

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.

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