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.**

   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.

   a. **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.

   b. **EP Offices.** The EP segment covers five geographic examination areas based on customer locations, workforce size, and employee locations, and two specialized offices.

      i. **EP** Examinations and the **geographic examination areas:**

Office	Covered States
Cincinnati, OH	Pennsylvania, North & South Carolina, Maryland, DC, Ohio, Virginia, West Virginia
Chicago, IL	Missouri, Kentucky, Wisconsin, Michigan, Minnesota, Indiana, Illinois, Iowa, South Dakota, North Dakota, Nebraska
Plantation, FL	Texas, Louisiana, Florida, Arkansas, Kansas, Georgia, Tennessee, Oklahoma, Alabama, Arizona
Brooklyn, NY	New York, New Jersey, Massachusetts, Connecticut, Maine, New Hampshire
Portland, OR	Colorado, California, Oregon, Washington, New Mexico, Utah, Arizona, Nevada

      ii. Special Function EP Offices

Office	Function
Richmond, VA	This group reviews all EP related referrals from DOL
Baltimore, MD	Functional Assignment Coordinator (FAC)

iii. **EP Contact Information.** Employee Plan Customer Service:[1]

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 benefit[6] 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 their 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 209[8] 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 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.[10]

    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.[11]

21. **Pooled Employer Plans.** The Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) removed possible legal barriers to the broader use of multiple employer plans by authorizing a new type of ERISA-covered defined contribution plan—a "pooled employer plan" operated by a "pooled plan provider." The SECURE Act amended section 3(2) of ERISA to authorize these pooled employer plans, which offer benefits to the employees of multiple unrelated employers without the need for any commonality among the participating employers or other genuine organizational relationship unrelated to participation in the plan, thus enabling a type of open MEP. ERISA Section 3(44) establishes requirements for pooled plan providers, including a requirement to register with the Department and the Department of the Treasury before beginning operations as a pooled plan provider.

22. **Funding.** ERISA Title I, Part 3 establishes minimum funding standards for defined benefit pension plans[12], money purchase pension plans, and target benefit plans.[13]

23. **General Coordination of Examination Programs.**

a. The procedures established in the coordination agreement (Exhibit A) 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 will notify the IRS monthly of the names of plans selected for civil investigation. Regional Offices may individually send case listings to the Classification and Case Assignment area, they may collaborate and send one list that includes the names of all pension benefit plans selected for civil investigation, or the National Office may send one listing on behalf of all regions.

24. **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 Form 6212-A (Checksheet A) and Form 6212-B (Checksheet B) (Exhibit C). Each referring agency will complete the appropriate checksheet based on the information obtained through their investigation/examination, in accordance with the following procedure:

a. **Referral Checksheets.** EBSA Investigators/Auditors will complete Form 6212-A during their investigations. IRS examiners will complete Form 6212-B during their examinations. Any checksheet with answers marked 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.** Referrals to and from Classification and Case Assignment will use the IRS FTI Secure Data Transfer (SDT) Tool. Referrals which cannot be sent via SDT should be mailed to the EP Functional Assignment Coordinator (FAC) at 31 Hopkins Plaza, Room 1120, Baltimore, MD 21201.

c. **Referral Receipt.** An agency receiving a referral may request additional information within 20 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).

25. **EBSA Referrals to the IRS (Form 6121-A).**

a. EBSA Investigators/Auditors must complete Form 6121-A for retirement benefit civil investigations, except for cases involving the late remittance of employee contributions and loan repayments when the total amount in lost earnings in all the years is less than $5,000.00.

b. The referral must be made not later than:

   i. The date the investigation is closed by the Regional Office; or

   ii. The case is referred to the DOL Office of the Solicitor except in cases where there is a prohibited transaction.

   iii. If the referral is related to excise tax under IRC 4975 the referral will be made as soon as the violation is uncovered.

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 via the SDT and is available for review.

d. If the IRS returns a copy of Form 6212-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 Form 6212-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 IRS Classification and Case Assignment area if the EBSA RO makes any future referrals of the case to the DOL National Office. If the EBSA 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 where the amount in lost earnings is greater than $5,000.00, the following items must accompany the checksheet:

   i. Copy of all EBSA correspondence related to the alleged prohibited transaction (referred issue), including VC letters and responses;

   ii. Any other information that documents the reason for the referral;

   iii. Information in EBSA's possession concerning the fiduciary/ disqualified person's filing or intent to file for bankruptcy.

i. When EBSA uncovers a prohibited transaction and the total amount in lost earnings for all years is $5,000.00 or less, a Form 6212-A does not have to be completed and sent to the IRS.

