

Conducting and Documenting Interviews

1. **Purpose.** This section outlines EBSA's guidelines for conducting and documenting interviews, and includes information to help develop interviewing skills.
2. **Objectives.** Interviews can develop credible information that is relevant to the investigation and establishes the interviewee's version of the facts.

Interviews can:

- i. Verify the accuracy of records and reports filed with the Department;
- ii. Obtain information not recorded in records, and reports;
- iii. Secure explanations for recorded entries;
- iv. Secure details and explanations for unrecorded transactions and events;
- v. Secure admissions regarding violations from potential defendants;
- vi. Obtain evidence of specific transactions and/or actions of individuals dealing with the plan(s); and
- vii. Assess the desirability of the interviewee as a witness at trial.

3. **Definition of Interview.**

An **interview** is the questioning of a person who may or does possess information relevant to the matter under investigation. An interview conducted on a subject of a criminal investigation, especially when in governmental custody, is referred to as an **interrogation**.

Interview subjects may include, but are not limited to:

- a. Individuals who know about a single document or transaction;
- b. Custodians of systems of regularly kept records;
- c. Fiduciaries of employee benefit plans;
- d. Service providers to employee benefit plans; and
- e. Subjects of criminal investigations.

4. **Establish a Goal.** The interviewer should establish a clear goal or objective for the interview. To determine the interview's objective, the interviewer should consider:

- a. The requirements of the law or investigative assignment; and
- b. The material facts that need to be addressed.

The interviewer should determine the facts that this interviewee likely knows based on the interviewee's position and relation to the events and persons involved in the investigation, and should ask questions that elicit facts pertinent to the investigation.

5.

6. **Aids.**

Aids are documents and/or statements, oral or written, shared with the interviewee during the course of the interview.

Some typical aids are:

- a. Written or recorded statements of other interviewees;
- b. Reports filed with EBSA or other agencies;
- c. Background information such as credit reports, financial statements, insurance claims, etc.;
- d. Information from other sources to be verified;
- e. Previous statement(s) of the same interviewee; and
- f. Copies of checks, plan records, bank records, medical records, official records of ownership, hotel records, etc.

7. **How to Ask Questions.** Investigators/Auditors will conduct interviews:

- a. Politely;
- b. Without personal prejudice or preconceived notions as to the interviewee's culpability; and
- c. Without making any threats or promises to elicit any information.

Questions should be clear, and designed to elicit information. Investigators/Auditors should ask questions in a language the interviewee understands.

8. **Preparing to Write Questions.** Questions should be designed to obtain information directly related to the matter under discussion.

- a. To prepare focused questions, the interviewer should understand:

- i. The nature of the investigation;
 - ii. The purpose of the interview; and
 - iii. The information needed.
- b. The interviewer should prepare for each interview by:
 - i. Reviewing the available evidence;
 - ii. Analyzing the evidence and organizing it logically based on its relationship or effect on the allegations; and
 - iii. Outlining the interview based upon a "theory of the case."

9. **Characteristics of Good Questions.** Good questions are:

- a. Straightforward;
- b. Understandable;
- c. Focused on relevant information; and
- d. Free of accusatory/intimidating language.

10. **Question Development.**

- a. Most questions can be based on:
 - i. "What?" (what happened);
 - ii. "When?" (when did it happen);
 - iii. "Where?" (where did it happen);
 - iv. "Why?" (why did it happen);
 - v. "How?" (how did it happen); and
 - vi. "Who?" (who was involved).

The questions "why?" and "why not?" are particularly valuable.

- b. **Free Narrative as a Means of Obtaining the Interviewee's General Description of Facts.** Investigator/Auditors can usually initiate a free narrative by

requesting the interviewee to tell what he/she knows about the specific matter. This open-ended method should elicit a free-flowing account of facts the interviewee can and will provide without questioning, and can be a useful initial technique in an interviews. When using this technique, never generalize about the subject matter discussion. Spell it out specifically. Ask specific follow-up questions about the interviewee's factual narrative are essential, as well as questioning about material facts not addressed in the narrative answer.

c. **Leading Questions.** Leading questions are those that suggest the answer, generally stating a fact and requiring a simple "yes" or "no" answer. Accordingly, they may limit the information obtained from the interview. When initially asking for information, the interviewer should ask open-ended rather than leading questions. However, leading questions will likely be necessary to follow-up on an interviewee's answers, and may be necessary to elicit relevant information.

