

Relationship with the IRS

1. **Purpose.** To provide guidance on implementing agreements between the Department and the IRS for coordinating investigations of employee benefit plans. (Figure 1)

2. IRS Background.

a. **Divisions.** The IRS has four operating divisions: Wage and Investment, Small Business/Self-Employed, Large Business and International, and Tax Exempt and Government Entities (TE/GE). The Department coordinates primarily with the IRS TE/GE division, which services employee plans, tax-exempt organizations, and government entities.

b. **Employee Plans (EP).** The Department works closest with the EP segment of the TE/GE division. The EP segment serves retirement plans, IRAs, related trusts, plan participants, beneficiaries, and employer sponsors of retirement plans. The EP segment has following departments: Determinations, Voluntary Compliance, Examinations, and Customer Account Services.

c. **EP Offices.** The EP segment covers five geographic examination areas based on customer locations, workforce size, and employee locations. EP Examinations and the geographic examination areas:

Office	Location	Jurisdiction
Northeast	Hartford, CT	Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont
Great Lakes	Chicago, IL	Minnesota, Nebraska, North Dakota, South Dakota, Wisconsin, Illinois, Indiana, Iowa, Kentucky, Michigan
Gulf Coast	Nashville, TN	Alabama, Arkansas, Florida, Georgia, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, Texas
Mid-Atlantic	Philadelphia, PA	Delaware, Maryland, North Carolina, Ohio, Pennsylvania, South Carolina, Virginia, West Virginia, Washington, D.C.
Pacific Coast	Denver, CO	Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Oregon, Nevada, New Mexico, Utah, Washington, Wyoming

a. **EP Contact Information.** Employee Plan Customer Service¹:

Internal Revenue Service
Attn: EP Customer Service Manager
P.O. Box 2508
Cincinnati, OH 45201
(P) 877-829-5500

3. Minimum Standards Scope.

Responsibility. The Department and the IRS both have responsibilities for benefit plans based on ERISA Title I part 2 (participation, vesting, and benefit accrual for retirement plans) and part 3 (funding defined benefit pension plans, money purchase pension plans and target benefit plans). Department Investigator/Auditors must determine if the benefit plan is subject to parts 2 and 3. If so, it may be possible to work with the IRS. **Section 22** below provides information on referrals between the agencies. If an investigator believes a violation of Title I part 2 or part 3 may also violate part 4, the region should consult with OE prior to making a final determination.

4. Benefit Plans Not Covered by Parts 2 and 3. The following types of plans are *not* covered:

- a. **Welfare Plans.** There are no minimum standards under Parts 2 and 3 for welfare plans. Rather, welfare plans are subject to Parts 1 (disclosure), 4 (fiduciary responsibility), and 5 (enforcement provision) under ERISA.
- b. **Retirement Plans in Sections 201 and 301.** Certain types of retirement plans, such as excess benefit plans or unfunded deferred compensation plans for management or highly compensated employees, are excluded from coverage under Parts 2 and 3.

5. Fiduciary Duties and Minimum Standards. Parts 2 and 3 establish minimum standards for participation, vesting, benefit accrual, and funding for retirement plans. These parts do not address a fiduciary's individual responsibilities to a plan, such as prudence and care. However, if a plan does not adhere to the minimum standards, there is a corresponding fiduciary duty under Section 404 to bring the plan into compliance.

6. Pension Plan Definitions. Under ERISA Title I, the terms "employee pension benefit plan" and "pension plan" refer to all retirement plans within the definition in Section 3(2). However, under the Code, the term "pension plan" refers *only* to defined benefit, money purchase and target benefit plans. The Code uses terms such as "profit sharing plans" and "savings and thrift plans" to refer to other types of retirement plans that would be called a "pension plan" under Title I.

7. Qualified Plans. Under the Code, certain types of retirement plans may qualify for favorable tax treatment if they meet requirements described in Section 401(a) of the Code. The requirements under the Code are substantially the same as the standards under ERISA Parts 2 and 3. ERISA applies to both qualified and non-qualified retirement plans.

8. Jurisdiction. Because most retirement plans are qualified plans under the Code, the IRS has primary authority for administering the minimum standards provisions of ERISA.

- a. **Tax Qualification.** If the IRS determines that a plan meets the requirements for tax qualification, the Department is required under ERISA Section 3001(d) to accept that as prima facie evidence of the plan's initial compliance with Parts 2 and 3.

b. **Participation and Vesting.** The Department should generally refer to the Secretary of the Treasury alleged violations of participation and vesting standards in a qualified plan. Since the IRS is the agency within the Treasury Department that is responsible for the administration of the Code, including the provisions dealing with qualified plans, the Department should refer to IRS most complaints concerning the minimum standards provisions. If an investigator believes a violation of Title I part 2 or part 3 may also violate part 4, the region should consult with OE prior to making a final determination.

c. **Interpretive Authority.** The Department has interpretive authority for plans where violations of Parts 2 and 3 are alleged and the plan is not qualified under the Code. The Department should refer these matters to the IRS through OE.

d. **Multiple Employer Plans.** The Department also has authority regarding special rules for multiple employer plans.

9. Participation. ERISA Section 202 establishes the minimum standards related to age and length of service for participation in a retirement plan. However, a plan may impose additional eligibility conditions, such as salaried employees only, hourly employees only, or members of a specific bargaining unit.

10. Vesting. ERISA Section 203 establishes minimum vesting standards for employer contributions. This means that a plan can only require an employee to work for a certain time before the employer contributions vest. A plan must adhere to one of two vesting schedules outlined in Section 203(a)(2).²

If an employee contributes to the plan, then those contributions are vested immediately (i.e., as soon as the contributions are made). Section 204(c) provides rules for separating the benefits derived from employee contributions and those derived from employer contributions.

11. Suspension of Benefits. Under Section 203, benefit payments under specific circumstances may be suspended. For example, benefits may be suspended when a retired employee comes back to work for the same employer who maintains the plan.³ See 29 C.F.R. 2530.2033 for interpretive guidance in this area.⁴

12. Benefit Accrual. A defined benefit pension plan must meet one of three tests to ensure that benefits accrue at a relatively uniform rate over a participant's career.⁵ In general, these tests:

- a. Specify the accrued benefit with which an employee must be credited;
- b. Prohibit retroactive reductions in participants' accrued benefits; and
- c. Require a separate accounting for each participant's accrued benefit under an individual account plan. There must be separate accounting for the portion of each participant's voluntary employee contributions.

13. Early Retirement Benefits. A defined benefit plan may provide an early retirement benefit⁶ that does not vest in accordance with the benefit accrual requirements above. However, the plan must also provide for a normal retirement benefit that meet the statutory standards. The normal retirement cannot be less than the early retirement benefit.

14. Commencement of Benefits. Unless a participant otherwise elects, a pension plan must start paying benefits within 60 days after the close of the plan year in which the following conditions have all been met:

- a. When the participant reaches age 65;
- b. By the 10th anniversary of his/her participation in the plan; or
- c. By the date of the participant's termination of service.

15. Assignment of Benefits. ERISA Section 206(d) does not allow the assignment or alienation of pension plan benefits. Exceptions include:

- a. Voluntary assignments that do not exceed 10 percent of a benefit payment;
- b. Most irrevocable assignments executed before ERISA was enacted; or
- c. A loan made by a plan to a participant under ERISA Section 408(b)(1).⁷

16. Joint and Survivor Annuity. Joint and survivor annuity benefits apply to all plans except certain defined contribution plans in limited circumstances. If a vested participant passes away before the annuity starting date and has a surviving spouse, then that spouse is eligible for a qualified pre-retirement survivor annuity.

17. Recordkeeping and Reporting. ERISA Section 209⁸ generally requires employers to maintain records necessary to determine benefits. It also requires pension plan administrators to provide individual benefit reports to participants under certain circumstances.

18. Special Rules for Plans Maintained by more than one Employer. ERISA Section 210 provides rules for services considered for purposes of participation, benefit accrual, and vesting in the case of plans maintained by more than employer, including both multiemployer and multiple employer plans. Under this Section and the Department's regulations, all of an employee's service in a job classification covered by a multiple employer plan and all "contiguous noncovered service" must be included.⁹

19. Failure of Employer to Make Required Contributions to a Plan Maintained by more than one Employer. A pension plan maintained by more than one employer *must* credit an employee for service towards benefit accrual (and eligibility for participation and vesting) even if the employer fails to make required contributions to the plan.

Any Department referral to the IRS relating to violations of this nature should contain information regarding the plan's tax qualification status, including the dates of the plan's most recent submission of a determination request, and the IRS response, if any. The referral should

also indicate whether there is express language in the plan's documents on the plan's denial of benefits.

20. Controlled Groups. ERISA Section 210 applies to plans maintained by a business entity that is under common control with one or more business entities. These plans must credit a participant's service with any of the entities for eligibility and vesting purposes.¹⁰

21. Funding. ERISA Title I, Part 3 establishes minimum funding standards for defined benefit pension plans¹¹, money purchase pension plans, and target benefit plans.¹²

22. General Coordination of Examination Programs.

- a. The procedures established in the coordination agreement (Figure 1) apply to all civil examinations conducted by EBSA and the IRS. However, nothing in the agreement limits the agencies from agreeing to use special procedures, such as joint investigations, if appropriate.
- b. EBSA ROs will notify the IRS of the names of plans selected for civil investigation at the beginning of each week (for case opening activity for the prior week).

