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"Broken Trust: How the Biden-Harris DOL Leaked Confidential Information"

Testimony of Anthony P. D'Esposito
Inspector General
Office of Inspector General
U.S. Department of Labor

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Good morning, Chairman Mackenzie, Ranking Member Omar, and distinguished Members of the Subcommittee. Thank you for the opportunity to testify on the U.S. Department of Labor Office of Inspector General's work examining the Department's use of common interest agreements and the sharing of confidential information with non-governmental entities.

We initiated our audit in response to Congressional concerns[1] about whether certain agencies within the Department, specifically the Office of the Solicitor, the Employee Benefits Security Administration, and the Wage and Hour Division, were entering into information sharing relationships with plaintiffs' law firms without adequate safeguards, documentation, or oversight.

A common interest agreement is an arrangement that allows two or more parties to share information while preserving legal protections such as attorney-client privilege. The Department of Labor has used these agreements in matters where government attorneys and private counsel are working on related issues, enabling outside groups to provide information like notes, statements, or other privileged materials that would not ordinarily be accessible through standard interviews or subpoenas. The Office of the Solicitor plays a central role by drafting and approving these agreements and guiding the agencies that rely on them.

Because these agreements involve sensitive and privileged information, their effectiveness depends on strong internal controls, clear oversight, and consistent documentation. When such safeguards are absent, there is an increased risk that information will be shared improperly, enforcement activities may become negatively impacted, and confidence in the Department's ability to protect confidential materials could erode. For these reasons, common interest agreements must be created, approved, and monitored through formal processes to ensure they are handled with the necessary authority, standardization, and accountability.

This testimony reflects the Office of Inspector General's comprehensive audit work of common interest agreements entered into in the previous administration, including findings contained in our report published on June 30, 2026.[2] Our audit work found that the Department lacked the foundational internal controls necessary to ensure such agreements were executed properly, monitored appropriately, and used in a way that protected sensitive investigative information. The Department lacked written policies and procedures governing when common interest agreements should be used, how they should be approved, who was authorized to sign them, or how they should be

[1] 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_plantiffs_attorneys.pdf Congressional concerns initially focused on EBSA. Based on additional concerns raised by the now-acting Secretary, the scope of our review was expanded to include SOL and WHD.
[2] DOL Needs Stronger Oversight and Controls for Sharing Confidential Information, Report No. 09-26-001-08-001 (June 30, 2026), available at: https://www.oig.dol.gov/public/reports/oa/2026/09-26-001-08-001.pdf

tracked. Although these agreements had been used for many years, the Department had never formalized expectations or instructions for how they should be developed or managed. As a result, the manner in which agreements were executed varied widely across the agencies and even among regional offices within the same agency. We observed inconsistencies regarding whether agreements were written or oral, who signed the written agreements, and whether staff executing agreements had the authority to sign on the Department's behalf. Staff without the proper authority entered into an agreement on behalf of their agency.

The limited coordination between the Office of the Solicitor and the agencies further compounded these challenges. In many instances, the Office of the Solicitor initiated or executed agreements without informing the Employee Benefits Security Administration or the Wage and Hour Division, which left investigative personnel unaware that privileged information had been shared externally. Without reliable communication, agencies could not ensure that information-sharing activities aligned with investigative priorities or maintained appropriate confidentiality protections.

The absence of a tracking mechanism created additional risks. The Department had no centralized system to identify, store, or monitor agreements. Instead, agreements were dispersed across case files, shared drives, and email records, forcing agencies to rely on manual searches and staff recollections. At the beginning of our audit, agencies identified 45 agreements, but the Office of the Solicitor later located 3 additional agreements, bringing the total to 48. This reliance on ad-hoc searches demonstrated the lack of effective oversight and increased the risk of unauthorized disclosure of privileged information.

Our audit also identified concerns related to potential conflicts of interest. The Office of the Solicitor did not have processes to track whether attorneys involved in establishing these agreements had prior or subsequent employment ties to participating non-governmental entities. Without such controls, the Department could not assess whether staff held affiliations that created an appearance of bias. We observed situations in which personnel moved between the Department and entities connected to common interest agreements. These scenarios underscored the need for stronger monitoring of prior and post-employment relationships.

Training deficiencies further increased vulnerabilities. Training on common interest agreements was inconsistent and incomplete, and many staff responsible for developing, approving, or using the agreements never received instruction. Personnel relied on informal practices rather than clear guidance. This significantly increased the likelihood that agreements could be mishandled, that unauthorized staff could engage in information-sharing activities, and that privileged information could be disclosed in ways that undermined enforcement integrity and exposed the Department to operational and reputational risks.

At Congressional request, we also examined the Department's interactions with plaintiffs' law firms. Through extensive manual searches, the Department identified cases in which investigative information was shared with law firms before litigation and prior to its availability through standard discovery processes. In two instances, witness statements were shared before litigation commenced. The Department also acknowledged that verbal agreements had been used, which made it difficult to determine the full scope of shared information, as verbal exchanges and informal discussions were not documented.

Overall, the combined effects of insufficient policies, poor coordination, inadequate tracking, and inconsistent training created substantial risks to the Department. Unauthorized disclosure of privileged information and potential harm to public trust were all heightened as a result of ineffective oversight. For agencies such as the Employee Benefits Security Administration and the Wage and Hour Division, which rely on the careful protection of sensitive information, even the appearance that privileged materials might be selectively shared threatens confidence in the Department's mission.

To strengthen controls, my office issued eight recommendations aimed at establishing formal internal procedures, clarifying roles and responsibilities, improving conflict-of-interest monitoring, enhancing coordination between the Office of the Solicitor and client agencies, creating a centralized tracking system, and expanding training. The Acting Secretary of Labor, Keith Sonderling, concurred with all recommendations.

The Department reported that it has begun strengthening its controls over the use of common interest agreements. The Office of the Solicitor is developing formal written policies to standardize how agreements are drafted, approved, executed, and monitored. These efforts include clearer definitions of roles and responsibilities and new requirements for staff to certify that they do not have recent employment ties to outside entities involved in an agreement. The Department also stated that the Office of the Solicitor will work with the Employee Benefits Security Administration and the Wage and Hour Division to improve coordination processes and establish a centralized tracking system so that agreements and related information-sharing activities are fully documented. In addition, the Department committed to expanding and updating training so that attorneys and enforcement personnel understand the legal obligations associated with these agreements. The Employee Benefits Security Administration and the Wage and Hour Division indicated that they will adopt new procedures with the Office of the Solicitor to improve communication and oversight. Collectively, the Department acknowledged that prior practices posed risks and emphasized its commitment to implementing more reliable controls.

In conclusion, our audit determined that the Department did not have the internal controls, oversight mechanisms, or documentation needed to manage common interest agreements effectively during the review period. These gaps created risks of improper disclosures, inconsistent implementation, and harm to enforcement integrity and public trust. Strengthening these controls is essential to ensuring that sensitive information is handled with the highest levels of accountability, consistency, and transparency. As such, the Office of Inspector General will continue to work with the Department, Congress, and our law enforcement partners to ensure all vulnerabilities are addressed and all available remedies are pursued.

Chairman Mackenzie, the Office of Inspector General remains committed to serving the American people, the Department of Labor, and Congress through our investigations and audits. Thank you for the opportunity to testify at today's hearing. I would also like to take a moment to thank the dedicated employees of the Office of Inspector General, who continue to work tirelessly in support of the agency and our essential oversight mission. I would be pleased to answer any questions you may have.