11. Questioning Strategies.

a. **General to Specific.** An efficient way to resolve an issue is to ask the questions from general to specific. Ask general questions designed to develop information on the setting of an event before exploring the details. Determine first what "was done" before exploring how or why it was done. Place a person at a scene before exploring his/her actions while there.

b. **Initial Questioning.** Initial questioning is systematic and designed to bring out a connected story of an event or incident. Its purpose is to elicit new information or fill in details omitted by the interviewee. How to conduct initial questioning:

- i. Begin with questions not likely to cause hostility.
- ii. Ask questions that will develop facts in the order of their occurrence or in some other systematic manner.
- iii. Ask only one question at a time and compose it so that only one answer to the question is required.
- iv. Ask straightforward and frank questions.
- v. Give the interviewee ample time to answer.
- vi. Help him/her to remember, if possible, with documents, if helpful.
- vii. Repeat or rephrase questions, if necessary, to get the desired facts.
- viii. Be sure there is a full understanding of the answers and, if not perfectly clear, request an explanation.

- ix. Give the interviewee an opportunity to explain his/her answers.
- x. Separate the interviewee's statement of facts from his/her inferences.
- xi. Get all the facts. Almost every subject/ interviewee possesses more information than he/she initially provides.
- xii. After receiving a narrative account, ask questions about every significant item discussed. Ask questions about little things; the answers will frequently contain clues to previously unreported information of interest.

c. **Follow-up Questions.** Interviewers should listen very carefully to the interviewee's answers and should discern whether an answer is fully responsive to the question asked. If not, the interviewer should ask follow-up questions. After receiving answers, it may be helpful for the interviewer to confirm the interviewer understood the response by paraphrasing the interviewee's response. The interviewer should adjust their questions, if the prepared script is not relevant based on the interviewee's responses. Follow-up questions are also needed to fully understand an interviewee's answer, or to pursue other relevant information based on the content of the answer.

12. Introduction by Investigator/Auditor and Initial Notifications/Warnings Preliminary to Interview

a. **Civil Cases.** Investigators/Auditors must:

- i. Clearly identify themselves to interviewees.
- ii. Inform the interviewee that the interview is pursuant to an official investigation by EBSA under the authority of ERISA.
- iii. Request the interviewee's voluntary cooperation.
- iv. Inform the interviewee that any information involving violations of other laws will be referred to the U.S. Department of Justice or other appropriate agency (See Figure 1). See EBSA Form 202.

Investigators/Auditors are required to carry **credentials**. Investigator/Auditors should display their **credentials or badges** when introducing themselves, as appropriate, and must present them if the interviewee requests. Investigators/Auditors must not misplace or copy their **credentials or badges**.

b. **Criminal Cases.** In criminal case interviews, Investigators/Auditors must also clearly identify themselves. When introducing themselves, they should display their credentials or

badges, as appropriate. Investigators/Auditors should always maintain adequate control of their credentials and badges.

i. Investigators/Auditors should:

- A. Ask for the interviewee's voluntary cooperation, and
- B. Advise that he/she is conducting a criminal investigation pursuant to ERISA, and any information obtained may be referred to the U.S. Department of Justice or other appropriate agency (See Figure 2). See Tab [B] for EBSA Form 202A.

Investigators/Auditors are not required to advise interviewees of their rights in non-custodial situations unless requested to do so by the U.S. Attorney's Office. However, in those circumstances where a person is in governmental custody or reasonably believes himself/herself to be in such custody, he/she must be advised of his/her rights. See EBSA Form 202B.

ii. **Advisement of Right, Custodial Interviews.** When interviewing, or otherwise substantively questioning a "Witness"¹ in custody, the investigator must advise the Witness of their rights as follows:

- A. You must understand your rights before we ask you any questions.
- B. You do not have to make any statement or answer any questions.
- C. Any statement you make or any answers you give may be used against you in a court of law or other proceedings.
- D. You have the right to talk to a lawyer for advice before you answer any questions and you have the right to have a lawyer present during the interview.
- E. If you decide to answer questions now without a lawyer present, you still have the right to stop the interview at any time.

