
EMPLOYEE BENEFITS SECURITY ADMINISTRATION

Chapter 48, Fiduciary and Part 7 Investigations Program 48

1. **Statutory Requirements.** The Employee Retirement Income Security Act (ERISA) expressly confers upon the Secretary direct responsibility and authority to investigate fiduciary violations of Title I of ERISA. In accordance with that authority, Program 48 will be used to investigate violations involving ERISA, Title I, part 4, sections 402, "Establishment of plan"; 403, "Establishment of trust"; 404, "Fiduciary duties"; 405, "Liability for breach of co-fiduciary"; 406, "Prohibited Transactions"; 407, "10 percent limitation with respect to acquisition and holding of employer securities and employer real property by certain plans"; 409, "Liability for breach of fiduciary duty"; 410, "Exculpatory provisions; insurance"; 412, "Bonding"; and violations involving ERISA, Title I, part 7 which includes the following provisions:

- 701 Limitations on preexisting condition exclusion;
- 702 Nondiscrimination based on health status;
- 703 Guaranteed Renewability in multiemployer plans and MEWAs;
- 711 Standards relating to benefits for mothers and newborns;
- 712 Parity in Mental Health and Substance Use Disorder Benefits;
- 713 Required coverage for reconstructive surgery following mastectomy;
- 714 Coverage of dependent students on medically necessary leave of absence;
- 715 Additional market reforms under the Affordable Care Act. This incorporates by reference Part A of Title XXVII of the Public Health Service Act, sections:
 - 2704 Prohibition on preexisting condition exclusions or other discrimination based on health status;
 - 2711 No lifetime or annual limits;
 - 2712 Prohibition on rescissions;
 - 2713 Coverage of preventive services;
 - 2714 Extension of dependent coverage;
 - 2719A Patient protections;
 - 2719 Appeals process.

Additionally, Program 48 will be used to investigate plans which have been terminated but whose assets have not been allocated according to the provisions of sections 403(d)(1) and 403(d)(2) of ERISA. Section 403(d)(1) provides that terminated pension plans which are not subject to the PBGC insurance regulations will allocate their assets in accordance with the provisions of section 404 of ERISA. Section 403(d)(2) provides that terminated welfare plans shall distribute their assets in accordance with the plan documents.

2. **Elements of Fiduciary Violations.** The following are basic elements of ERISA fiduciary violations:

a. Subject plan and the assets involved are covered by the provisions of part 4 of Title I of ERISA in accordance with the requirements of ERISA section 401.

b. At least one violator was a fiduciary within the meaning of section 3(21) at the time of the occurrence of the breach.

c. The action(s) taken constituted a breach(es) of the fiduciary's duties by virtue of the fact that the fiduciary violated one or more of ERISA sections 402, 403, 404, 405, 406, 407, 410, and 412. It must be shown that the action or actions taken by the fiduciary are not covered by statutory or regulatory exemptions or regulatory variances.

d. Sufficient evidence must be collected to satisfy the various statutory definitions of terms contained in part 4. For example, if a party in interest transaction is involved, it must be established that the individual or entity is a party in interest within the meaning of section 3(14).

e. Each fiduciary violation must fall within the timeliness provisions of section 413.

3. **Elements of Violations of Part 7.** The following are basic elements of Part 7 violations:

a. Subject plan involved is covered by the provisions of part 7 of Title I of ERISA.

b. The action(s) taken constituted a violation by virtue of the fact that the plan provisions or practices did not comply with the requirements under part 7.

c. Sufficient evidence must be collected to establish the plan was not in compliance with one or more statutory and regulatory provisions of part 7.

d. If the plan documents are not in compliance with part 7, the investigation should seek correction of the plan documents.

If the evidence shows that a part 7 violation occurred and claims were denied in violation of part 7, the investigation must pursue, when appropriate, the re-adjudication of claims in compliance with part 7. EBSA should consult with SOL regarding the applicable statute of limitations for re-adjudication of claims.

4. **Case Opening.** Consistent with National and Regional priorities, Program 48 cases will be opened (a) when information is acquired by the field office, which indicates a past or prospective violation of one or more of the ERISA sections set forth in paragraph 1 of this chapter or (b) when directed by the National Office.

The case opening form should describe briefly the reasons for opening the case as well as any materials reviewed prior to the case opening and the dates of such review. The summary section of the case opening form will contain a description of the pertinent facts that form the basis for opening an investigation, including an explanation of the nature of the

complaint or other information received; the ERISA related issues raised by such complaint or information; and the specific ERISA sections potentially involved. The summary information provided on the case opening form should include a statement setting forth the results of the preparer's search of the EBSA global indices.

Any materials reviewed which constituted the basis for the case opening should be identified and dated.

5. **Complaint-Generated Cases.** Consistent with RO priorities, the RO will open investigations as soon as practical after allegations of fiduciary or part 7 violations deemed worthy of investigation are received from plan participants, plan officials, employees, employee benefit plan practitioners, the general public, or other federal, state, or local governmental agencies.

6. **RO-Generated Cases.** Consistent with RO priorities, the RO will open a case when it acquires evidence of a possible fiduciary or part 7 violation from a review of its files, the plan's annual report, media information, or from any other applicable targeting approach.

7. **Preliminary Investigative Activities.** Prior to case opening or the on-site investigation the Investigator/Auditor assigned to the case should do the following:

- a. Obtain all recent financial reports filed by the Plan.
- b. If the plan has filed an exemption application pertaining to a prohibited transaction, a complete copy should be obtained from the National Office and reviewed before the investigation is undertaken.

8. **Planning the Investigation.** Proper planning and preparation by the Investigator/Auditor is most important in the successful conduct of a fiduciary investigation.

a. *Written Plan.* At the RD's discretion, investigative plans shall be prepared for Program 48 cases. When an investigative plan is required, the Investigator/Auditor will promptly prepare the plan in the form of a memorandum to the supervisor. A written investigative plan is meant to aid both supervisors and Investigators/Auditors in using limited resources in the most systematic and productive way. See Figure 1 for the suggested format to be used in preparing the investigative plan.

b. *Review by Supervisor.* The supervisor will review the investigative plan and, after having made any necessary changes, will initial and date the plan. The original plan will be placed in the file after the Investigator/Auditor has been notified of its approval.

c. *Updating the Plan.* Whenever the Investigator/Auditor or the supervisor concludes that a major change in the original plan or a significant amount of additional investigation is warranted, a written update of the plan will be prepared by the Investigator/Auditor. As appropriate, the supervisor will review and approve the updated plan. See Figure 2 for the suggested format to be used in updating the plan.

9. **Disclosure of Basis of Investigation.** By established policy, EBSA generally does not reveal the basis or source of an open investigation.

