

Fiduciary Investigations Program

1. Statutory Requirements. The Employee Retirement Income Security Act (ERISA) expressly gives the Secretary direct responsibility and authority to investigate fiduciary violations of Title I of ERISA. In accordance with that authority, cases will be used to investigate potential 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.

ROs investigate violations of Part 1 in terminated plans that have assets either not allocated or distributed prudently and in accordance with the terms of the plan.

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

- a. Subject plan and the assets involved are subject to 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 the breach occurred.
- c. The fiduciary violated one or more of ERISA sections 402, 403, 404, 405, 406, 407, 410, and 412, resulting in a breach of fiduciary duty. Investigators/Auditors must show that the fiduciary action(s) are not subject to statutory or regulatory exemptions or regulatory variances.
- d. Collect sufficient evidence to satisfy the various statutory definitions of terms contained in part 4. For example, if a party in interest transaction is involved, establish 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. Case Opening.

- a. Consistent with National and Regional priorities, RO will open cases when:
 - i. The RO acquires information indicating a possible past or prospective ERISA violation; or
 - ii. The National Office directs it.

b. The case opening form should describe briefly the reasons for opening the case, any materials reviewed before opening the case, and the dates of such review. The summary section of the case opening form will include:

- i. The pertinent facts that form the basis for opening an investigation,
- ii. The nature of the complaint or other information received,
- iii. Whether a service provider is involved and if so, identification of the service provider(s)
- iv. The ERISA related issues raised by the complaint or information, and
- v. The specific ERISA sections potentially violated.

The summary information provided on the form should set forth the results of the preparer's search of global EBSA indices.

The case predication should also identify and date any materials reviewed that constituted the basis for the opening.

4. Complaint-Generated Cases. The region will open investigations as soon as practical after receiving allegations of fiduciary or Part 7 violations deemed worthy of investigation.

5. Region-Generated Cases. 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 case development approach.

6. Preliminary Investigative Activities. Before opening a case or on-site investigation, the RO should:

- a. Obtain all recent financial reports filed by the plan.
- b. If the plan has filed an exemption application pertaining to a prohibited transaction, get a complete copy of the application from the National Office for review.

7. Planning the Investigation.

- a. **Written Plan.** At the RD's discretion, prepare investigative plans for cases in the form of a memorandum to the supervisor. A written investigative plan can help supervisors and Investigators/Auditors use limited resources productively. See **Figure 1** for the suggested format for preparing the investigative plan.
- b. **Supervisor Review.** The supervisor will review the investigative plan, make any necessary changes, and initial and date the plan. After approval of the original plan and notification to Investigator/Auditor, the plan becomes part of the file.

c. **Updating the Plan.** Whenever the Investigator/Auditor or the supervisor concludes a need for a major change in the original plan, the Investigator/Auditor should prepare a written update of the plan. As appropriate, the supervisor will review and approve the updated plan. See [Figure 2](#) for the suggested format in updating the plan.

8. Disclosure of Basis of Investigation. EBSA generally does not reveal the basis or source of an open investigation.

9. Investigation of Possible Criminal Violations. Follow the procedures set forth in the Criminal Investigations section when possible criminal violations of ERISA sections 411, 501, 511, and related sections of Title 18 U.S.C. are uncovered.

a. **Dual Responsibility.** If a criminal investigation is appropriate, ROs will open a separate [Program 52](#) case to investigate the possible criminal violations. The director must decide whether to investigate both cases simultaneously or sequentially. Criteria to assist in making this decision are set forth in paragraph 4 of the Criminal Investigations section.

b. **Postponement or Delay Requests.** Federal, state, or local governmental agency may request that EBSA postpone or delay a civil ERISA investigation, or witness interviews/testimony. RO should consider such requests after receiving a written request, or an oral request 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. RO should consult OE before making any EBSA decision or response.

c. **Prohibited Persons.** If the investigation discloses possible violations of ERISA section 411, open a [Program 47](#) case under the Prohibited Persons section.

10. 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, the RO should immediately open a [Program 43](#) case. Follow the procedures for a Program 43 case under the Participant Rights section.

11. 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 section 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:

- a. The Investigator/Auditor should treat as insubstantial, and not as an apparent violation of ERISA section 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). These items will be treated as insubstantial, if 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.
- b. The Investigator/Auditor should not treat the reimbursement by a plan of expenses associated with a plan representative's attendance at an educational conference as a violation of ERISA section 406(b)(3) under the following conditions. A plan fiduciary must have 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.

12. 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 the **Relationship with the IRS** section. 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). Investigator/Auditor completes these checklists in fiduciary cases and retains them 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 fiduciary case, the Investigator/Auditor may attempt to resolve such a violation during the course of the investigation. If there are bonding, reporting, or disclosure violation corrections before completion of the ROI in the RO, the Investigator/Auditor will report the correction in the report and include documentation of the correction in the exhibit file.