If the above-described advisory is given, the Report of Interview along with the Witness's acknowledgement (if any) should reflect it. In recorded interviews, the audio recording should capture the advisory and the Witness's acknowledgement (if any). (see Paragraph 22 below for guidance concerning the recording of interviews).

iii. **Waiver of Rights.** If a Witness in custody verbally acknowledges their rights and indicates a willingness to proceed with the interview, the Investigator/Auditor should immediately attempt to obtain a "Waiver of Rights" from the Witness.

The Investigator/Auditor should read the "waiver of rights" language to the Witness and ask them to sign the document. (See **Figure 3**: Advisement of Rights.)

If the Witness agrees to an interview but does not agree to sign the "Waiver of Rights" form, the interview should continue.

- iv. **Deemed to be in custody.** A Witness is “in custody” in any circumstance in which a reasonable person might conclude that they are not free to leave. If a Witness is not in custody, an investigator may advise the Witness that they are not in custody and that he or she is free to leave at any time.
- v. **Documentation of Advisories and Acknowledgement by Witness.** The Report of Interview should list any advisories given along with the Witness’s acknowledgement (if any). In recorded interviews, the advisory and the Witness’s acknowledgement (if any) should be captured on the audio recording (see, guidance concerning the recording of interviews).
- vi. **Discontinuing the Interview.** If at any point, a custodial Witness indicates that he or she wants to consult with an attorney, or wants an attorney present before answering any further questions, the interview must immediately stop and cannot resume until the Witness had the opportunity to consult with an attorney.
- vii. **Interview under direction of a Law Enforcement Officer or Prosecutor.** If a law enforcement officer or other law enforcement agency is leading the interview (or attempted interview), the Investigator/Auditor should generally follow the lead agency's interview procedures. If the investigation is under the direction of a prosecutor, investigators should consult with and follow the prosecutor's instructions.

13. **Third Parties Present During an Interview.** EBSA investigations are not public. Only interviewees and their representatives may be present. Third parties, other than attorneys who represent the witness, do not have the right to attend interviews conducted by an EBSA Investigator/Auditor during the course of an investigation. If an Investigator/Auditor asks a third party to leave the room at the beginning of the interview, and the third party refuses, the Investigator/Auditor should terminate the interview, and subpoena the witness for an administrative deposition.

14. **Summarize Interview.** After the interview is completed, the Investigator/Auditor should summarize the interview by stating all the important details in order. The Investigator/Auditor should stop after each part of the summary and ask the interviewee to verify his/her interpretations. If the interviewee disagrees with any segment of the summary, the Investigator/Auditor should correct the discrepancy before proceeding.

15. **Ending the Interview.** After the interview, the Investigator/Auditor should politely end it and leave. The Investigator/Auditor should explain that more interviews may become necessary.

16. **EBSA Form 202, "Report of Interview".** Investigator/Auditors will record oral information in detail obtained from an interview on **EBSA Form 202, "Report of Interview"** (RI). Investigator/Auditors will use the interviewee's actual language as much as possible.

Figure 1: Outline for Civil RI

Figure 2: Outline for Criminal RIs; Witness or Non-Custodial Subject

Figure 3: Advisement of Rights

Figure 4: Outline for Criminal RIs; Custodial Subject

- a. The text of the RI should clearly identify:
 - i. The interviewee's full name;
 - ii. Address - work and home;
 - iii. Telephone numbers;
 - iv. Any documents shown to the interviewee or provided by the interviewee during the interview; and
 - v. Interviewee's age, education, and employment history, where appropriate.
- b. RIs must be prepared to record all interviews. When the interviewee provides a signed, written statement, the RI should reflect only the appropriate preface comments, the fact that a signed, written statement of the interviewee is attached, and the circumstances of the statement's execution as known to the Investigator/Auditor receiving it.

Figure 5: Civil RI with Signed Statement

Figure 6: Format for Criminal RIs; Witness or Non-Custodial Subject

Figure 7: Format for Criminal RIs; Custodial Subject with Signed Statement

- c. There is no requirement for RIs when testimony is from administrative depositions.
- d. RI basics:
 - i. Use plain bond paper when additional pages are required.
 - ii. Use separate EBSA Form 202 to report each interview.
 - iii. Investigator/Auditors should write RIs as soon as possible after the interview to ensure accuracy and completeness.
 - iv. Investigator/Auditors should sign the original RI above the typewritten names of the Investigators/Auditors who conducted or were present at the interview.