10. **Investigation of Possible Criminal Violations.** The procedures set forth in Chapter 52 will be followed when possible criminal violations of ERISA sections 411, 501, 511, and related sections of Title 18 U.S.C. are uncovered.

a. *Dual Responsibility.* In those cases where potential fiduciary and/or part 7 and criminal violations are found, and it is decided that a criminal investigation is appropriate, a separate Program 52 case will be opened to investigate the possible criminal violations. The RD must decide whether to work both cases at the same time or to work them sequentially. Criteria to assist in such a decision are set forth in paragraph 12 of Chapter 52.

b. *Postponement or Delay Requests.* Federal, state, or local governmental agency requests for EBSA to postpone or delay a civil ERISA investigation, or the interviewing or taking of testimony of witnesses, shall be considered after receipt of a written request, or an oral request which is confirmed in a letter to the requesting agency by the RD, stating the reasons why a postponement or delay is appropriate and the length of the anticipated delay. The OE/DFO Chief should be consulted prior to any EBSA decision or response.

c. *Prohibited Persons.* If the investigation discloses possible violations of ERISA section 411, a Program 47 case should be opened.

11. **Investigations Involving Health Plans.**

While health investigations may include a review of all applicable ERISA provisions, a major component of these investigations will be a compliance review of ERISA's group health plan requirements under ERISA Part 7 relating to the following laws:

- Health Insurance Portability and Accountability Act (HIPAA);
- Mental Health Parity Act (MHPA);
- Mental Health Parity and Addiction Equity Act (MHPAEA);
- Women's Health and Cancer Rights Act (WHCRA);
- Newborns' and Mothers' Health Protection Act (Newborns' Act);
- Genetic Information Nondiscrimination Act (GINA);
- Michelle's Law;
- Children's Health Insurance Program Reauthorization Act (CHIPRA);
- Patient Protection and Affordable Care Act (Affordable Care Act).

Health plan investigations which find violations of Part 7 will include a re-adjudication of affected claims when applicable to ensure claims are properly paid.

Because enforcement for part 7 is shared among the Departments of Labor, Treasury and Health and Human Services, administration of part 7 involves a tri-agency approach. The Memorandum of Understanding (MOU) between the Departments of Labor, Treasury and Health and Human Services formally establishes an interagency agreement to

ensure regulations, rulings, and interpretations relating to HIPAA and other laws are administered in a consistent and uniform manner among the Departments.

ERISA also requires group health plans to provide participants with plan information including important information about plan features and funding; provides fiduciary responsibilities for those who manage and control plan assets; requires plans to establish a grievance and appeals process for participants to get benefits from their plans; gives participants the right to sue for benefits and breaches of fiduciary duty; and includes rules relating to plan eligibility and coverage requirements.

Fiduciaries are to be advised in writing of findings of part 7 violations. Exceptions to this are to be discussed with OE.

12. **Apparent Violations of Participant Rights.** If the investigation discloses possible ERISA section 510 violations involving acts against a participant or beneficiary for exercising any right to which he/she is entitled under the provisions of an employee benefit plan, or interfering with the attainment of any right to which the participant may become entitled, a Program 43 case will be opened immediately.

13. **Fiduciary Violations Involving Gifts and Gratuities.** Investigations may disclose possible fiduciary violations involving a plan fiduciary's acceptance, from a party dealing with the plan, of consideration such as meals, gifts, entertainment, or expenses associated with educational conferences. In such cases, the Investigator/Auditor should determine whether the facts support an allegation that the receipt of gifts, gratuities, or other consideration were for the fiduciary's personal account and received in connection with a transaction or transactions involving the assets of the plan as required for a violation of ERISA §406(b)(3). The Investigator/Auditor should also determine whether the fiduciary or the plan maintained a reasonable written policy or plan provision governing the receipt of items or services from parties dealing with the plan and whether the fiduciary adhered to that policy.

Further, for enforcement purposes only, the Investigator/Auditor generally should adhere to the following guidelines:

(1) The Investigator/Auditor should treat as insubstantial, and not as an apparent violation of ERISA § 406(b)(3), the receipt by a fiduciary (including his or her relatives) of the following items or services from any one individual or entity (including any employee, affiliate, or other related party) as long as their aggregate annual value is less than \$250 and their receipt does not violate any plan policy or provision: (a) gifts, gratuities, meals, entertainment, or other consideration (other than cash or cash equivalents) and (b) reimbursement of expenses associated with educational conferences.

(2) The Investigator/Auditor should not treat the reimbursement to a plan of expenses associated with a plan representative's attendance at an educational conference as a violation of ERISA § 406(b)(3) if a plan fiduciary reasonably determined, in advance and without regard to whether such expenses will be reimbursed, that (a) the plan's payment of educational expenses in the first instance was prudent, (b) the expenses were consistent with a written plan policy or provision designed to prevent abuse, (c) the conference had a reasonable

relationship to the duties of the attending plan representative, and (d) the expenses for attendance were reasonable in light of the benefits afforded to the plan by such attendance and unlikely to compromise the plan representative's ability to carry out his or her duties faithfully in accordance with ERISA. The fiduciary's determination should be in writing.

14. **DOL-IRS, Bonding, Reporting and Disclosure Checklists.** As part of a fiduciary investigation, an Investigator/Auditor will complete an IRS checklist. For further guidance, see Chapter 12, Relationship with the IRS. Also, the Investigator/Auditor will ordinarily determine whether a plan is in compliance with the bonding, reporting, and disclosure provisions of ERISA by completing an ERISA Bonding Checklist (Figure 3), a Reporting and Disclosure Checklist (Figure 4) and an Individual Benefit Statement Compliance Checklist (Figure 5). These checklists will be filled out in fiduciary cases and retained in the RO workpaper case file unless violations are uncovered, developed, and reported in the ROI. If the RO discovers a potential bonding, reporting, or disclosure violation in the context of a Program 48 case, the Investigator/Auditor may attempt to resolve such a violation during the course of the investigation. In the event that a bonding, reporting, or disclosure violation is corrected prior to completion of the ROI in the RO, the Investigator/Auditor will report the correction in the ROI and include documentation of the correction in the exhibit file.

15. **Investigative Activity.**

a. *Investigation Guidelines.* Items in the investigation guidelines (Figure 6) should not be considered as either mandatory or all-inclusive, but should be used to the extent deemed appropriate for the plan or other entity under review. The guidelines are arranged in two parts: Part I, Background Information, such as data related to the type and size of plan, the responsible parties, etc. and Part II, Review Procedures, for exploring compliance with ERISA and for probing for potential violations of ERISA, particularly fiduciary violations. Additional investigative steps should be performed when exploration of areas not covered in the guidelines is needed to develop and investigate possible violations.

b. *Additional Investigative Activity.* The scope of the investigation may be expanded beyond the original allegations or leads to include additional areas of inquiry when new information has been uncovered.

16. **Subpoena.** Determine the need for a subpoena and, if deemed necessary, submit the request according to established procedures described in Chapter 33.

17. **Receipts for Books, Records, and Documents Obtained.** When it is necessary to physically move documentary evidence or property such as books, records, canceled checks, bank statements, receipt books, invoices, vouchers, letters, memoranda, etc., offsite pursuant to subpoena or when voluntarily furnished (even if only to photocopy and immediately return), the Investigator/Auditor will give the organization or individual providing the documents a signed, itemized, and dated receipt for the material, and will retain a copy of the receipt in the case file. For further guidance, see Chapter 32, Collection and Preservation of Evidence.