23. Examination Referral Program. The IRS and the Department check sheets determine whether issues in an examination/investigation by one agency should refer to the other. The check sheets are Check sheets A (Form 6212A) and B (Form 6212B). Each referring agency will complete the appropriate check sheet based on the information obtained through their investigation/examination, per the following procedure:

- a. **Referral Check sheets.** EBSA Investigators/Auditors will complete Check sheet A during their investigations. IRS examiners will complete Check sheet B during their examinations. Any check sheets with answers circled in the right column may be referred to the other agency. Agencies will include necessary information in the remarks section to support the referral.
- b. **Transmittals.** These exchanges occur between the EP Classification Unit in Baltimore and the EBSA RO that has jurisdiction over the plan under examination.
- c. **IRS Address.** When a referral is required, the initiating agency will send two copies of the check sheet to the EP Classification Unit in Baltimore and maintain a copy for its records. Referrals should be sent to:

Internal Revenue Service
ATTN: Manager, Employee Plans Classification
31 Hopkins Plaza, Room 1550
Baltimore, MD 21201

The IRS EP Classification Unit will then forward the referral to the appropriate EBSA or IRS office. The agency receiving the form will retain one copy of the referral and will return a copy to the initiating agency.

Referral Receipt. An agency receiving a referral may request additional information within 15 workdays from the date the referral. The request should not require an additional investigation or examination. EBSA requests for tax information must comply with Section 6103(l)(2) of the Internal Revenue Code. There is a form letter for that purpose (See **Release of Information Figure 4**).

24. EBSA Referrals to the IRS (Checksheet A).

- a. EBSA Investigators/Auditors must complete Checksheet A for retirement benefit civil investigations.
- b. If the case requires a referral to the IRS, EBSA will send Document Transmittal Form 217 along with the referral. The referral must be made by the earlier of:
 1. When the investigation is closed by the RO (but at least 20 days before the closing letter is issued), or;
 2. When there is a case referral to the RSOL or the Department National Office.
- c. The IRS will review any checksheet referred by EBSA and complete the "Action Taken" block. It will then return a copy to EBSA within 30 workdays of receiving the checksheet.
- d. If the IRS returns a copy of Checksheet A to EBSA indicating that it is not acting on the case, EBSA will continue its investigation according to its own existing procedures.
- e. If the IRS returns a copy of Checksheet A to EBSA indicating that it plans to take action, then the IRS will contact EBSA for any additional information that it needs. If EBSA requests that the IRS participate in the examination, then the agencies will coordinate their activities.
- f. If the IRS defers action in a case, then the EBSA RO will notify the Manager of EP Classification if EBSA makes any future referrals to RSOL or the Department National Office. If the RO makes such a referral, the IRS will defer further action.
- g. When EBSA refers a Checksheet A to the IRS involving issues other than prohibited transactions, the checksheet will include as an attachment only the Form 5500 series return.
- h. When EBSA refers a Checksheet A to the IRS that involves prohibited transactions of \$20,000 or more, the following items must accompany the checksheet:

1. Copies of Form 5500 series returns for all years in which a prohibited transaction was in effect;
2. Available information about any taxpayer/disqualified persons, including particularly the EIN or SSN, address, educational level, and possible name changes;
3. Copies of plan and trust documents, including restatements and amendments (only if the IRS has not issued a determination letter on the plan and amendment). If the prohibited transaction is a loan to a plan participant, a copy of the plan loan provisions should be included;
4. Copies of all EBSA correspondence related to the referred issue;
5. Copy of the Report of Investigation (ROI) completed by the EBSA Investigator/Auditor and related work papers. The work papers should include financial statements of the trust and specific details of the prohibited transaction (including copies of sale or transfer documents, repayment documents, contracts, and agreements);
6. A description of the current status of the prohibited transaction;
7. EBSA draft closing letter or the voluntary compliance letter (if issued). The closing letter will advise the taxpayer:
 - a. That a prohibited transaction has occurred;
 - b. That the disqualified persons are required to file Form 5330, Return of Excise Tax Related to Employee Benefit Plans; and
 - c. Where to seek assistance in completing Form 5330.
8. A description of the disqualified person's position regarding the prohibited transaction (if not contained in the ROI);
9. Any other information that documents the reasons for the referral; and
10. Any information EBSA has on the fiduciary/disqualified person's filing or intent to file for bankruptcy.
 - i. When EBSA refers a Checksheet A to the IRS that involves prohibited transactions of less than \$20,000, only a copy of EBSA's closing letter or the voluntary compliance letter, and a copy of the ROI (without attachments) need to be included.

25. IRS referrals to EBSA (Checksheet B).

- a. IRS examiners must complete a Checksheet B as soon as possible in all IRS field examinations of retirement benefit plans. When an entry on a Checksheet B requires the referral of the checksheet to EBSA, the IRS will refer the checksheet to EBSA.
- b. Once EBSA receives a Checksheet B, it will complete the "Action Taken" block, and return a copy to the IRS within 30 workdays. EBSA should use the EBSA Form 217 to transmit the Checksheet B back to the IRS.
- c. If EBSA indicates in the "Action Taken" block that it is not going to pursue the matter, then the IRS will continue its examination according to its own existing procedures.
- d. If EBSA indicates that it will take action on the matter, EBSA will contact the IRS to coordinate the activities of the agencies.
- e. If the IRS refers a Checksheet B to EBSA with an entry indicating a violation of fiduciary standards or a prohibited transaction, then the referral is a notice to the Department under ERISA Section 3003(a).
- f. If the IRS refers a Checksheet B to EBSA indicating that a violation of the minimum funding requirements of Section 412 occurred, then the referral is a notice to the Department under ERISA Section 3002(b).
- g. If the IRS refers a Checksheet B to EBSA indicating that a fiduciary violation occurred and that the IRS is considering disqualifying the plan due to a violation of the exclusive benefit rule, the agencies will process the case according to Section 103 of Reorganization Plan No. 4 of 1978.
- h. If the IRS defers action in a case as a result of EBSA referring the matter to the Department National Office, the IRS will not take further action until the earlier of:
 - i. The date when RO notifies the Manager of EP Classification of EBSA's final action in the case, or;
 - ii. The collection of a tax is in jeopardy, the imminent running of the statute of limitations, or protecting plan assets or the interests of participants.

26. IRS Appeals Office Procedures. When the IRS Appeals office receives cases that involve employee benefits, the following procedures will apply:

- a. The applicable Appeals Area Director will notify, in writing, the EBSA Regional Director that a case is in his or her office. When applicable, the written letter is the notice required under IRC Sections 4971(d) and 4975(h).
- b. The Appeals Area Director will not take final action to settle the case, concede any government issue, enter into a closing agreement, issue any notice of deficiency with respect to taxes under Sections 4971(a) and/or (b) or 4975 that are not in jeopardy, or proceed with

any action to revoke the favorable determination or qualification letter of any plan prior to the earlier of:

- i. The date when the Appeals Area Director receives a response from EBSA;
or
 - ii. 60 days after the date of the Appeals Area Director's letter to EBSA.
- c. Within 60 days of receiving the letter from the Appeals Area Director, EBSA will reply in writing stating whether it will be taking any action on the referred case. If EBSA is taking action, then the Appeals Area Director will coordinate with EBSA before taking any action described above.
- d. If the IRS Appeals Area Director and the EBSA RD are unable to reach agreement as to how to proceed with the case, the matter goes to the IRS National Chief of Appeals to coordinate with the EBSA Director of Enforcement.

27. Litigation Notice.

a. IRS Litigation.

- i. The IRS Division Counsel/Associate Chief Counsel (TE/GE) will forward to the Department Solicitor (Attention: Associate Solicitor, Plan Benefits Security Division), and the EBSA Director of Enforcement at the earliest possible date a copy of any complaint or other opening pleading in litigation concerning ERISA Title I to which the IRS, the Treasury, the United States or any official thereof is a party, either in the Tax Court, Claims Court or in district court. Additional information forwarded upon request.
- ii. The IRS Division Counsel/Associate Chief Counsel (TE/GE) will notify the Department Solicitor at the earliest possible date when the IRS determines that it will seek to intervene in any action in which the Secretary of the Treasury is entitled to do so under ERISA Section 502(h).
- iii. The IRS provides the initial pleadings submitted on behalf of the Secretary to the Associate Solicitor. Further information forwarded upon request.

b. Department Litigation.

- i. The Solicitor of Labor will notify the IRS Division Chief/Associate Chief Counsel (TE/GE) and the Director of EP Examinations when Department litigation relating to employee benefit plans is warranted. The Department will provide copies of the proposed complaint (or other opening pleading and supporting documents) to the IRS Chief Counsel and to the Department of Justice for assignment of primary litigation responsibility.

- ii. The Solicitor of Labor will forward to the IRS Division Counsel/Associate Chief Counsel (TE/GE) a copy of any pleading filed that names the Secretary of Labor as a defendant and relates to employee benefit plans. Further information forwarded upon request.
- iii. The Solicitor of Labor will notify the IRS Division Counsel/Associate Chief Counsel (TE/GE) at the earliest possible date when the Department determines that it will seek to intervene in any action in which the Secretary of the Treasury is entitled to do so under ERISA Section 502(h).
- iv. The Solicitor of Labor will submit the initial pleadings submitted on behalf of the Secretary to the Director of EP. Further information forwarded upon request.