17. **Maintenance of Report of Interview.** Original RIs will be preserved as original evidence in the case file in order to ensure availability if production is required. Include copies of RIs as exhibits in ROIs.

18. **Investigator/Auditor Notes Taken During Interview.**

a. **Civil Investigations.** Keep notes taken during interviews.

b. **Criminal Investigations.** Keep interview notes in all criminal investigations, unless instructed otherwise by the USAO. The Investigator/Auditor should consult with the USAO early in the investigation concerning the retention of notes or rough drafts of RIs. See Criminal Investigations section.

19. **Disclosure of Notes.** Investigators/Auditors should not show interview notes to the interviewee. Treat notes like work papers and secure them whenever you leave the work area.

20. **Signed Statements.** Investigators/auditors may get a signed, written statement from an interviewee.

a. The preface of the statement must:

i. Include identifying information about the interviewee;

ii. Note that EBSA gave appropriate notifications or warnings; and

iii. Indicate that the statement is voluntary.

Figure 8: Format and Guide for a Signed Statement

b. The body of the signed statement need not follow a prescribed form, but it should contain a complete account of all the pertinent information known to the maker relevant to the alleged violation.

c. The statement can be:

i. Written or dictated by the maker, or

ii. Written by the Investigator/Auditor, keeping to the maker's own words.

d. The maker should:

i. Review the completed statement,

ii. Initial any corrections/deletions²,

iii. Number and initial each page, and

iv. Include and sign a paragraph attesting that he/she has read, or has had read to him/her, the statement which consists of a certain number of pages, that each page

(which has been numbered) and each correction has been initialed by him/her and that the statement is complete and true to the best of his/her knowledge.³

- e. Each person who witnessed the statement's creation should sign and date it.
- f. Investigator/Auditor should not voluntarily provide a copy of the signed statement to the person furnishing the statement. However, if the person or his/her attorney requests a copy of the statement, a copy is furnished. Investigator/Auditor maintains these signed statements in the same manner as RIs.

21. **Personal Observations.**

a. "Evaluation of Witnesses" is a memorandum to the file that records observations as to the:

- i. Credibility,
- ii. Dependability, or
- iii. Availability of potential witnesses.

b. The observations may help SOL and others evaluate the litigation potential of cases. Investigator/Auditors should keep observations to a minimum and expressed in the most objective manner possible; they must never appear in an RI or the body of an ROI.

c. Investigator/Auditor should also observe and report any information related to the inquiry, such as the disorder of records, books, the contents of a safe deposit box, and so on. Such evidence is direct testimony, about which the Investigator/Auditors may later testify. Accordingly, Investigator/Auditors should report such information in a separate memorandum to the file.

22. **Attorneys-at-Law**

a. **Civil Cases.** Investigators/Auditors should not object to the presence of an attorney representing the interviewee during the interview of a civil case witness or subject. He/she should keep in mind that in an interview of a person represented by counsel, the attorney may also represent a potential defendant. Under these circumstances, Investigators/Auditors should avoid disclosure of EBSA's case.

i. In interviews conducted in the presence of attorneys, Investigators/Auditors should not engage in arguments as to:

- A. Interpretations of the law,
- B. The facts of the case, or

C. Matters of procedure.

- ii. Attorneys may advise their clients, but may not reply for them. If, in isolated cases, an attorney does reply for his/her client, the interviewer should ask interviewee for his/her own answer. If significant, the RI should also reflect the attorney's answer.
- iii. If the attorney seeks to control the scope and progress of the investigation, the Investigator/Auditor courteously discontinues the interview, and tells his/her supervisory at the earliest opportunity.

b. **Criminal Cases.** Witnesses and both custodial and non-custodial subjects in criminal investigations have a right to representation during an interview. Considerations similar to those in **paragraph 21.a.** still pertain in such interviews, particularly with respect to having the interviewee answer for him/herself.