18. Investigations Involving Applications for Exemptions.

a. During some fiduciary investigations, the RO may discover that a plan has a pending application for exemption from a prohibited transaction. In such an event, the RO should advise OE/DFO of the pending application and OE/DFO will coordinate with OED. In no instance should the RO provide to OED information obtained during the course of the investigation.

b. The RO should not assume that, because the factual situation under investigation is similar to previously granted individual exemptions, further investigation is unnecessary. The investigation should continue to its completion.

19. No Violations Found. When the investigation does not identify any violation(s), the Investigator/Auditor will prepare a Closed ROI (see Figure 7 and Form 203A, Form 203B, Form 203C, and Form 203H for sample formats) and a pattern closing letter (see Chapter 34, Figure 9) to be sent to plan officials. A conference may be held with the plan officials in addition to sending the pattern closing letter. In instances when the RD determines that it is not advisable to send a closing letter, a notation will be made to the file and OE/DFO will be notified of the decision not to issue a closing letter.

20. Technical Advice. When the RO needs technical advice concerning the existence of actionable violations, appropriate remedial procedures including voluntary compliance, or other such matters, it will contact OE/DFO for assistance.

21. Violations/Voluntary Compliance (VC). When there are apparent violations, the RD will determine, in accordance with National Office policy, whether initially to pursue corrective action through voluntary compliance. If it is decided that correction of the apparent violations should be pursued through voluntary compliance, the RO should issue a VC notice letter (see Chapter 34, Figure 1) which will advise plan fiduciaries or other responsible parties of the results of the investigation and the section(s) of ERISA violated. The letter will invite the recipients to discuss with the RO how the violation(s) will be corrected and how any losses will be restored to the plan.

Although some cases may be suitable for resolution through voluntary compliance, neither the RO nor EBSA is bound to seek voluntary compliance in all cases.

Widespread Compliance

In the health insurance industry, it is a common practice for issuers or other service providers to issue standardized plan documents and other material to ERISA plan clients. In order to leverage agency resources, EBSA will continue to identify service providers who are providing non-compliant health insurance policies or standardized plan documents and pursue global correction which will affect all plans governed by the faulty policies or plan documents.

22. Report Writing for Voluntary Compliance Cases.

a. In voluntary compliance cases involving limited or non-complex issues, the Investigator/Auditor should prepare a VC notice letter (see Chapter 34, Figure 1) and statute

of limitations matrix (Figure 8) for review. If the basis for the asserted violations or the need for the suggested corrective action is not apparent from the VC notice letter alone, a detailed memorandum, Checksheet ROI, or Action ROI may be required by the RD.

b. In voluntary compliance cases involving numerous or complex issues, the Investigator/Auditor should prepare for the RD's review a detailed memorandum explaining all the issues and citing supporting facts, a VC notice letter for the plan officials or other affected parties, and a statute of limitations matrix. The documentation of the facts presented in the detailed memorandum should be available in the RO/DO. At the RD's discretion, a Checksheet ROI or an Action ROI may be prepared in such cases (See paragraph 22.a. below).

c. In all VC cases, VC notice letters and closing letters will be approved and signed by the RD prior to issuance. Copies of all approved and dated VC notice and corresponding closing letters sent to plan officials or other related parties should be forwarded to OE/DFO. The case and program number should be noted on all VC notice and closing letters.

d. In voluntary compliance cases in which full compliance is achieved, or if partial or no compliance is achieved but the case will not be referred for litigation, the Investigator/Auditor may prepare a Closed ROI in an appropriate format as set forth in Form 203A, Form 203B, Form 203C, Form 203H or Figure 7. If an Action ROI has already been prepared, the Investigator/Auditor may prepare a supplemental memorandum to reflect the outcome of the voluntary compliance process, rather than using the Closed ROI formats. All 502(l) and 502(i) civil penalty issues must be resolved before a case may be closed.

e. In a voluntary compliance case in which partial or no compliance is achieved and the case is considered as appropriate for litigation referral, the Investigator/Auditor will prepare an Action ROI in the format outlined in Figure 9.

23. **Action Reports.** The Investigator/Auditor will prepare an Action ROI together with exhibits and a cover memorandum whenever (1) the RD determines that violation(s) of parts 4 or 7 of Title I of ERISA have been established by the investigation and remain uncorrected, and (2) the program enforcement priorities would be served by referral for litigation.

The Action ROI together with exhibits and a cover memorandum from the RD will be sent to the National Office or RSOL, as appropriate. In those instances where the Action ROI is referred to PBSO or RSOL, a copy of the cover memorandum and ROI, without exhibits, will simultaneously be sent to OE/DFO.

a. *Preparation of Action ROIs.* An Action ROI should set forth facts obtained during the course of the investigation and necessary to cover each element of the offense(s) believed to have been revealed. The ROI should also set forth evidence, if any, which contradicts or does not support the elements of proof. It should furthermore contain facts regarding each element of any statutory or administrative exemption which may apply. The ROI should normally not state that certain elements have been met unless it has also set forth the facts from which a conclusion may be drawn. Every Action ROI should be accompanied by both a list of exhibits attached to the ROI and a list of file material, documents, and workpapers maintained

in the field office, which were obtained or produced in the course of the investigation. As noted above, the format to be used in the preparation of an Action ROI is set forth in Figure 9.

In summary, the following general rules apply to the preparation of all ROIs:

1. All material allegations and leads pursued during an investigation will be reported.
2. The ROI should be objective and not contain legal analysis, recitation or paraphrasing of ERISA, assumptions, the Investigator's/Auditor's opinion, or other extraneous matters. Such items are more appropriately included, if at all, in a cover memorandum accompanying the ROI.
3. All significant facts presented in the report must be supported by either a reference to an exhibit (Action Reports) or by file material and workpapers (Closed Reports). The page and paragraph number of the exhibit should be cited when exhibits exceed two pages in length.
4. The report should be concise and well-written. Terms, individuals, or abbreviations should be fully identified the first time they are used.
5. The significant facts contained in the exhibits should be reported in the ROI.
6. ROIs are to be written promptly after an investigation is completed.

b. *Regional Director Cover Memorandum Format.* The RD's cover memorandum, which must accompany each Action ROI, should include (1) a summary of the facts demonstrating the violation(s); (2) a discussion of ERISA sections violated; (3) an explanation of any loss computation; (4) a brief statement of the applicable statute of limitations date(s); (5) a description of the potential defendants' defenses and financial condition, if known; (6) a summary of any voluntary compliance efforts; (7) the existence (if any) of a parallel criminal investigation; (8) recommendation(s) for remedies to be sought, and (9) appropriate footnotes on page 1 reflecting IRC 6103 material or referrals to OCA. The format for the RD cover memorandum is set forth at Figure 10.

24. **Case Closing-No Other Action.** When voluntary compliance is pursued and full, partial, or no compliance is achieved, the case closing procedures outlined in Chapter 34 are to be followed.

