

Release of Information

1. Release of Information to News Media and the Public.

- a. The Department's Office of Public Affairs writes all news releases. Regional public affairs staff will prepare news announcements for decentralized litigation with the respective field office and the Regional Solicitor's Office. EBSA field offices are responsible for coordinating the release of information concerning criminal prosecutions with the U.S. Attorney's Office(s) in their jurisdiction. The field office is responsible for forwarding copies of the relevant court documents and the issued news release to the National Office. Public affairs staff will handle follow-up inquiries on news announcements.
- b. In the case of questions from news media or the public concerning open investigations, employees should not confirm or deny the existence or consideration of an investigation unless special circumstances warrant otherwise. If the RO is satisfied that knowledge of an open investigation is in the public domain, the Regional Director (RD) or Deputy Regional Director may confirm the existence of an investigation; however, no EBSA staff should comment on the investigation. A RO should direct requests for a variance from this policy to the Director of Enforcement.

2. Release of Information Pursuant to ERISA §504.

- a. The Secretary can provide information concerning a matter that may be the subject of an investigation to any person actually affected by that matter, and to any federal department or agency. However, any information obtained by the Secretary pursuant to section 6103 of the Internal Revenue Code is available only in accordance with regulations prescribed by the Secretary of the Treasury.¹ (See paragraph 7 for treatment of IRS information.)
- b. EBSA may not disclose any information concerning any matter under an open investigation without RD approval. Information concerning any matter that is the subject of a closed investigation may be disclosed pursuant to ERISA §504, subject to the restrictions imposed by various statutes and rules. These statutes and rules include: the Freedom of Information Act (see paragraph 4), the Right to Financial Privacy Act (see paragraph 5), the Privacy Act (see paragraph 6), the Internal Revenue Code (see paragraph 7), Rule 6(e) of the Federal Rules of Criminal Procedure (see paragraph 8), and 18 U.S.C. §1905 prohibiting disclosure of confidential information (Figure 1).

3. Release of Information Pursuant to Subpoena.

The Department's regulations set forth at 29 CFR Part 2, Subpart C concern responses to subpoenas, orders, or other demands which call for the production or disclosure of material contained in Departmental files, or information relating to material contained in such files, in connection with proceedings to which the Department is not a party. An employee who receives a subpoena to produce material or disclose information must immediately notify the appropriate Associate or Regional Solicitor's Office by forwarding a copy of the subpoena,

order, or other demand calling for the production or disclosure of material for evaluation. In addition, the RO should notify OE when it receives a third-party subpoena.

Investigators/Auditors shall not comply with a subpoena except upon approval of the Deputy Solicitor of Labor. Even in the face of a court order directing immediate compliance with a subpoena, there is no disclosure of information without authorization from the Deputy Solicitor. The Solicitor's Office will represent any employee ordered by a court to comply with a subpoena.

4. Release of Information Pursuant to the Freedom of Information Act.

a. The Freedom of Information Act (FOIA), 5 U.S.C. §552, requires federal agencies to make records promptly available to any person whose request reasonably describes the records sought and who complies with procedures for making such requests. Departmental regulations on FOIA are at 29 C.F.R. Part 70.

Normally an agency must respond to a request within 20 business days. If an agency cannot respond within 20 business days, the agency should get an extension of the deadline from the requester by phone, then confirm in writing.

b. Federal agencies are not required to disclose material that falls within the nine exemptions set forth in FOIA. These exemptions are for material concerning:

1. National security or foreign policy;
2. Internal agency personnel rules and practices;
3. Specific exemptions provided for by statute;
4. Trade secrets and privileged or confidential commercial and financial information;
5. Inter-agency and intra-agency memoranda and letters not available by law to a party in litigation with the agency;
6. Personnel and medical files;
7. Law enforcement records or information;
8. Financial regulatory matters; and
9. Technical information about wells.

Exemptions most relevant to Investigators/Auditors are 4 through 8. See paragraph 5 for a discussion of the exemption dealing with information from financial regulatory agencies.

c. By Executive Order 12600 and Departmental regulations 29 CFR 70.26, Exemption 4 establishes procedures required before deciding to release records. When the Department receives a claim of confidential commercial information from a party providing information to the Department, the RO must include a copy of the request in the case file. In addition, the RO should forward a copy of the request to OE.

