

**Memorandum of Understanding Between
The United States Department of Labor
The National Association of Insurance Commissioners and
State Insurance Regulatory Agencies**

ACUERDO NO ECONOMICOS

2014-000030

I. Introduction and Purpose

The U.S. Department of Labor, the National Association of Insurance Commissioners and the undersigned state insurance regulatory agencies (collectively, "the Parties") enter into this Memorandum of Understanding to facilitate the exchange of information on matters of common interest, without causing the Parties to forfeit the right to maintain the confidentiality of such information as to other entities.

II. Authority

Section 506 of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1136(a), authorizes the Secretary of Labor to enter into cooperative and mutual assistance agreements with state government agencies in the performance of its functions under title I of ERISA.

The NAIC is the organization of state insurance regulatory agencies from the 50 states, the District of Columbia and the five United States territories. The NAIC represents that it has authority to agree to this MOU under its charter and by-laws. The state agencies that are parties to this agreement represent that they have authority to agree to this MOU under relevant state laws.

III. Scope

The Parties intend to pursue their common but separate interests by exchanging information pursuant to this MOU without waiving any legal privileges or other legal protections against disclosure to any entities or persons that are not party to this MOU. These privileges and protections include, but are not limited to, attorney-client privilege, and the protections against disclosure of investigative files, confidential informants, attorney work product and deliberative process, and confidentiality agreements and orders that may apply to the shared information.

A. General Information Sharing

The Parties agree that it is in their common interest to share certain information on a continuing basis regarding particular insurers, fiduciaries, service providers and other entities and individuals involved with employee welfare benefit plans covered by ERISA. The Parties have a common interest because activities that may violate provisions of ERISA in connection with employee welfare benefit plans, or that occur in connection with potential violations of ERISA, may also violate state insurance laws. Sharing this information will help the Parties to

allocate investigative and litigation resources in carrying out their respective statutory responsibilities. This information includes the:

1. MEWA Injunction List consisting of MEWA operators, service providers, trustees, and fiduciaries against whom the Department has obtained permanent injunctive relief from acting as a fiduciary, trustee, service provider, agent, or representative in any capacity to any employee benefit plan as defined by ERISA;
2. MEWA Watchlist consisting of individuals the Department has found in violation of ERISA during its MEWA investigations; have been involved in more than one MEWA case involving potential violations of ERISA; or whose actions may give rise to potential violations of ERISA; and
3. Information communicated between the Parties via the MEWA Contact List.

B. Common Interest Agreements

The Parties agree that from time to time, it may be in the common interest of the Secretary of Labor and one or more of the state parties to share information obtained from a specific investigation. Before exchanging information from an investigative or litigation file, the Parties will execute a common interest agreement in a form similar to Attachment A for each case. Each common interest agreement will identify the subjects of the investigation, the Parties to the agreement, and the nature of the common interest with respect to the shared information. An agreement will include, or incorporate by reference to this MOU, the following terms and conditions:

1. A Party providing information will clearly identify any documentation or other physical material it regards as privileged or protected against further disclosure.
2. A Party receiving information identified as privileged or protected will use it solely in connection with its investigation of possible or actual violations of employee welfare benefit plan terms, ERISA, or applicable state insurance law and related investigations and enforcement actions.
3. A Party receiving information identified as privileged or protected will take all measures reasonably necessary in accordance with applicable law to preserve, protect and maintain all privileges and protections unless:
 - a. The Party providing the information agrees in writing that it need not be so treated;

- b. The information becomes public knowledge without violation of this agreement; or
 - c. A court or other legal authority of competent jurisdiction requires disclosure of the information.
- 4. A Party receiving a request, subpoena, order, or other legal process for the production of information identified as privileged or protected received from the other Party will:
 - a. Immediately notify in writing the Party who has provided such information;
 - b. Take reasonable and timely measures including, but not limited to asserting the common interest privilege, to preserve, protect, and maintain all privileges and claims of confidentiality; and
 - c. Consent to any request by the Party who provided the information to intervene in any action for the purpose of asserting and preserving any privileges and protections with respect to the shared information.
- 5. A common interest agreement does not:
 - a. Establish any attorney-client relationship among the Parties;
 - b. Disqualify any counsel from representing any Party in any proceeding;
 - c. Establish any agency or similar relationship between the Parties; or
 - d. Authorize the U.S. Department of Labor to disclose or share the information in violation of the Trade Secrets Act, 18 U.S.C §§1905 et. seq., or the Privacy Act, 5 U.S.C. §552a.
- 6. The requirements of a common interest agreement as to information shared while the agreement is in effect will survive the withdrawal by any Party from the agreement, termination of the agreement, and final disposition of claims or actions, whether by judgment, settlement or other means of disposition.
- 7. A Party to a common interest agreement may terminate the common interest agreement after thirty (30) days written notice to all other Parties to the agreement.