26. **<u>IRS referrals to EBSA (Form 6121-B)</u>.**

a. IRS examiners must complete Form 6212-B as soon as possible in all IRS field examinations of retirement benefit plans. When an entry on a Form 6121-B requires the referral of the checksheet to EBSA, the IRS will refer the checksheet to EBSA.

b. Once EBSA receives a Form 6121-B, it will complete the "Action Taken" block, and return an electronically signed copy to FAC within 30 workdays of the referral. Form 6212-B will be transmitted by EBSA using the SDT.

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 complete an IRC 6103 request. Once the IRC 6103 request is forwarded to the IRS EP Area Office, the IRS will contact the EBSA investigator to coordinate information that EBSA needs to complete its planned action.

e. If the IRS refers a Form 6121-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. In all unagreed IRS cases involving Internal Revenue Code section 4971(a) and/or (b) or 4975, that are not resolved through voluntary compliance procedures, 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.

   i. The Form 6212-B should be sent to the EBSA Regional Director at least thirty (30) days prior to sending the report, including the thirty-day letter, to the taxpayer.

   ii. If EBSA declines to participate in the examination, the case file will be documented accordingly. Generally, IRS should not close a case until thirty (30) days from the date the Form 6212-B is sent to the Regional Director.

g. If the IRS refers a Form 6121-B to EBSA indicating that a violation of the minimum funding requirements of Internal Revenue Code Section 412 occurred, then the referral is a notice to the Department under ERISA Section 3002(b).

h. If the IRS refers a Form 6121-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.

i. 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.

27. **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 (or designee) will notify, in writing, the EBSA Regional Director that an employee plans case has been received in their 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 regarding disposition of the case, the matter will be forwarded to the IRS Headquarters Office, Chief Appeals to coordinate final resolution with the Director, EBSA Office of Enforcement, DOL.

28. **Litigation Notice.**

a. **IRS Litigation.**

i. The IRS Division Counsel (TEGEDC) (or designee) will forward to the Department Solicitor (Attention: Associate Solicitor, Plan Benefits Security Division), 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, and that presents issues relating to the administration of Title I of ERISA. Further pleadings in such matters will be furnished upon request.

ii. TEGEDC (or designee), will notify the DOL Solicitor (Attention: Associate Solicitor, Plan Benefits Security Division) at the earliest possible date whenever 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 will provide the initial pleadings submitted on behalf of the Secretary to the Associate Solicitor. Further information will be forwarded upon request.

b. **Department Litigation.**

i. The Solicitor of Labor (or designee) will notify the TEGEDC and the Director of EP Examinations T:EP:E when it is determined that 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 TEGEDC and to the Department of Justice for review.

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.

29. **Tracking/Feedback.**

a. **Referral Reconciliation**. IRS and DOL will conduct formal referral reconciliations twice yearly. Agencies are not precluded from communicating more frequently on referrals as needed.

b. **Excise Taxes**. When the IRS closes an examination initiated by an EBSA referral, the FAC will forward to the EBSA Regional Director DOL Results Sheet

indicating the amount of Internal Revenue Code section 4971(a) and/or (b) or 4975 proposed or assessed excise tax[14]. If the IRS will not propose or assess excise taxes, then it will enter the reasons in the "Remarks" Section of Form 6212-A.

c. **Semiannual Meetings**. At least semiannually, IRS EP Examinations and DOL 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. **Work Plan and Initiatives**. The IRS Director of EP Examinations (or representative) and the EBSA Director of Enforcement 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).

e. **Contact Lists**. EP Examinations and EBSA will update their Local Contact List at least once a year.

30. **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(l)(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.[15] 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.[16]

31. **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 a Memorandum of Understanding, effective April 21, 1999, to coordinate the enforcement of the shared provisions under HIPAA (Exhibit E). Under this MOU, the three agencies work together to avoid enforcement duplication and to assign priorities.

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

32. **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 between the Internal Revenue Service, Tax-Exempt and Government Entities Division (TEGE) and the Department of Labor, Employee Benefits Security Administration (EBSA) 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 agreement reflects changes resulting from Implementation of the IRS FTI Secure Data Transfer (SDT) Tool, and other revisions identified from the agencies' experiences under 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.

DOL will continue to refer Form 6212-A to IRS for welfare benefit plans and pension benefit plans in accordance with the requirements of Article II, D., of the Agreement. IRS will continue to make referrals to DOL on Form 6212-B in accordance with the requirements of Article II, C. of the Agreement.

Employee Plans is a function of the TE/GE Operating Division of the IRS. The Director, EP Examinations supervises five Area Managers located around the country. The Director, Compliance, Planning and Classification supervises the Senior Managers of Classification and Case Assignment, Issue ID and Planning and Monitoring. Referrals made by EBSA personnel are now made to the Classification and Case Assignment area of TE/GE Compliance, Planning and Classification through the SDT Tool, which was implemented in 2020. In accordance with Article V. C. of the Agreement, representatives of the IRS and DOL will meet at a minimum of semi-annually.

/s/ June 26, 2023
Eric D. Slack
Director of Employee Plans

/s/ June 14, 2023
Timothy D. Hauser
Deputy Assistant Secretary for Program Operations
Employee Benefits Security Administration

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Exhibit A
IRS/DOL Coordination Procedures

I. Notification of Examinations

A. General

For the agencies to avoid unnecessary duplication in examinations, the Department of Labor, Employee Benefits Security Administration (EBSA) Regional Offices or the National Office will notify the IRS Classification and Case Assignment area monthly of the names of pension benefit plans selected for civil investigation. Regional Offices may individually send case listings to the Classification and Case Assignment area, they may collaborate and send one list that includes the names of all pension benefit plans selected for civil investigation, or the National Office may send one listing on behalf of all regions. These notifications, referred to as "Open Transmittal Reports" shall be sent via email to tege.ep.classification@irs.gov or electronically via the SDT monthly. 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

1. Within ten (10) workdays after the date that the listings of plans are provided to Classification and Case Assignment, the IRS will notify EBSA if any of the cases have open EP Examinations and determine whether the investigation would duplicate an examination by IRS and, if the investigation is duplicative, advise the appropriate EBSA Regional Director and/or Regional Director designated person.

2. 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 twelve (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.

C. EBSA Action After Positive Feedback

Generally, EBSA and IRS will collaborate on investigations 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 (respectively known as Forms 6212-A and 6212-B, or Checksheets A 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 examination by EP examiners of the books and records of an employee benefit plan will be subject to the referral process.

   (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 or referral made by Benefit Advisors directly to the IRS; 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. 2019-19 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. An agency initiating a referral with the "Participation Requested" box checked shall 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 thirty (30) days of receipt. 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 (5) 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 Form 6212-A during their investigations and will be sent to Classification and Case Assignment once it is determined a referral is required. Form 6212-A will also be completed for referral of Welfare Benefit Plans. Electronic transmissions to and from Classification and Case Assignment will use the SDT. Referrals which cannot be sent via SDT should be mailed to the EP Functional Assignment Coordinator (FAC).

2. IRS examiners will complete Form 6212-B for all examinations requiring a referral. Forms 6212-B requiring referral to EBSA will be sent (to the FAC) on the last workday of each week. The FAC 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. Form 6212-B. Transmissions to EBSA will be sent using the SDT, whenever possible. For cases that have been referred to Criminal Investigation (CI), IRS Examiners will submit Form 6212-B to the FAC only after CI has declined the case or, if CI accepts the case, after CI has discontinued its investigation. IRS Examiners will not submit Form 6212-B to EBSA in cases that CI has referred to the Department of Justice even if the Department of Justice declines to prosecute.

3. The initiating agency will complete the appropriate Form 6212 during an examination/investigation whenever a referral is required. The agency initiating the referral will retain a copy of the Form 6212 (maintained by the FAC and in each EBSA Regional Office). The receiving agency will complete the "Action

Taken" portion of the Form 6212, 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 Classification and Case Assignment) with respect to the plan involved. Such a request should be made within 20 workdays of the date the referral was transmitted (this timeframe is based on IRS document retention policies). 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 30 days after the date of the referral (this timeframe is based on IRS document retention policies). 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 (5) workdays. In general, referrals not requesting participation will be responded to within thirty (30) days.

6. EBSA will continue to refer untimely contribution/loan repayment prohibited transactions where the amount of lost earnings is more than $5,000.00 or 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

1. IRS examiners will complete Form 6212- B during all IRS examinations as necessary.

2. When an entry on a Form 6212- 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 Form 6212- B, complete the "Action Taken" portion of the referral checksheet, and return an electronically signed copy to FAC within thirty (30) workdays of the referral. Form 6212-B will be transmitted by EBSA using the SDT.

4. When EBSA returns a copy of Form 6212-B to the FAC 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 Form 6212-B to the FAC 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, that are not resolved through voluntary compliance procedures, 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 thirty (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 thirty (30) days from the date the Form 6212-B is sent to the Regional Director.

7. If IRS refers a Form 6212-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 Form 6212-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 Form 6212-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 Exhibit D).

10. IRS will defer action in a case when, as a result of a referral of a Form 6212 between the agencies, the EBSA Regional Office advises the Manager, Classification and Case Assignment, 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 Form 6212-A during all civil pension benefit investigations, except for cases involving the late remittance of employee contributions and loan repayments when the total amount in lost earnings in all the years is less than $5,000.00.

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 or (2) the case is referred to the DOL Office of the Solicitor except in cases where there is a prohibited transaction. If the referral is related to excise tax under IRC 4975 the referral will be made as soon as the violation is uncovered. EBSA will refer checksheets in accordance with section B.1 above using the SDT.

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 thirty (30) workdays of the date the IRS is notified the checksheet was received via the SDT and is available for review.

   (a) If the IRS returns a copy of 6212-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 II.B.5, below, regarding the information IRS must provide to DOL.

   (b) If the IRS returns a copy of 6212-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 Classification and Case Assignment 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 Form 6212-A to the IRS involving issues other than prohibited transactions, no other documents are required to be attached to the checksheet.

5. When EBSA refers a Form 6212-A to the IRS that involves prohibited transactions of at least twenty thousand dollars or cases where the amount in lost

earnings is greater than $5,000.00, the following items must accompany the checksheet to the extent documents have been completed as part of the investigation at time of referral:

(a) Copy of all EBSA correspondence related to the alleged prohibited transaction (referred issue), including VC letters and responses.

(b) Any other information that documents the reason for the referral.

(c) Information in EBSA's possession concerning the fiduciary/ disqualified person's filing or intent to file for bankruptcy.

Upon receipt of the above information, IRS may request additional documents.

6. When EBSA uncovers a prohibited transaction and the total amount in lost earnings for all years is $5,000.00 or less, a Form 6212-A does not have to be completed and sent to the IRS.

7. When an EBSA Regional Office refers a checksheet to Classification and Case Assignment concerning a violation of the prohibited transaction provisions, the IRS will generally take action to assess the excise tax under IRC section 4975 if: (1) 400 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.

8. When an EBSA Regional Office refers a checksheet to Classification and Case Assignment concerning a violation of the prohibited transaction provisions, the IRS will generally take action to assess the excise tax under IRC section 4975 if: (1) 400 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.

III. IRS Appeals Office Procedures

A. Applicability

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.

B. Notification to EBSA

The applicable Appeals Area Director (or designee) will notify, in writing, the EBSA Regional Director's Office as listed in Exhibit B 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.

C. Timing

1. 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.

2. 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. Final Resolution

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 (TEGEDC)(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. TEGEDC (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

The Solicitor of Labor (or designee) will notify the TEGEDC, 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 will be furnished to the TEGEDC and to the Department of Justice for review.

V. Tracking/Feedback

A. Referral Reconciliations

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

B. Excise Taxes

The FAC, upon closure of an examination initiated as the result of a referral from DOL, will forward to the EBSA Regional Results Sheet 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. Resolution of Disputes

IRS EP Examinations and DOL National Office personnel will meet at least semiannually to resolve any referrals on which the appropriate enforcement action is in dispute. These 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.

D. Work Plan and Initiatives

The IRS Director of EP Examinations (or Representative) and the EBSA's Director of the Office 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).

E. Local Contact List

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

VI. Tax Return Information

A. IRS Disclosure

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(l)(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 Disclosures under IRC section 6103(l)(2) are required to be accounted for per IRC section 6103(p)(3)(A). This is accomplished by TE/GE by use of Form 5466-B.

B. EBSA Requests and Safeguards

1. EBSA personnel will forward IRC Section 6103(l)(2) requests electronically via the SDT, IRC 6103(l)(2) information will be provided by electronic media (i.e., scanned originals, facsimile, and transcripts). Regional Offices may designate certain requests (e.g., plans in bankruptcy or litigation) as priority by indicating "Expedite" on the request.

2. 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.

Exhibit B
IRS / EBSA Office Referral Directory

EP EXAMS CONTACTS

Office	Covered States	Area Manager	Main Phone
Cincinnati, OH	**Pennsylvania, North & South Carolina, Maryland, DC, Ohio, Virginia, West Virginia**	Ryan McDonald	513-975-6470 (O) 513-623-1199 (C)
Chicago, IL	**Missouri, Kentucky, Wisconsin, Michigan, Minnesota, Indiana, Illinois, Iowa, South Dakota, North Dakota, Nebraska**	John Wright	312-292-4583 (O) 312-305-7963 (C)
Plantation, FL	**Texas, Louisiana, Florida, Arkansas, Kansas, Georgia, Tennessee, Oklahoma, Alabama, Arizona**	Sharon Gowans	954-991-4174 (O) 754-260-8521 (C)
Brooklyn, NY	**New York, New Jersey, Massachusetts, Connecticut, Maine, New Hampshire**	Janet Mak	347-628-8966 (C)
Portland, Oregon	**Colorado, California, Oregon, Washington, New Mexico, Utah, Arizona, Nevada**	Stephanie Harris	503-265-3731 (O) 360-513-0822 (C)
Richmond, VA	**His group reviews all EP related referrals from DOL**	Christopher Huxtable	804-916-8211
Baltimore, MD	**Functional Assignment Coordinator (FAC)**	Jonathan Limes	443-853-5520 (O) 301-639-2861 (C)

EBSA CONTACTS

Office	Regional Director	Main Phone
Atlanta	Crystal Coleman 61 Forsyth St, SW, Ste 7B54 Atlanta, GA 30303	404-302-3900 Fax: 404-302-3975
Boston	Carol Hamilton JFK Federal Bldg. 15 Sudbury St, Rm 575 Boston, MA 02203	617-565-9600 Fax: 617-565-9666
Chicago	Ruben Chapa John C. Kluczynski Federal Bldg. 230 S. Dearborn Street, Ste 2160 Chicago, IL 60604	312-353-0900 Fax: 312-353-1023
Cincinnati	Joe Rivers 1885 Dixie Hwy, Ste 210 Ft. Wright, KY 41011-2664	859-578-4680 Fax: 859-578-4688
Dallas	Deborah Perry 525 South Griffin St, Rm 900 Dallas, TX 75202-5025	972-850-4500 Fax: 214-767-1055
Kansas City	Mark Underwood 2300 Main St, Ste 11093 Kansas City, MO 64108	816-285-1800 Fax: 816-285-1888
Los Angeles	Crisanta Johnson 35 N. Lake Ave., Ste 300 Pasadena, CA 91101	626-229-1000 Fax: 626-229-1098
New York	Thomas Licetti 201 Varick Street, Room 746 New York, NY 10014	212-607-8600 Fax: 212-607-8611
Philadelphia	Cristina O'Brien 1835 Market Street, 21st Floor Mailstop EBSA/21 Philadelphia, PA 19103-2968	202-693-8747 Fax: 215-861-5347
San Francisco	Klaus Placke 90 7th St, Ste 11-300 San Francisco, CA 94103	415-625-2481 Fax: 415-625-2450

EXHIBIT C
FORM 6212-A & FORM 6212-B

Examination Referral Checksheet A

(To be completed by DOL Investigators for referral of plans subject to Title II of ERISA to the IRS)

Employer/Sponsor Name and Address	Plan EIN/PN
Plan Name	Plan Year Examined
Address of Plan Books and Records	DOL Case Number

Plan Explanation	*(Circle one response.)*		
1. Have all required Form 5500 series returns, including appropriate schedules been filed timely?	N/A	Yes	No
2(a). Has a favorable determination letter *(or opinion letter in the case of a master or prototype plan)* been issued after December 31, 2000?	N/A	Yes	No
2(b). Has a substantive amendment *(not including IRS Model Amendments)* been made to the plan since the date of the most recent determination letter *(or opinion letter, if applicable)*?	N/A	No	Yes
3(a). If the plan is being or has been terminated, has the employer filed Form 5310 requesting a determination letter on the qualification of the plan upon termination?	N/A	Yes	No
3(b). If there was a reversion, was a Form 5330 timely filed to report the reversion? Enter the amount of the reversion _____	N/A	Yes	No
4. Was there a merger, spin-off or a transfer from a defined benefit plan to a defined contribution plan?	N/A	No	Yes
5(a). Is there any indication that the plan has been operated in a manner that resulted in discrimination in favor of the highly compensated employees?	N/A	No	Yes
5(b). Is there a pattern of employer-initiated termination of nonhighly compensated employees before they are vested in their accrued benefits?	N/A	No	Yes
6. Are there any indications that the minimum funding requirements of IRC 412 are not satisfied?	N/A	No	Yes
7. Is there any indications that a prohibited transaction subject to the tax in IRC 4975(a) has occurred between the plan and a disqualified person? *(Answer "yes" only if the transaction is not covered by a statutory exemption under IRC 4975(d) or if the terms of an administrative exemptions have not been complied with.)*	N/A	No	Yes
8(a). If contributions are in the form of assets other than cash: (a) Does the plan document provide for contributions in kind?	N/A	Yes	No
8(b). Are such contributions valued at fair market value?	N/A	Yes	No
9. Are all trust assets valued annually at fair market value?	N/A	Yes	No
10. Is there any other issue that would require referral? *(Explain in Remarks below.)*	N/A	No	Yes

Remarks

Action Taken by IRS

No action planned

IRS Examination Planned

Additional Information Requested

Name of Reviewer:

Phone No.:

Date Mailed to IRS	Date Mailed to Regional Director/District Supervisor	
Auditor/Investigator (DOL)	Regional Office	Phone No.
☐ IRS Participation Requested	Signature of Regional Director	

Form **6212-A** (Rev. 8-2003) Catalog Number 60146B Department of the Treasury-**Internal Revenue Service** publish.no.irs.gov

Examination Referral Checksheet B

(To be completed by the EP Examiner for referral to DOL)

Date mailed to regional director	Date returned to IRS	IRS file number	Plan name

Employer/Sponsor *(name and address)*

Plan EIN/Plan number

Address of plan books and records

Plan year(s) examined

Unagreed case ☐ Yes ☐ No

Plan Explanation Items	N/A	Yes	No
1. Is there any indication that the investments of the trust are imprudent, impermissible by the plan, underperforming, or the investment performance is not being monitored *(ERISA Sec 404)*			
2. Is there any evidence that the plan holds more than 20% of its assets in any SINGLE investment, except as permitted by the plan document, or that the plan holds tangible assets *(ERISA Sec 404(a)(1))*			
3. Is there any evidence that compensation arrangements with individuals or service providers are unreasonable or that impermissible revenue sharing arrangements exist *(ERISA Sec 404(a)(1)(A))*			
4. Is there any evidence that plan expense reimbursements are impermissible or not documented *(ERISA Sec 408(c)(2))*			
5. Did the plan enter into any real estate or security transaction where a market price is not readily available without a written appraisal from an unrelated third party within 3 months of the transaction			
6. Is there any evidence that the plan paid any expense that should have been paid by the plan sponsor *(settlor fees)*			
7. Is there any evidence that trust assets or individual account balances are not reported or allocated at current value			
8. Were any loans, leases, or fixed income obligations in default as of the close of the plan year or classified as uncollectible during the plan year			
9. Have any parties engaged in a non-exempt prohibited transaction (including loans) that was not corrected			
10. Have any Forms 5500 and audits NOT been filed? Have any required disclosures not been made to participants, such as SPD, SMM, SAR			
11. Does the plan fail to meet minimum funding standards as a result of a fiduciary breach, or did the plan administrator fail to collect required contributions			
12. Is there any evidence of participant discrimination, plan termination or disqualification issues			
13. Is there any evidence that the plan is abandoned, issued improper distributions, or failed to implement procedures to locate missing participants and pay benefits due under the terms of the plan			
14. Was there a loss due to fraud or dishonesty			
15. Is the plan Not covered by a fidelity bond			
16. If an ESOP, is there evidence that the plan transaction was not in the best interest of the participants			
17. Other *(describe)*			

Remarks

IRS Referral Information

IRS examiner	IRS office	Telephone number	Action taken by DOL
			☐ No action planned
Name of DOL reviewer	Regional office	Telephone number	☐ DOL investigation planned
☐ DOL participation requested	Signature *(EP Area Manager)*		☐ Additional information requested *(specify on separate sheet of paper)*

Form **6212-B** (Rev. 6-2021) Catalog Number 61519I publish.no.irs.gov Department of the Treasury - **Internal Revenue Service**

Exhibit D
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.

Exhibit E
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 share 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 Customer Account Services group can assist consumers with account-specific questions, basic information about Employee Plan Forms (Forms 5300, 5330, 5307, 5310, 5500-EZ, 8955-SSA), and the status of pending applications.

[2] In addition, a plan must provide that an employee's normal retirement benefit i.e., the accrued benefit payable at normal retirement age becomes non-forfeitable if the employee reaches normal retirement age while still employed by the employer sponsoring the plan, to the extent that the accrued benefit has not yet become vested before that date.

[3] ERISA Section 203 also provides that a multiemployer plan, without violating the vesting requirements, provide for the suspension of benefits after they have commenced for periods during when the participant is employed in the same industry, trade, or craft, and in the same geographic area covered by the plan, as when the benefits commenced.

[4] The Department's authority to interpret ERISA Section 203 did not transfer to the Department of the Treasury pursuant to Reorganization Plan No. 4 of 1978 (Exhibit D).

[5] This is to prevent excessive "backloading," i.e., the pre-ERISA practice of deferring the accrual of all or most of an employee's benefits under a pension plan until the latter years of an employee's career.

[6] A benefit that employees may begin to receive before the plan’s normal retirement age.

[7] IRS regulation 401(a)(13) of the Code [26 C.F.R. 1.401(a) 13] describes what constitutes an alienation or assignment of benefits. They also describe certain arrangements that do not constitute such an assignment or alienation. Most significantly, these regulations provide that a participant's direction that the plan pay all, or any portion, of a benefit payment to a third party does not constitute an assignment or alienation if such direction is revocable at any time. The recipient of the directed payments must also file a written acknowledgement with the plan administrator that he/she has no enforceable right to any benefit payment or portion thereof.

[8] The Department retained authority to interpret this provision under Reorganization Plan No. 4 of 1978.

[9] Generally, contiguous non-covered service is service with an employer maintaining a multiple employer plan if such service is performed before or after a period of covered service and no quitting, discharge, or retirement occurs between the periods of covered and non-covered service. For example, if an employee hired by an employer maintaining a multiple employer plan in a non-covered job classification without a termination of the employment relationship, service in the non-covered job classification is deemed "contiguous non-covered service" and must be considered to determine the employee's eligibility to participate in the plan and for vesting.

[10] See 29 CFR 2530.210.

[11] Exception: if a participant works for a business that is under common control but has no role or association with the plan, then there is no requirement for service credit for that non-participating employer.

[12] For defined benefit pension plans, the design of minimum funding standards ensure sufficient assets accumulate during employees' working careers to pay their benefits when they retire. To this end, the statute requires funding for defined benefit plans in accordance with appropriate actuarial techniques. Certain defined benefit plans funded exclusively through insurance contracts (generally annuity contracts) are exempt from the minimum funding standards, as long as all premium payments are made when due.

[13] In the case of a money purchase or target benefit plan, the minimum funding standards require only that employer contributions specified under the plan be made when due.

[14] Per IRC Section 4971(a) and/or (b) or 4975.

[15] This right of public inspection applies to applications filed and documents issued after September 2, 1974.

[16] See Release of Information section, paragraph 7.