The Department should coordinate with appropriate RSOL when responding to FOIA requests involving information protected by Exemption 4.

d. The RD and DS, by regulation, are designated FOIA Disclosure Officers, with signatory authority for FOIA responses.

5. Release of Information Obtained from Financial Regulatory Agencies

a. Exemption 8 of FOIA permits officials to withhold materials related to examination, operations, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions. Under Departmental regulations, officials must refuse to disclose information from financial regulatory agencies unless there is express authority permitting it.

b. The Right to Financial Privacy Act (RFPA), 12 U.S.C. §3401 et seq., prohibits any agency or department of the United States from obtaining financial records of a customer from a financial institution unless the records are reasonably described, and the disclosure is authorized by the customer, or the records are disclosed in response to an administrative subpoena that meets specific requirements as set forth in the Act. (See **paragraph 14 of the Subpoena** section for a more complete explanation of the RFPA.) Once a government agency obtains such financial information, it may transfer the financial records to another federal agency only if an official of the transferring agency certifies in writing that there is reason to believe that the records are relevant to a legitimate law enforcement inquiry of the receiving agency. In addition, within 14 days after any transfer, the agency must notify the customer of the transfer unless the government has obtained a court order delaying notice. See **Figure 2** for a model notice letter.

Transfer restrictions do not apply to intra-departmental transfers or to transfers from state or local government agencies to federal agencies or from federal to state agencies.

6. Release of Information Subject to the Privacy Act.

a. The Privacy Act, 5 U.S.C. §552a, provides that, with certain exceptions, an agency must not disclose any record contained in a system of records from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual unless it has permission of the individual to whom the record pertains. The Privacy Act sets forth criminal penalties for officials who willfully disclose such material to a person or agency not entitled to receive it. Departmental regulations concerning the Privacy Act are at 29 C.F.R. Part 70a.

b. The Privacy Act also provides that any agency that maintain a system of records containing personal information that retrieves by name, social security number, or some other identifying number, symbol, or identifying particular, must ensure that administration of the file complies with Privacy Act requirements. The Department has taken the position that Privacy Act provisions exempt its investigatory files from these requirements because the Department compiles the investigatory material for law enforcement purposes. In addition, Departmental regulations deny disclosure to anyone, including the individual subject of the record, of information compiled in reasonable anticipation of a civil action or proceeding.

c. RDs or DSs have primary responsibility for Privacy Act compliance.

7. Release of Information Obtained from the IRS.

a. IRC section 6103 generally prohibits the IRS from disclosing federal tax returns and return information (Federal Tax Information). However, exceptions to the general prohibition allow the IRS to furnish tax returns and return information to the Department for the enforcement of Title I of ERISA. As a condition of receiving federal tax returns and return information, the Department must establish and maintain, to the satisfaction of the IRS, certain safeguards designed to prevent unauthorized uses of the information and to protect the confidentiality of that information.

b. Any Department employee who illegally discloses tax information received from the IRS may be subject to criminal penalties under IRC section 7213 (a \$5,000 fine, five years imprisonment, or both), as well as civil damages under IRC section 7431 (Figure 3). These civil and criminal penalties apply even for unauthorized disclosures made after ending employment with the Department.

All employees should ensure that they do not disclose tax information to unauthorized persons or use such information for unauthorized purposes. Employees may disclose tax returns and return information only to the extent necessary to conduct an investigation or prepare for litigation. Among those persons to whom returns and return information may be disclosed for such purposes are other Department employees, employees of other federal agencies, and court reporters. In addition, any Department employee who performs an unauthorized inspection of tax information received from the IRS may be subject to criminal penalties under IRC section 7213A (a \$1,000 fine, one year imprisonment, or both).

c. If during any investigation, the RD or DS believes that information in the possession of the IRS will help in carrying out the provisions of Title I, they can send a written request to the IRS using the format in Figure 4. Copies of the requests should be retained a minimum of five years.

d. Access to federal tax information must be strictly on a need-to-know basis. A variety of internal safeguards can accomplish restricted access, including:

- i. Keep federal tax information separate from other information as much as possible. If impractical, clearly label files to indicate that federal tax information is included.
- ii. Set up and maintain any files containing federal tax information (including the IRS Form 6212-B Checksheet) in a secured area. Each office holding IRS 6103 information must maintain an EBSA Form 534 (IRS Safeguard Inventory and Destruction Log). The files should only be accessible by authorized individuals and all areas where federal tax information is present should be locked during non-duty hours.
- iii. Do not mix federal tax information with other information in a way that could inadvertently compromise its confidentiality. For example, do not include any federal tax information when giving documents to a clerk/typist, unless it is essential to their duties.

