

Relationship with Federal Financial Agencies and other Regulatory Agencies

1. **Purpose.** Sharing information and resources with federal financial and regulatory agencies can increase enforcement efficiency and investigation strategies.

2. **Background.** ERISA Section 3004(b) 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 or her functions under ERISA.

3. **Federal Financial Institution Regulatory Agencies.** In 2006, an interagency agreement was signed between DOL and the federal financial institution regulatory agencies, i.e., the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and Office of Thrift Supervision (Figure 1). The agencies agreed to provide written notification to the Director of Enforcement of possible ERISA violations of a significant nature discovered in the course of their supervision of the fiduciary activities of institutions subject to their respective jurisdictions. Figure 2 describes the functions of each agency.

A possible violation is significant when, in the view of the appropriate federal financial institution regulatory agency, it falls within:

- a. Title I, Part 4, Sections 404 and 405, except if a transaction, individually or in combination with other questionable transactions, is less than \$100,000.
- b. Title I, Part 4, Sections 406 and 407(a), except a *de minimis* threat of loss to plan participants.
- c. Title I, Part 4, Sections 411 and 412, relating to the bonding requirements as applicable to the financial institution itself.
- d. Title I, Part 1 relating to reporting and disclosure in cases where a financial institution also serves as plan administrator or plan sponsor.

The written notification to the Director of Enforcement shall include:

- a. The name of the financial institution;
- b. The name of the plan; and
- c. A brief description of the possible violation and any correction requested or initiated by the federal financial institution regulatory agency.

Information received from the agencies pursuant to this agreement, to the extent permissible by law, will be held in strict confidence and may be used for investigative purposes only. Except as required by law, no other use of such information shall be made without the express written authorization of the agency that originally supplied the information. Regions should send all disclosure requests received pursuant to this agreement to the Director of Enforcement. Prior to disclosure, OE, in appropriate cases, will seek permission of the agency that provided the information.

RO requests for information from an agency shall be made in writing to the Director of Enforcement. OE will be responsible for contacting the appropriate agency and obtaining permission for the RO to review the agency's file.

If a RO opens a case pursuant to a referral from an agency, it should inform OE 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, it should inform OE of the case and its predication.

4. Securities and Exchange Commission. On July 25, 2013, 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). The MOU sets forth periodic meetings to discuss matters of interest to the staffs, designates persons to serve as points of contact for each RO and headquarter office, and seeks to identify periodic internal training opportunities which may be appropriate for the other agency's staff to attend.

Under the MOU, DOL and SEC grant the other agency standing access to non-public examination information with respect to examinations that each agency's staff determine are relevant to the other agency's mission, with certain safeguards for confidentiality and the Right to Financial Privacy Act of 1978. Similarly, DOL and SEC intend to honor each other's requests for enforcement information to the extent permitted by law and in through a set of procedures, including the use of "access request letters" and with certain safeguards for confidentiality. See Figure 4 for the SEC Access Request letter.

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

RO requests shall be made in writing directly to the appropriate office for non-public information from the SEC ROs. ROs can obtain public information directly from the appropriate SEC office.

5. Pension Benefit Guaranty Corporation. RO investigators, with the approval of the RD, may contact Pension Benefit Guaranty Corporation (PBGC) representatives directly to discuss PBGC referrals. RO can send requests directly to PBGC for non-public documents, with a copy to OE. ROs should send OE a copy of any formal referrals to PBGC.

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.

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.

ROs will pursue cooperative arrangements with appropriate agencies pursuant to which the ROs will share and discuss information relating to open and closed MEWA cases. The ROs may also make documents, including documents obtained by voluntary production or civil subpoena, available to the state agency involved. Refer to the Enforcement Manual section on Release of Information for further guidance on the release of investigative material.

DOL maintains an MOU with the National Association of Insurance Commissioners (NAIC) on MEWAs and pursuant to the MOU, DOL may pursue common interest agreements with state agencies to share case specific information. The states have not all signed the NAIC MOU. The ROs should coordinate with OE when seeking any MOUs or common interest agreements.

(Figure 1) Interagency Agreement

Procedures for Cooperation Between the Federal Financial Institution Regulatory Agencies and the Department of Labor in the Enforcement of the Employee

The Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, the 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 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 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 permissible 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 written 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.

For The Federal Financial Institution Regulatory Agencies

Date: February 23, 2006
/s/ Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System

Date: March 1, 2006
/s/ David M. Marquis
Director, Office of Examination and Insurance
National Credit Union Administration

Date: February 8, 2006
/s/ Scott M. Albinson
Managing Director
Examinations, Supervision and Consumer Protection
Office of Thrift Supervision

Date: February 8, 2006
/s/ Christopher J. Spoth
Acting Director
Division of Supervision and Consumer Compliance
Federal Deposit Insurance Corporation

Date: February 13, 2006
/s/ Emory W. Rushton
Senior Deputy Comptroller
and Chief National Bank Examiner
Office of the Comptroller of the Currency

For the Department of Labor

January 26, 2006
/s/ Ann L. Combs
Assistant Secretary of Labor
Employee Benefits Security Administration

(Figure 2)
The Federal Financial Institutions Regulator 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 nine regions, each of which is headed by a regional director.

The Office Of Thrift Supervision (OTS)

Effective July 21, 2011, the Office of Thrift Supervision (OTS) merged with the Office of the Comptroller of the Currency (OCC).