13. Investigative Activity.

- a. **Investigation Guidelines.** Items in the investigation guidelines (Figure 6) are not either mandatory or all-inclusive, but applied as 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, designed to investigate compliance with and potential violations of ERISA,

particularly fiduciary violations. The Investigator/Auditor performs additional investigative steps when exploration of areas not covered in the guidelines is required to develop and investigate possible violations.

b. **Additional Investigative Activity.** The scope of the investigation can expand beyond the original allegations or suggests additional areas of inquiry after new information has been uncovered.

14. Subpoena. Determine the need for a subpoena and, if deemed necessary, submit the request according to established procedures described in the **Subpoenas section**. Alternatively, the RO may choose to send a letter requesting documents (**see Figure 7**).

15. Receipts for Books, Records, and Documents Obtained. It may become necessary to physically move documentary evidence or property (e.g., 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 material. In such cases, 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 the **Collection and Preservation of Evidence section**.

16. 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 that event, the RO should advise OE of the pending application and OE 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.

17. No Violations Found. When the investigation does not identify any violation(s), the Investigator/Auditor will prepare a Closed ROI (see **Form 203A, Form 203B, Form 203C, and Form 203H** for sample formats) and a pattern closing letter (see the **Voluntary Compliance Manual section, Figure 7**) to be sent to plan officials. RO may hold a conference with the plan officials and send a pattern closing letter. In instances when the RD determines that it is not advisable to send a closing letter the RO should enter a notation to the file and notify OE of the decision not to issue a closing letter.

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

19. Violations/Voluntary Compliance (VC). When violations are apparent, the RD will determine, in accordance with National Office policy, whether initially to pursue corrective

action through voluntary compliance. If the decision is to pursue correction of apparent violations through voluntary compliance, the RO should issue a VC notice letter (see **the Voluntary Compliance Manual section**, 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 corrections of violations and any restoration of losses to the plan.

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

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. 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 that will affect all plans governed by the faulty policies or plan documents.

20. 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 **the Voluntary Compliance Manual section**, 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, the RD may require the Investigator/Auditor prepare a detailed memorandum, Checksheet ROI, or Action ROI.
- b. In voluntary compliance cases involving numerous or complex issues, the Investigator/Auditor may 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 may be available in the RO. At the RD's discretion, a Checksheet ROI or an Action ROI may be prepared in such cases (See paragraph 21.a. below).
- c. In all VC cases, RDs will approve and sign all VC notice letters and closing letters prior to issuance. Copies of all approved and dated VC notice and corresponding closing letters sent to plan officials or other related parties become part of the case file and available to OE. 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 where there is only partial or no compliance, and the case is appropriate for litigation referral, the Investigator/Auditor will prepare an Action ROI in the format outlined in [Figure 9](#).

21. Action Reports. The Investigator/Auditor will prepare an Action ROI together with exhibits and a cover memorandum whenever: (1) the RD determines that there are established violation(s) of Parts 4 or 7 of Title I of ERISA that remain uncorrected, and (2) the litigation referral serves enforcement priorities.

The RO sends the Action ROI together with exhibits and a cover memorandum from the RD to the PBSO or RSOL, as appropriate. In instances where the Action ROI is referred to PBSO or RSOL, a copy of the cover memorandum and ROI becomes part of the case file, and is available to OE.

a. **Preparation of Action ROIs.** An Action ROI should describe the facts obtained during the investigation and necessary to show each element of the alleged violations. The ROI should also set forth evidence, if any, that contradicts or does not support the elements of the violations. It should also contain facts regarding each element of any applicable statutory or administrative exemption. The ROI should normally not state that all elements are met unless it also describes the facts that support that conclusion. Every Action ROI must include both a list of exhibits attached to the ROI and a list of file material, documents, and workpapers maintained in the RO, obtained or produced in the course of the investigation. See [Figure 9](#) for the format of an Action ROI.