23. **Recording, Transcribing, and Monitoring of Conversations and Statements**

a. **Policy.** DOL policy is that all internal and external business must be transacted in an atmosphere of complete candor. Accordingly, statements or conversations made in person or over the telephone must not be secretly recorded, transcribed, or monitored.

b. **Restrictions.** In accordance with the above policy, the following restrictions apply:

- i. Unless otherwise authorized by a court, the policy prohibits the use of electronic or mechanical recording and monitoring devices in conjunction with two-way telephone conversations. Telephone recording devices must not be used except for purposes of receiving messages on automatic answering equipment or, where Voice Over Internet Protocol (VOIP) is used, for purposes of administering communications devices or filtering and logging certain types of traffic to mitigate potential security vulnerabilities.
- ii. Interviewers may use electronic recording devices, if all parties consent to such use, and the interview is in person and conducted in accordance with approved procedures.
- iii. The Investigator/Auditor should not permit a Witness or any other person in attendance to record the interview (other than a law enforcement officer or investigative partner).
- iv. Interviews should not be conducted if a Witness or their representative insists on recording the interview. If the Investigator/Auditor discovers that an interview is being recorded by the Witness or another party in attendance (other

than a law enforcement officer), they should immediately stop the interview and (in a criminal case) consult the prosecutor (or the Solicitor's Office in a civil case) as soon as practicable (as any third party recordings may represent potential additional evidence that must be collected).

v. If an EBSA investigator, conducting a criminal case, has reason to believe that a witness is in custody (i.e., is incarcerated at the time of the interview or otherwise being detained), then the investigator should consult with the prosecutor prior to engaging in the interview to determine whether recording of the interview may be necessary in order to fulfill the requirements imposed by DOJ policy or other authority.

vi. Secretaries or other personnel may monitor telephone conversations to confirm appointments, make arrangements, assist with commitments, and assure adequate follow-ups only after notifying callers that such monitoring is taking place.

24. **Administrative Depositions.** Court stenographers record administrative depositions and witnesses are under oath. The use of RIs or signed statements is not required. In some instances, an Investigator/Auditor may take an administrative deposition without a government attorney present. They should first consult with SOL. In these circumstances, Investigator/Auditors should take special care to employ good interviewing techniques to insure a sound transcript. (See Subpoenas section).

25. **Disclosure of Criminal Investigation.** See Criminal investigation section paragraph 7, titled Disclosure of Criminal Investigation.

(Figure 1)
Outline for Civil Investigation Report of Interview
(See EBSA Form 202)

[Date of Interview]

[Interviewee] was interviewed at [interview location] on the above date at [time] am/pm by Investigator/Auditor [Inv/Aud Name]. (Include if applicable) Also present during the interview was [names, titles].

[Interviewee or Attendees] was/were advised that the writer is conducting an official investigation for the Employee Benefits Security Administration, U.S. Department of Labor, pursuant to the authority granted under the Employee Retirement Income Security Act of 1974.

[Interviewee] was further advised that the writer was requesting his/her voluntary cooperation, and that any information obtained during this official investigation which might involve violations of other laws, civil or criminal, would be referred to the U.S. Department of Justice or other appropriate agency.

In response to questioning, [Interviewee] provided the following information.

1. The first paragraph should contain background information regarding the interviewee, which may bear upon his/her credibility, such as: address, social security number, title, duties and responsibilities, and length of service in the current position.
2. Organize subsequent paragraphs chronologically or topically, and must be written, as much as possible, in the words of the interviewee. Avoid words or terminology that are unfamiliar to the interviewee. Use section headings when appropriate to identify discussion topics.
3. Clearly identify sources of all information. Make clear whether (or not) the interviewee has first-hand knowledge of the information he/she is providing. If the information comes from another source, identify the other source.
4. Clearly identify any document shown to, or provided by, the witness during the interview. If there is any possibility of confusion, attach copies of the relevant documents to the RI.
5. If applicable, identify any other Investigator/Auditor or counsel present at the interview.

(Figure 3)
Advisement of Rights

Place _____

Date _____

Time _____

You must understand your rights before we ask you any questions.

You do not have to make any statement or answer any questions.

Any statement you make or answers you give may be used against you in a court of law or other proceedings.

You have the right to talk to a lawyer for advice before you answer any questions and you have the right to have a lawyer present during the interview.

If you decide to answer questions now without a lawyer present, you still have the right to stop the interview at any time.

Waiver of Rights

I have read this statement of my rights and it has been read to me, and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer present at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me. I hereby voluntarily and intentionally waive my rights.

Date _____

Signature _____

Time _____

Certification

I hereby certify that the foregoing Warning and Waiver of Rights were read by me to the above signatory, and that he/she also read it and has affixed his/her signature hereto in my presence.

