

# U.S. Department of Labor

Office of Inspector General—Office of Audit

REPORT TO THE EMPLOYEE  
BENEFITS SECURITY  
ADMINISTRATION, OFFICE OF  
THE SOLICITOR, AND WAGE  
AND HOUR DIVISION



**DOL NEEDS STRONGER OVERSIGHT  
AND CONTROLS FOR SHARING  
CONFIDENTIAL INFORMATION**

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## BRIEFLY...

### **DOL Needs Stronger Oversight and Controls for Sharing Confidential Information**

#### **Why We Did the Audit**

In November 2024 and January 2025, the Committee on Education and the Workforce requested the U.S. Department of Labor (DOL) Office of Inspector General evaluate allegations that the Employee Benefits Security Administration (EBSA) and Office of the Solicitor (SOL) used a common interest agreement to share confidential information with plaintiffs' attorneys during class action lawsuits. The Deputy Secretary of Labor also requested we review the Wage and Hour Division's (WHD) information-sharing practices with plaintiffs' law firms.

DOL uses these agreements to obtain information to enhance enforcement efforts and to protect sensitive information from being disclosed.

Based on the Committee's and the Deputy Secretary's requests, we initiated a performance audit to answer the following question:

To what extent do SOL, EBSA, and WHD have established controls for how they share confidential information using common interest agreements with non-governmental entities?

#### **What We Found**

We found DOL did not establish sufficient controls for how it shared confidential information using common interest agreements with non-governmental entities. Specifically, SOL, EBSA, and WHD did not have formal policies and procedures, a framework for internal coordination, and tracking mechanisms.

The agencies did not have a formalized oversight process to ensure these agreements were appropriately and consistently executed. For example, they did not establish roles and responsibilities or have strategies for minimizing potential, actual, and apparent bias for government personnel working on agreements. For a program to operate effectively, there needs to be appropriate and consistent implementation of controls. Without standardization, agencies and offices within the same agency entered into agreements inconsistently and possibly inappropriately.

In addition, SOL, EBSA, and WHD did not establish an adequate coordination process to develop and execute common interest agreements. As a result, SOL did not regularly communicate or coordinate with or involve agencies when executing agreements, including disclosing information shared. Without ongoing communication, EBSA and WHD indicated they were not always aware agreements existed or what information was shared.

Furthermore, SOL, EBSA, and WHD did not have tracking mechanisms for common interest agreements and were unable to determine with certainty the number of agreements that had been executed. As a result, DOL may have improperly entered into common interest agreements with non-governmental entities and potentially disclosed privileged investigative information, providing an unfair advantage to those entities.

These issues occurred because DOL management did not place sufficient emphasis on establishing roles and responsibilities necessary for effective oversight and did not provide adequate training to all responsible parties.

#### **What We Recommended**

We made eight recommendations to DOL to establish policies and procedures for the use of common interest agreements with non-governmental entities, initiate coordination processes between DOL client agencies, develop a tracking system, and update training. SOL, EBSA, and WHD agreed with all eight recommendations.

#### **Read the Full Report**

For more information, go to:

<https://www.oig.dol.gov/public/reports/oa/2026/09-26-001-08-001.pdf>.

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## **INSPECTOR GENERAL'S REPORT**

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This report presents the results of the U.S. Department of Labor (DOL or Department) Office of Inspector General's (OIG) audit of DOL's internal controls for sharing confidential information using common interest agreements with non-governmental entities. This audit was initiated in response to a Congressional request that identified concerns with agency processes.

In November 2024 and January 2025, the Committee on Education and the Workforce (Committee) requested the OIG evaluate allegations that DOL's Employee Benefits Security Administration (EBSA) and Office of the Solicitor (SOL) inappropriately shared confidential information regarding employee benefit plans and their fiduciaries with plaintiffs' attorneys during class action lawsuits.<sup>1</sup> At about the same time, the Deputy Secretary of Labor requested we also review the Wage and Hour Division's (WHD) information-sharing practices with plaintiffs' law firms.

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<sup>1</sup> U.S. House of Representatives, Committee on Education and the Workforce, Letter of Request (November 21, 2024), available at: [https://edworkforce.house.gov/uploadedfiles/11.21.24\\_dol\\_oig\\_letter\\_re\\_ebsa\\_aiding\\_plaintiffs\\_at\\_torneys.pdf](https://edworkforce.house.gov/uploadedfiles/11.21.24_dol_oig_letter_re_ebsa_aiding_plaintiffs_at_torneys.pdf)

Based on the Committee’s and the Deputy Secretary’s requests, we initiated a performance audit to answer the following question:

To what extent do SOL, EBSA, and WHD have established controls for how they share confidential information using common interest agreements with non-governmental entities?

To answer our objective, we focused on SOL’s, EBSA’s, and WHD’s processes for information sharing and for entering into common interest agreements with non-governmental entities. This includes identifying whether, where, and how agreements were recorded, tracked, and monitored.

The agreements within our scope were identified by requesting SOL, EBSA, and WHD to compile all common interest agreements they entered into with non-governmental entities between January 1, 2023, and June 30, 2025.<sup>2</sup> Through this process, the agencies initially identified 45 agreements. SOL later identified 3 additional agreements, bringing the total to 48 (see Table 1).

**Table 1: DOL Common Interest Agreements Established between January 1, 2023, and June 30, 2025**

<b>DOL Agency</b>	<b>Number of Common Interest Agreements</b>
EBSA	7
WHD	41
<b>Total</b>	<b>48</b>

Source: SOL, EBSA, and WHD common interest agreements

Of the 48, we reviewed a sample of 13 common interest agreements—4 related to EBSA investigations and 9 related to WHD investigations. The EBSA sample was comprised of two random and two judgmental selections. The two judgmentally selected agreements addressed the Committee’s request. The WHD sample comprised eight random selections and one judgmental selection. The judgmental agreement was included with a randomly selected agreement. See Appendix A for additional details on scope and methodology.

To address the Committee’s specific questions, we also interviewed SOL, EBSA, and WHD officials, solicited written responses, and reviewed any evidence

<sup>2</sup> The Department reported it did not enter any common interest agreements from January 1 through June 30, 2025.

provided to support their response. See Exhibit 1 for the Committee’s questions, a summary of the agencies’ responses, and our corresponding analyses.

### **Common Interest Agreements**

A common interest agreement is a written or oral engagement between two or more parties, confirming their understanding that the exchange of certain information should be protected by the common legal interest doctrine. According to DOL, SOL has historically found common interest agreements to be an important tool to facilitate information gathering during investigations and litigation. Common interest agreements can protect Departmental privileges when communicating with: (1) outside law firms where the Department’s enforcement action overlapped with private litigation; (2) employees about their employer or a related entity or regarding an individual that is subject to a Departmental investigation or SOL litigation; (3) the attorneys of such employees; or (4) other individuals, such as independent fiduciaries and court-appointed receivers.