28. Tracking/Feedback.

- a. **Referral Reconciliation.** EBSA ROs and the designated IRS contacts will reconcile their lists of pending referrals twice yearly.
- b. **IRS Examinations.** When the IRS closes an examination initiated by an EBSA referral, the IRS will forward a copy of Checksheet A, which indicates the proposed or assessed excise tax¹³. If the IRS will not propose or assess excise taxes, then it will enter the reasons in the “Remarks” Section of Checksheet A.
- c. **Quarterly Meetings.** At least once per quarter, IRS EP Examinations Headquarters and Department National Office personnel will meet to resolve any referrals where there is a dispute of an appropriate enforcement action. They will also resolve problems encountered by EBSA ROs and IRS EP Examinations in following the provisions of this Agreement.
- d. **Annual Meeting.** The IRS Director of EP Examinations (or representative) and the EBSA Director of Enforcement will meet each year in October to review work plan and initiatives for the fiscal year.
- e. **Contact Lists.** EP Examinations and EBSA will update their Local Contact List at least once a year.

29. Requesting Information from IRS.

- a. **Disclosure Restrictions.** In general, there is a prohibition of IRS from disclosing any tax information to anyone outside IRS. However, IRC Section 6103(1)(2) allows the IRS to furnish information (including tax return information) to the Department and PBGC to enforce Titles I and IV of ERISA.
- b. **Making Information Requests.** During an investigation, the RO can request information from the IRS if the RO believes the information will help EBSA carry out the provisions of Title I (See **Release of Information Figure 4**). Requests for

IRC 6103(l)(2) information should be electrically transmitted to the IRS through the Secure Data Transfer tool in place between the Department and IRS.

c. **IRC Section 6104 Information.** The RO should not request IRC Section 6103(l)(2) information that is already authorized to be disclosed under IRC Section 6104.

IRC Section 6104 provides that any application for tax-qualified status, tax-exempt status, or papers submitted in support of any such applications is open for public inspection.¹⁴ However, if a plan has 25 or fewer participants, this right of public inspection is open only to a plan participant. Section IRC Section 6104 specifies places and times for public inspection. Materials or documents regarding an individual's compensation are not open to public inspection.

d. **Securing IRS Materials.** Each Department Investigator/Auditor should know the proper procedures for securing IRS information. Unauthorized inspection and disclosure of information may subject the individual to penalties under IRC Sections 7213 and 7213A.¹⁵

30. Examinations Pursuant to HIPAA.

a. Titles I and IV of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) amended the Code, ERISA, and the Public Health Service Act to improve access, portability, and continuity of health insurance coverage in the group and individual markets.

b. Per HIPAA Section 104, the Secretary of Treasury, the Secretary of Labor, and the Secretary of Health and Human Services entered into an Interim Memorandum of Understanding in December 1999 (Figure 3) to coordinate the enforcement of the shared provisions under HIPAA. Under this MOU, the three agencies work together to avoid enforcement duplication and to assign priorities.

c. The terms of the Interim MOU also apply to interpretations and enforcement of the Newborns' and Mothers' Health Protection Act of 1996, the Mental Health Parity Act of 1996, and the Woman's Health and Cancer Rights Act of 1998.

31. Voluntary Fiduciary Correction Programs. Both the Department and IRS maintain separate voluntary programs to encourage voluntary compliance by self-correcting violations of the law. See the Voluntary Fiduciary Correction Program for information on EBSA's program.

(Figure 1)

Memorandum Of Understanding

Internal Revenue Service/Department of Labor

Coordination Agreement

In order for the IRS and DOL to fulfill the mandates of the Employee Retirement Income Security Act of 1974 (ERISA) Sections 3003 and 3004 and in accordance with ERISA Section 506, the IRS and DOL have executed the Internal Revenue Service/Department of Labor Coordination Agreement (Agreement).

The attached Agreement reflects changes resulting from the Modernization of the IRS, the change in name of the Department of Labor's benefit plan regulatory agency from the Pension and Welfare Benefits Administration (PWBA) to the Employee Benefits Security Administration (EBSA), and other revisions identified from the agencies' experiences under the prior Agreements.

Although an essential component of the Agreement is timely coordination and emphasis on the need to eliminate duplicative investigative efforts, the agencies recognize there may be situations that require both agencies to become involved. The IRS and DOL agree to identify past situations where both agencies have had an examination/investigation on the same subject and to determine when it may be beneficial for the agencies and the public for examinations/investigations to be conducted jointly.

In reviewing the Agencies' experiences under the prior Agreements, it was determined that both agencies are devoting resources to the coordination of welfare plan investigations that appear to be unnecessary. In that regard, case opening notification (EBSA Form 205) and referral checksheet completion (IRS Form 6212-C) for welfare plans have been eliminated. DOL can make referrals to the IRS for tax matters outside EP jurisdiction in the form of a letter.

DOL will continue to refer Checksheet A to IRS (Form 6212-A) to IRS for pension benefit plans in accordance with the requirements of Article II, D., of the Agreement. IRS will continue to make referrals to DOL on Checksheet B (Form 6212-B) in accordance with the requirements of Article II, C. of the Agreement. Both forms have been revised. See Appendices B and C.

Under the Modernization of the IRS, Employee Plans and Exempt Organizations are separate units under the Tax Exempt/Government Entities Operating Division. The Employee Plans Examinations Headquarters is located in Baltimore. The Director, EP Examinations,

supervises six Area Managers located around the country and the Manager of EP Examinations, Programs and Review. The IRS Key District concept was eliminated. Referrals made by EBSA personnel are now made to the IRS through the Manager, EP Examinations Classification in Baltimore.

In accordance with Article V.C of the Agreement, representatives of the IRS and DOL will meet quarterly.

/s/ June 3, 2003

Carol Gold

Director, Employee Plans

Tax Exempt and Government Entities Division

Internal Revenue Service

/s/ June 3, 2003

Alan D. Lebowitz

Deputy Assistant Secretary for Program Operations

Employee Benefits Security Administration

(Figure 1a)

IRS/DOL Coordination Agreement Index

1. Notification of Examination
 - a. General
 - b. IRS Action on Notification
 - c. EBSA Action After Positive Feedback
2. Examination Referral Program
 - a. General
 - b. Referral Procedures
 - c. Examinations Initiated by IRS
 - d. Investigations Initiated by EBSA
3. IRS Appeals Office Procedures
4. Notification of Litigation
 - a. Litigation Involving IRS and Relating to the Administration of Title I of ERISA
 - b. Litigation Involving DOL and Relating to Employee Benefit Plans
5. Tracking/Feedback
6. EBSA Requests for Tax Return Information from the IRS

List of Appendices

- a. IRS / EBSA Office Referral Directory
- b. Referral Checksheet 6212-A
- c. Referral Checksheet 6212-B
- d. EBSA Form 217, Document Transmittal
- e. Section 103 of the Reorganization Plan No. 4 of 1978

[Note: Some of the above listed appendices are not included in the current version of the Enforcement Manual.]

This document provides the procedures for the coordination of examination and litigation activities involving employee benefit plans between the Employee Benefits Security Administration (EBSA) of the Department of Labor (DOL) and the Employee Plans (EP) of the Internal Revenue Service (IRS).

I. Notification of Examinations

A. General

For the agencies to avoid unnecessary duplication in examinations, the EBSA Regional Offices will notify the IRS Employee Plans Classification Unit in Baltimore weekly of the names of pension benefit plans selected for civil investigation. Generally, a Regional Office will not begin its investigation of a plan until 10 workdays after the date the information was provided to the IRS. However, nothing contained in this agreement shall preclude the agencies from agreeing to use special procedures, including joint or concurrent investigations/examinations in appropriate cases.

B. IRS Action on Notification

Within 9 workdays after the date that the listings of plans are provided to the Employee Plans Classification Unit in Baltimore, the Classification Unit will determine whether the investigation would duplicate an examination by IRS and, if the investigation is duplicative, advise, the appropriate EBSA Regional Director.

1. For purposes of notifying EBSA of examinations in process by IRS, a plan will be considered under examination if: (1) an examination was closed by IRS with respect to the plan within 12 months of the date of receipt from EBSA; (2) an examination case with respect to the plan is in inventory in EP Examinations but not yet assigned; or (3) an examination with respect to the plan is currently assigned within the EP Examinations.
2. If the EP Classification Unit determines that a plan on the EBSA listing is not under examination, the EP Classification Unit will take action to associate the EBSA notification with the IRS administrative file relating to the plan. If the EP Classification Unit subsequently assigns such a plan for examination, the EP Classification Unit will, prior to examining the

plan, contact the appropriate EBSA Regional Director concerning the status and/or result of DOL's investigation.

3.

C. EBSA Action After Positive Feedback

Generally, EBSA will not begin an investigation of a plan if IRS advises the Regional Director that the investigation would be duplicative. If IRS has selected a plan for examination but has not yet initiated contact with the plan, the EBSA Regional Office and the EP Examinations Area Office with jurisdiction over the plan will decide which agency will examine/ investigate the plan. Any jurisdictional disputes will be resolved in accordance with section A.6. of Part II below.