The following general rules apply to the preparation of all ROIs:

- i. Report all material allegations and leads pursued during an investigation.
- ii. The ROI should be objective and not contain legal analysis, recitation or paraphrasing of ERISA, assumptions, Investigator/Auditor opinions, or other extraneous matters. Such items are more appropriately included, if at all, in a cover memorandum accompanying the ROI.
- iii. All significant facts presented in the report must be supported by a reference to an exhibit (Action Reports) or by file material and workpapers (Closed Reports). Cite the page and paragraph number of the exhibit when an exhibit exceeds two pages in length.
- iv. The ROI should be concise and clearly written. Identify terms, individuals, or abbreviations the first time they are used.
- v. The ROI should report all significant facts contained in the exhibits.
- vi. Investigator/Auditor should promptly prepare a ROI after an investigation is completed.

b. **RD Cover Memorandum Format.** The RD's cover memorandum, that must accompany each Action ROI, should include: (1) a summary of the facts; (2) a discussion of ERISA violations; (3) loss computation(s); (4) statute of limitations analysis; (5) potential defendants' defenses and financial condition, if known; (6) voluntary compliance efforts; (7) the existence (if any) of a parallel criminal investigation; (8) recommendation(s) for remedies; and (9) appropriate footnotes on page 1 reflecting IRC 6103 material or referrals to OCA. See Figure 10 for the format for the RD cover memorandum.

22. Case Closing-No Other Action. When the RO pursues voluntary compliance with full, partial, or no compliance, the RO should follow case closing procedures outlined in the **Voluntary Compliance Manual section**.

23. 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. EBSA RDs have discretion 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.

(Figure 1)

Memorandum Format for Fiduciary Case 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 Applications

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, including applicable references to the statute, regulations, and/or agency guidance.
- 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 should be used to limit, if possible, the expected duration of the inquiry, and to estimate when the investigation should be closed if no evidence of potential violations is found. A well-planned investigation should estimate how much time and effort should be expended before the costs of pursuing the investigation outweigh its potential benefits).

III. Planned Investigative Activity

By issue, describe what records will be reviewed and/or what interviews will be conducted and what information and documentation will be developed. Use the following outline to describe 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)

(Figure 2)
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)

(Figure 3) Bonding Checklist

Bonding Checklist

- | | Yes | No |
|---|-----------|-----------|
| 1. Does a separate trust fund exist? | [Control] | [Control] |
| 2. Are there insurance or annuity contracts? | [Control] | [Control] |
| 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? | [Control] | [Control] |

Note: 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? | [Control] | [Control] |
| 5. Is there any segregation of the Plan Funds? | [Control] | [Control] |
| 6. Are there separate accounts on the books or separate books of account for the Plan? | [Control] | [Control] |

Note: 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: | [Control] | [Control] |
| a. Physical possession of Plan assets? | [Control] | [Control] |
| b. The power to obtain physical possession of plan assets? | [Control] | [Control] |
| c. The power to transfer assets? | [Control] | [Control] |
| d. The authority to disburse Plan funds directly or indirectly? | [Control] | [Control] |
| e. The authority to endorse checks? | [Control] | [Control] |
| f. The authority to make investments? | [Control] | [Control] |

Note: 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 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? | [Control] | [Control] |
| b. Are any of the fiduciaries an entity authorized to exercise trust powers or to conduct an insurance business? | [Control] | [Control] |

Note: 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? | [Control] | [Control] |
|--|-----------|-----------|

Note: The Plan must be named as an "insured" and the pay over 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? | [Control] [Control] |

<https://www.fiscal.treasury.gov/fsreports/ref/suretyBnd/c570.htm>

Name of Company _____

Policy Lapse Date _____

- | | | |
|---|-----------|-----------|
| 13. Is the Plan named as the insured? | [Control] | [Control] |
| 14. If more than one Plan or Plan(s) and the Plan Sponsor are covered, is a pay-over rider attached? | [Control] | [Control] |
| 15. If the bond contains a deductible, is an elimination of deductible rider attached with respect to the Plan? | [Control] | [Control] |
| 16. Does the bond protect against fraud or dishonesty? | [Control] | [Control] |
| 17. Does the bond cover all persons who "handle" funds? | [Control] | [Control] |

Note: Without a "Definition of Employee" rider, a bond generally excludes "officers, Directors, and Trustees" from coverage.

- | | | |
|---|-----------|-----------|
| 18. Does the bond have a one-year discovery period? | [Control] | [Control] |
| 19. Does the Plan have fiduciary liability insurance? | [Control] | [Control] |
| 20. Does the Plan hold employer securities? | [Control] | [Control] |

Note: 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

Asset	Total
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	_____

B. Receipts during preceding reporting year

Receipts	Total
1. Contributions	_____
2. Interest	_____
3. Dividends	_____
4. Rents	_____
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.	_____
5. Other	_____
Total, B	_____
Total, A and B	_____

C. Applicable Adjustments

Applicable Adjustments

Total

Accrual basis accounting:

- 1. 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: _____
 - a. Qualifying employer securities _____
 - b. Permitted participant loans _____
 - c. Total assets held by: _____
 - 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 _____

D. Required Bond

Required Bond

Total

- 1. General Required Bond: _____
 - 1. 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 _____
 - Small plan (using audit waiver):
If the percentage in C.2.f is 95% or more, general bonding rules apply:
 - 3. 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 4)
Reporting and Disclosure Checklist

