
PERSONS CASE – PROGRAM 47

U.S. DEPARTMENT OF LABOR
EMPLOYEE BENEFITS SECURITY ADMINISTRATION

Memorandum For: SOL Counsel

From: Regional Director
XYZ Regional Office

Subject: Name, Address of Applicant
Name, Address and EIN of Plan

First paragraph - briefly state the basis for opening the case.

Second paragraph - briefly state the nature of the original conviction and any mitigating circumstances involved in sentencing.

Third paragraph - briefly state investigative results, specifically commenting on the applicant's efforts at rehabilitation.

Fourth paragraph - briefly state the recommendation of the Regional Office as to whether the Department of Labor should contest the application.

cc: File, Deputy Director for Criminal Enforcement