Employees must maintain all federal tax returns and tax information in accordance with the procedures set forth in the **Release of Information section**.

- e. After using federal tax information, either return the information (including any copies made) to the office from where originally obtained or destroy the information by burning, mulching, pulping, shredding, or disintegrating.

These safeguards cease to apply to any return or return information disclosed in the course of any judicial or administrative proceeding and made a part of the public record thereof.

8. Documents Obtained from a Grand Jury.

- a. Rule 6(e) of the Federal Rules of Criminal Procedure prohibits the disclosure of matters occurring before a grand jury. A knowing violation of the rule may be punished as contempt of court. A violation of the rule can jeopardize an investigation to the extent that civil litigation may become impossible.
- b. Employees must maintain in a secure manner all documents or transcripts of a grand jury obtained during an investigation. Employees may not disclose such information to anyone, including other Department employees, unless the court authorizes that person to have access to the material. See section on Criminal Investigations.

9. Release of Documents to Other Government Agencies.

At times, another government agency may request documents from EBSA. If there is a Memorandum of Understanding (MOU) with that agency, it should follow the procedures identified in the MOU. If there is no MOU, the other agency should submit an access request

letter to EBSA. If appropriate, the agency and EBSA should execute a common interest agreement.

(Figure 1)

18 U.S.C. 1905. Disclosure of Confidential Information Generally

Whoever, being an officer or employee of the United States or of any department or agency thereof, any person acting on behalf of the Federal Housing Finance Agency, or agent of the Department of Justice as defined in the Antitrust Civil Process Act (15 U.S.C. 1311-1314), or being an employee of a private sector organization who is or was assigned to an agency under chapter 37 of title 5, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment.

(Figure 2)

Notice of Transfer of Financial Records

Dear (Name of Customer):

Copies of, or information contained in, your financial records lawfully in the possession of the Employee Benefits Security Administration, U.S. Department of Labor, have been furnished to _____ (Government Agency) pursuant to the Right to Financial

Privacy Act of 1978 for the following purpose(s):

If you believe that this transfer has not been made to further a legitimate law enforcement inquiry, you may have legal rights under the Right to Financial Privacy Act of 1978 or the Privacy Act of 1974.

Sincerely,
Regional Director

(Figure 3)

Unauthorized Disclosure of Information

Sec. 7213(a)(1) [Internal Revenue Code of 1986]

Federal employees and other persons -- It shall be unlawful for any officer or employee of the United States or any person described in section 6103(n) (or an officer or employee of any such person), or any former officer or employee, willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)). Any violation of this paragraph shall be a felony punishable upon conviction by a fine in an amount not exceeding \$5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution, and if such offense is committed by any officer or employee of the United States, he shall, in addition to any other punishment, be dismissed from office or discharged from employment upon conviction for such offense.

Civil Damages for Unauthorized Inspection or Disclosure of Returns and Return Information

Sec. 7431(a)(1) [Internal Revenue Code of 1986]

Inspection or disclosure by employee of United States -- If any officer or employee of the United States knowingly, or by reason of negligence, inspects or discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103, such taxpayer may bring a civil action for damages against the United States in a district court of the United States.

(Figure 4)

Internal Revenue Service
Manager, EP Classification
31 Hopkins Plaza
Room 1550
Baltimore, MD 21201
RE: Name and address of plan
EIN/PN
EBSA Case No.

Dear _____:

In connection with the administration of Title I of the Employee Retirement Income Security Act of 1974 (ERISA), and a current investigation conducted by the Employee Benefits Security Administration (EBSA) it is requested that you make the documents listed in the attached available to this office, pursuant to section 6103(1)(2) of the Internal Revenue Code.