II. Examination Referral Program

A. General

1. The agencies have developed checksheets for determining whether issues presented in an examination/investigation by one agency should be referred to the other agency. The checksheets can be three-part snap out forms or computer generated forms (respectively known as Checksheets A and B, or Forms 6212A and B – see Appendices). When either agency completes a checksheet during an examination/investigation, an entry in the right hand column with respect to any item on the checksheet will indicate that referral of the checksheet to the other agency may be required. The checksheets completed by the IRS contain confidential tax return information provided by the IRS and must be safeguarded by EBSA.
2. For purposes of the Examination Referral Program (Part II) and IRS Appeals Office Procedures (Part III), the term "examination" means:
 - a. In the case of an examination of an employee benefit plan conducted by IRS, any field examination by EP specialists of the books and records of an employee benefit plan. An examination described in this paragraph will be subject to the referral procedures without regard to whether the examination is an on-site examination or an office correspondence/interview examination.
 - b. In the case of an investigation of an employee benefit plan conducted by EBSA, any investigation or audit of the books and records of an employee benefit plan; and
 - c. In the case of an examination/investigation of an entity other than a plan by either agency, any examination/investigation the purpose of which is to determine compliance with the Employee Retirement Income Security Act of 1974 (ERISA), related sections of the Internal Revenue Code, or both.
 - d. Consideration pursuant to a correction program described in Rev. Proc. 2002-47 or its successors is not an examination within the meaning of section 7605(b) of the Code.
3. An agency initiating a referral may request that the receiving agency participate in the examination. These requests will be made by checking the "Participation Requested" box on the referral checksheet and obtaining the signature of the Regional Director or the EP Area Manager. The agency requesting the assistance will not generally take dispositive action on the investigation or examination until a response is received from the other agency. However, an agency may take dispositive action if collection of a tax is in jeopardy, the running of the

statute of limitations is imminent, or plan assets or the interests of plan participants must be protected. In such a case, the agency taking the dispositive action will immediately notify the other agency of the action by telephone and confirm the notification in writing within five workdays.

4. Except as stated in 3. above, an agency initiating a referral is generally not required to postpone taking dispositive action on an examination.
5. If the agency receiving a referral checksheet indicates an interest in the case, the agencies will coordinate in accordance with the procedures described in Sections B., C. and D. of Part II.
6. Disagreement concerning appropriate enforcement action in a specific case will generally be resolved jointly by the EP Examinations Area Office and the appropriate EBSA Regional Office. If the EP Examinations Area Office and the EBSA Regional Office are unable to reach agreement in a case, they will consult with EP Examinations and the Office of Enforcement for final resolution.

B. Referral Procedures

1. EBSA investigators/auditors will complete Checksheet A during their investigations. Checksheets referred to the IRS will be sent to the Manager, EP Classification in Baltimore using Document Transmittal Form 217 (see Appendix D) on the last workday of each week.
2. IRS examiners will complete Checksheet B during their examinations. Checksheets requiring referral to EBSA will be sent (along with copies of 5500 Series returns relating to the plans subject to the referral) to the EP Classification Unit in Baltimore. The EP Classification Unit will send this information to the appropriate Regional Director on the last workday of each week.
3. The initiating agency will complete the appropriate checksheet during an examination/investigation. If a referral is required, the agency initiating the referral will retain a copy of the checksheet (maintained in the EP Classification Unit and in each EBSA Regional Office). The agency making the referral will transmit two copies to the other agency. The receiving agency will complete the "Action Taken" portion of the referral checksheet, retain a copy and return the other copy to the initiating agency to be included in the appropriate plan administrative/case file.
4. After receiving a referral, an agency may request additional information from the initiating agency (EBSA Regional Office or IRS EP Classification Unit) with respect to the plan involved. Such a request should be made within 15 workdays of the date the referral was mailed. The request should not require the initiating agency to conduct additional investigative work or examination. A request for additional information by DOL must comply with the requirements of Section 6103(l)(2) of the Code.
5. An agency initiating a referral where participation is not requested will generally not take dispositive action on the investigation or examination until 20 days after the date of the referral. However, an agency may take dispositive action if collection of a tax is in jeopardy, the running of the statute of limitations is imminent, or plan assets or the interest of plan participants must be protected. In such a case, the agency taking the dispositive action will immediately notify the other agency of the action by telephone and confirm the notification in writing within five workdays.

C. Examinations Initiated by the IRS

1. IRS examiners will complete Checksheet B during all IRS field examinations.
2. When an entry on a Checksheet B requires the referral of the checksheet to EBSA, IRS will refer the checksheet in accordance with section B.2. of this Part.
3. EBSA will review Checksheet B, complete the "Action Taken" portion of the referral checksheet, and return a copy to IRS EP Classification Unit within 20 workdays of the referral. Checksheet B will be transmitted by EBSA using Document Transmittal Form 217 (see Appendix D).
4. When EBSA returns a copy of Checksheet B to the IRS EP Classification Unit with an entry in the "Action Taken" portion of the referral checksheet indicating that EBSA is taking no action, IRS will continue its examination in accordance with its existing procedures.
5. When EBSA returns a copy of Checksheet B to the IRS EP Classification Unit with an entry indicating that it is taking action, EBSA will also contact the IRS EP Area Office to obtain information that EBSA needs to complete its planned action.
6. In all unagreed IRS cases involving Internal Revenue Code section 4971(a) and/or (b) or 4975, Form 6212-B (or a copy of Form 6212-B) will be completed with an entry in the box for "DOL Participation Requested." A copy of the report to the taxpayer (including a copy of the proposed 30-day letter) will be sent with a copy of the Form 6212-B by the IRS EP Mandatory Review Unit. The Form 6212-B should be sent to the EBSA Regional Director at least 30 days prior to sending the report, including the 30-day letter, to the taxpayer. If EBSA declines to participate in the examination, the case file will be documented accordingly. Generally IRS should not close a case until 30 days from the date the Form 6212-B is sent to the Regional Director.
7. If IRS refers a Checksheet B to the EBSA Regional Director with an entry indicating that a violation of the fiduciary provisions under Title I of ERISA or a violation of the ERISA prohibited transaction requirements has occurred, the referral will constitute a notice to the Department of Labor within the meaning of section 3003(a) of ERISA and 4975(h) of the Code.
8. If IRS refers a Checksheet B to the EBSA Regional Director indicating that a violation of the minimum funding requirements of section 412 has occurred, the referral will constitute a notice to the Department of Labor within the meaning of section 3002(b) of ERISA and 4971(d) of the Code.
9. If IRS refers a Checksheet B to the EBSA Regional Director with an entry indicating that a fiduciary violation under Title I of ERISA has occurred with respect to an employee benefit plan and that IRS is considering action to disqualify the plan because the plan is also in violation of the exclusive benefit rule under the Internal Revenue Code, the agencies will process the case in accordance with section 103 of Reorganization Plan No. 4 of 1978. (See Appendix E.)
10. IRS will defer action in a case when, as a result of a referral of a checksheet between the agencies, the EBSA Regional Office advises the Manager, EP Classification, in writing that the case has been referred to the DOL National Office. IRS will not take further action in the case until the date when EBSA notifies the EP Classification Unit of EBSA's final action in the case, unless the provisions of Part II A.3. become applicable.

D. Investigations Initiated by EBSA

1. EBSA investigators/auditors will complete Checksheet A during all civil pension benefit investigations.
2. If an entry on a completed checksheet requires a referral to the IRS, the referral will be made not later than the earlier of (1) the date the investigation is closed by the Regional Office (but at least 20 days before the closing letter is issued) or (2) the case is referred to the EBSA National Office. EBSA will refer checksheets in accordance with section B.1. of this Part, using Document Transmittal Form 217 (see Appendix D).
3. The IRS will review any checksheet referred by EBSA, complete the "Action Taken" portion of the referral checksheet, and return a copy to the Regional Director within 20 workdays of the date of the Document Transmittal Form 217 memorandum or other document transmitting the checksheet to the IRS.
 - a. If the IRS returns a copy of Checksheet A to the Regional Director with an entry indicating that IRS is taking no action in the case, EBSA will continue its investigation in accordance with its existing procedures. However, see Part V below regarding the information IRS must provide to DOL.
 - b. If the IRS returns a copy of Checksheet A to the Regional Director with an entry indicating that IRS is taking action with respect to the referral, IRS will contact EBSA to obtain any additional information that IRS needs to complete its examination. If EBSA completes the checksheet with an entry in the "IRS Participation Requested" block, the agencies will coordinate their activities in the case. However, see Part V below regarding the information IRS must provide to DOL when the case is closed.
 - c. The IRS will defer action in a case when as a result of a checksheet referral between the agencies, the EBSA Regional Office notifies the IRS EP Classification Unit of any referral of the case to the DOL National Office in accordance with section C.10. of this Part.
4. When EBSA refers a Checksheet A to the IRS involving issues other than prohibited transactions, only the Form 5500 series return must be attached to the checksheet.
5. When EBSA refers a Checksheet A to the IRS that involves prohibited transactions of twenty thousand dollars or more, the following items must accompany the checksheet:
 - a. Copy of Form 5500 series returns for all years in which a prohibited transaction was in effect.
 - b. Available information about taxpayer/disqualified person including, particularly the EIN or SSN, address, educational level and possible name changes.
 - c. Copy of plan and trust documents including restatements and/or amendments (only if IRS has not issued a determination letter on the plan and/or amendment). If the prohibited transaction is a loan to a plan participant, a copy of the loan provisions of the plan should be included.
 - d. Copy of all EBSA correspondence related to the referred issue.
 - e. Copy of the Report of Investigation (ROI) completed by EBSA investigator/auditor and related work papers. The work papers should include financial statements of trust, specific details of the prohibited transaction including copies of sale/transfer documents, repayment documents, contracts and agreements.
 - f. A description of the current status of the prohibited transaction, including possible corrective action.

