



Federal Register

**Monday,
February 3, 2003**

Part III

Department of Labor

Office of the Secretary

**Delegation of Authority and Assignment
of Responsibilities to the Employee
Benefits Security Administration; Notice**

DEPARTMENT OF LABOR**Office of the Secretary**

[Secretary's Order 1-2003]

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 and 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 Secretary's Order 1-87, 52 FR 13139 (Apr. 21, 1987), and the memoranda to Meredith Miller, on Oct. 28, 1998, 63 FR 59339 (Nov. 3, 1998), and on Dec. 16, 1998, 63 FR 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 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 the 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 or the 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 Plans 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 Service (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 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 paragraph 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 processes.

(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 persons who have provided 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 the 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 paragraph 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 the date of publication in the **Federal Register**.

Dated: January 23, 2003.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 03-2163 Filed 1-31-03; 8:45 am]

BILLING CODE 4510-23-P