Signature _____

Witness _____

(Figure 4)
Outline for Criminal Report of Interview
Custodial Subject
(See EBSA Form 202B)

Date of Interview

[Interviewee] was interviewed at [interview location] on the above date at [time] am/pm by Investigator/Auditor [Inv/Aud Name]. **(Include if applicable)** Also present during the interview was [names, titles].

[Interviewee or Attendees] was/were advised that the writer is conducting an official criminal investigation for the Employee Benefits Security Administration, U.S. Department of Labor, pursuant to the authority granted in the Employee Retirement Income Security Act of 1974, as amended.

[Interviewee] was further advised that the writer was requesting his/her voluntary cooperation. [Interviewee] was warned that he/she must understand his/her rights before any questions were asked. [Interviewee] was told that he/she does not have to make any statement or answer any questions; that any statement he/she makes or any answers he/she gives may be used against him/her in a court of law or other proceedings; that he/she has the right to talk to a lawyer for advice before he/she answers any questions and that he/she has the right to have a lawyer present during the interview; further, [Interviewee] was told that if he/she decides to answer questions without a lawyer present, that he/she still has the right to stop the interview at any time. After being warned, [Interviewee] agreed to being interviewed. [Interviewee] signed the waiver of rights/refused to sign the waiver of rights (circle one).

In response to questioning, [Interviewee] provided the following information.

1. The first paragraph(s) should contain background information regarding the interviewee, which would tend to bear upon his/her credibility, such as title, duties and responsibilities, and length of service in current position.
2. Organize subsequent paragraphs either chronologically or topically and must be written, as much as possible, in the words of the interviewee. Avoid words or terminology that are unfamiliar to the witness.
3. Clearly identify all sources of all information. Make clear whether (or not) the witness has first-hand knowledge of the information he/she is providing. If the information comes from another source, identify the other source.
4. Clearly identify any document shown to, or provided by, the witness during the interview. If there is any possibility of confusion, attach copies of the relevant documents to the RI.
5. If applicable, identify any other Investigator/Auditor or counsel present at the interview.

(Figure 5)
Civil Investigation Report of Interview
with Signed Statement

Date of Interview

[Interviewee] was interviewed at [interview location] on the above date at [time] am/pm by Investigator/Auditor [Inv/Aud Name] was advised that the writer is conducting an official investigation for the Employee Benefits Security Administration, U.S. Department of Labor, pursuant to the authority granted in the Employee Retirement Income Security Act of 1974, as amended.

[Interviewee] was further advised that the writer was requesting his/her voluntary cooperation, and that any information obtained during this official investigation which might involve violations of other laws, civil or criminal, would be referred to the U.S. Department of Justice or other appropriate agency.

[Interviewee] agreed to cooperate and provide the attached signed statement.

[Any information obtained that is not in the signed statement, should be included in the RI. If the interviewee refuses to sign a prepared statement, ask him/her to read it orally, acknowledge whether it is true or correct, and record his/her comments in the RI.]

(Figure 6)
Format for Criminal Investigation Report of Interview
Witness or Non-Custodial Subject

Date of Interview

[Interviewee] was interviewed at [interview location] on the above date at [time] am/pm by Investigator/Auditor [Inv/Aud Name].

[Interviewee] was advised that the writer is conducting an official criminal investigation for the Employee Benefits Security Administration, U.S. Department of Labor, pursuant to the authority granted in the Employee Retirement Income Security Act of 1974, as amended.

[Interviewee] was further advised that the writer was requesting his/her voluntary cooperation, and that any information obtained during this official criminal investigation may be referred to the U.S. Department of Justice or other appropriate agency for consideration.

[Interviewee] agreed to cooperate and provided the attached signed statement.

[Any information obtained that is not in the signed statement, should be included in the RI. If the interviewee refuses to sign a prepared statement, ask him/her to read it orally, acknowledge whether it is true or correct, and record his/her comments in the RI.]

(Figure 7)
Format for Criminal Investigation Report of Interview
Custodial Subject with Signed Statement

Date of Interview

[Interviewee] was interviewed at [interview location] on the above date at [time] am/pm by Investigator/Auditor [Inv/Aud Name]. [Interviewee] was advised that the writer is conducting an official criminal investigation for the Employee Benefits Security Administration, U.S. Department of Labor, pursuant to the authority granted in the Employee Retirement Income Security Act of 1974, as amended.