- g. EBSA draft closing letter and if applicable, the voluntary compliance letter. The closing letter will advise the taxpayer that (a) a prohibited transaction has occurred, (b) the disqualified person(s) is/are required to file Form 5330, Return of Excise Tax Related to Employee Benefit Plans and where assistance in completing Form 5330 can be obtained.
 - h. A description of the disqualified person's position regarding the prohibited transaction (if not contained in the ROI).
 - i. Any other information that documents the reason for the referral.
 - j. Information in EBSA's possession concerning the fiduciary/ disqualified person's filing or intent to file for bankruptcy.
6. When EBSA refers a Checksheet A to the IRS that involves prohibited transactions of less than twenty thousand dollars, only a copy of EBSA's closing letter or the voluntary compliance letter (prepared in accordance with 5(g) above) that describes the transaction, and a copy of the Report of Investigation (without attachments) needs to be transmitted.
 7. When an EBSA Regional Office refers a checksheet to the EP Classification Unit concerning a violation of the prohibited transaction provisions, the EP Classification Unit/EP Examinations Area Office will generally take action to assess the excise tax under IRC section 4975 if: (1) the tax under section 4975(a) for any taxable year is at least equal to the amount specified in Part VII of the IRS Law Enforcement Manual; (2) 180 days or more remain before the expiration of the statute of limitations with respect to the prohibited transaction; and (3) the information described in section D.5. of this Part is attached to the checksheet when it is referred. If a case referred to EP satisfies the foregoing requirements and action is not taken to assess the tax under section 4975(a), the case file will be annotated to reflect the reason for such failure and the remarks section of the checksheet returned to the DOL will contain an explanation why the assessment was not made.

III. IRS Appeals Office Procedures

The following procedures apply to all cases received by IRS Appeals Offices involving examinations of employee benefit plans within the meaning of section A.2. of Part II.

- a. The applicable Appeals Area Director (or designee) will notify, in writing, the EBSA Regional Director's Office as listed in Appendix A that an employee plans case has been received in their office. To ensure that notice has been given to DOL as required by Sections 4971(d) and 4975(h) of the Internal Revenue Code, the Appeals Office shall follow the procedures of B. and C. of this part.
- b. The Appeals Area Director will not take final action to settle the case, concede any Government issue, enter into a closing agreement with any taxpayer, issue any notice of deficiency with respect to taxes under section 4971(a) and/or (b) and 4975 that are not in jeopardy, or proceed with any action to revoke the favorable determination or qualification letter of any plan prior to the earlier of the date when the Appeals Area Director receives a response from EBSA or 60 days after the date of the Appeals Office's letter to EBSA.
- c. EBSA will, within 60 days of the date of the letter from the Appeals Area Director, reply to the Appeals Area Director in writing if EBSA is taking any action concerning the referred case. If EBSA is taking action with respect to the case, the Appeals Area Director will coordinate with EBSA before taking any of the actions described in Section B. of this Part.

- d. If the Appeals Area Director and the EBSA Regional Director are unable to reach agreement regarding disposition of the case, the matter will be forwarded to the National Chief, Appeals to coordinate final resolution with the Director, EBSA Office of Enforcement, DOL.

IV. Notification of Litigation

- a. Litigation Involving IRS and Relating to the Administration of Title I of ERISA
 1. The Division Counsel/Associate Chief Counsel (TE/GE) (or designee), will forward to the DOL Solicitor (Attention: Associate Solicitor, Plan Benefits Security Division), and Director, Office of Enforcement, EBSA, at the earliest possible date, a copy of any complaint or other opening pleading in litigation to which the IRS, the Treasury, the United States or any official thereof is party, either in Tax Court, Claims Court or in district court, and that presents issues relating to the administration of Title I of ERISA. Further pleadings in such matters will be furnished upon request.
 2. The Division Counsel/Associate Chief Counsel (TE/GE) (or designee), will notify the DOL Solicitor (Attention: Associate Solicitor, Plan Benefits Security Division), at the earliest possible date, whenever IRS determines that it will seek to intervene in any action in which the Secretary of the Treasury is entitled to do so under the provisions of ERISA section 502(h). The initial pleadings submitted on behalf of the Secretary will be forwarded to the Associate Solicitor. Further pleadings in such matters will be furnished upon request.
- b. Litigation Involving DOL and Relating to Employee Benefit Plans
 1. The Solicitor of Labor (or designee) will notify the Division Chief/Associate Chief Counsel (TE/GE), and the Director, EP Examinations T:EP:E, when it is determined that litigation by DOL relating to employee benefit plans is warranted. Copies of the proposed complaint (or other opening pleading and supporting documents) will be furnished to the Chief Counsel for review and to the Department of Justice for its assignment of primary litigative responsibility under the Memorandum of Understanding of February 11, 1975.
 2. The Solicitor of Labor (or designee) will forward to the Division Counsel/Associate Chief Counsel (TE/GE) a copy of any pleading filed naming the Secretary of Labor as a defendant and presenting issues relating to employee benefit plans. Further pleadings in such matters will be furnished upon request.
 3. The Solicitor of Labor (or designee) will notify the Division Counsel/Associate Chief Counsel (TE/GE) at the earliest possible date whenever DOL determines that it will seek to intervene in any action in which the Secretary of Labor is entitled to do so under the provisions of ERISA section 502(h). The initial pleadings submitted on behalf of the Secretary will be forwarded to the IRS counsel. Further pleadings in such matters will be furnished upon request.

V. Tracking/Feedback

- a. EBSA Regional Offices and IRS EP Classification Unit will reconcile their listings of pending referrals at least once a quarter.

- b. IRS EP Classification, upon closure of an examination initiated as the result of a referral from DOL, will forward to the EBSA Regional Director Form 6212-A (or a copy of Form 6212-A) indicating the amount of Internal Revenue Code section 4971(a) and/or (b) or 4975 proposed or assessed excise tax. If the IRS does not propose or assess excise taxes, then the reasons will be entered in the "Remarks" section of Form 6212-A.
- c. IRS EP Examinations and DOL National Office personnel will meet at least quarterly to resolve any referrals on which the appropriate enforcement action is in dispute. These quarterly meetings will also be used as a medium for discussions of issues encountered by EBSA Regional Offices and IRS EP Examinations in following the provisions of this Agreement.

VI. EBSA Requests for Tax Return Information from the IRS

Internal Revenue Service
Manager, EP Classification
31 Hopkins Plaza
Room 1550
Baltimore MD 21201

- a. In general, IRS is prohibited from disclosing any tax information to anyone outside of the IRS. IRC section 6103 lists the exceptions to this general rule. IRC section 6103(1)(2) allows the IRS to furnish information to the DOL and PBGC for the enforcement of Titles I and IV of ERISA. This includes requests for tax returns and tax return information.
- b. If during any investigation, the Regional Office believes that information in the possession of the IRS will help in carrying out the provisions of Title I, a request will be made to the IRS for such information. Requests for IRC 6103(1)(2) information should be sent to the following address:
- c. Information that can be disclosed under IRC section 6104 should not be requested under this procedure. IRC section 6104(a)(1)(B) provides that any application for tax-qualified status of a pension, profit sharing, stock bonus, annuity, individual retirement account, or individual retirement annuity plan, any application filed with respect to the tax-exempt status of an organization forming part of such plan or account, any papers submitted in support of any such application and any letter or other document issued by the IRS in connection with such tax qualification or tax exemption is to be open for public inspection; however, if a plan does not have more than 25 participants, this right of public inspection is open only to a plan participant. The places and times for the right of public inspection are specified in the regulations issued under IRC section 6104. Materials or documents from which an individual's compensation may be ascertained are not open to public inspection. This right of public inspection applies to applications filed and documents issued after September 2, 1974.
- d. EBSA personnel will employ proper procedures for obtaining and safeguarding the information received from the IRS. Unauthorized disclosure of information received from the IRS may subject the individual disclosing such information to both civil and criminal penalties as provided for in the Internal Revenue Code.

(Figure 1b)

Addendum to IRS/DOL Coordination Agreement

For purposes of implementing the Internal Revenue Service/Department of Labor Coordination Agreement after the date this Addendum is agreed to by both Agencies, the following provisions of the Agreement are modified as follows:

I. Notification of Examinations

A. General

Section I A.

EBSA Regional Office personnel will no longer be required to wait 10 workdays after notifying IRS Employee Plans Examinations (EP Examinations) that a pension plan was selected for investigation. EBSA Regional Office personnel will continue to provide case opening notifications to the IRS. EP Classification will also continue to notify EBSA Regional Offices if they are aware of any open EP Examinations at the time of initial notification.

B. IRS Action on Notification

Section I.B.2

This section of the MOU is no longer operative.

II. Examination Referral Program

A. General

Section II.A.3

An agency initiating a referral with the "Participation Requested" box checked will now be required to attach a memorandum signed by the Regional Director or the EP Area Manager requesting joint investigation. These referrals will be prioritized and should be responded to generally within 20 days of receipt.