25. **SBREFA Notice.** In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman and 10 Regional Small Business Regulatory Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The Ombudsman annually evaluates enforcement activities and rates each agency's responsiveness to small businesses. If a small business wishes

to comment on the enforcement actions of EBSA it may call 1-888-REG-FAIR (1-888-734-3247) or write to the Ombudsman at 409 3rd Street SW, MC 2120, Washington, DC 20416.

Notice of the right to comment to the SBREFA Ombudsman will be provided by copy of the EBSA Customer Service Standards pamphlet to all plan sponsors, plans, or plan service providers with less than 100 participants or employees during the course of ERISA Title I civil investigations. Discretion is granted to EBSA Regional Directors regarding the timing of the delivery of the pamphlet/notice on a case-by-case basis. The case file must reflect appropriate documentation of the SBREFA notice.

The right to file a comment with the Ombudsman does not affect EBSA's authority to enforce or otherwise seek compliance with ERISA. The filing of a comment by a small business with the Ombudsman is not a substitute for complying with an EBSA subpoena or addressing EBSA's proposed corrective action in a timely manner to protect the business' interests.

MEMORANDUM FORMAT
FOR PROGRAM 48 INVESTIGATIVE PLAN

Subject: Name of Plan
 Location
 EIN
 File No.

To: Supervisor

Investigative Plan for Subject Case

I. Results of Search of Indices and Exemption Application

Summarize any pertinent information in the Regional Office files, which might have a bearing on the investigation.

II. Analysis and Scope of Investigation

A. Allegations/Investigative Leads/Basis for Investigation.

Analyze each allegation, investigative lead, or area of investigation within the context of the applicable sections of the statute, interpretations, and regulations. Identify each allegation, investigative lead, or area of investigation seriatim using the following general outline:

1. Set forth the issue being investigated, being as concise as possible without sacrificing the meaning.
 - a. Indicate which sections of ERISA, if known, appear to have been violated, together with appropriate references to any interpretations and/or regulations.
 - b. List the elements of proof needed to establish that a violation has occurred.
 - c. Describe the scope of the proposed inquiry. (This section of the work plan can and should be used to limit, insofar as possible, the length of the inquiry, and to determine the point at which the investigation will be terminated absent findings of potential violations. A well-planned investigation should be able to predict how much investigative time and effort should be expended before it becomes more costly than the benefits to be derived).

III. Planned Investigative Activity

Indicate what records will be reviewed and/or what interviews will be conducted and what information and documentation will be solicited to fully investigate each issue. The following outline should be used in setting out the planned investigative activity.

a. General.

Set forth any investigative activity not related to resolving a specific issue such as verifying the adequacy of the plan's bond.

b. Allegation/Lead/Area of Investigation.

Identify all the activity needed to fully investigate the allegation/lead.

c. Allegation/Lead/Area of Investigation #2.

Repeat as in B, for all allegations/leads.

Investigator's/Auditor's Name, Signature, and Date

Approved: _____ Date: _____
(Initials of Supervisor)

MEMORANDUM FORMAT FOR
UPDATED FIDUCIARY CASE INVESTIGATIVE PLAN

Subject: Name of Plan
 Location
 EIN
 File No.

To: Supervisor

Update of Investigative Plan

I. Changes in Original Plan

Fully describe any deletions from the original plan together with the reasons for the deletions.

II. Additional Planned Investigative Activity

Fully describe changes in direction or what additional investigation will be conducted.

Investigator's/Auditor's Name, Signature, and Date

Approved: _____ Date: _____
 (Initials of Supervisor)

BONDING CHECKLIST

<u>CHECKLIST ITEM</u>	<u>YES</u>	<u>NO</u>
1. Does a separate trust fund exist?		
2. Are there insurance or annuity contracts?		
3. Are there separate accounts in the books of the employer or do separate funds or other properties exist in the name of the Plan?		
<u>NOTE:</u> If item 1 or 3 is answered “Yes,” bonding is usually required. If item 2 is answered “Yes,” bonding may be required. Determine whether insurance dividends belong to the Plan or to the Employer. If they belong to the Plan, bonding is required. If cash surrender values exist and the Plan can obtain those values, bonding is required.		
4. Are benefits paid from the general assets of the plan Sponsor?		
5. Is there any segregation of the Plan Funds?		
6. Are there separate accounts on the books or separate books of account for the Plan?		
<u>NOTE:</u> If item 4 is answered “Yes” and items 5 and 6 are “No,” the Plan is unfunded and bonding is not required.		
7. Do any trustees or Plan employees have: a. Physical possession of Plan assets? b. The power to obtain physical possession of plan assets? c. The power to transfer assets? d. The authority to disburse Plan funds directly or indirectly? e. The authority to endorse checks? f. The authority to make investments?		
<u>NOTE:</u> If any of items 7a through 7f is answered “Yes,” “handling” of Plan funds is indicated and bonding is required for each individual who has the above authority. If a corporate trustee holds the Plans assets, but the Plan trustees can direct the payment of		

(Figure 3)

<u>CHECKLIST ITEM</u>	<u>YES</u>	<u>NO</u>
benefits by the corporate trustee or direct the investments to be made by the corporate trustee, the Plan trustees “handle” funds and bonding is required.		
8. a. Are any of the fiduciaries registered as a broker or a dealer under section 15(b) of the Securities Exchange Act?		
b. Are any of the fiduciaries an entity authorized to exercise trust powers or to conduct an insurance business?		
<u>NOTE:</u> If item 8a or 8b is answered “Yes,” the fiduciary or entity may not need to be covered by a bond. See ERISA §412 for details.		
9. Does the bond provide for payment to the Plan in the event of loss?		
<u>NOTE:</u> The Plan must be named as an “insured” and the payover rider must be attached unless the Plan is the sole insured under the bond. The definition of employee in the bond must cover all persons who “handle” funds.		
10. How many Plans are covered by the bond?		
11. How many non-plan entities are covered by the bond?		
12. Is the bonding company listed in Treasury Circular 570? https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm Name of Company _____ Policy Lapse Date _____		
13. Is the Plan named as the insured?		
14. If more than one Plan or Plan(s) and the Plan Sponsor are covered, is a pay-over rider attached?		
15. If the bond contains a deductible, is an elimination of deductible rider attached with respect to the Plan?		
16. Does the bond protect against fraud or dishonesty?		
17. Does the bond cover all persons who “handle” funds?		
<u>NOTE:</u> Without a “Definition of Employee” rider, a bond generally excludes “officers, Directors, and Trustees” from coverage.		

(Figure 3)

<u>CHECKLIST ITEM</u>	<u>YES</u>	<u>NO</u>
18. Does the bond have a one-year discovery period?		
19. Does the Plan have fiduciary liability insurance?		
20. Does the Plan hold employer securities?		
<u>NOTE:</u> In cases where the plan holds employer securities for plan years beginning after December 31, 2007, the maximum bond is increased to \$1,000,000.		

BONDING COMPUTATION SHEET

The amount of bond shall be fixed at the beginning of each reporting year and is determined by the funds “handled” by plan officials during the preceding year.