Such agreements also allow outside entities or individuals to share otherwise privileged information with DOL while preserving an underlying privilege. In other words, common interest agreements can allow the Department to obtain information that it might not otherwise be able to obtain through a subpoena or other investigative information request.

### **Agency Responsibilities and How DOL Uses Common Interest Agreements**

EBSA is responsible for protecting workers’ retirement and health benefits through effective regulations and enforcement of the law. EBSA oversees and enforces the requirements for how plan fiduciaries, service providers, and employers manage, report, and explain retirement and health benefits plans to employees under federal law, specifically Title I of the Employee Retirement Income Security Act (ERISA). Section 504(a) of ERISA allows DOL to share information with outside entities.<sup>3</sup>

WHD is responsible for enforcing compliance with labor standards to protect and enhance the welfare of the Nation’s workforce. WHD, in coordination with SOL, uses common interest agreements, in certain cases, to interview workers represented by legal counsel. Similar to EBSA, WHD also uses these

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<sup>3</sup> ERISA Section 504(a) provides: “[t]he Secretary may make available to any person actually affected by any matter which is the subject of an investigation...information concerning any matter which may be the subject of such investigation.”

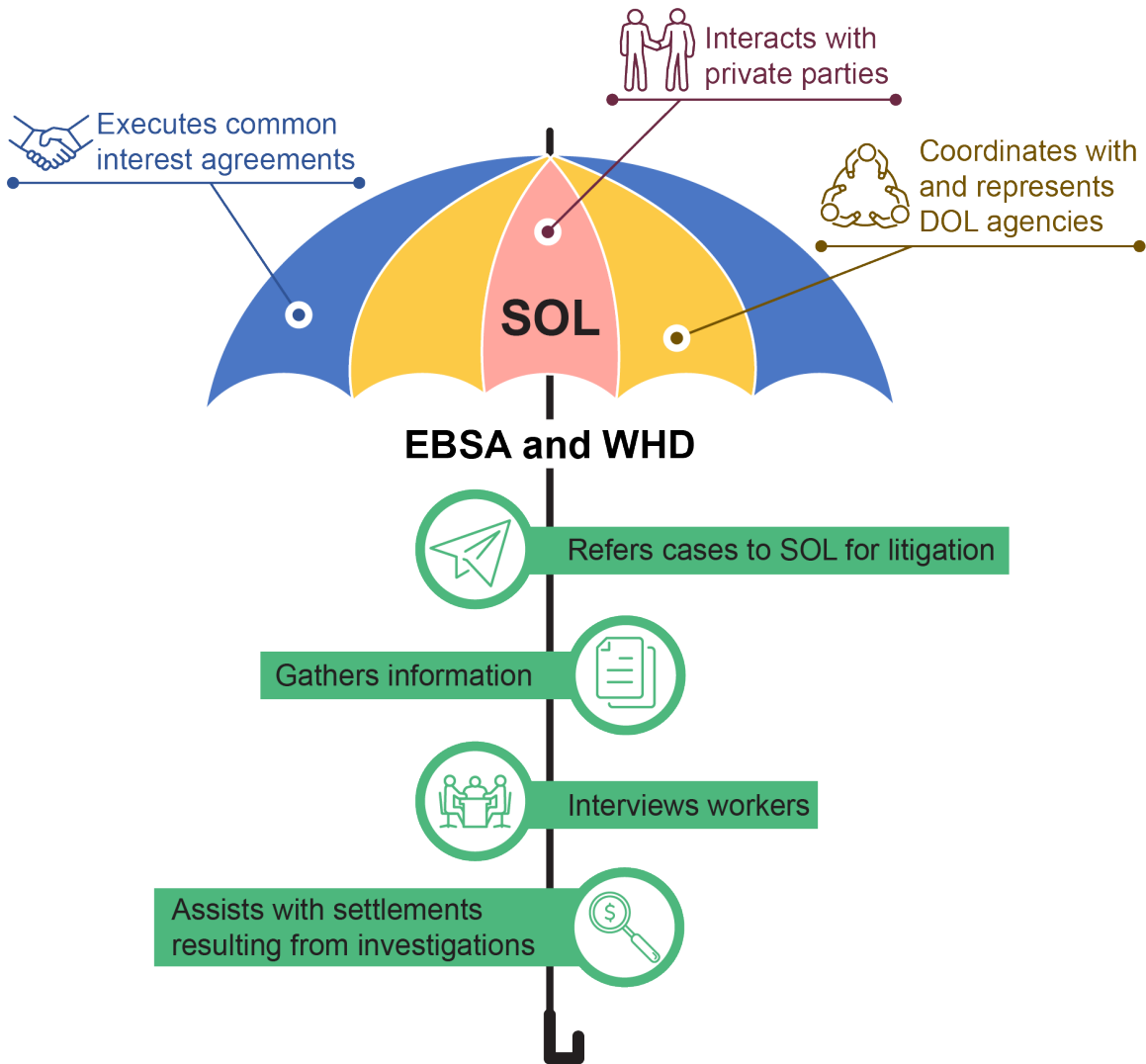
agreements to share information and assist in facilitating settlements resulting from its investigations.

SOL serves as DOL's legal counsel and plays a central role in supporting both EBSA and WHD. For EBSA, SOL provides legal advice on interpretation and enforcement; helps to develop regulations and guidance; and litigates cases involving fiduciary breaches, prohibited transactions, and plan mismanagement. In support of WHD, SOL advises on the labor laws; assists with rulemakings, guidance, and enforcement strategy; and litigates cases involving minimum wage, and overtime violations. In both contexts, SOL ensures that agency actions are legally sound.

SOL also occasionally facilitates coordination with non-governmental agencies, which include outside law firms, through tools like common interest agreements. SOL, in coordination with client agencies, such as EBSA, uses common interest agreements to gather and share information with non-governmental entities and to assist in facilitating settlements resulting from its investigations. According to SOL, these agreements are important in complex investigations or litigation involving overlapping cases, and they help EBSA and WHD to collaborate more effectively with outside parties. In matters involving EBSA and WHD, such as complex ERISA litigation or multi-plaintiff wage and hour cases, these agreements can enable DOL to collaborate with outside law firms representing plan participants, beneficiaries, or workers without waiving confidentiality. According to SOL, this approach helps ensure consistent legal positions, strengthens enforcement efforts, and promotes more efficient resolution for cases where government and private interests are closely aligned.