B. Referral Procedures

Section II.B.1

Electronic means of transmission for referrals will be used wherever possible by both Agencies. The electronic software for electronic referrals must meet the encryption level security FIPS 140-2. Electronic transmissions to and from Classification will use: tege.ep.class.dol@irs.gov. Referrals that cannot be forwarded electronically should be mailed to the designated EP Examination and EBSA Regional Office addresses.

Section II.B.2

EP Examinations will send Form 6212-B and include necessary information in the remarks section to support the referral item. Upon acceptance additional information will be provided in accordance with Section VI. The 6212-B checksheet and attachments will be sent using Document Transmittal Form 3210. (See Appendix I)

Section II.B.5

In general, referrals not requesting participation will be responded to within 30 days.

Section II.B.6 (added)

EBSA referrals to the IRS involving the late remittance of employee contributions and loan repayments with less than \$6,700 in Lost Opportunity Costs in a plan year are referred to as Streamline Referrals. EBSA will provide the following information in the Remarks section of Form 6212-A:

- a. A notation that the referral is "Streamlined – LOC Under \$6,700/Plan Year"
 - b. Lost opportunity costs for each plan year will be provided separately for each plan year.
 - c. A notation that the correction has been completed.
- No other documents will need to be included with Form 6212-A.

EBSA will continue to refer untimely contribution/loan repayment prohibited transactions where there are multiple issues related to the investigation using Form 6212-A in accordance with Section II.D.5 and II.D.6 of the Agreement.

C. Examinations Initiated by the IRS

Section II.C.3

EBSA Regional Offices, in general, will respond to referrals submitted by EP Classification within 30 days.

D. Investigations Initiated by EBSA

Section II.D.3

EP Classification, in general, will respond to referrals submitted by EBSA Regional Offices within 30 days.

Section II.D.7(1)

When an EBSA Regional Office refers a checksheet to the EP Classification Unit concerning a violation of the prohibited transaction provisions, the EP Classification Unit/EP Examinations Area Office will generally take action to assess the excise tax under IRC section 4975 if: (1) 180 days or more remain before the expiration of the statute of limitations with respect to the prohibited transaction; and (2) the information described in section D.5. of this Part is attached to the checksheet when it is referred. If a case referred to EP satisfies the foregoing requirements and action is not taken to assess the tax under section 4975(a), the case file will be annotated to reflect the reason for such failure and the remarks section of the checksheet returned to the DOL will contain an explanation why the assessment was not made.

[No changes to Section III]

IV. Notification of Litigation

A. Litigation Involving IRS and Relating to the Administration of Title I of ERISA

Section IV.A.1

1. The Division Counsel/Associate Chief Counsel (TEGE) (or designee), will forward to the DOL Solicitor (Attention: Associate Solicitor, Plan Benefits Security Division), and Director, Office of Enforcement, EBSA, at the earliest possible date, a copy of any complaint or other opening pleading in litigation to which the IRS, the Treasury, the United States or any official thereof is party, either in Tax Court, Claims Court or in district court, and that presents issues relating to the administration of Title I of ERISA. Further pleadings in such matters will be furnished upon request.

Section IV.A.2

2. The Division Counsel/Associate Chief Counsel (TEGE) (or designee), will notify the DOL Solicitor (Attention: Associate Solicitor, Plan Benefits Security Division), at the earliest possible date, whenever IRS determines that it will seek to intervene in any action in which the Secretary of the Treasury is entitled to do so under the provisions of ERISA section 502(h). The initial pleadings submitted on behalf of the Secretary will be forwarded to the Associate Solicitor. Further pleadings in such matters will be furnished upon request.

B. Litigation Involving DOL and Relating to Employee Benefit Plans

Section IV.B.1

1. The Solicitor of Labor (or designee) will notify the Division Counsel/Associate Chief Counsel (TEGE), and the Director, EP Examinations T:EP:E, when it is determined that litigation by DOL relating to employee benefit plans is warranted. Copies of the proposed complaint (or other opening pleading and supporting documents) will be furnished to the Division Counsel/Associate

Chief Counsel (TEGE) for review and to the Department of Justice for its assignment of primary responsibility under the Memorandum of Understanding of February 11, 1975.

Section IV.B.2

2. The Solicitor of Labor (or designee) will forward to the Division Counsel/Associate Chief Counsel (TEGE) a copy of any pleading filed naming the Secretary of Labor as a defendant and presenting issues relating to employee benefit plans. Further pleadings in such matters will be furnished upon request.

Section IV.B.3

3. The Solicitor of Labor (or designee) will notify the Division Counsel/Associate Chief Counsel (TEGE) at the earliest possible date whenever DOL determines that it will seek to intervene in any action in which the Secretary of Labor is entitled to do so under the provisions of ERISA section 502(h). The initial pleadings submitted on behalf of the Secretary will be forwarded to the Division Counsel/Associate Chief Counsel (TEGE). Further pleadings in such matters will be furnished upon request.

V. Tracking/Feedback

Section V.A

Agencies will conduct formal referral reconciliations twice yearly. Agencies are not precluded from communicating more frequently on referrals as needed.

Section V.D (added.)

The IRS Director of EP Examinations (or Representative) and the EBSA's Director of Enforcement (or Representative) will meet at the start of each fiscal year but no later than October 31st to review work plan and initiatives for the fiscal year (i.e. programs, data mining, projects).

Section V.E (added)

IRS-EP Examinations and DOL-EBSA Local Contact List will be updated annually. Agencies are not precluded from updating list more frequently as needed. (Appendix J)

VI. EBSA Requests for Tax Return Information from the IRS

Section VI.B

EBSA personnel will forward IRC Section 6103(1)(2) requests electronically to tege.ep.class.dol@irs.gov permitting that the electronic software meets the encryption level

security FIPS 140-2. IRC 6103(l)(2) information will be provided by electronic media (i.e. scanned originals, facsimile and transcripts).

/s/ 10/24/2013
Robert S. Choi
Director, Employee Plans
Tax Exempt and Government Entities Division
Internal Revenue Service

/s/ 10/23/2013
Alan D. Lebowitz
Deputy Assistant Secretary for Program Operations
Employee Benefits Security Administration

IRS – EP & DOL - EBSA Local Contacts

EP Northeast Area Office – Contact: (Name) Area Office Manager or Representative (Telephone Number)

Name	Office	Representative	Telephone Number
Name	EBSA Boston Regional Office	Regional Director or Authorized Representative	(617) 565-9600
Name	EBSA New York Regional Office	Regional Director or Authorized Representative	(212) 607-8600

EP Mid Atlantic Area Office – Contact: Area Office Manager or Representative (Telephone Number)

Name	Office	Representative	Telephone Number
Name	EBSA Philadelphia Regional Office	Regional Director or Authorized Representative	(215) 861-5300
Name	EBSA Cincinnati Regional Office	Regional Director or Authorized Representative	(859) 578-4680

EP Gulf Coast Area Office – Contact: Area Office Manager or Representative (Telephone Number)

Name	Office	Representative	Telephone Number
Name	EBSA Atlanta Regional Office	Regional Director or Authorized Representative	(404) 302-3900
Name	EBSA Dallas Regional Office	Regional Director or Authorized Representative	(972) 850-4500

EP Gulf Coast Area Office – Contact: Area Office Manager or Representative (Telephone Number)

Name	Office	Representative	Telephone Number
Name	EBSA Kansas City Regional Office	Regional Director or Authorized Representative	(816) 285-1800

EP Great Lakes Area Office – Contact: Area Office Manager or Representative (Telephone Number)

Name	Office	Representative	Telephone Number
Name	EBSA Chicago Regional Office	Regional Director or Authorized Representative	(312) 353-0900

EP Pacific Coast Area Office – Contact: Area Office Manager or Representative (Telephone Number)

Name	Office	Representative	Telephone Number
Name	EBSA Los Angeles Regional Office	Regional Director or Authorized Representative	(626) 229-1000
Name	EBSA San Francisco Regional Office	Regional Director or Authorized Representative	(415) 625-2481

(Figure 2)

Reorganization Plan No. 4 Of 1978

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, August 10, 1978, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

Employee Retirement Income Security Act Transfers

Section 101. Transfer to the Secretary of the Treasury

Except as otherwise provided in Sections 104 and 106 of this plan, all authority of the Secretary of Labor to issue the following described documents pursuant to the statutes hereinafter specified is hereby transferred to the Secretary of the Treasury:

(a) regulations, rulings, opinions, variances and waivers under Parts 2 and 3 of Subtitle B of Title I and subsection 1012(c) of Title II of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001) (hereinafter referred to as "ERISA"), Except for sections and subsections 201,203(a)(3)(B), 209, and 301(a) of ERISA;

(b) such regulations, rulings, and opinions which are granted to the Secretary of Labor under Sections 404, 410, 411, 412, and 413 of the Internal Revenue Code of 1986, as amended (hereinafter referred to as the "Code"), Except for subsections 411(a)(3)(B) of the Code and the definitions of "collectively bargained plan" and "collective bargaining agreement" contained in subsections 404(a)(1)(B) and (a)(1)(C), 410(b)(2)(A) and (b)(2)(B), and 413(a)(1) of the Code; and

(c) regulations, rulings, and opinions under subsections 3(19), 3(22), 3(23), 3(24), 3(25), 3(27), 3(28), 3(29), 3(30), and 3(31) of Subtitle A of Title I of ERISA.