A. Total assets, beginning of preceding year

<u>ASSET</u>	<u>TOTAL</u>
1. Cash (on hand and in banks)	
2. Governmental securities	
3. Corporate debt securities	
4. Corporate stocks (common and preferred)	
5. Shares in registered investment companies	
6. Real Estate	
7. Mortgages	
8. Loans other than mortgages	
9. Value of interest pooled fund	
10. Value of unallocated group annuity contracts, cash surrender values	
11. Other assets	
Total A	

(Figure 3)

B. Receipts during preceding reporting year

<u>RECEIPTS</u>	<u>TOTAL</u>
1. Contributions	
2. Interest	
3. Dividends	
4. Rents	
5. Profit from sale of assets (sale price less market value at beginning of preceding reporting year or value at transactions date if purchased during the preceding year) Note: The proceeds (profit or loss) from the sale of assets have not been included in this bonding computation since it is not possible to identify the necessary valuations to obtain this specific computation from the annual report.	
6. Other	
Total B	
Total A and B	

(Figure 3)

C. Applicable Adjustments

<u>APPLICABLE ADJUSTMENTS</u>	<u>TOTAL</u>
1. Accrual basis accounting: Plus accts. receiv. – beginning of year Less accts. receiv. – end of year	
2. Small plan (using audit waiver) (Note: the small plan waiver calculation is determined as of the end of the preceding year.) Year ending: <ul style="list-style-type: none"> a. Qualifying employer securities b. Permitted participant loans c. Total assets held by: <ul style="list-style-type: none"> i. Bank or financial institution ii. State-qualified insurance company iii. Registered broker-dealer iv. Other entity authorized to act as trustee for an IRA d. Shares held by registered investment comp. e. Participant directed assets that appear on a statement issued by an entity described in (c) f. Sub-total: (qualifying plan assets) 	
Plan total (A):	
Divide sub-total by plan total	

(Figure 3)

D. Required Bond

<u>REQUIRED BOND</u>	<u>TOTAL</u>
1. General Required Bond: Minimum \$1,000, Maximum \$500,000	
2. If the plan holds employer securities, for plan years beginning after December 31, 2007, the maximum bond is \$1,000,000	
3. Small plan (using audit waiver): If the percentage in C.2.f is 95% or more, general bonding rules apply: If the percentage in C.2.f is less than 95%, the bond must be the greater of the general required bond or the amount of the non-qualifying assets: (Reg. §2520.104-46)**	
** Note: If a small plan is required to have a bond in the higher amount of the non-qualifying assets, the correction is not merely to obtain a bond in the future, but to either obtain one retroactively or to conduct an audit for the years in which the plan failed to have the proper bond.	
Prepared by: Date Prepared: Case #: Case Name:	

(Figure 3)

 REPORTING AND DISCLOSURE CHECKLIST

<u>CHECKLIST ITEM</u>	<u>YES</u>	<u>NO</u>
A. Reporting 1. Is the plan exempt from reporting requirements? If yes, explain.		
B. Summary Plan Description (SPD) 1. Does the SPD meet the style, format and content requirements? (Regs. 2520.102-2 and 3) 2. Date of SPD: _____ Is SPD more than five years old? If yes, explain. (Regs. 2520-104b) 3. Has SPD been provided to participants and beneficiaries receiving benefits within 120 days after the Plan is subject to ERISA or, for new participants, within 90 days after becoming covered by the Plan? (Regs. 2520-104b)		
C. Material Modifications If material modifications occurred, has a Summary of Material Modifications been disclosed to participants and beneficiaries within 210 days after the end of the Plan year in which the change was made? (Regs. 2520.104a-7 and 2520.104b-3).		
D. Summary Annual Reports (SAR) Has SAR been disclosed to Plan participants and beneficiaries within nine months after the close of the plan year? (Regs. 2520.104b-10)		
E. Annual Reports (Form 5500 Series) (AR) 1. Have ARs been filed with the DOL/IRS within seven months after the end of the Plan year, unless an extension is filed? (Regs. 2520.104a-5) 2. Were the appropriate schedules included? (Regs. 2520.103-1)		

(Figure 4)

<u>CHECKLIST ITEM</u>	<u>YES</u>	<u>NO</u>
<p>F. Mergers, Consolidations, Transfers, Terminations, PBGC Insurance</p> <ol style="list-style-type: none"> 1. If applicable, has form 5310 (Application for Determination upon Termination; Notice of Merger, Consolidation or Transfer of Plan Assets or Liabilities; Notice of Intent to Terminate) been filed with the IRS and/or PBGC? (Instructions for Form 5310) 2. If applicable, has a "Final" AR (Form 5500 Series) been filed upon complete distribution of all assets? 3. If applicable, has PBGC been notified of a merger, transfer of assets or liabilities or termination of a Multi-employer Plan covered by the PBGC Insurance Program? 4. For Defined Benefit Plans: Has form PBGC-1 been filed? 		
<p>G. Disclosure – Other</p> <ol style="list-style-type: none"> 1. Are copies of the Plan Description, latest Annual Report and documents under which the Plan was established or operated made available to Plan participants at the principal office of the administrator? (Regs. 2520.104b-1) 2. For plan that charge for documents, is the charge reasonable? (Regs. 2520.104b-30) 3. Does the Plan respond to written disclosure requests within 30 days? (Sec. 502(c)(1)) 4. For those plans to which the vesting standards apply, has a statement concerning the nature, amount, and form of deferred vested benefits been provided to those participants that have terminated employment or had a one-year break in service? (Sec. 105(c)) 5. For participants or beneficiaries with claim denials, does the Plan provide notice of denial within required timeframes? (Reg. 2560.503-1(i)(2)) 6. For health plans covering more than 20 employees: <ol style="list-style-type: none"> a. Has each covered employee and his or her spouse been 		

(Figure 4)

<u>CHECKLIST ITEM</u>	<u>YES</u>	<u>NO</u>
<p>notified of their continuation rights under COBRA?</p> <p>b. Is each new employee and his or her spouse notified of their rights under COBRA at the time they become covered for health insurance under the Plan?</p> <p>c. Does the Plan provide written notification to employees and their spouses of their rights to continued coverage under COBRA within 14 days of the plan administrator being notified that a qualifying event has occurred?</p>		

(Figure 4)

**INVESTIGATIVE GUIDELINES
INDIVIDUAL BENEFIT STATEMENTS
INDIVIDUAL BENEFIT STATEMENT COMPLIANCE CHECKLIST
PARTICIPANT-DIRECTED INDIVIDUAL ACCOUNT PLANS**

[For use with Plans that Permit Participants to Direct the Investment of Assets Held in their Individual Account]

Timing:

1. Within what period of time following the end of the quarter(s) were statements furnished to participants? _____

2. If statements were furnished within a period longer than 45 days following the end of the quarter(s): a) Within what period were statements (typically) furnished? _____. b) What was the reason given for taking longer than 45 days?

3. With regard to furnishing benefit statements to plan beneficiaries, were statements generally furnished within a reasonable period of time (such as 30 days) following receipt of a written request, taking into account the circumstances of the request?