8. A common interest agreement is effective on the latest date on which all the Parties have signed the agreement.
9. A common interest agreement:
 - a. Embodies the entire agreement and understanding among the Parties and supersedes any prior agreements and understandings, whether written or oral, relating to the subject matter of the agreement;
 - b. May not be modified or amended except by written agreement signed by each of the Parties;
 - c. May be executed in separate counterparts, which together shall constitute the full agreement. Further, electronic transmission of signatures will be treated as original signatures; and
 - d. Does not permit a Party to assign its rights and obligations under the agreement without the prior written consent of the other Parties to the agreement.

C. No Obligation to Enter into Common Interest Agreements

Although the Parties intend to share information of mutual interest, nothing in this MOU requires any Party to share information or enter into a common interest agreement with another Party.

D. Privacy Act Requirements

In carrying out this MOU or any common interest agreement, the U.S. Secretary of Labor will comply with the Privacy Act of 1974, 5 U.S.C. 552a, the Right to Financial Privacy Act, 12 U.S.C. §3401 *et. seq.*, and any other applicable law and regulations.

IV. Duration and Amendment of MOU

The MOU is effective upon execution by the U.S. Department of Labor and the NAIC and shall remain in effect for a five-year period unless terminated beforehand in accordance with paragraph V. The MOU may be renewed for subsequent five-year periods upon mutual written agreement of each Party. The MOU or any subsequent renewal period is effective as to an individual state insurance regulatory agency on the date such state agency executes the MOU, provided such date is after the MOU is executed or renewed by the USDOL and the NAIC. The MOU shall remain in effect as to any signatory state agency until such state agency terminates its participation in accordance with paragraph V. Any amendment or modification of the MOU requires the

mutual written agreement of the USDOL, NAIC, and any states to which the amendment or modification will apply.

V. Termination

The U.S. Secretary of Labor or the NAIC may terminate this MOU upon thirty (30) days written notice to all Parties. Any state agency may terminate its participation in this MOU upon thirty (30) days written notice to the other Parties. Withdrawal from the MOU by a state agency will not affect the applicability of the MOU to the other Parties.

VI. Effect of MOU

Nothing in this MOU limits, supersedes, or otherwise affects any Party's authority or discretion in normal operations or decisions in carrying out its statutory or regulatory duties; authorizes the expenditure or reimbursement of any funds; obligates the Parties to expend appropriations or enter into any contract or other obligations; limits or restricts the Parties from participating in similar activities; or creates any legally enforceable rights between the Parties.

Information obtained in accordance with these procedures will remain confidential and subject to the privileges and protections under this MOU notwithstanding its termination.

VII. Contact Information

Virginia C. Smith
Director of Enforcement
Employee Benefits Security Administration
U.S. Department of Labor
122 C Street, N.W., Ste. 600
Washington, D.C. 20210
202-693-8443

VIII. Officials Responsible for MOU

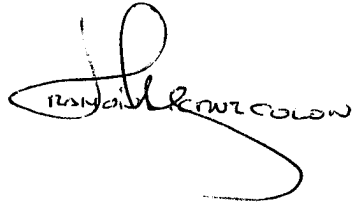
The parties signing below agree to this memorandum.

United States Department of Labor

By: Virginia C. Smith
Virginia C. Smith, Director of Enforcement
Employee Benefits Security Administration
U.S. Department of Labor
122 C Street, N.W., Ste. 600
Washington, D.C. 20210

Dated: 6-28-2011

INDIVIDUAL NAIC MEMBER SIGNATURE PAGES

A handwritten signature in black ink, appearing to read "Rafael Henriquez". The signature is stylized with a large loop at the end.

Puerto Rico
COMMISSIONER OF
INSURANCE

Attachment A

COMMON INTEREST AGREEMENT

The United States Department of Labor and the undersigned state insurance regulatory agency(ies) ("the Parties") enter into this Common Interest Agreement ("Agreement") to share certain information without waiving any legal privileges or protections.

Each Party shall clearly identify any documentation or other physical material it regards as privileged or protected against further disclosure. Each Party receiving information identified as privileged or protected will use it solely in connection with its investigation of possible or actual violations of employee welfare benefit plan terms, ERISA, or applicable state insurance law and related investigations and enforcement actions. Further terms and conditions governing information shared under this Agreement are set forth in the Memorandum of Understanding between the Parties entered into on [ENTER MOU EFFECTIVE DATE] and incorporated herein by reference.

This Agreement applies to information shared by the Parties pertaining to the following plans(s), entity (ies) or individual(s): _____

The common interest in sharing this information is: _____

The United States Department of Labor

By: _____ Dated: _____
[INSERT NAME]
Regional Director, Employee Benefits Security Administration
U.S. Department of Labor

[INSERT STATE DEPARTMENT OF INSURANCE]

By: _____ Dated: _____
[INSERT NAME, TITLE AND ADDRESS]