Figure 1 provides a visual overview of EBSA's, WHD's, and SOL's roles when executing common interest agreements.

**Figure 1: Agencies' Roles When Executing Common Interest Agreements**



Source: The OIG's analyses of the agencies' processes

## RESULTS

We found DOL did not establish sufficient controls for how it shared confidential information using common interest agreements with non-governmental entities. Specifically, SOL, EBSA, and WHD did not have formal policies and procedures, a framework for internal coordination, nor tracking mechanisms. These issues occurred because management did not place sufficient emphasis on oversight and accountability, which included not: (1) establishing roles and responsibilities; (2) having strategies for minimizing potential, actual, and apparent bias with

government personnel working on agreements; and (3) providing training to all responsible parties. As a result, DOL may have improperly entered into common interest agreements with non-governmental entities and potentially disclosed privileged investigative information, providing an unfair advantage to those entities.

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### **SOL, EBSA, and WHD Did Not Have Sufficient Oversight Over Common Interest Agreements with Non-Governmental Entities**

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SOL and its client agencies, including EBSA and WHD, lacked formal processes to govern how they entered into agreements with non-governmental entities. There was also no clear internal coordination between SOL and its client agencies, including EBSA and WHD. In the absence of formal and collaborative processes, the frequency and manner in which these agreements were entered into and how they were used differed between agencies and even regional offices within the same agency. In addition, none of the agencies developed and implemented mechanisms to track and monitor signed agreements. Within the Federal Government, internal controls are required to ensure processes are designed, implemented, and operating effectively.<sup>4</sup> Without proper oversight, DOL may have executed inappropriate common interest agreements with non-governmental entities, resulting in the potential improper disclosure of privileged information, which could create biased outcomes.

### **Lack of Sufficient Policies and Procedures Led to Inconsistencies**

We determined that SOL, EBSA, and WHD did not establish sufficient written policies and procedures for common interest agreements with non-governmental entities. Even though DOL had been using common interest agreements for many years, it did not develop a formalized oversight process to ensure these agreements were appropriately and consistently executed. The Office of Management and Budget requires federal leaders and managers to establish internal control systems and to annually report on their effectiveness.<sup>5</sup> Without

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<sup>4</sup> U.S. Government Accountability Office (GAO), Standards for Internal Control in the Federal Government, May 2025 (GAO-25-107721), available at: <https://www.gao.gov/assets/gao-25-107721.pdf>. These GAO standards align with the requirements under the Office of Management and Budget's Circular No. A-123, Management's Responsibility for Internal Control.

<sup>5</sup> Office of Management and Budget Circular No. A-123, Management's Responsibility for Internal Control (March 10, 2026), available at: <https://www.whitehouse.gov/wp-content/uploads/2026/03/OMB-Circular-No.-A-123-2026.pdf>

standardization, agencies and even regional offices within the same agency entered into common interest agreements inconsistently and possibly inappropriately.

While SOL and its seven regional offices set Departmental policies related to how cases are legally handled, SOL never developed any formalized processes for the use of common interest agreements in such cases. This led to the regional SOL offices following their own informal and undocumented processes, which caused inconsistencies in how agreements were executed.

For example, SOL regional offices had different approaches in utilizing common interest agreements including the use of written versus oral agreements. One of the seven regional offices indicated that it established an oral agreement through a conversation with the other party. Conversely, the other regional offices established written agreements when sharing information with outside entities.

Similarly, SOL regional offices had varying opinions regarding who signed common interest agreements. The regional SOL office that typically used oral agreements explained that it sometimes established written agreements and had WHD officials sign them to ensure they were aware of legal obligations. In contrast, other regions only had SOL attorneys sign the agreements. While SOL indicated that they were involved in all common interest agreements, during our review, we identified WHD as the sole signatory for three agreements, while two other agreements were jointly signed by WHD and SOL.

Furthermore, due to a lack of oversight and procedures related to agreement signing, common interest agreements could be entered into by staff who did not have the authority to bind the agency to such agreements. For example, we found in one instance that a WHD staff member who entered into an agreement on behalf of WHD lacked the authority to do so.

In addition, SOL did not establish a framework to ensure attorneys involved with common interest agreements did not have a potential conflict of interest<sup>6</sup> or bias. Specifically, SOL did not establish a process to track and monitor what legal matters SOL attorneys worked on prior to their government employment or where they went to work after leaving the government. As a result, SOL cannot ensure attorneys associated with common interest agreements did not have a potential conflict of interest or bias. We identified two scenarios where the interactions between the DOL attorneys and non-governmental entities—in conjunction with

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<sup>6</sup> 18 U.S.C. § 207, 5 C.F.R. § 2641, and 5 C.F.R. § 2635 delineate post-employment restrictions, such as a lifetime ban on communications and a 2-year ban on involvement. Specifically, executive branch employees are banned for the lifetime of a specific matter in which they were personally involved, and they are banned for 2 years after leaving federal service from matters that were under their official responsibility.

the timing of the common interest agreements—may have created at least an appearance of bias (see also Exhibit 1).

### **Appearance of a Conflict of Interest or Bias Scenario #1**

An individual from a non-governmental entity entered into a common interest agreement with DOL in April 2023. After signing the agreement, this individual served as Senior Counsel to the Secretary of Labor for about 8 months (November 2023 to July 2024), left the Department, and returned to the same non-governmental entity. SOL did not provide details on what role and responsibilities this individual had, if any, after returning to their former non-governmental employer.

In addition, SOL disclosed that a different and current DOL employee was a former student intern at this same entity. This employee was the signatory for the April 2023 agreement as well as three other agreements the non-governmental entity and DOL entered into in 2023 and 2024.

### **Appearance of a Conflict of Interest or Bias Scenario #2**

SOL identified one former employee—employed at DOL from February 2022 to May 2025—who was employed at a non-governmental entity before and after their employment with SOL. In addition, we identified one current SOL employee who was previously employed at the same entity from September 2013 to August 2015. The employee joined SOL in August 2015. We determined that SOL entered into six agreements with this entity from January 2023 to March 2024; however, neither SOL employee signed these agreements.

Both EBSA and WHD had the ability to develop their own policies and procedures for common interest agreements, but neither established any requirements. EBSA told us it began discussing changes to its enforcement guidance to include agreements with non-governmental entities during the fall of 2024, and the changes to standardize its oversight were implemented in January 2025. Specifically, the guidance now provides details for coordination with SOL on drafting, approving, and signing agreements. The updated guidance also includes procedures for recording information and documents shared or received under the agreement in EBSA's electronic case file. However, it did not establish procedures for coordination with SOL regarding the monitoring of these agreements.