Section 102. Transfers to the Secretary of Labor

Except as otherwise provided in Section 105 of this Plan, all authority of the Secretary of the Treasury to issue the following described documents pursuant to the statutes hereinafter specified is hereby transferred to the Secretary of Labor:

(a) regulations, rulings, opinions, and exemptions under section 4975 of the Code,

Except for (i) subsections 4975(a), (b), (c)(3), (d)(3), (e)(1), and (e)(7) of the Code; (ii) to the extent necessary for the continued enforcement of subsections 4975(a) and (b) by the Secretary of the Treasury, subsections 4975(f)(1), (f)(2), (f)(4), (f)(5) and (f)(6) of the Code; and (iii) exemptions with respect to transactions that are exempt by subsection 404(c) of ERISA from the provisions of Part 4 of Subtitle B of Title I of ERISA; and

(b) regulations, rulings, and opinions under subsection 2003(c) of ERISA, Except for subsection 2003(c)(1)(B).

Section 103. Coordination Concerning Certain Fiduciary Actions

In the case of fiduciary actions which are subject to Part 4 of Subtitle B of Title I of ERISA, the Secretary of the Treasury shall notify the Secretary of Labor prior to the time of commencing any proceedings to determine whether the action violates the exclusive benefit rule of subsection 401(a) of the Code, but not later than prior to issuing a preliminary notice of intent to disqualify under that rule, and the Secretary of the Treasury shall not issue a determination that a plan or trust does not satisfy the requirements of subsection 401(a) by reason of the exclusive benefit rule of subsection 401(a), unless within 90 days after the date on which the Secretary of the Treasury notifies the Secretary of Labor of pending action, the Secretary of Labor certifies that he has no objection to the disqualification or the Secretary of Labor fails to respond to the Secretary of the Treasury. The requirements of this paragraph do not apply to the case of any termination or jeopardy assessment under sections 6851 or 6861 of the Code that has been approved in advance by the Commissioner of Internal Revenue, or, as delegated, the Assistant Commissioner for Employee Plans and Exemption Organizations.

Section 104. Enforcement by the Secretary of Labor

The transfers provided for in Section 101 of this Plan shall not affect the ability of the Secretary of Labor, subject to the provisions of Title III of ERISA relating to jurisdiction, administration, and enforcement, to engage in enforcement under Section 502 of ERISA or to exercise the authority set forth under Title III of ERISA, including the ability to make interpretations necessary to engage in such enforcement or to exercise such authority. However, in bringing such actions and in exercising such authority with respect to Parts 2 and 3 of Subtitle B of Title I of ERISA and any definitions for which the authority of the Secretary of Labor is transferred to the Secretary of the Treasury as provided in Section 101 of this Plan, the Secretary of Labor shall be bound by the regulations, rulings, opinions, variances, and waivers issued by the Secretary of the Treasury.

Section 105. Enforcement by the Secretary of the Treasury

The transfers provided for in Section 102 of this Plan shall not affect the ability of the Secretary of the Treasury, subject to the provisions of Title III of ERISA relating to jurisdiction, administration, and enforcement, (a) to audit plans and employers and to enforce the excise tax provisions of subsections 4975(a) and 4975(b) of the Code, to exercise the authority set forth in subsections 502(b)(1) and 502(h) of ERISA, or to exercise the authority set forth in Title III of ERISA, including the ability to make interpretations necessary to audit, to enforce such taxes, and to exercise such authority; and (b) consistent with the coordination requirements under Section 103 of this Plan, to disqualify, under section 401 of the Code, a plan subject to Part 4 of Subtitle B of Title I of ERISA, including the ability to make the interpretations necessary to make such disqualification. However, in enforcing such excise taxes, and, to the extent applicable, in disqualifying such plans the Secretary of the Treasury shall be bound by the regulations, rulings, opinions, and exemptions issued by the Secretary of Labor pursuant to the authority transferred to the Secretary of Labor as provided in Section 102 of this Plan.

Section 106. Coordination for Section 101 Transfers

(a) The Secretary of the Treasury shall not exercise the functions transferred pursuant to Section 101 of this Plan to issue in proposed or final form any of the documents described in subsection (b) of this Section in any case in which such documents would significantly impact on or substantially affect collectively bargained plans unless, within 100 calendar days after the Secretary of the Treasury notifies the Secretary of Labor of such proposed action, the Secretary of Labor certifies that he has no objection or he fails to respond to the Secretary of the Treasury. The fact of such notification, except for such notification for documents described in subsection (b)(iv) of this Section, from the Secretary of the Treasury to the Secretary of Labor shall be announced by the Secretary of Labor to the public within ten days following the date of receipt of the notification by the Secretary of Labor.

(b) The documents to which this Section applies are:

(i) amendments to regulations issued pursuant to subsections 202(a)(3), 203(b)(2) and (3)(A), 204(b)(3)(A), (C) and (E), and 210(a)(2) of ERISA, and subsections 410(a)(3) and 411(a)(5), (6)(A), and (b)(3)(A), (C), and (E), 413(b)(4) and (c)(3) and 414(f) of the Code;

(ii) regulations issued pursuant to subsections 204(b)(3)(D), 302(c)(8), and 304(a) and (b)(2)(A) of ERISA, and subsections 411(b)(3)(D), 412(c)(8), (e), and (f)(2)(A) of the Code; and

(iii) revenue rulings (within the meaning of 26 CFR Section 601.201(a)(6)), revenue procedures, and similar publications if the rulings, procedures and publications are issued under one of the statutory provisions listed in (i) and (ii) of this subsection; and

(iv) rulings (within the meaning of 26 CFR Section 601.201(a)(2)) issued prior to the issuance of a published regulation under one of the statutory provisions listed in (i) and (ii) of this subsection and not issued under a published Revenue Ruling.

(c) For those documents described in subsections (b)(i), (b)(ii) and (b)(iii) of this Section, the Secretary of Labor may request the Secretary of the Treasury to initiate the actions described in this Section 106 of this Plan.

Section 107. Evaluation

On or before April 30, 1980, the President will submit to both Houses of the Congress an evaluation of the extent to which this Reorganization Plan has alleviated the problems associated with the present administrative structure under ERISA, accompanied by specific legislative recommendations for a long-term administrative structure under ERISA.

Section 108. Incidental Transfers

So much of the personnel, property, records, and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this Plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate agency, or component at such time or times as the Director of the Office of Management and Budget shall provide, except that no such expended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for terminating the affairs of any agencies abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purpose of this Reorganization Plan.

Section 109. Effective Date

The provisions of this Reorganization Plan shall become effective at such time or times, on or before April 30, 1979, as the President shall specify, but not sooner than the earliest time allowable under Section 906 of Title 5, United States Code.

(Figure 3)

Memorandum of Understanding Among the U.S. Department of the Treasury, the U.S. Department of Labor, and the U.S. Department of Health and Human Services

Article I

Introduction and Purpose

The Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Pub. L. No. 104-191, was enacted on August 21, 1996. Titles I and IV of HIPAA amended the Internal Revenue Code, the Employee Retirement Income Security Act of 1974, and the Public Health Service Act to add provisions to improve access, portability and continuity of health insurance coverage in the group and individual health insurance markets.

Section 104 of HIPAA directs the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services to enter into an interagency memorandum of understanding. Section 104 requires that the memorandum of understanding ensure that regulations, rulings, and interpretations relating to the changes made by Subtitle A of Title I and section 401 of Title IV of HIPAA over which two or more Secretaries have responsibility ("shared provisions") are administered so as to have the same effect at all times. Section 104 also requires the coordination of policies relating to enforcing the shared provisions in order to avoid duplication of enforcement efforts and to assign priorities in enforcement. This memorandum of understanding (MOU) is adopted pursuant to section 104 of HIPAA.

This MOU formally establishes an interagency agreement among the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services to ensure coordination in the manner and for the purposes set forth in section 104 of

HIPAA. The Departments also intend to follow the process set forth in this MOU, to the extent appropriate, with regard to interpretations and enforcement of the provisions of the Newborns' and Mothers' Health Protection Act of 1996, the Mental Health Parity Act of 1996, and Subsequent Legislation. In addition, the Departments of Labor and HHS agree to follow the process set forth in this MOU, to the extent appropriate, with regard to interpretations and enforcement of the provisions of the Women's Health and Cancer Rights Act of 1998.

Article II

Authority

This MOU is entered pursuant to the authority set forth in section 104 of HIPAA, Pub. L. No. 104-191.

Article III

Definitions

- "Agency" refers to a component of a Department. For purposes of the MOU, this includes the Internal Revenue Service (IRS) within the Department of the Treasury, the Pension and Welfare Benefits Administration (PWBA) within the Department of Labor, and the Health Care Financing Administration (HCFA) within the Department of Health and Human Services.
- "Code" refers to the Internal Revenue Code of 1986.
- "Committee" refers to the Coordinating Committee described in Article V.
- "Department" refers to each of the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services.
- "Departments" refers collectively to the Department of the Treasury, the Department of Labor, and the Department of Health and Human Services.
- "ERISA" refers to the Employee Retirement Security Act of 1974.
- "HCFA" refers to the Health Care Financing Administration.
- "HHS" refers to the Department of Health and Human Services.
- "Interpretations" refers to any written Agency or Departmental statement, guidance ruling, pronouncement, or explanation regarding a statute described in Article I of the MOU that is not a Regulation. Interpretations include statements such as Revenue Rulings, Technical Bulletins/Releases, Advisory Opinions, and similar Agency or Departmental releases that are binding on the issuing Agency or Department. Interpretations also include policy guidance, such as information letters, bulletins and policy letters, whether or not such guidance is binding on the issuing Agency or Department.
- "IRS" refers to the Internal Revenue Service.
- "Labor" and "DOL" refer to the Department of Labor.
- "MHPA" refers to the Mental Health Parity Act of 1996.
- "NMHPA" refers to the Newborns' and Mothers' Health Protection Act of 1996.

