

DOL Audit Yields Recommendations for 3 Agencies

The Office of the Inspector General called for stronger oversight and controls for sharing confidential information.

Reported by [EMILY BOYLE](#)

The Department of Labor's Office of the Inspector General found that three agencies within the department lacked "sufficient controls" for how they shared confidential information with nongovernmental entities.

The OIG's investigation came after two requests from Republican leaders of the House Committee on Education and the Workforce, first in [November 2024](#) and again in [January 2025](#). In a [report](#) issued June 30 that considered agreements entered into between January 1, 2023, and June 30, 2025, the OIG concluded that the Employee Benefits Security Administration, the Office of the Solicitor, and the Wage and Hour Division "did not have formal policies and procedures, a framework for internal coordination and tracking mechanisms" in place for common interest agreements.

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A common interest agreement occurs when EBSA shares information it learns during an investigation with plaintiffs involved in litigation related to the Employee Retirement Income Security Act, a practice that attorneys for plan sponsors argue is unfair to fiduciaries. The DOL uses the agreements to "obtain information to enhance enforcement efforts and to protect sensitive information from being disclosed," according to the OIG's report.

"When agencies share sensitive data, the safeguards must be airtight," wrote Inspector General Anthony D'Esposito, in a response to emailed questions. "Anything less puts programs, people, and accountability at risk."

The agencies issued recommendations that the three agencies:

- implement policies and procedures for the use of common interest agreements with outside entities;
- initiate coordination processes between the DOL client agencies;
- develop a tracking system to monitor agreements; and
- update training for all relevant DOL agencies and SOL attorneys.

Each agency agreed with the recommendations, according to the OIG report.

"The Department of Labor agrees with the Inspector General's findings that under the Biden Administration, DOL failed to establish sufficient controls for how it shared confidential information," wrote Assistant Secretary for Public Affairs David O'Brien, who works in the Department of the Treasury, in a response to emailed questions. "[The] DOL will not take any action to compromise the Department's independence, integrity and credibility with the regulated or participant communities. This includes improper coordination with plaintiff lawyers who are pursuing private actions."

Andrew Oringer, head of the Wagner Law Group's New York office and an ERISA attorney, in response to emailed questions, wrote to PLANSPONSOR that under prior Democratic administrations, the DOL made efforts to share information with plaintiffs in ERISA cases.

“Putting aside possible questions surrounding the legal basis for [common interest agreements], there is a potential problem with perception regarding that activity,” Oringer wrote. “There are those who view some plaintiffs’ cases firms as reflective of a litigious society that allows settlements to be unfairly extracted in light of high litigation cost and risks, even where the cases might be meritless or at least suspect.”

Oringer noted that the approach to ERISA litigation has varied significantly between prior Democratic administrations and Trump’s administrations. Most administrations have concerns both about “preventing nuisance lawsuits from succeeding” and about stopping harm to plan participants and beneficiaries, he wrote.

“However, in terms of prioritizing between those two types of considerations, prior Democratic administrations typically leaned toward supporting the plaintiff, and, now, recent indications from officials within the Trump administration’s DOL are that the DOL is focusing more on avoiding what are perceived as inappropriate claims,” Oringer wrote. “ Now the tone seems to center more on how the DOL can promote a system where plan sponsors and fiduciaries are not being unnecessarily and unduly challenged legally, while at the same time protecting participants and beneficiaries, instead of vice versa.

In the House Education and Workforce Committee hearing Restoring Trust: Enhancing Transparency and Oversight at EBSA in July 2025, Ali Khawar, the former deputy head of EBSA, defended the agency’s actions during the Biden administration, indicating that there were only 12 common interest agreements in the last 15 years, and said ERISA grants the agency the right to share information with interested parties.

A spokesperson for the OIG did not immediately respond to a request for comment.

Tags

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