Without sufficient emphasis on oversight and accountability, including establishing roles and responsibilities, there is a risk that unauthorized DOL staff could execute a common interest agreement and inappropriately share privileged information.

### **DOL Agencies Did Not Establish an Adequate Coordination Process**

We found SOL and its client agencies, including EBSA and WHD, did not establish a coordination process related to the development, execution, and monitoring of common interest agreements. SOL took the lead on these agreements but did not always communicate with the agencies on the actions it took. To ensure the proper execution of agreements, including shared information, coordination between the investigating agency and SOL is necessary.<sup>7</sup> Without ongoing communication, EBSA and WHD indicated they were not always aware agreements existed or what information was shared. EBSA and WHD indicated they would not always know if an agreement was implemented unless SOL chose to share that information. There were no formal policies or procedures that required SOL to notify EBSA or WHD when an agreement was executed on their behalf. We found two specific instances in our testing when EBSA and WHD were unaware an agreement had been used.

When determining the future use of common interest agreements, SOL and its client agencies, EBSA and WHD, were not aligned. EBSA and WHD stated they were not currently entering into any agreements. However, SOL indicated it was responsible for determining if an agreement was needed regardless of what EBSA and WHD decided. Without formal coordination processes, SOL may enter into agreements of which EBSA and WHD may not be aware or approve, potentially jeopardizing EBSA's and WHD's enforcement efforts and weakening the public's trust in the Department by disclosing information prematurely.

### **SOL, EBSA, and WHD Did Not Establish Tracking Mechanisms for Common Interest Agreements**

We found SOL, EBSA, and WHD did not have mechanisms for recording and tracking common interest agreements at the agency or Departmental level. As a result, DOL was unable to determine with certainty the number of agreements it executed. Effective monitoring activities are essential for the Department to make informed decisions. Without a complete and adequate tracking system, there is a risk that agreements could go unidentified.

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<sup>7</sup> GAO, Standards for Internal Control in the Federal Government, May 2025 (GAO-25-107721)

We found that SOL did not track or maintain a centralized system or database for common interest agreements or shared information. Agreements were stored in individual case files on an internal shared drive. SOL had no way to clearly identify which cases had common interest agreements and what information had been shared as a result of those agreements. This made it difficult for SOL to identify the number of agreements it executed and the information shared. This is also outlined in responses to the Committee's questions in Exhibit 1.

In addition, neither EBSA nor WHD tracked or monitored common interest agreements or the shared information. EBSA stated that it did begin tracking agreements in January 2025 when it updated its policies and procedures; however, no agreements had been initiated since this change was made.

In order to determine the number of common interest agreements executed by DOL on behalf of EBSA and WHD, we asked SOL, EBSA, and WHD to identify how many agreements they had entered into with non-governmental entities between January 1, 2023, and June 30, 2025. To determine the total number of common interest agreements executed by the Department (herein referred to as the universe), each agency's national office used various manual search methods, such as inquiring with their regional offices, searching internal drives, and reviewing email correspondence. The three agencies collectively identified 45 agreements. During our audit, SOL later discovered three additional agreements it had not provided. This increased the universe to 48 agreements. SOL and WHD could not provide an explanation for why the additional agreements were not provided in their initial universe submission. Due to the lack of tracking, we could not verify that the universe of agreements provided was complete.

Of the 48 agreements, we sampled 4 EBSA agreements and 9 WHD agreements to determine how and what information was shared by the agencies with non-governmental entities. For this sample, national and/or regional offices for SOL, EBSA, and WHD accessed current and former employee email accounts and searched internal drives for information shared through these agreements. Based on our review of sampled emails, including attachments, we did not find any inappropriate information sharing. However, we could not determine if additional information—that was not provided to us during the audit—was shared during verbal conversations, in-person meetings, or via personal devices or personal email accounts. As a result, information may have been inappropriately shared but not disclosed. Without an efficient tracking and monitoring mechanism, unidentified common interest agreements could result in the disclosure of privileged information and prevent the Department from protecting this information in the future.

As a result of our testing, we determined the Department did not place sufficient emphasis on the oversight of and accountability related to its use of common interest agreements because it did not establish adequate guidance, coordination, and tracking of agreements with non-governmental entities. This issue occurred for two reasons.

First, DOL management did not establish roles and responsibilities necessary for effective oversight of common interest agreements. Specifically, SOL, EBSA, and WHD indicated they did not implement procedures because agreements were not regularly used. The absence of defined roles and responsibilities created inconsistencies and prevented management at all three agencies from having visibility of agreements and shared information.

In addition, DOL did not provide adequate training to all responsible parties on common interest agreements. Training was only provided in 2022, 2023, and 2024 and only included some of the responsible parties. Specifically, training was provided to some SOL attorneys, certain EBSA enforcement staff, and WHD leadership. SOL did not ensure all SOL attorneys and all EBSA and WHD staff involved in common interest agreements received common interest training. Without proper training, staff responsible for executing common interest agreements may not have the requisite knowledge for managing those agreements.

DOL acknowledged its controls for how common interest agreements are tracked and monitored required improvement. During our discussions, DOL agreed that enhanced transparency could be beneficial. However, it cautioned that public disclosure of newly executed, ongoing, and terminated agreements could compromise the effectiveness of the agreements by undermining privilege protections and limiting the Department's ability to use them as an investigative and enforcement tool. In addition, according to DOL, individuals or entities providing information to DOL may be less willing to share sensitive information if they believe the existence or details of such agreements could become publicly known, which could negatively affect the Department's ability to obtain information necessary to support investigations and enforcement activities. Finally, DOL said public disclosure of agreements would reveal the existence of investigations, which are kept confidential until DOL is ready to take enforcement action. DOL did, however, recognize that internal controls over these agreements should allow for sufficient tracking and reporting on the use of such agreements.

## CONCLUSION

DOL did not establish sufficient controls, coordination procedures, and tracking mechanisms for how it shares investigative information with non-governmental entities using common interest agreements. This occurred because DOL management did not place sufficient emphasis on establishing roles and responsibilities necessary for effective oversight and did not provide adequate training to all responsible parties. As a result, SOL, EBSA, and WHD followed informal and unstructured processes.

While EBSA has the authority to disclose information to non-governmental entities under Section 504(a) of ERISA, the Department's lack of adequate management oversight for common interest agreements increased the risk that DOL improperly entered into agreements with non-governmental entities, resulting in the disclosure of privileged information. In addition, improperly sharing non-public information that is not otherwise available to all parties involved in possible or ongoing investigations could provide other non-governmental entities with an unfair advantage.