- "PHS Act" refers to the Public Health Service Act.
- "PWBA" refers to the Pension and Welfare Benefits Administration.
- "Regulations" refers to rules that are promulgated in accordance with the provisions of the Administrative Procedure Act applicable to substantive rules and that are published in the Federal Register and codified in the Code of Federal Regulations.
- "Related Acts" refers to MHPA and NMHPA.
- "Subsequent Legislation" refers to future federal legislative enactments concerning health care which result in two or more of the Departments having shared jurisdiction.
- "Treasury" refers to the Department of the Treasury.
- "WHCRA" refers to the Women's Health and Cancer Rights Act of 1998.

Article IV

Background

Subtitle A of Title I and section 401 of Title IV of HIPAA are intended to improve the availability of private health insurance by increasing portability, access and renewability in the group market. HIPAA establishes limits on the imposition of preexisting condition exclusions and generally prohibits group health plans and health insurance issuers from discriminating against individuals based on health status when determining eligibility to enroll in a group health plan or to obtain related insurance or in deciding the amount of premium to be charged to similarly situated individuals. Employers may not be denied continued access to multiemployer plans, or multiple employer welfare arrangements, except for certain reasons set forth in HIPAA.

HIPAA and Related Acts amended three federal statutes: the Code, administered by the Treasury through IRS; ERISA, administered by DOL through PWBA; and the PHS Act, administered by HHS through HCFA. Under the Code, as amended by HIPAA and Related Acts, the Treasury has authority over group health plans (including church plans) and their sponsors, and IRS enforced the requirements of HIPAA and Related Acts through the imposition of an excise tax. Under ERISA, as amended by HIPAA and Related Acts, DOL has increased authority over group health plans that are subject to Part 7 of subtitle B of Title I of ERISA. Health insurance issuers offering health insurance coverage in connection with such plans are also subject to Part 7. However, in accordance with the provisions of HIPAA, only participants and beneficiaries (and not DOL) may bring an enforcement action against health insurance issuers under Part 7.

Under the PHA Act, as amended by HIPAA and Related Acts, HCFA has authority over health insurance issuers and nonfederal governmental plans. If a State fails to substantially enforce Parts A and B of Title XXVII of the PHS Act, or requests that HCFA enforce the provisions or requirements, HCFA enforces the group and individual market requirements by imposing a civil monetary penalty on issuers that fail to comply with HIPAA's requirements in that State.

There are differences in some of the amendments that HIPAA and Related Acts made to the three statutes. In some instances, changes were made to only one of the federal statutes with no counterpart in the other two statutes. Section 104 of HIPAA requires the Secretaries of the Treasury, Labor and HHS to coordinate in the areas of parallel responsibility relating to the shared provisions of HIPAA.

Article V

Scope of Work

The Departments agree to assign representatives to work closely to ensure that all Interpretations, Regulations and enforcement strategies relating to shared provisions of Subtitle A of Title I and section 401 of Title IV of HIPAA and Related Acts will be developed and implemented in a coordinated manner. All such Interpretations, Regulations and enforcement strategies will be administered in a manner that promotes consistency in effect, that avoids duplication of enforcement efforts, and that reflects consideration of the appropriate priorities in enforcement.

In this regard, the Departments will continue to work together closely through regular joint meetings and frequent consultation, consistent with the process (*i.e.*, by mutual consent) that has been used in developing existing Regulations and Interpretations under HIPAA and Related Acts. Similarly, DOL and HHS will continue to work together closely through regular joint meetings and frequent consultation to develop Regulations and Interpretations under WHCRA.

In order to further effectuate this coordination, the Treasury, IRS, DOL, and HHS each will name a "Department Designee" to serve on a Coordinating Committee. The Committee's task will be to ensure the identification and coordination of policies involving areas of shared responsibility under HIPAA and Related Acts to maintain consistency in the application of these provisions that amend the Code, ERISA, and the PHS Act.

The Committee also will take steps to maximize the efficiency of Agency enforcement efforts, including developing the terms of further agreement(s), as necessary. The Committee members shall meet, quarterly, or at such times as they may agree, to review and discuss relevant pending Regulations and Interpretations to evaluate whether the position(s) set forth therein reflect a coordinated position. Committee meetings will be held at locations agreed to by the Committee members. Upon agreement of the Committee members, such meetings may be held by conference call. Each Department will assume the costs associated with the participation of its respective Committee members.

Timely and prompt consensus will be sought in the development and administration of all Interpretations affected by this MOU. Any Department Designee can bring any matter

subject to the MOU before the Committee. The Department Designees serving on the Committee will attempt to reach consensus on issues within 45 days (except in unusual circumstances) after such issues have been formally presented (including a written summary) at a meeting of the Committee. If consensus on particular issues is reached by the members of the Committee, appropriate clearance will be initiated within each Department.

Article VI

Coordinated Enforcement Strategy

Generally, the Departments intend to continue the current informal arrangements that have developed for cooperation and collaboration in the handling of inquiries arising under HIPAA, MHPA, NMHPA, and WHCRA. In addition, pursuant to Section 104(2) of HIPAA and this MOU, the Committee, and any appropriate individuals designated by the Agencies or Departments, shall develop a coordinated enforcement strategy that avoids duplication of enforcement efforts and assigns priorities in enforcement. The Agencies or Departments shall first designate, within six months of the execution of this MOU, individuals who are to work with the Committee in developing the enforcement strategy. This group shall also devise a written operational agreement for the sharing of information that is related to enforcement cases among the Departments. Moreover, the operational agreement may address procedures for the referral of cases, the development of audit checklists and training materials, and the coordination of public affairs information. The operational agreement may also describe the individuals within each Department who are responsible for implementing the sharing of information.

Subject to applicable legal restrictions (including section 6103 of the Code), the Departments agree, absent exigent circumstances, to notify each other in writing (through the Department Designee) prior to the commencement of any administrative or judicial proceeding on matters within the scope of this MOU and to inform each other of the final action resulting from such proceeding.

Nothing in this section shall be construed to affect the enforcement authority that HIPAA or Related Acts confers on any Department, including enforcement concerning a matter as to which a Department has given or received the information or notice described herein, nor shall this paragraph be construed to preclude the Departments from agreeing to different arrangements on a case by case basis.

Article VII

Confidentiality of Information

The Departments agree that any information shared or disclosed pursuant to this MOU will be held in strict confidence and may be used only for purposes consistent with this

MOU or as otherwise permitted by law. All requests by parties other than the Departments for disclosure of information shall be coordinated with the Agency that initially compiled or collected the information, provided that no Agency shall disclose information initially compiled by another Agency to the public without the approval of the appropriate Agency or Department unless the Agency is required by law to do so (e.g., Freedom of Information Act (FOIA), 5 U.S.C. 552; Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2), in which event it will notify the appropriate Department or Agency in writing of its intent to disclose such information. Nothing in this MOU shall be deemed to confer rights on any party other than the Departments as a result of any act or omission by any Agency or Department with respect to its obligations under this MOU.

Article VIII

Duration of Agreement

This MOU will become effective upon the date of the final signature and may be amended by written agreement of the undersigned. It will remain in effect until amended by the parties, or until terminated by any of the parties upon 30 days written notice to the other parties and, upon the agreement of the Departments, shall apply to Subsequent Legislation.

Article IX

Officials Responsible for MOU

The appropriate Departmental officials will appoint their respective Department Designees to the Committee within 30 days after the signing of this MOU and will appoint any successors in a timely manner.

We, the undersigned, do hereby agree to the foregoing provisions of this MOU.

Dated: April 8, 1999.
Donald C. Lubick,
Assistant Secretary for Tax Policy, Department of the Treasury.

We, the undersigned, do hereby agree to the foregoing provisions of this MOU.

Dated: April 21, 1999.
Robert E. Wenzel,
Deputy Commissioner, Internal Revenue Service, Department of the Treasury.

We, the undersigned, do hereby agree to the foregoing provisions of this MOU.

Dated: March 17, 1999.

Richard M. McGahey,

Assistant Secretary, Pension and Welfare Benefits Administration, Department of Labor.

We, the undersigned, do hereby agree to the foregoing provisions of this MOU.

Dated: March 30, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration, Department of Health and Human Services.

Footnotes

1. The terminology of the Code is slightly different from that of Title I of ERISA. Under Title I, the terms "employee pension benefit plan" and "pension plan" refer to all retirement plans within the definition in section 3(2). Under the Code, the term "pension plan" is used to refer only to defined benefit, money purchase and target benefit plans. Terms such as "profit sharing plans" and "savings and thrift plans" are used in the Code to refer to other types of retirement plans any of which would be called a "pension plan" under Title I.