I would appreciate your furnishing the requested documents and, if necessary, discussing their contents with the following individuals of the Department of Labor (select as appropriate and state proper names):

Regional Office, EBSA

Regional Director
Deputy Regional Director
District Supervisor
Supervisory Investigator

Investigator/Auditor

National Office, EBSA

Director of Enforcement
Chief, Division of Field Operations and Support, Office of Enforcement
Chief, Division of Criminal Investigations, Office of Enforcement
Investigator/Auditor

Office of the Solicitor

Solicitor
Associate Solicitor, Plan Benefits Security Division (PBSD)
Deputy Associate Solicitor, PBSD
Counsel for Regulations, PBSD
Counsel for General Litigation, PBSD
Counsel for Fiduciary Litigation, PBSD
Counsel for Appellate and/or RSOL Decentralized Litigation, PBSD
Staff Attorney, PBSD
Regional Solicitor
Staff Attorney, RSOL

This information is necessary and is being requested for the purpose of the administration of Title I of ERISA. It is understood that the information furnished by the Internal Revenue Service will be used strictly in accordance with, and subject to the limitations of, the disclosure provisions of the Internal Revenue Code pertaining to confidentiality and taxpayer rights to privacy. The Department of Labor representatives are also aware of the penalty provisions of section 7213 of the Internal Revenue Code and section 1905 of Title 18 of the United States Code with respect to their use of this information.

Sincerely,
Regional Director/District Supervisor
cc: Director of Enforcement

Attachment to Request for Federal Tax Returns

(A) At this time, a request is hereby made for IRS transcripts of the tax information/forms listed below.

Or

A request is hereby made for copies of the tax information/forms listed below. These copies are being requested rather than transcripts because of (Investigators should enter court proceedings, other imminent events and related dates).

Taxpayer Name:

Taxpayer Address:

Taxpayer TIN (SSN or EIN):

Federal Tax Information/Form Requested:

Plan/Tax Year(s) Requested:

Taxpayer Name:

Taxpayer Address:

Taxpayer TIN (SSN or EIN):

Federal Tax Information/Form Requested:

Plan/Tax Year(s) Requested:

Taxpayer Name:

Taxpayer Address:

Taxpayer TIN (SSN or EIN):

Federal Tax Information/Form Requested:

Plan/Tax Year(s) Requested:

Attachment to Request for IRS Reports, Correspondences & Documents

(B) A request is hereby made for copies of the following reports and/or correspondences for the plan/sponsor/fiduciary listed below: [Choose from below as applicable.] (Investigators should provide as much detail as known, such as IRS agent name, and IRS division or group.)

1. Any reports, reports of investigation or interview, or memoranda related to the below-referenced plan, its sponsor or fiduciaries and any work papers related thereto or related to any audit of the above-referenced plan or its sponsors, including, but not limited to, any conclusive findings developed by the IRS Office as a result of its investigation and review. The reports of investigation, interviews or memoranda requested include information relating to any exclusive benefit rule/fiduciary disqualification of the plan.
2. Any correspondence or memoranda reflecting communications between the IRS and the below-referenced plan, its sponsors or its fiduciaries in regard to any of the above, including, but not limited to, any tax exempt status and IRS responses.
3. Reports or documents of any nature, plus attachments, filed by or obtained from the below-referenced plan, its sponsors, its fiduciaries, and any other persons affiliated with the above-referenced plan.

[Complete the appropriate items below.]

Plan/Sponsor/Fiduciary Name:

Address:

Taxpayer TIN (SSN or EIN)

Plan/Tax Year(s) Requested (if known):

Plan/Sponsor/Fiduciary Name:
Address:
Taxpayer TIN (SSN or EIN)
Plan/Tax Year(s) Requested (if known):
Plan/Sponsor/Fiduciary Name:
Address:
Taxpayer TIN (SSN or EIN)
Plan/Tax Year(s) Requested (if known):
Plan/Sponsor/Fiduciary Name:
Address:
Taxpayer TIN (SSN or EIN)
Plan/Tax Year(s) Requested (if known):
Plan/Sponsor/Fiduciary Name:
Address:
Taxpayer TIN (SSN or EIN)
Plan/Tax Year(s) Requested (if known):