## OIG'S RECOMMENDATIONS

We recommend the Solicitor of Labor:

1. Establish and implement written policies and procedures to standardize the development, execution, and monitoring of common interest agreements with non-governmental entities.
2. Establish clearly defined roles and responsibilities, including monitoring for bias, for the designated signatory of common interest agreements with non-governmental entities.
3. Require staff who participate in common interest agreements to sign an affidavit that they have not previously been employed by the external parties involved in the agreement in the prior year and that they will abide by any post-employment restrictions imposed by 18 U.S.C. § 207.
4. Establish and implement coordination processes with all applicable DOL client agencies.
5. Develop a tracking system to monitor executed common interest agreements with non-governmental entities including information shared.

6. Update and provide training to all applicable DOL agencies and SOL attorneys on the management and use of common interest agreements.

We recommend the Assistant Secretary for Employee Benefits Security:

7. Establish coordination procedures with SOL to monitor common interest agreements with non-governmental entities.

We recommend the Administrator for the Wage and Hour Division:

8. Establish coordination procedures with SOL to develop, execute, and monitor common interest agreements with non-governmental entities.

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### **Analysis of Agency's Comments**

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In response to a draft of this report, SOL, EBSA, and WHD agreed with all eight recommendations to strengthen controls for the use of common interest agreements with non-governmental entities. DOL acknowledged that its past use of common interest agreements created an appearance of impropriety and presented reputational and potential legal risks to the Department. Furthermore, the Department is in the process of adopting policies and procedures to address the recommendations. Synopses of DOL's responses follow:

- For Recommendation 1, SOL concurred with this recommendation and is implementing a written policy to standardize the development, execution, and monitoring of common interest agreements with non-governmental entities.
  - We determined SOL's proposed corrective action to develop a standardized policy for developing, executing and monitoring common interest agreements meets the intent of the recommendation.
- For Recommendation 2, SOL concurred with this recommendation and is implementing a written policy defining roles and responsibilities for the use of common interest agreements, including signatory bias monitoring.
  - We determined SOL's proposed corrective action to implement a written policy defining roles and responsibilities for parties involved in common interest agreements meets the intent of the recommendation.

- For Recommendation 3, SOL concurred with this recommendation and is implementing a written policy requiring staff involved in common interest agreements to sign an affidavit confirming no prior employment with related external parties in the past year and compliance with post-employment restrictions under 18 U.S.C. § 207.
  - We determined SOL’s proposed corrective action to implement a written policy for prior employment meets the intent of the recommendation.
- For Recommendation 4, SOL concurred with this recommendation and will work with applicable client agencies to develop a coordination process within 90 days.
  - We determined SOL’s proposed corrective action to engage with client to establish coordination procedures meets the intent of the recommendation.
- For Recommendation 5, SOL concurred with this recommendation and is implementing a written policy that establishes a tracking system to monitor executed common interest agreements and information shared with non-governmental entities.
  - We determined SOL’s proposed corrective action to implement a written policy and establish a tracking system to monitor common interest agreements meets the intent of the recommendation.
- For Recommendation 6, SOL concurred with this recommendation and plans to conduct training for applicable client agency staff on the management and use of common interest agreements within the next 90 days.
  - We determined SOL’s proposed corrective action to conduct training meets the intent of the recommendation.
- For Recommendation 7, EBSA concurred with this recommendation and will coordinate with SOL on procedures to monitor common interest agreements within 90 days.
  - We determined EBSA’s proposed corrective action to engage with SOL to establish coordination procedures meets the intent of the recommendation.

- For Recommendation 8, WHD concurred with this recommendation and will work with SOL to establish coordination procedures within 90 days to develop, execute, and monitor common interest agreements with non-governmental entities.
  - We determined WHD's proposed corrective action to engage with SOL to establish coordination procedures meets the intent of the recommendation.

We look forward to working with DOL to ensure the intent of the recommendations are addressed. The agency's response to the draft report is included in its entirety in Appendix B. We appreciate the cooperation and courtesies SOL, EBSA, and WHD extended to us during this audit.



Laura B. Nicolosi  
Assistant Inspector General for Audit

## **EXHIBIT 1: COMMITTEE QUESTIONS AND AGENCY RESPONSES**

To address the Committee’s specific questions, we interviewed SOL, EBSA, and WHD officials, solicited written responses, and reviewed any evidence provided to support their responses.<sup>8</sup> Below is a summary of their responses and our analyses:

### **1. The number of instances in which DOL shared information gleaned from EBSA investigations with outside law firms before any lawsuit had been filed related to the investigation.**

*DOL Consolidated Response:* To identify the number of instances, the Department first had to compile a list of cases involving common interest agreements. Then, it had to identify litigation filing dates. For the period covering January 1, 2023, through June 30, 2025, DOL shared documents from one EBSA case and one WHD case before initiating litigation.

*OIG Analysis:* For the selected sample of agreements, our review was limited to emails and corresponding attachments provided by the agencies to outside law firms. Due to DOL’s lack of tracking for common interest agreements, there was no way to ensure the agencies provided us with all electronic documentation. In addition, the agencies did not document verbal interactions, such as telephone or virtual conversations and in-person meetings, with the law firms. As such, we were unable to determine if investigative information was electronically or verbally shared with outside law firms prior to legal proceedings. However, we were able to corroborate that information was shared with law firms regarding the two cases the Department mentioned in its response.

### **2. The number of instances in which DOL shared information gleaned from EBSA investigations with outside law firms that do not have access to that information under normal discovery rules at the time it was shared.**

*DOL Consolidated Response:* For the period covering January 1, 2023, through June 30, 2025, DOL shared witness statements from one EBSA investigation and one WHD investigation with an outside law firm that would not have been accessible under normal discovery rules.

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<sup>8</sup> The Committee’s questions included specific requests for EBSA; however, for comprehensive analyses, we included information gathered from SOL, EBSA, and WHD in DOL’s responses.

*OIG Analysis:* For the selected sample of agreements, our review was limited to emails and corresponding attachments provided by the agencies to outside law firms. Due to the Department’s lack of tracking for common interest agreements, there was no way to ensure the agencies provided us with all electronic documentation. In addition, the agencies did not document verbal interactions, such as telephone or virtual conversations and in-person meetings, with the law firms. As such, we were unable to determine if investigative information was electronically or verbally shared with outside law firms prior to legal proceedings. However, we did verify that witness statements were shared with the law firms regarding the two cases DOL mentioned in its response.