Yes _____ No _____. If "No", what was the reason given for the longer period?

Content:

Did the benefit statement furnished or made available to participants contain the following information:

<u>INFORMATION</u>	<u>YES</u>	<u>NO</u>
1. Total accrued benefits (based on latest available information)		
2. Nonforfeitable benefits or earliest date on which benefits would become nonforfeitable (based on latest available information)		
3. Explanation of permitted disparity or floor offset, <i>if applicable</i>		
4. Value of each investment (as of most recent valuation date)		
5. Explanation of any limitations or restrictions imposed by plan (rather than investment funds) on right to direct investments		
6. Explanation of importance of well-balanced and diversified portfolio (Note: model (not required) language provided in FAB 2006-03)		
7. A statement referring participants to DOL Website for sources of information on investing and diversification (Note: Website link provided in FAB 2006-03)		

(Figure 5)

**INDIVIDUAL BENEFIT STATEMENT COMPLIANCE CHECKLIST
INDIVIDUAL ACCOUNT PLANS WITHOUT PARTICIPANT DIRECTION**

[For use with plans that do not permit participants to direct the investment of assets held in their individual account. Note: the ability to obtain a participant loan is not participant direction for this purpose]

Timing:

1. Within what period of time following the end of the year were statements furnished to participants? _____

2. If statements were not furnished by the date the Plan was required to file Form 5500 Annual Return/Report (including applicable extensions) for the Plan Year to which the statement relates: a) Within what period were statements (typically) furnished? _____. b) What was the reason given for taking longer than established timeframe? _____

3. With regard to furnishing benefit statements to plan beneficiaries, were statements generally furnished within a reasonable period of time (such as 30 days) following receipt of a written request, taking into account the circumstances of the request?

Yes _____ No _____. If "No", what was the reason given for the longer period?

Content:

Did the benefit statement furnished or made available to participants contain the following information:

<u>INFORMATION</u>	<u>YES</u>	<u>NO</u>
1. Total accrued benefits (based on latest available information)		
2. Nonforfeitable benefits or earliest date on which benefits would become nonforfeitable (based on latest available information)		
3. Explanation of permitted disparity or floor offset, <i>if applicable</i>		
4. Value of each investment (as of most recent valuation date)		

(Figure 5)

**INDIVIDUAL BENEFIT STATEMENT COMPLIANCE CHECKLIST
DEFINED BENEFIT PLANS**

Election:

Defined benefit plans are required to furnish benefit statements to participants and beneficiaries at least once every 3 years OR such plans may elect to furnish at least once a year a notice informing participants of the availability of a pension benefit statement and how to obtain such a statement.

Plan has elected to furnish benefit statements every three years (earliest statement required to comply with the new requirements would be due for the 2009 plan year). Yes _____
No _____

(Note: If the plan is furnishing or intends to furnish benefit statements annually, although not required to do so, answer "Yes.")

If "No," has the plan provided (or does the plan intend to) furnish an annual notice (Note: first required annual notice would be for the 2007 plan year). Yes _____ No _____

Date on which notice was (or will be) furnished _____

Annual Notice Alternative:

If a plan has elected to furnish an annual notice, does the annual notice:

<u>INFORMATION</u>	<u>YES</u>	<u>NO</u>
1. Explain that participants have a right to request and receive a pension benefit statement?		
2. Explain how participants can request and receive a pension benefit statement from the plan?		

(Figure 5)

Pension Benefit Statement:

<u>INFORMATION</u>	<u>YES</u>	<u>NO</u>
1. Did the plan provide a pension benefit statement to each participant with nonforfeitable benefits and who is employed by the employer maintaining the plan at the time the statement is furnished?		
2. Did the benefit statement furnished or made available to participants contain the following information:		
3. Total accrued benefits (based on latest available information)		
4. Nonforfeitable benefits or earliest date on which benefits would become nonforfeitable (based on latest available information)		

Statements Upon Request:

1. With regard to furnishing benefit statements to participants and beneficiaries following receipt of a written request, were statements generally furnished within a reasonable period of time (such as 30 days) following receipt of a written request, taking into account the circumstances of the request?

Yes _____ No _____. If "No", what was the reason given for the longer period?

2. Did the furnished statements contain the "content" information described above?
 Yes _____ No _____

(Figure 5)

INVESTIGATION GUIDELINES

Part I. Background Information

Obtain the following data for the pension or welfare plan which has been selected for investigation.

Note: You need not complete the following items to the extent that the data is already in your possession; for example, on Form 5500.

A. General

Plan name _____

Plan sponsor name _____

Plan administrator name _____

Sponsor EIN _____ Plan number _____

Plan address _____

Contact person _____ Telephone _____

B. Coverage (describe types and locations of employees covered by the plan)

number of participants _____

active _____

retired or separated _____

total _____

C. Type of Plan

Pension

- defined benefit
- profit sharing
- stock bonus
- target benefit
- other money purchase
- ESOP
- other _____

Welfare

- health benefit
- fully insured
- self-funded
- life insurance
- other _____

Administration

- single employer
- multi-employer
- other _____

D. Contributions

Sponsor (number and types of employers, unions or other organizations contributing to plan)

Participants contribute _____ yes _____ no

E. Funding

_____ trustee

_____ insured

_____ both trustee and insured from sponsor assets

name and location of trust fund

insurance carriers and insurance vehicles

total plan assets \$ _____ at (date) _____

F. Plan Managers (include named fiduciaries)

Name	Title (officer, trustee, committee member, etc.)
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

G. Service Providers (attorney, accountant, actuary, insurance agent, contract administrator, investment manager, etc.)

Name	Company	Type of Service
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

H. Verifications

date of most recent audit by outside auditors _____

date of most recent review by internal auditors _____

date of most recent actuarial valuation _____

I. Plan Documents

List the basic documents, which establish and govern the plan and/or trust

(Figure 6)

J. Plan Records

List the basic books and records of the plan, e.g., contribution records, participant hours/earnings/ benefits, records, investment policies, claim forms and files, bank statements, trust reports, cash books, journals, ledgers, inventories, investment reports, etc.

K. List Related Plans and Trusts

Part II. Review Procedures**A. Fiduciary - Establishment of Plan**

1. Determine that the employee benefit plan has been established pursuant to a written instrument.
2. Determine that the written instrument provides for one or more named fiduciaries.
3. Determine that the plan:
 - a. provides a procedure for establishing and carrying out a funding policy consistent with plan objectives.
 - b. describes any procedure for allocating responsibilities for the operation and administration of the plan.
 - c. provides a procedure for amending the plan and for identifying the persons who have authority to amend the plan.
 - d. specifies the basis on which payments are made to and from the plan.

B. Fiduciary - Establishment of Trust

Ascertain that assets of the plan are held in trust [unless the assets are insurance contracts, are held by insurance companies or are otherwise exempted by section 403(b)].