The National Credit Union Administration (NCUA)

The purpose of the NCUA is to charter, examine, supervise, and insure the nation's nearly 10,000 federal credit unions. In addition, NCUA also provides insurance for member accounts at 4,980 state-chartered credit unions.

The major responsibilities of the NCUA are:

- chartering, supervising, and examining federal credit unions;
- administering the National Credit Union Share Insurance Fund (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 NCUA has five regions in addition to the Office of National Examinations and Supervision.

The Office Of The Comptroller Of The Currency (OCC)

The OCC is the regulator and supervisor of the national banking system and federal savings associations. 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 and federal savings association 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.

(Figure 3)

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 and inspection findings and trends, enforcement cases, participant assistance, public outreach and investor education, research and data analysis, information technology and data sharing, and any other matters that the SEC and DOL staffs believe would be of interest to the other regulator in fulfilling their respective 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 each agency will require that its participating employees agree to maintain the confidentiality of any non public program materials and information obtained during such programs.
4. *DOL and SEC Access to Non-Public 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, and subject to applicable law, regulations, memoranda of understanding or other agreements, (a) 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 and (b) to the extent not addressed by section 5 below concerning enforcement-related information, the DOL grants SEC standing access to non-public information that DOL staff determine is relevant to SEC's mission, pursuant to the following safeguards and to the extent permitted by law:

- *DOL and SEC Assurances of Confidentiality.* To the extent permitted by law, the DOL and SEC 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). Such files and information may, however, be used for the purpose of the DOL's and SEC's investigation and/or proceeding and any resulting proceedings. They also may be transferred to criminal law enforcement authorities, self-regulatory organizations subject to the SEC's oversight and the Public Company Accounting Oversight Board ("PCAOB"). The DOL and SEC 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 DOL and SEC staffs will: make no public disclosure of the files or information without the prior written approval of the other agency's staff; notify the other agency's staff in writing of any legally enforceable demand for such files or information prior to complying with the demand and assert all such legal exemptions or privileges on behalf of the other agency as may be requested; and not grant any other demand or request for such files or information without prior written notice to, and lack of objection by, the other agency's staff.
 - *Right to Financial Privacy Act of 1978 ("RFPA"):* The files and information provided by the SEC and DOL staffs to the other agency's 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 and SEC will represent that they have reason to believe that the files and information are relevant to their 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 for which the information is needed 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). Such 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 such files and information to criminal law enforcement authorities, self-regulatory organizations subject to the SEC's oversight and the PCAOB. The DOL may transfer such 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 such 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 for such files or information prior to complying with the demand and assert all such legal exemptions or privileges on behalf of the other agency as may be requested; and not grant any other demand or request for such files or information without prior written notice to, and lack of objection by, the other agency's staff.

6. *Privileges and Confidentiality of Information Maintained:* The DOL and SEC intend that the sharing of information between the agencies will not constitute a waiver of privilege or confidentiality with respect to such information. The DOL and SEC shall have sole discretion to determine whether to provide the other agency with access to non-public information, in light of, among other things, any ongoing examinations, enforcement investigations, civil or criminal investigations or proceedings or internal policies. This MOU does not create any rights of access to non-public documents. Any access to non-public documents will adhere to Federal information protection requirements defined by the National Institute of Standards and Technology for secure transmission of data, including encryption requirements and/or minimum FIPS 140-2 Level 1 certified data transmission methodology. If a security incident is suspected or verifiably detected, the party shall immediately notify their designated counterparts so that steps may be taken to determine whether there has been a compromise, and that appropriate security precautions are taken. Each party will provide reasonable support to their counterparts in support of analysis and/or investigation into any security incidents. To safeguard the confidentiality of the data, access will be limited to only authorized users with a need to know as each agency conducts its respective mission activities, and such data will be stored in a secure data location, accessible only by those users.
7. *Effect of Agreement:* Nothing in this agreement shall be interpreted as limiting, superseding, or otherwise affecting either agency's normal operations or decisions in carrying out its statutory or regulatory duties. This agreement does not limit or restrict the parties from participating in similar activities or arrangements with other entities. This MOU does not create any legally enforceable rights, nor is it to be construed as obligating funds. This agreement will be executed in full compliance with the Privacy Act of 1974 and E Government Act of 2002. This agreement does not itself authorize the expenditure or reimbursement of any funds, nor does it serve to obligate the parties to expend appropriations.
8. *Effective Date; Termination:* This MOU shall become effective on the date on which it is signed by both parties. The SEC and DOL will review the operation of this MOU, as necessary, and the MOU may be modified by mutual agreement of the parties. Either party may terminate this agreement upon 30 days' written notice to the other party.
9. *Survival of Terms:* In the event this MOU is terminated, any files or information derived therefrom shared pursuant to this MOU shall remain non-public and subject to the safeguards contained herein despite such termination.

10. *Authority*: The parties enter into this MOU pursuant to authority set forth in Section 506(a) of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. Section 1136(a) and Section 24(c) of the Securities Exchange Act, 15 U.S.C. Section 78(x).

/S/ Thomas E. Perez
Secretary of Labor
07/25/2013

/S/ Mary Jo White, Chair
Securities and Exchange Commission
07/29/2013

(Figure 4)
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.](¹)

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.

[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.](²)

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

Sincerely,
Regional Director

Footnotes

1. This paragraph is necessary only when the files contain RFPA material.
2. This paragraph may be omitted if the Commission's case is closed.