**3. An identification of those law firms with which DOL shared confidential information collected during an investigation.**

*DOL Consolidated Response:* DOL had to manually search emails to identify law firms with which it shared investigative information. For the period covering January 1, 2023, through June 30, 2025, DOL shared investigative information with four law firms under common interest agreements.<sup>9</sup>

*OIG Analysis:* As outlined above, our testing was limited to electronic documentation provided by the agencies for our selected sample of agreements. Our sample included three of the four law firms mentioned in the Department’s response. We did verify that DOL electronically shared information with these three law firms.

**4. The number of instances in which DOL shared information gleaned from EBSA investigations with a plaintiffs’ law firm before a formal written “common interest agreement” or similar agreement had been executed or acknowledged.**

*DOL Consolidated Response:* For the period covering January 1, 2023, through June 30, 2025, the Department entered into a common interest agreement that was not documented in a formal written agreement in two cases, one EBSA case and one WHD case. For both cases, DOL stated EBSA and WHD investigative information was not shared with the plaintiffs’ law firms. DOL indicated that entering into a verbal agreement instead of a written one permits the agency to move forward with collecting information immediately before it is determined if it is an effective use of resources to reduce the agreement to writing. In addition, the Department stated that if a departed attorney entered into a verbal agreement, their supervisor would be aware of it. Even if the agreement was

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<sup>9</sup> SOL identified three law firms, and EBSA identified one additional law firm. We were unable to verify the one additional law firm EBSA identified because it was not part of our sample.

inadvertently missed, if the information was to be requested through discovery, a court might not be aware of that oral memorialization of the agreement, which would shield the information's release.

*OIG Analysis:* SOL regional offices had varying approaches in the use of written versus oral agreements. In addition, since DOL did not track verbal interactions, it is possible that other oral agreements (besides the two mentioned in DOL's response) were initiated or investigative information was shared with law firms prior to executing a written agreement. Based on our review of documentation provided by the agencies, for the selected sample of written agreements and interviews conducted, we did not identify any instances where information was electronically shared prior to signing a written agreement.

**5. The number of instances in which DOL directed resources to assist a plaintiffs' law firm in litigation, including moot court practices, strategy phone calls, expert advice, or any other assistance, and whether any of these instances exceeded the scope of DOL's statutory authority.**

*DOL Consolidated Response:* The Department does not expend resources to assist or benefit a plaintiffs' law firm in litigation, including moot court practices, strategy phone calls, expert advice, or other assistance in particular matters to which DOL was not itself a party.

*OIG Analysis:* There was no way to determine if resources were used in common interest agreements to assist plaintiffs' law firms since DOL does not track this information. As a result, we could not perform any testing to validate the agencies' response.

**6. To the extent that DOL views plaintiffs' law firms as assisting DOL in its enforcement initiatives and regulatory goals, whether DOL is in compliance with procurement rules.**

*DOL Consolidated Response:* During the previous Administration, some Departmental staff viewed plaintiffs' law firms as assisting in their enforcement initiatives and regulatory goals and tried to assist those plaintiffs' law firms in DOL's private goals as well. However, current leadership does not view this as assistance. There are limited scenarios in which outside entities may provide helpful information that supports enforcement, but it is no different than other stakeholders offering information to achieve compliance.

Communications with law firms about amicus briefs or investigations do not create obligations that are enforceable or otherwise recognizable and, therefore,

do not constitute contracts or contract-like instruments subject to federal procurement law.

*OIG Analysis:* There was no way to determine if resources were used in common interest agreements to assist plaintiff's' law firms since DOL does not track this information. As a result, we could not perform any testing to validate the agencies' response.

**7. The criteria DOL uses to select which plaintiffs' law firms DOL will share information with pursuant to a common interest agreement.**

*DOL Consolidated Response:* There is no effort or approach by DOL to work with a particular entity. The Department uses common interest agreements primarily to gather information, rather than share information. The potential for a common interest agreement is identified based on the specific facts and circumstances of individual enforcement matters.

*OIG Analysis:* Based on our review of available guidance, interviews conducted, and review of electronic documentation for selected agreements, DOL does not have or use any criteria to select law firms to share information with. Specifically, for 8 of the 13 agreements we reviewed, we found the Department initiated information sharing or suggested entering into a common interest agreement to further its enforcement interests. The non-governmental entity suggested information sharing for the remaining five agreements.

**8. An assessment of the monetary value of the information that DOL is providing to plaintiffs' law firms, including information provided to those firms that may be used to strengthen their claims against employee benefits plan fiduciaries and to increase the value of the plaintiffs' law firm's potential recovery and, with it, the firm's attorneys' fees. Questions would include: Does DOL determine the value of the information it shares with these law firms? Does DOL consider whether it is reasonable or appropriate to use confidential information collected during investigations to enrich plaintiff's law firms? Does DOL cap the value of information it shares with any plaintiffs' law firm? Does DOL receive anything of value in exchange for providing this valuable confidential information?**

*DOL Consolidated Response:* DOL does not set a monetary value on the information that is shared or receive anything of value in exchange for providing information through a common interest agreement. DOL provides information when required by law or when sharing information furthers the Department's enforcement interests. DOL does not believe it is appropriate to use investigative

information to enrich plaintiffs' law firms. The value DOL receives is noneconomic and enriches the agencies' missions.

*OIG Analysis:* Since DOL did not track the information it shared or set a monetary value on information shared or gathered, it was not possible to assess the value or validate the agency's response.

**9. The extent to which any law firm or firms are the recipient of more DOL assistance than others. Questions would include: Are there revolving door relationships with these law firms, i.e., have any attorneys at these firms worked at EBSA, and have any EBSA attorneys worked at these firms? What does a search of emails and call logs between DOL and the firms reveal? To what extent do DOL employees communicate with plaintiffs' law firms using unofficial channels, such as personal cell phones or personal email accounts?**

*DOL Consolidated Response:* DOL does not provide assistance by directing resources to benefit law firms. The Department enters into common interest agreements for the benefit of the agency's enforcement efforts. Law firms are seen like other groups, as stakeholders, who assist DOL to gain compliance or to obtain information.

DOL does not require its attorneys to sign non-disclosure or non-compete agreements, either as a condition of employment or upon separating from the agency. There are legal restrictions associated with handling matters in which the Department is involved after employment depending on the position held and work done for DOL. In addition, DOL does not track employment positions for departed attorneys.

Departmental policy requires employees to use only DOL phones (government issued cell phones and landlines) and email to conduct official business. The policy also requires recurring training on safeguarding DOL information, technology use, and records retention.

*OIG Analysis:* As previously noted, our testing was limited to emails and corresponding attachments provided by the agencies for the selected sample of agreements. We did validate that the Department has policies that restrict the use of personal cell phones and personal email accounts to conduct official government business. However, due to attorney-client privilege and lack of DOL tracking of common interest agreements, it was not possible to determine all the DOL employees involved in these matters. As such, we could not access DOL employee call logs, personal cell phone records, or personal email accounts. However, for the DOL employees that were identified to have worked on

common interest agreements, we identified the two potential areas for conflicts of interest or bias concerns outlined in our report.

**10. An assessment of the reputational risk to DOL resulting from sharing information gathered during EBSA investigations with plaintiffs' law firms.**

*DOL Consolidated Response:* DOL is aware of actions undertaken during the previous Administration in which the agency entered into common interest agreements with plaintiffs' law firms and privileged investigative material was shared by the Department with those outside firms. This has potential to create an appearance of impropriety in the use of common interest agreements and could present reputational risk and the potential for legal risk to DOL. Some risks include waiving the ability to invoke privileges, protecting the confidentiality of materials in the future, or adversely affecting the Department's enforcement efforts.

DOL provides information when required by law or when sharing information furthers the agency's enforcement interests. If the American people suspect that the Department is sharing information to enrich plaintiffs' law firms, this may erode public trust in DOL and cause reputational harm.

*OIG Analysis:* Based on our review, we agree with DOL's response. Inappropriately sharing information with law firms could have a negative reputational impact on DOL and weaken the public's trust in the Department.

**11. The extent to which sharing information gathered during EBSA investigations with plaintiffs' law firms will have a negative impact on DOL's role promoting employee benefit plan sponsorship.**

*DOL Consolidated Response:* DOL is unaware of any evidence that its execution of common interest agreements discouraged or prevented employee benefit plan sponsorship.

*OIG Analysis:* None of the audit work performed identified concerns related to employee benefit plan sponsorship in relation to common interest agreements.

## APPENDIX A: SCOPE AND METHODOLOGY

### Scope

We reviewed SOL's, EBSA's, and WHD's processes for information sharing and for entering into common interest agreements with non-governmental entities. This included identifying where and how agreements were recorded, tracked, and monitored. The agreements reviewed related to EBSA and WHD investigations and information shared between January 1, 2023, and June 30, 2025.

### Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To answer our audit objective, we obtained an understanding of applicable federal laws and regulations, DOL guidance, and agency requirements related to the development, execution, and monitoring of common interest agreements with non-governmental entities. Additionally, we interviewed SOL, EBSA, and WHD officials to determine how common interest agreements were initiated and executed.

We also requested that SOL, EBSA, and WHD provide a universe of agreements they entered into between January 1, 2023, and June 30, 2025. Each agency conducted a manual search in support of this request. The search methodology included reviewing email correspondence, searching internal drives, and asking regional office staff to determine the number of agreements and information shared. The agencies identified a total of 48 agreements for this time period, specifically 7 agreements related to EBSA cases, and 41 agreements related to WHD cases. We selected a random sample of 10 agreements that included 2 EBSA-related agreements and 8 WHD-related agreements. The sample also included two judgmentally selected EBSA-related agreements to address the Committee's request and one judgmentally selected WHD-related agreement because it was included with information submitted from the agencies. In total, we reviewed 13 agreements that comprised 4 EBSA-related agreements and 9 WHD-related agreements.

We determined that the Department entered into common interest agreements with 44 different non-governmental entities that included 30 different law firms and 14 other non-governmental entities, such as legal services organizations and non-profit legal advocacy organizations. Of these, 12 entities (6 law firms and 6 other non-governmental entities) entered into 2 or more agreements with DOL.

### Universe of Common Interest Agreements

Below is a summary of the methodologies that SOL, EBSA, and WHD used to identify the universe of common interest agreements.

SOL requested the Office of the Chief Information Officer perform an electronic search of email accounts and local network drives to identify responsive records related to specific common interest agreements. Search terms included the entity names, individual names associated with the investigation, non-governmental entity domain names, and attorney names to identify the common interest agreements. SOL initially identified 45 common interest agreements, which included 7 EBSA-related agreements and 38 WHD-related agreements. During our audit, SOL later discovered 3 additional WHD-related agreements it had not previously provided, which increased the universe to 48 agreements. According to SOL, its review process did not withhold any relevant materials responsive to our request.

EBSA performed a search for agreements in the agency's case management system from January 1, 2017, through June 30, 2025. EBSA also requested the Office of the Chief Information Officer perform an electronic search of email accounts and local network drives to identify responsive records related to specific common interest agreements. Search terms included words related to common interest agreements. Additionally, EBSA searched through Reports of Investigation and attachments and requested each of its 10 regional offices search for cases involving common interest agreements. According to EBSA, its review process did not withhold any relevant materials responsive to our request.

WHD requested the Office of the Chief Information Officer perform an electronic search of email accounts and local network drives to identify responsive records related to specific common interest agreements. Search terms included current and previous WHD employee names. Additionally, the Director of Regional Support instructed each of its five regional offices to retrieve all emails associated with common interest agreements. WHD indicated that common interest agreements are not recorded in WHD's case management system. According to WHD, its review process did not withhold any relevant materials responsive to our request.

Sampling

For the period of January 1, 2023, through June 30, 2025, DOL executed 48 common interest agreements: 7 agreements for EBSA cases and 41 agreements for WHD cases. We selected a random sample size of 10 agreements that included 2 EBSA-related agreements and 8 WHD-related agreements. We judgmentally selected two EBSA-related agreements because they were of specific interest to the Committee’s request. We also added one WHD-related agreement because it was included in documentation for a sampled agreement. This brought the sample total to 13 agreements. To select our sample, we stratified the universe by agency and year. Below are the details for each agency and how the sample was selected.

For the sample of agreements related to EBSA investigations, we stratified by year (2023, 2024, and 2025). Our random sample was sorted by year and then by random number. The first agreement for each year (2023 and 2024) was selected. DOL reported that it did not enter any common interest agreements from January 1 through June 30, 2025; therefore, there were no agreements for EBSA in 2025. See Table 2 for details on the random sample of common interest agreements for EBSA investigations.

**Table 2: Random Sample of Common Interest Agreements for EBSA Investigations**

<b>Year</b>	<b>Number of Agreements in the Universe<sup>10</sup></b>	<b>Number of Randomly Sampled Agreements</b>
2023	4	1
2024	2	1
2025	0	0
<b>Total</b>	<b>6</b>	<b>2</b>

Source: OIG sample

For the sample of agreements related to WHD investigations, we stratified by year (2023, 2024, and 2025). Our random sample was sorted by year and then by random number. The first four agreements for each year (2023 and 2024) were selected. The Department reported that it did not enter into any common interest agreements from January 1 through June 30, 2025; therefore, there were

<sup>10</sup> After sample selection, we discovered that there were two agreements signed in 2023 with the same entity associated with one EBSA case. This changed the total universe to seven agreements (2023: 5 and 2024: 2).

no agreements for WHD in 2025. See Table 3 for details on the random sample of common interest agreements for WHD investigations.

**Table 3: Random Sample of Common Interest Agreements for WHD Investigations**

<b>Year</b>	<b>Number of Agreements in the Universe<sup>11</sup></b>	<b>Number of Randomly Sampled Agreements</b>
2023	13	4
2024	25	4
2025	0	0
<b>Total</b>	<b>38</b>	<b>8</b>

Source: OIG sample

Internal Controls

We reviewed internal controls related to DOL’s use of common interest agreements and shared information with non-governmental entities to identify deficiencies that might be material weaknesses. We reviewed the Department’s policies and procedures, methods for internal coordination, and systems for tracking and monitoring. We conducted testing to identify if the internal controls were designed, implemented, and operated effectively. The results of the internal controls testing can be found in the body of the report.

In response to the Committee’s request, we also conducted internal controls testing related to potential bias by current or previous DOL personnel. To determine if there were potential areas for bias, we conducted a review to identify whether any DOL employees had affiliations with the non-governmental entities included in our sample of agreements, and whether individuals associated with those entities had any affiliation with the Department. We requested written responses from SOL, EBSA, and WHD addressing the Committee’s questions regarding bias concerns. We searched public data sources to identify any potential areas for bias in our selected sample of agreements. The control weaknesses we identified are outlined in the body of the report.

Criteria

- 29 U.S.C. § 1134 - Investigative Authority

<sup>11</sup> As previously mentioned, during the audit, three additional WHD-related agreements were discovered. This changed the total universe to 41 agreements (2023: 16 and 2024: 25).

- 18 U.S.C. § 207 - Restrictions on Former Officers, Employees, and Elected Officials of the Executive and Legislative Branches
- 5 C.F.R. Part 2635 - Standards of Ethical Conduct for Employees of the Executive Branch
- 5 C.F.R. Part 2641 - Post-Employment Conflict of Interest Restrictions (dated March 5, 2026)
- Office of Management and Budget Circular No. A-123, Management's Responsibility for Internal Control (updated March 10, 2026)
- U.S. Government Accountability Office, Standards for Internal Control in the Federal Government, GAO-14-704G (May 2025)
- DLMS 7-902, Appropriate Use of DOL Information Technology
- DOL Ethics Guide: How to Keep Out of Trouble (updated January 2025)
- EBSA Enforcement Manual (January 2025)
- Wage and Hour Memorandum No. 2021-5, Guidance Regarding Delegation of Authorities and Assignment of Responsibilities for Written and Signed Documents (dated March 8, 2021)

#### Prior Relevant Coverage

There were no audit reports released by the OIG or the U.S. Government Accountability Office in the past 5 years that were pertinent to this audit.

**APPENDIX B: AGENCY'S RESPONSE TO THE REPORT**

The agency's response to our draft report follows.

**U.S. Department of Labor** Office of the Solicitor  
Washington, D.C. 20210



DATE: June 17, 2026

MEMORANDUM FOR: LAURA B. NICOLOSI  
Assistant Inspector General for Audit

FROM: JONATHAN BERRY  
Solicitor of Labor

SUBJECT: Response to the Office of the Inspector General's Draft Report:  
*DOL Needs Stronger Oversight and Controls for Sharing  
Confidential Information*, Report No. \_\_\_\_\_

The U.S. Department of Labor's Office of the Solicitor, Wage and Hour Division, and Employee Benefits Security Administration appreciate the opportunity to respond to the June 1, 2026 draft report of the Office of the Inspector General titled *DOL Needs Stronger Oversight and Controls for Sharing Confidential Information*, which examines the use of common interest agreements by these three agencies in the course of investigations and enforcement litigation.

We thank OIG for its audit, report, and recommendations. Although there are limited situations where common interest agreements can assist the Department in obtaining information, we are aware of uses during the previous Administration in which the Department entered into common interest agreements with plaintiffs' law firms and privileged investigative material was shared by the Department with those outside firms. This creates an appearance of impropriety in the use of common interest agreements, and presents reputational risk and the potential for legal risk to the Department and SOL.

As indicated below, we concur with OIG's recommendations and are in the process of adopting policies and procedures to implement them.

**Recommendations for SOL:**

1. Establish and implement written policies and procedures to standardize the development, execution, and monitoring of common interest agreements with non-governmental entities.

*SOL Response:* SOL concurs with this recommendation and is adopting a written policy that sets forth procedures to standardize the development, execution, and monitoring of common interest agreements with non-governmental entities.

2. Establish clearly defined roles and responsibilities, including monitoring for bias, for the designated signatory for common interest agreements with non-governmental entities.

*SOL Response:* SOL concurs with the recommendation and is adopting a written policy for common interest agreements that defines roles and responsibilities for their use, including monitoring for bias of the designated signatory.

3. Require staff who participate in common interest agreements to sign an affidavit that he or she has not previously been employed by the external parties involved in the agreement in the prior year and that he or she will abide by any post-employment restrictions imposed by 18 U.S.C. § 207.

*SOL Response:* SOL concurs with the recommendation and is adopting a written policy that includes procedures requiring staff who participate in common interest agreements to sign an affidavit that reflects the language of this recommendation.

4. Establish and implement coordination processes with all applicable DOL client agencies.

*SOL Response:* SOL concurs with the recommendation and will work with applicable client agencies to develop a coordination process within 90 days.

5. Develop a tracking system to monitor executed common interest agreements with non-governmental entities, including information shared.

*SOL Response:* SOL agrees with the recommendation and is adopting a written policy for common interest agreements that includes establishing a tracking system to monitor executed common interest agreements with non-governmental entities, including information shared.

6. Update and provide training to all applicable DOL agencies and SOL attorneys on the management and use of common interest agreements.

*SOL Response:* SOL agrees with the recommendation and plans to conduct training for applicable client agency staff on the management and use of common interest agreements within the next 90 days.

**Recommendation for EBSA**

7. Establish coordination procedures with SOL to monitor common interest agreements with non-governmental entities.

*EBSA Response:* EBSA concurs with this recommendation. Within 90 days, the Assistant Secretary for Employee Benefits Security will coordinate with SOL on procedures to monitor common interest agreements.

**Recommendation for WHD**

8. Establish coordination procedures with SOL to develop, execute, and monitor common interest agreements with non-governmental entities.

*WHD Response:* WHD concurs with the recommendation and will work with SOL to establish coordination procedures within 90 days to develop, execute, and monitor common interest agreements with non-governmental entities.

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