C. Fiduciary Duties

1. Examine all or selected expenses paid or incurred by the plan for the last year in an attempt to identify expenses which were not incurred exclusively to provide benefits to participants and their beneficiaries or to defray reasonable plan administrative costs. Examine income and expense statements and the general ledger accounts for unusual expenses (accounts). Examine selected cash disbursements and non-cash transactions and supporting documentation for transactions, which appear unrelated to operating the plan.
2. Examine administrative expenses for categories that appear unreasonably costly in relation to other similar plans.

-
3. Explore the management of plan operations by examining whether contributions are collected timely; cash is deposited promptly; investment certificates are properly safeguarded; assets are appropriately insured; reserves and retentions held by insurance carriers are not unreasonable; tax qualified status with IRS is maintained; PBGC insurance is current.
 4. Analyze plan investments to ascertain extent of diversification. Consider diversification:
 - a. among types of investments, i.e., stocks, bonds, real estate, etc.;
 - b. within types, i.e., is common stock all of one or two companies; and
 - c. geographical areas of investment.
 Determine if investment portfolio appears to adhere to investment policy in plan instruments, minutes of meetings, etc.
 5. Read the basic plan documents and note substantive policy direction (other than investment policy) to the plan fiduciaries and examine if it is being followed.
 6. Inquire whether any plan funds are invested in assets which are beyond the reach of United States courts in contravention of section 404(b).
- D. Fiduciary - Co-Fiduciary Liability
Examine selected allocations of fiduciary responsibilities (other than trustee responsibilities) to both named fiduciaries and other fiduciaries, to determine if they have been allocated in accordance with the instrument under which the plan is maintained.
- E. Fiduciary - Prohibited Transaction
1. Obtain a list of parties in interest from the plan. Compare to the lists of plan sponsors, plan managers, and service providers obtained in Part I of these guidelines. Determine how plan management identifies parties in interest and how plan fiduciaries prevent inadvertent party in interest transactions from occurring.
 2. Inquire as to any applications for individual exemptions from prohibited transactions for the plan and their status. Compare with OED information available at RO, and clarify if necessary. Also be aware of applicable statutory and class exemptions.
 3. For selected sales, purchases, and lease property transactions by the plan during the period being investigated, examine property records and supporting documentation to ascertain if any of the transactions were between the plan and a party in interest.
 4. Examine accounts receivable, accounts payable, cash receipt records, and cash disbursement records for the period under examination in an attempt to identify any loan of money or extension of credit by the plan to or from a party in interest.
 5. For the period being investigated, examine expense accounts representing acquisition of goods, services or facilities by the plan. For selected transactions, ascertain whether they were acquired by the plan from a party in interest.
 6. Inquire as to any plan assets, which have been transferred. Ascertain whether such assets were transferred to parties in interest.
 7. For some of the larger and continuous transactions in which the plan engages, e.g., purchases/sales of securities, purchases/sales of properties, placing of insurance contracts, advisory and consulting fees, etc., ascertain the organizations

that acted as broker, agent, consultant, etc. Determine whether any of the plan's fiduciary have had any ownership or direct involvement in these organizations, or have received any remuneration from their organizations.

- F. **Fiduciary - Employer Securities and Real Property**
Request a listing of all employer securities and properties held by the plan. Ascertain whether any such post-ERISA acquisitions have resulted in holdings by the plan of employer securities and properties in excess of 10% of total plan assets (measured on a fair market value basis).
- G. **Bonding**
The Bonding Checklist and Bonding Computation Sheet will ordinarily be completed for every plan. See Figure 3.
- H. **Reporting and Disclosure**
The Reporting and Disclosure Checklists and Individual Benefit Statement Compliance Checklist will ordinarily be completed for every plan. See Figure 4 and Figure 5.
- I. **Verifying Financial Data Reported**
Verify the accuracy of plan financial data reported to DOL on the most recent annual report by:
1. Determining whether the plan is exempt from completing financial data on annual report forms and from engaging an independent qualified public accountant pursuant to DOL regulation.
 2. Determining for non-exempt plans that the annual report, related schedules, and accountant's opinion have been completed and reported, as appropriate.
- J. **Verifying Assets Held by Third Parties**
If a plan fiduciary or other plan official indicates that plan assets are being held by a third party, such as an investment manager or custodian, verify that the assets exist and are in the name of the plan by contacting the third party directly.
- K. **Claims Procedures**
Determine whether plan instruments and operating procedures provide for:
1. Prompt handling of claims from participants and beneficiaries.
 2. Notice in writing to participants and beneficiaries of claim denials and reasons therefore.
 3. Full and fair review by a named fiduciary of claim denials.

REPORT OF INVESTIGATION
SAMPLE FORMAT

This document is the property of the Employee Benefits
Security Administration.
Its contents are not to be disclosed to unauthorized persons.

File No.

Subject: (Fiduciary Name and Address of Plan)

Date

Or Related Entity

By Investigator/Auditor

Approved By

EIN/PN

Status: Closed

I. Predication

State the reasons for the case opening and for conducting an investigation.

II. Background

This can be limited to setting forth the facts about the subject, e.g., type, identity of all principals, identity of plan sponsor, benefits provided, number of active and retired participants, the most recent information on amounts of assets (gross and net), etc.

III. Bonding And Reporting And Disclosure

Cite the facts to establish that the bonding and reporting and disclosure requirements have been met;

or

Cite the facts to establish that the bonding and reporting and disclosure requirements were not met and note corrective action taken when there are no other apparent ERISA violations;

or

Cite the facts to establish that the bonding and reporting and disclosure requirements were not met and note the corrective action taken in the Issues and Findings Section when there are other apparent ERISA violation(s) resolved through voluntary compliance or other dispositive action was taken (i.e., bonding and reporting and disclosure violations referred to the National Office.)

IV. Issues & Findings

Set forth the allegation or issue.

1. Cite the facts to show that the allegation or issue was not a violation. In cases where violations are substantiated, cite the facts to show that voluntary compliance was achieved including the monetary results, if any, or other dispositive action.
2. Repeat as above for each allegation or issue.

V. Other Findings

This section can be used to present facts or any other investigative activity not previously mentioned.

STATUTE OF LIMITATIONS MATRIX

Issue(s):	Date of Act or Omission	6 Years After Fiduciary's Act or Omission	3 Years After EBSA's Actual Knowledge	6 Years After EBSA's Discovery Where There is Fraud or Concealment
1. (Exhibit #)				
2. (Exhibit #)				
3. (Exhibit #)				
4. (Exhibit #)				

(Figure 8)

REPORT OF INVESTIGATION
SAMPLE FORMAT

This document is the property of the Employee Benefits
Security Administration.
Its contents are not to be disclosed to unauthorized persons.

File No.

Subject: (Last Name of Complainant) v. Employer

Date

Address of Employer

By Investigator/Auditor

Approved By

EIN/PN

Status: Action

I. Predication

State the reasons for case opening and for making an investigative effort. Briefly present facts potentially relevant to timeliness under Section 413. Such facts would include, but are not limited to, the following:

1. The date the case was opened;
2. The date on which information was received which resulted in the opening of the investigation and a description of that information (including source and recipient);
3. The date the investigation began; and
4. The earliest date that any information or document was received that suggested a violation of ERISA and a description, including source and recipient, of that information.