Reporting and Disclosure Checklist

	Yes	No
A. Reporting		
1. Is the plan exempt from reporting requirements? If yes, explain.	[Control]	[Control]
B. Summary Plan Description (SPD)		
1. Does the SPD meet the style, format and content requirements? (Regs. 2520.102-2 and 3)	[Control]	[Control]
2. Date of SPD: _____ Is SPD more than five years old? If yes, explain. (Regs. 2520-104b)	[Control]	[Control]
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)	[Control]	[Control]
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).	[Control]	[Control]
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)	[Control]	[Control]
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)	[Control]	[Control]
2. Were the appropriate schedules included? (Regs. 2520.103-1)	[Control]	[Control]
F. Mergers, Consolidations, Transfers, Terminations, PBGC Insurance		
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)	[Control]	[Control]
2. If applicable, has a "Final" AR (Form 5500 Series) been filed upon complete distribution of all assets?	[Control]	[Control]
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?	[Control]	[Control]
4. For Defined Benefit Plans: Has form PBGC-1 been filed?	[Control]	[Control]
G. Disclosure - Other		
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)	[Control]	[Control]
2. For plans that charge for documents, is the charge reasonable? (Regs. 2520.104b-30)	[Control]	[Control]
3. Does the Plan respond to written disclosure requests within 30 days? (Sec. 502(c)(1))	[Control]	[Control]

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)) [Control] [Control]
5. For participants or beneficiaries with claim denials, does the Plan provide notice of denial within required timeframes? (Reg. 2560.503-1(i)(2)) [Control] [Control]
6. For health plans covering more than 20 employees:
- a. Has each covered employee and his or her spouse been notified of their continuation rights under COBRA? [Control] [Control]
- 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? [Control] [Control]
- 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?

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:

Yes

No

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)

	<u>Yes</u>	<u>No</u>
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)	_____	_____

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 furnished within a period longer than 45 days following the end of the year: 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:

Yes

No

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) _____

Yes

No

3. Explanation of permitted disparity or
floor offset, *if applicable*

4. Value of each investment

(as of most recent valuation date)

**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:

1. Explain that participants have a right to request and receive a pension benefit statement? **Yes** ____
No ____

2. Explain how participants can request and receive a pension benefit statement from the plan? **Yes** ____
No ____

PENSION BENEFIT STATEMENT:

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? **Yes** ____ **No** ____

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

	<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)	_____	_____

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 6) 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 _____

Type of Plan

Pension	Welfare	Administration
<input type="checkbox"/> defined benefit	<input type="checkbox"/> health benefit	<input type="checkbox"/> single employer
<input type="checkbox"/> profit sharing	<input type="checkbox"/> fully insured	<input type="checkbox"/> multi-employer
<input type="checkbox"/> stock bonus	<input type="checkbox"/> self-funded	<input type="checkbox"/> other
<input type="checkbox"/> target benefit	<input type="checkbox"/> life insurance	
<input type="checkbox"/> other money purchase	<input type="checkbox"/> other	
<input type="checkbox"/> ESOP		
<input type="checkbox"/> other		

total _____

C. Type of Plan

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)

Plan Managers

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

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

Service Providers

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

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
 1. provides a procedure for establishing and carrying out a funding policy consistent with plan objectives.
 2. describes any procedure for allocating responsibilities for the operation and administration of the plan.
 3. provides a procedure for amending the plan and for identifying the persons who have authority to amend the plan.
 4. 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:
 1. among types of investments, i.e., stocks, bonds, real estate, etc.;
 2. within types, i.e., is common stock all of one or two companies; and
 3. 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.

(Figure 7)
Sample Document Request Letter

Month DD, YYYY

Plan Administrator
XYZ Corporation
234 N. Fairfield Street
Somewhere, Illinois 12345

Re: XYZ Plan

Dear Sir:

As you know, our office will be reviewing XYZ Plan for compliance with Title I of the Employee Retirement Income Security Act (ERISA), which establishes standards governing the operation of employee benefit plans such as XYZ Plan.¹

Submitting relevant documents to our office before the on-site field investigation begins, can help to:

- increase the speed of the process,
- reduce the administrative burden for plan and corporate officials, and
- (in some cases) eliminate the need for an on-site visit entirely.

Please submit to this office by DATE OF LETTER + 10 WORKING DAYS the documents indicated on the checklist below for the XYZ plan. You can also send the documents electronically to: [INVESTIGATOR NAME]@dol.gov.

Thank you for your cooperation. If you have any questions, please contact Investigator/Auditor _____ at 200-321-1234.

Sincerely,

Please Submit Copies of the Items Listed Below: