



# U.S. Department of Labor

## Investigative Authority

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**1. Statutory Authority.** The investigative authority given to the Secretary of Labor (Secretary) under ERISA is found in section 504 and section 506 (as amended by the Comprehensive Crime Control Act of 1984) and relates to all investigations undertaken pursuant to Title I of the Act.

**2. Interpretation of Section 504.** Section 504(a) gives investigative authority to the Secretary in order to determine whether any person has violated Title I of ERISA or any regulations or orders issued thereunder. This authority extends to investigations of actual or potential violations of Title I.

**3. Interpretation of Section 506.** Section 506(b) was amended by the Comprehensive Crime Control Act of 1984 to give the Secretary explicit authority to investigate criminal violations of Title 18 of the United States Code, insofar as they relate to employee benefit plans. In particular, the Secretary was given specific jurisdiction to investigate potential criminal violations of Sections 664, 1027, 1954, 669, 1035, 1347, and 1518 of Title 18. However, the Secretary continues to observe certain limitations on the exercise of this authority under an agreement with the Department of Justice. See paragraph 6 below.

**4. Making Information Available to Affected Person.** Section 504(a) provides that the Secretary may make information available to any person actually affected by any matter which is the subject of an investigation. Generally, such persons will include plan fiduciaries, participants, beneficiaries, or their representatives. In appropriate cases, others may also be included. This section does not permit disclosure of information specifically prohibited by another statute, such as grand jury information subject to Rule 6(e) of the Federal Rules of Criminal Procedure or tax information subject to Section 6103 of the Internal Revenue Code. (See Chapter 20, Release of Information, for discussion of restrictions on disclosure).

**5. Delegation of Authority to Assistant Secretary for Employee Benefits Security.** Secretary's Order 1-87 dated April 13, 1987,<sup>(1)</sup> states, in part, that the Assistant Secretary for Pension and Welfare Benefits is delegated authority -- including authority to redelegate -- and assigned responsibilities for carrying out programs and activities to be performed by the Secretary under:

- a. The Employee Retirement Income Security Act of 1974, as amended, except for subtitle C of Title III, and Title IV;<sup>(2)</sup>
- b. The Welfare and Pension Plans Disclosure Act of 1958, as amended;<sup>(3)</sup> and
- c. The Federal Employees' Retirement System Act of 1986.

Secretary's Order 01-2003, dated January 23, 2003, re-designated the title and position of the Assistant Secretary for Pension and Welfare as the Assistant Secretary for Employee Benefits Security. All programs, activities, functions and responsibilities delegated to the Office of the Assistant Secretary for Pension and Welfare Benefits or the Pension and Welfare Benefits Administration were re-designated programs, activities, functions and responsibilities of the Office of the Assistant Secretary for Employee Benefits Security or the Employee Benefits Security Administration, respectively<sup>(4)</sup> ([Figure 1](#)).

## 6. Investigation of Criminal Matters Related to ERISA

- a. On February 9, 1975, the Department of Labor (DOL) and the Department of Justice (DOJ) executed a Memorandum of Understanding (MOU) which provided for a specific case-by-case delegation from the DOJ regarding investigations of criminal matters relating to employee benefit plans ([Figure 2](#)). With the passage of the Comprehensive Crime Control Act of 1984, the DOL has express statutory authority to investigate criminal matters relating to employee benefit plans. Accordingly, the DOL is no longer required to obtain delegation on a case-by-case basis; however, Employee Benefits Security Administration (EBSA) Investigators/Auditors will contact the appropriate United States Attorney's

Office (USAO) as early as possible in the investigation to determine interest by the USAO. (See Chapter 52, Criminal Investigations, for EBSA policy concerning criminal investigations involving employee benefit plans.)

b. The Secretary will either on complaint of an alleged violation or on his/her own motion investigate through his/her own staff all matters that may form the basis for possible criminal action under Section 501 of the Act. These matters include reporting and disclosure provisions under part 1 of Title I and any regulations issued thereunder.

**7. Parallel Civil and Criminal Investigations.** Occasionally, EBSA personnel are requested to terminate or postpone a civil ERISA investigation pending completion of another government agency's investigation of a parallel criminal matter. Procedures for handling such requests are set forth in Chapter 52, paragraph 13.

**8. Section 411(a) Exemption Proceedings.** Pursuant to the MOU between the Secretary and the Department of Justice, the investigation and presentation of issues concerning the appropriateness of a grant of a Certificate of Exemption under Section 411(a) to a person by a federal court will be the responsibility of the Department of Labor, including appearances before the court. (See Chapter 47, Prohibited Persons.)

**9. Investigations Under Title IV of ERISA.** The statute does not give the Secretary authority to investigate under Title IV of the Act. Under Section 4003(d), the Pension Benefit Guaranty Corporation (PBGC) may make agreements with the Secretary to help carry out the provisions of Title IV.

**10. Litigative Responsibility for Civil Cases.** A Memorandum of Understanding entered into on February 11, 1975, between the Department of Justice and the Department of Labor, established litigative responsibility under ERISA (Figure 2). Pursuant to the agreement, primary litigative responsibility for the preparation and presentation of most civil cases arising in the district courts and courts of appeals under the Employee Retirement Income Security Act of 1974 is exercised by attorneys in the Office of the Solicitor of Labor. There are certain exceptions which are set out in the Memorandum of Understanding.

**11. Prosecution of Criminal Matters.** The Memorandum of Understanding between the Secretary and the Department of Justice provides that all cases involving criminal provisions of ERISA will be prosecuted by the Department of Justice (Figure 3).

**12. Agreements with Other Government Agencies.** EBSA, in addition to having agreements with the Department of Justice, has agreements with the following government agencies:

Internal Revenue Service (Chapter 12);

Departments of Treasury and Health and Human Services (Chapter 12);

Office of the Inspector General, Office of Labor Racketeering (Chapter 13); and,

Federal Financial Institution Regulatory Agencies (Federal Reserve System, Federal Deposit Insurance Corporation, Federal Home Loan Bank Board (FHLBB),<sup>(5)</sup> National Credit Union Administration, and the Office of the Comptroller of the Currency) (Chapter 14).

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(Figure 1)

## **Secretary's Order 01-2003**

**Subject: Delegation of Authority and Assignment of Responsibilities to the Employee Benefits Security Administration**

**1. Purpose.** To delegate authority and assign responsibilities for the administration of the Department of Labor's responsibilities under the Employee Retirement Income Security Act of 1974 (ERISA), the Welfare Pension Plans Disclosure Act (WPPDA) and the Federal Employees' Retirement System Act of 1986 (FERSA), and to change the name of the office of the Assistant Secretary for Pension and Welfare Benefits and the Pension and Welfare Benefits Administration (PWBA).

**2. Authority and Directives Affected.** This Order is issued pursuant to 5 U.S.C. 301; 29 U.S.C. 551, *et seq.*; and 5 U.S.C. 5315. This order supersedes the Secretary's Order 1-87, 52 Fed. Reg. 13139 (Apr. 21, 1987), and the memoranda to Meredith Miller, on Oct. 28, 1998, 63 Fed. Reg. 59339 (Nov. 3, 1998), and on December 16, 1998, 63 Fed. Reg. 71506 (Dec. 28, 1998).

**3. Background.** ERISA places responsibility in the Department of Labor for the administration of a comprehensive program to protect the interests of participants and beneficiaries of private sector employee benefit plans. Secretary's Order 1-87 delegated authority for this program to the Pension and Welfare Benefits Administration (PWBA), which was headed by the Assistant Secretary for Pension and Welfare Benefits who reported to the Secretary of Labor.

FERSA requires the Department of Labor to, among other things, administer and enforce the fiduciary responsibility, prohibited transaction, and bonding provisions of FERSA. Secretary's Order 1-87 also delegated these responsibilities to PWBA.

In more recent years, statutes such as the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Newborns' and Mothers' Health Protection Act of 1996, the Mental Health Parity Act of 1996, the Women's Health and Cancer Rights Act of 1998, and the Child Support Performance and Incentive Act of 1998 amended ERISA. Pursuant to Secretary's Order 1-87, PWBA has carried out the Department's additional responsibilities under these Acts.

Changing the agency's name to the Employee Benefits Security Administration (EBSA) will more clearly communicate the agency's mission of protecting private sector employee benefits. Restating the delegations contained in Secretary's Order 1-87, and including an additional delegation regarding claims of governmental privileges, previously published separately, will provide a single source for questions regarding the Assistant Secretary's current authority and responsibility.

#### **4. Re-Designation of the Assistant Secretary for Pension and Welfare Benefits and the Pension and Welfare Benefits Administration.**

a. The title and position of the Assistant Secretary for Pension and Welfare Benefits is re-designated Assistant Secretary for Employee Benefits Security. The Office of the Assistant Secretary for Pension and Welfare Benefits is re-designated the Office of the Assistant Secretary for Employee Benefits Security, and

b. The Pension and Welfare Benefits Administration is re-designated as the Employee Benefits Security Administration.

c. All offices, subdivisions and positions within the Department of Labor deriving their names in whole, or in part, from the Office of the Assistant Secretary for Pension and Welfare Benefits or the Pension and Welfare Benefits Administration shall accomplish an appropriate change of name pursuant to this order.

d. All employees of the Office of Assistant Secretary for Pension and Welfare Benefits and the Pension and Welfare Benefits Administration are re-designated employees of the Office of the Assistant Secretary for Employee Benefits Security Administration, respectively.

e. All programs, activities, functions, and responsibilities delegated to the Office of the Assistant Secretary for Pension and Welfare Benefits or the Pension and Welfare Benefits Administration are re-designated programs, activities, functions and responsibilities of the Office of the Assistant Secretary for Employee Benefits Security or the Employee Benefits Security Administration, respectively.

f. All currently effective delegations made by the Assistant Secretary for Pension and Welfare Benefits to employees of the Pension and Welfare Benefits Administration are deemed delegations by the Assistant Secretary for Employee Benefits Security to employees of the Employee Benefits Security Administration.

g. Other agencies within the Department of Labor shall make any appropriate re-designation in conformity with the spirit and purpose of this order.

#### **5. Delegation of Authority and Assignment of Responsibilities**

a. Except as hereinafter provided, the Assistant Secretary for Employee Benefits Security is delegated the authority (including the authority to re-delegate) and assigned the responsibilities of the Secretary of Labor:

(1) under the following statutes, including any amendments:

(i) The Employee Retirement Income Security Act of 1974, as amended, except for subtitle C of Title III and Title IV (29 U.S.C. §§ 1001-1232);

(ii) the Welfare and Pension Disclosure Act of 1958, as amended Pub. L. 85-836, 72 Stat. 997; Pub. L. 86-624, 74 Stat. 417; Pub. L. 87-420, 76 Stat. 35;

(iii) The Federal Employees' Retirement System Act of 1986 (5 U.S.C. §§ 8401-8479); and

(iv) as directed by the Secretary, such additional Federal acts similar to or related to those listed in paragraphs (i) through (iii), above, that from time to time may assign additional authority or responsibilities to the Secretary.

(2) to request information the Internal Revenue (IRS) possesses for use in connection with the administration of Title I of ERISA of 1974.

(3) to invoke all appropriate governmental privileges, arising from the functions of the Employee Benefits Security Administration, following his/her personal consideration of the matter and in accordance with the following guidelines:

(i) Generally Applicable Guidelines. The Assistant Secretary may not re-delegate the authority to invoke a privilege. The privilege may be asserted only with respect to specifically described information and only where the Assistant Secretary determines the privilege is applicable. In asserting a privilege, the Assistant Secretary shall articulate in writing the specific reasons for preserving the confidentiality of the information.

(ii) Informant's Privilege (to protect from disclosure the identity of any person who has provided information to the Employee Benefits Security Administration in cases arising under the statutory provisions listed in 5.a.(1) of this order that are delegated or assigned to the Employee Benefits Security Administration). To assert this privilege, the Assistant Secretary must first determine that disclosure of the privileged matter may: (A) interfere with the Employee Benefits Security Administration's enforcement of a particular statute for which it exercises investigative or enforcement authority; (B) adversely affect persons who have provided information to the Employee Benefits Security Administration; or (C) deter other persons from reporting violations of the statute.

(iii) Deliberative Process Privilege (to withhold information which may disclose pre-decisional intra-agency or inter-agency deliberations in cases arising under the statutory provisions listed in paragraph 5.a.(1) of this order including: the analysis and evaluation of facts; written summaries of factual evidence; and recommendations, opinions, or advice on legal or policy matters.) To assert this privilege, the Assistant Secretary must first determine that: (A) the information is not purely factual and does not concern recommendations that the department expressly adopted or incorporated by reference in its ultimate decision; (B) the information was generated prior to and in contemplation of a decision by a part of the Department; and (C) disclosure of the information would have an inhibiting effect on the Department's decision-making process.

(iv) Privilege for Investigative Files compiled for law enforcement purposes (to withhold information which may reveal the Employee Benefits Security Administration's confidential investigative techniques and procedures). To assert this privilege, the Assistant Secretary must first determine that

disclosure of the privileged matter may have an adverse impact upon the Employee Benefits Security Administration's enforcement of the statutory provisions listed in paragraph 5.a.(1) of this order, by: (A) disclosing investigative techniques and methodologies; (B) deterring persons from providing information to the Employee Benefits Security Administration; (C) prematurely revealing the facts of the Department's case; or (D) disclosing the identities of person who have provided confidential information under an express or implied promise of confidentiality.

(v) Prior to filing a formal claim of privilege, the Assistant Secretary shall personally review the information sought to be withheld, including all documents sought to be withheld (or, in cases where the volume of information is so large all of it cannot be personally reviewed in a reasonable time, an adequate and representative sample of such information) and a description or summary of the litigation in which the disclosure is sought.

(vi) The Assistant Secretary may comply with any additional requirements imposed by local court rules or precedent in asserting a governmental privilege.

(vii) In asserting a governmental privilege, the Assistant Secretary may ask the Solicitor of Labor or the Solicitor's representative to prepare and file any necessary legal papers or documents.

b. The Solicitor of Labor is responsible for providing legal advice and assistance to all officials of the Department relating to the administration of the statutes listed in paragraphs 5.a.(1) of this order, for bringing appropriate legal actions on behalf of the Secretary, and representing the Secretary in all civil proceedings. The Solicitor of Labor is also authorized to request information the IRS possesses for use in connection with the administration of Title I of ERISA.

c. The Inspector General is authorized to request information the IRS possesses for use in connection with the administration of Title I of ERISA.

## **6. Reservation of Authority**

a. The submission of reports and recommendations to the President and the Congress concerning the administration of the statutes listed in paragraph 5.a.(1) of this order and responsibilities under Subtitle C of Title III of ERISA are reserved to the Secretary. The Pension Benefit Guaranty Corporation carries out responsibilities under Title IV of ERISA.

b. This Secretary's Order does not affect the authorities and responsibilities of the Office of Inspector General under the Inspector General Act of 1978, as amended, or under Secretary's Order 2-90 (January 31, 1990)

**7. Effective Date.** This order is effective upon date of publication in the Federal Register.

/s/ Elaine L. Chao  
Secretary of Labor

January 23, 2003

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(Figure 2)

## **Memorandum Of Understanding**

**Memorandum of Understanding Between the Departments of Justice and Labor Relating to the Investigation and Prosecution of Crimes and Related Matters under Title I of the Employee Retirement Income Security Act of 1974**

**It is hereby agreed and understood between the Department of Justice and the Department of Labor as follows:**

Whereas Title I of the Employee Retirement Income Security Act of 1974 (P.L. 93-406, 88 Stat. 829, 29 U.S.C. 1001, hereinafter referred to as "the Act") imposes certain duties and responsibilities upon the Attorney General and the Secretary of Labor with regard to prosecution of crimes and related matters arising under the Act; and

Whereas, section 504 of the Act imposes upon the Secretary of Labor the responsibility for conducting investigations of persons who have violated or are about to violate any provision of Title I of the Act or any regulation issued thereunder; and

Whereas, section 506 of the Act provides that the Secretary of Labor may make interagency agreements to avoid unnecessary expense and duplication of functions among government agencies and ensure cooperation and mutual assistance in the performance of his functions under the Act; and

Whereas, section 506 of the Act provides that the Attorney General or his representative shall receive from the Secretary of Labor for appropriate action such information developed in the performance of the Secretary's functions under Title I of the Act as may be found to warrant consideration for criminal prosecution; and

Whereas, it is desirable and essential that the areas of responsibility and the procedure to be used in investigations and prosecutions of offenses arising under the Act should be the subject of a formal agreement between the Departments;

### **I. Criminal Prosecution**

All cases involving violation of criminal provisions of the Act will be prosecuted by the Department of Justice. Those cases investigated by the Department of Labor which may warrant criminal prosecution will be referred to the Management and Labor Section, Criminal Division, Department of Justice.

### **II. Investigations of Matters made Criminal by the Act**

Subject to specific arrangements agreed upon by the two Departments on a case-by-case basis, investigations of criminal matters under the Act will be conducted as follows:

(a) The Department of Justice will investigate all matters arising under 18 U.S.C. 664 (theft or embezzlement from employee benefit plan), 1027 (false statements and concealment of facts in relation to documents required by the Act) and 1954 (offer, acceptance, or solicitation to influence operations of employee benefit plans).

(b) The Secretary of Labor will either on complaint of a violation or on his own motion investigate through his own staff all matters that may form the basis for possible criminal action under section 501 of the Act. These matters include reporting and disclosure provisions under Part I of Title I of the Act and any regulations issued thereunder.

(c) The Department of Justice will under delegation from the Secretary of Labor investigate those criminal matters arising under:

(1) Section 411 of the Act (prohibition against certain persons being a consultant to, employed by, or holding office in an employee benefit plan and against allowing such persons to act as a consultant to, be employed by, or hold office in an employee benefit plan).

(2) Section 511 of the Act (interference with the rights of a participant or beneficiary by fraud or coercion).

### **III. Parole Board Proceedings**

The investigation and presentation of issues concerning the appropriateness of a grant of a certificate under Section 411(a) of the Act to a person by the Board of Parole of the Department of Justice will be the responsibility of the Department of Labor, including appearances before the Board of Parole.

### **IV. Instructions**

So that the terms of this Memorandum of Understanding will be effectively performed, both Departments will issue instructions for the guidance of their officers and employees in the matters referred to in the preceding paragraphs, such instructions to be submitted for comment to the other Department prior to their issuance.

## **V. Adjustments**

Periodic reviews of this agreement will be made to determine whether any adjustments are desirable in light of experience under the Act.

/S/ Peter J. Brennan  
Secretary of Labor

February 5, 1975

/S/ L. N. Silberman  
(Acting) Attorney General

February 8, 1975

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(Figure 3)

### **United States Department Of Justice**

### **United States Department Of Labor**

### **Memorandum Of Understanding**

Whereas, the Employee Retirement Income Security Act of 1974 (P.L. 93-406; 88 Stat. 829), the Occupational Safety and Health Act of 1970 (P.L. 91-596; 84 Stat. 1590), and the Farm Labor Contractor Registration Act Amendments of 1974 (P.L. 93-518; 88 Stat. 1652), each provide that except for litigation in the Supreme Court of the United States and the United States Court of Claims, attorneys appointed by the Secretary of Labor may represent the Secretary in civil actions, subject to the direction and control of the Attorney General;

Whereas, this memorandum has been entered into in accordance with the legislative history of the aforementioned provisions; and

Whereas, satisfactory cooperative relationships exist between the Civil Division of the Department of Justice and the Department of Labor with respect to the conduct of litigation under other statutes administered by the Department of Labor;

Now, therefore, the following memorandum of understanding is entered into between the Attorney General of the United States and the Secretary of Labor for the purposes of promoting the efficient and effective handling of government litigation concerning these statutes.

1. It is the intention of the Attorney General to delegate primary litigative responsibility for the preparation and presentation of most civil cases arising in the district court and courts of appeal under the Occupational Safety and Health Act of 1970, the Employee Retirement Income Security Act of 1974, and the Farm Labor Contractor Registration Act of 1974, to attorneys appointed by the Secretary of Labor. The delegation of primary litigative responsibility shall, in the normal course, include the preparation and filing of all papers, the conduct of trials and the presentation of oral arguments. These activities shall be performed with the cooperation and assistance of the United States Attorneys and the Civil Division of the Department of Justice and be subject to the direction and control of the Attorney General.

2. There will be, however, a limited number of cases in which primary litigative responsibility may be retained in the Civil Division of the Department of Justice.

The criteria for retention of primary litigative responsibility are:

- (i) Cases raising significant issues concerning the validity or construction of statutes or important governmental regulatory schemes;

(ii) Cases having a significant impact on, or which can be expected to have a significant impact on, the government as a whole, or on agencies, or programs of agencies, other than the Department of Labor.