II. Potential Jurisdictional Problems

If no jurisdictional problems are anticipated, enter "None". If any are known, set forth the facts to identify them and document jurisdiction under the appropriate section of ERISA. Any issue or potential defense relating to whether the plan is covered under ERISA should be set forth in this section.

III. Background

Briefly cite the facts that will establish the following:

Type of Plan

Date and place Plan was established

Plan Sponsor

Type of benefits provided

Type of administration

If jointly administered, name the participating union(s)

Number of Participants - active/retired

Plan Assets – Gross

Include other background facts as appropriate such as, private litigation and bankruptcy proceedings.

IV. Bonding; Reporting And Disclosure; And Fiduciary Liability Insurance

1. Briefly cite the facts that will establish that the bonding and reporting and disclosure requirements have been met, or cite the violations uncovered and the corrective actions taken.
2. If the fiduciaries do not have fiduciary liability insurance, state that fact. If the fiduciaries have fiduciary liability insurance cite the name of the company, effective date of the policy, and amount of the policy. If, because of the nature of the fiduciary breach, more than one company had the fiduciary liability contract, cite the relevant companies, effective dates, and amount of policies.

V. Plan Administration And Financial Operation

Where appropriate this section of the report should include, but not be limited to, information concerning: identities and principal duties of all plan officials and principal employees and service providers during the relevant period, including dates of service; funding method; internal controls; investment policies and practices; benefit payment procedures; collection of contributions; and other relevant information relating to plan administration and financial operation.

VI. Request For Variances And Exemptions

Include under this heading any variances or exemptions that have been requested, and the decision, if any, by OED, or present the status of the request.

VII. Issues & Findings^{1/}

1. Use the heading "The Issue/Alleged Violation of Section(s) _____." Present all the facts from which a conclusion(s) can be drawn that the pertinent section(s) of Part 4 was violated (support with exhibits). In the first paragraph(s) under this heading, set forth facts, which establish whether at least one violator was a fiduciary within the meaning of section 3(21) of ERISA at the time of the occurrence of the fiduciary breach. In subsequent paragraphs, set forth the facts to establish the breach of fiduciary responsibilities. In the next paragraph(s) present facts necessary to show timeliness under section 413. In the next paragraph(s), in situations where efforts were made to obtain voluntary compliance, indicate the results of such efforts. Include copies of any

¹ If voluntary compliance was attempted and some issues, but not all, were fully resolved, the last section of the Issues and Findings section of the Action ROI should set forth the issues on which voluntary compliance was achieved. No exhibits substantiating these corrected violations are required. Example: "Issues resolved include (1) the selling of plan property without obtaining an appraisal to determine FMV, (2) the plan's incurring unreasonable and unnecessary trustee expenses, and (3) the failing to follow governing plan documents in making participant loans." The content of this section should be confined as much as possible to factual statements.

correspondence or RIs of conferences with plan officials as exhibits.

In the final paragraph(s) set forth the position of the fiduciary and any other involved party on the possible violation.

2. Describe the next issue, and alleged ERISA violation, in the format set forth above.

VIII. Other Findings

This heading can be used to present facts or any other investigative activity not previously mentioned.

Exhibits

All significant facts presented in the report should be supported with exhibit citations. The following procedures should be used in submitting exhibits.

1. State the name of the individual who is the subject of an RI, signed statement or sworn administrative testimony and the date of the interview or testimony.
2. Documents, schedules, etc., should be complete and precisely identified.
3. Each supporting document should be the final version of the document under which the parties are operating at the time of the alleged breach.
4. Each supporting document should be a separate exhibit.
5. Multiple page exhibits should be numbered.
6. Exhibits should be identified by number.
7. All copies must be legible.
8. All plan documents (trust agreement, etc.), relevant minutes of meetings of plan fiduciaries, canceled checks, contracts/agreements, or any other supporting documents pertaining to the transaction(s) at issue, third-party corroborating interviews and/or records, and expert opinions, if any, must be included as exhibits.
9. Fiduciary liability insurance policy(s) held on the date(s) of the alleged violation(s) and/or at any time subsequent to that date should be included as exhibits. Attempts should be made to determine if the policies are/were in force.
10. Copies of all annual reports, with attachments, which have been filed by the subject plan subsequent to the transaction or action at issue, must be included as exhibits.

List of Documents and Workpapers Available in RO but not Used as Exhibits

List documents, schedules, RIs etc., in the RO file that were not included as exhibits. Identify all applicable dates of such documents (e.g., date prepared, date received, etc.).

FORMAT FOR REGIONAL DIRECTORS
COVER MEMORANDUM TO AN ACTION REPORT

Memorandum For: _____
Office of the Solicitor
(Regional Solicitor or PBSO, as appropriate)

From: _____
Regional Director
XYZ Regional Office

Subject: Name and Address of Plan/Related Entity^{2/3/}
EIN/PN _____
And/Or _____

Introduction: Identify the RO/DO which conducted the investigation, the plan and plan sponsor name(s), and the related entity, if applicable.

Briefly describe the issues and the total apparent losses involved.

Background: Briefly describe the plan(s) and/or related entities involved, including type, nature of benefits/services provided, type of administration, number of participants/plans serviced, and amount of plan assets.

Facts/Violations: Briefly summarize the essential facts demonstrating each violation. For each issue discuss ERISA section(s) violated, and explain the basis for any loss computation.

Statute of Limitations: Discuss the statute of limitations date applicable to each issue identifying the earliest applicable date(s).

Position of the Fiduciaries/Related Parties: Discuss the position of the fiduciaries and/or other parties on each issue, if known. If unknown, state the reason(s) why the RO was unable to obtain this information (e.g., parties' refusal to be interviewed).

² Footnote (as applicable): This memorandum and the Action ROI on page(s)____ , and exhibits _____ contain IRC 6103 information and should be handled accordingly.

³ Footnote (as applicable): This case presents possible reporting deficiencies and/or blackout deficiencies for which ERISA section 502(c)(2) and/or 502(c)(7) civil penalties may be imposed by OCA and which have been referred to OCA. This case presents possible IQPA deficiencies referred to OCA.

Financial Condition of the Fiduciaries/Related Parties: Discuss the financial condition of the fiduciaries and/or related parties, if known. If unknown, state the steps taken by the RO to obtain this information. Also state whether the fiduciaries have fiduciary liability insurance.

Issues Resolved Through Voluntary Compliance: Briefly discuss any issue(s) resolved through voluntary compliance, including any 502(l) implications.

Parallel Investigations: Note any parallel criminal investigations being conducted involving the subject plan and/or its fiduciaries.

Recommendations: Discuss the appropriate remedies, for each violation identified, including but not limited to restitution, rescission of prohibited transactions, removal of fiduciaries, appointment of a receiver, disgorgement, indemnification of the plan against future losses, injunctions against future service to ERISA plans, imposition of 502(i) and 502(l) penalties as applicable, etc.