[Interviewee] was further advised that the writer was requesting his/her voluntary cooperation. [Interviewee] was warned that he/she must understand his/her rights before any questions were asked. [Interviewee] was told that he/she does not have to make any statement or answer any questions; that any statement he/she makes or any answers he/she gives might be used against him/her in a court of law or other proceedings; that he/she has the right to talk to a lawyer for advice before he/she answers any questions and that he/she has the right to have a lawyer present during the interview; further, was told that if he/she decides to answer questions without a lawyer present that he/she still has the right to stop the interview at any time. After being warned, [Interviewee] agreed to being interviewed. [Interviewee] signed the waiver of rights/refused to sign the waiver of rights (circle one).

[Interviewee] agreed to cooperate and provided the attached signed statement.

[Any information obtained that is not in the signed statement, should be included in the RI. If the interviewee refuses to sign a prepared statement, ask him/her to read it orally, acknowledge whether it is true or correct, and record his/her comments in the RI.]

(Figure 8)
Format and Guide For A Signed Statement

(Preface for Civil Program Witness or Subject)

I, [full name of interviewee, home and work addresses and telephone numbers], make the following voluntary statement to Investigator/Auditor _____. I was advised that Investigator/Auditor _____ is conducting an official investigation for the Employee Benefits Security Administration, U.S. Department of Labor, pursuant to the Employee Retirement Income Security Act of 1974, as amended. I was further advised that Investigator/Auditor was requesting my voluntary cooperation and that any information obtained during this official investigation that may involve violations of other laws may be referred to the U.S. Department of Justice or other appropriate agency for consideration.

(Preface for Criminal Investigation Witness or Non-Custodial Subject)

I, [full name of interviewee, home and work addresses and telephone numbers], make the following voluntary statement to Investigator/Auditor _____. I was advised that Investigator/Auditor _____ is conducting an official criminal investigation for the Employee Benefits Security Administration, U.S. Department of Labor, pursuant to authority granted in the Employee Retirement Income Security Act of 1974, as amended. I was further advised that Investigator/Auditor _____ was requesting my voluntary cooperation and that information obtained during his/her official criminal investigation will be referred to the U.S. Department of Justice or other appropriate agency for consideration.

(Preface for Criminal Investigation Custodial Subject)

I, [full name of interviewee, home and work addresses and telephone numbers], make the following voluntary statement to Investigator/Auditor _____. I was advised that Investigator/Auditor _____ is conducting an official criminal investigation for the Employee Benefits Security Administration, U.S. Department of Labor, pursuant to authority granted in the Employee Retirement Income Security Act of 1974, as amended. I was further advised that Investigator/Auditor _____ was requesting my voluntary cooperation. I was told that I do not have to make any statement or answer any question; that any statement I make or any answer I give may be used against me in a court of law or other proceedings; that I have the right to talk to a lawyer for advice before I answer any question and that I have the right to have a lawyer present during the interview; further, I was told that if I decide to answer questions without a lawyer present, that I still have the right to stop the interview at any time.

(Body of the Statement)

1. The first paragraph(s) should contain background information regarding the witness/subject that will tend to establish his/her credibility. This should include, under certain circumstances, the date and place of the witness's/subject's birth and highest educational level he/she attained.
2. Organize subsequent paragraphs either chronologically or topically and must be, as much as possible, in the words of the interviewee.
3. Clearly identify the sources of all information. It should be clear from the signed statement whether (or not) the interviewee has first-hand knowledge of the information he/she is providing. If the information comes from a source other than what the interviewee saw and/or heard him/herself, identify that source.
4. Interviewee must make and initial all additions and deletions in the body of the report.

5. All pages must be numbered. The interviewee must place his/her initials next to the last word in the last line of the last paragraph on each page.

6. Do not leave any space between paragraphs.

(Attestation)

I have read the above statement consisting of _____ pages. Each page is numbered, and I have initialed each correction. I declare (or certify, verify, or state) under penalty of perjury that the statement is true and correct.

/s/ _____ Date _____

Witnessed:

_____ Investigator/Auditor Date _____

_____ Investigator/Auditor Date _____

1. If possible, have the interviewee write out the attestation in his/her own hand.
2. The signature of the maker should be the same as the name identifying him/her in the heading of the statement.