3. To facilitate determinations by the Assistant Attorney General for the Civil Division as to the delegation of primary litigative responsibility, the Department of Labor shall, as to any case subject to this memorandum, provide the Civil Division with:

(i) A copy of any claim, complaint or petition for review proposed to be filed by the Department of Labor;

(ii) A copy of any complaint, responsive pleading or petition for review filed by a party to litigation other than the Department of Labor, whenever such pleading has not otherwise been served on the Attorney General;

(iii) Immediate notice should a case, the primary responsibility for which has been delegated to the Department of Labor, come within the criteria of paragraph 2, *supra*, during the course of the proceedings in that case;

(iv) A memorandum proposing an appeal be taken from a district court from a decision adverse to the government; and

(v) A memorandum describing any case in which a district court decision favorable to the government has been appealed by another party to the litigation.

The Department of Labor shall provide the Civil Division with all of the material necessary for a determination as to the delegation of primary litigative responsibility within a reasonable time. The Assistant Attorney General for the Civil Division shall make the determination within 20 days time of receipt of the above material or within such reasonable time as the exigencies of the situation demand.

4. In each instance where the Civil Division determines to retain primary litigative responsibility for the handling of litigation under the criteria set forth in paragraph 2, *supra*, it shall be the responsibility of the Assistant Attorney General for the Civil Division to set forth in writing in a communication to the Solicitor of Labor the basis for the retention of primary responsibility and the reasons therefore. If the Solicitor of Labor disagrees with any such determination, he shall present his views to the Deputy Attorney General who shall have final authority to resolve the matter.

5. In the conduct of any litigation subject to this agreement, regardless of where primary litigative responsibility is reposed, Department of Justice and Department of Labor attorneys will cooperate and collaborate in the preparation and representation of such actions and the Attorney General will retain the final authority to determine, where appropriate, the government's litigating position.

6. This memorandum is intended to provide a general description of the delegation of litigation responsibility. Decisions regarding the implementation of this agreement, including the development of special procedures for the handling of cases in which circumstances require the immediate filing of a pleading, are to be made by the Solicitor of Labor and the Assistant Attorney General for the Civil Division.

7. Nothing in this agreement shall affect any authority of the Department of Labor to take action under the statutes subject to this agreement, other than the instituting or conducting of litigation in court under such statutes.

8. Nothing in this agreement shall affect any authority of the Solicitor General to authorize or decline to authorize appeals by the government from any district court to any appellate court or petitions to such courts for the issuance of extraordinary writs, such as the authority conferred by 28 C.F.R. 0.20(b).

9. In order effectively to implement the terms of this Memorandum, each Department will issue to all personnel affected by its provisions a copy of this Memorandum. This Memorandum shall not preclude both Departments from entering into mutually satisfactory arrangements concerning the handling of a particular case.



10. This agreement shall apply to all cases filed on or after the date of approval of this agreement by the Department of Justice and the Department of Labor.

With respect to cases arising before the effective date of this agreement, the Departments of Justice and Labor shall enter into mutually satisfactory arrangements for the transfer of litigation responsibility in individual cases, consistent with the purposes of this agreement and where such transfer will not be prejudicial to the handling of such cases.

/S/ Laurence H. Silberman  
Attorney General

February 11, 1975

/S/ Peter J. Brennan  
Acting Secretary of Labor

February 11, 1975

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## Footnotes

1. This Order superseded Secretary's Order 1-86 dated January 16, 1986 which transferred the delegated authority and assigned responsibilities for the administration of ERISA from the Office of Pension Welfare Benefit Programs to the Pension and Welfare Benefits Administration.
2. PWBA Order No. 1-88 redelegated this authority to the Deputy Assistant Secretary for Program Operations and the Director of Enforcement. By PWBA Order 00-04, Regional Directors are, subject to the guidance of the Deputy Assistant Secretary for Program Operations, redelegated authority and assigned responsibility for ERISA enforcement activities, including authority to sign and issue certain subpoenas, among other powers. By PWBA Order No. 1-94, Regional Directors were granted discretion to further delegate certain signatory responsibility to selected staff. See Chapter 33, Administrative Subpoenas.
3. PWBA Order No. 1-88 also redelegated this authority to the Deputy Assistant Secretary for Program Operations and the Director of Enforcement.
4. Secretary's Order 01-2003 superseded Secretary's Order 1-87. 68 Fed. Reg. 5373 (Feb. 3, 2003).
5. This agreement predates the dismantling of the FHLBB and the subsequent establishment of the Office of Thrift Supervision (OTS), which succeeded the FHLBB. The OTS has acknowledged that it is the successor to the FHLBB in its agreement with the Secretary.

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