

Case Development and Limited Review Investigations

1. **Purpose.** This section provides guidance for using case development techniques and handling limited review investigations relating to employee benefit plans.

2. **Case Development.**

Case Development is the process of combining intelligence, planning, and operations in order to analyze, identify, develop, validate, assess, and prioritize cases for investigation. EBSA's case development seeks to direct limited resources toward those plans and service providers with the highest potential for abuse in a matter consistent with agency goals, objectives, and priorities.

- a. **Criteria.** Enforcement strategies, annual operating plans, industry trends, and national policy statements will provide direction for case development efforts to initiate the investigation of:
- i. Financial institutions
 - ii. Insurance carriers
 - iii. Service providers
 - iv. Specific sizes and types of plans
 - v. Types of benefits
 - vi. Types of investments
 - vii. Individuals
 - viii. Other specific matters

Additionally, regionally initiated case development should reflect plan demographic factors, like local economic conditions, geographical coverage, and specialized industries or plan types and sizes.

- b. **Sources.** Sources for case development potential investigations may include:
- i. Computer-generated compilations of selected employee benefit plans or service providers derived from reports filed with EBSA.
 - ii. Information derived from detailed review and analysis of annual reports, supporting financial statements, schedules, exemption application files, ERISA section 502 complaints, and other internal EBSA sources.
 - iii. Information concerning employee benefit plans or service providers referred by other governmental agencies such as the IRS, the SEC, other financial regulatory agencies, HHS, and the state insurance agencies.

- iv. Information concerning employee benefit plans or service providers obtained from non-governmental sources such as newspapers, private litigation, industry journals and magazines, websites, social media, public and commercial databases, or leads from knowledgeable parties.
 - v. Information and leads of potential systemic violations from participants, fiduciaries, informants, or other sources in the employee benefit plan community. These leads are exclusive of other than allegations of 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, which should be handled as described in Participant Rights.
 - vi. Compilations of selected employee benefit plans or service providers derived by using combinations of the sources listed in (a) through (e) above.
- c. **Records for Case Development.** For all activities conducted during case development, such as telephone calls, internet/database searches, etc., the RO must maintain a record in EBSA's database (Zero File). The record for each entity shall include:
- i. Date of contact/search;
 - ii. Name of party contacted/searched;
 - iii. Name of database searched;
 - iv. Summary of what occurred;
 - v. Any action taken by the RO (i.e., no action taken, case opened, etc.); and
 - vi. Sufficient back-up documentation (e.g., annual reports, financial statements, correspondence) to allow for a subsequent statute of limitations analysis.
 - vii.
- d. **Disposition.** If case development efforts indicate that a violation may exist, then the RO should open a full-scope investigation.

If, however, case development leaves open a threshold question or issue that must be resolved before determining whether a violation exists, then the RO may open a limited review investigation (Program 77).

At the case development stage, the RO makes no commitment under ERISA section 504 to conduct a limited review and/or full-scope investigation.

3. Limited Review Investigations

Limited Review Investigations are expedited inquiries into one or more specific issues, features, or aspects of a plan, service provider operations, and/or an individual in order to determine whether a potential violation exists and RO determines whether to further investigate or close the matter.

- a. Scope.** A limited review investigation is appropriate when an initial lead or complaint is unclear or not adequately supported, or when case development presents an issue that needs further explanation. RO should only open limited review investigations to determine whether a particular activity, transaction, or specific potential violation occurred. ROs are not required to examine every aspect of plan or service provider operations, only those matters that formed the basis for the limited review opening.
- b. Relationship of Case Development to Limited Review Investigation.** If limited information is necessary to determine the likelihood of whether or not a violation exists, the RO should open a limited review investigation to determine that information exists.
- c. Opening Limited Review Investigations.** The opening narrative should briefly describe the reason for the limited review opening. The summary should contain:
 - i. A description of the pertinent facts that form the basis for opening an investigation, including an explanation of the issue that needs clarification; and
 - ii. The results of the case opening vetting procedures, including the search of global indices.

Investigator/Auditors should maintain any materials reviewed before opening the case in the case file.

- d. Information Requests & Fact-Gathering.** Once RO opens a limited review investigation, activities to obtain information include background searches such as CLEAR and other available public records and:
 - i. Initial document requests (or subpoenas) to get information relating to the specific issue, feature or aspect; and
 - ii. Interviews to get additional information relating to the specific issue, feature or aspect.

Information obtained by document request and interviews will be used to determine whether a full-scope investigation is merited. See [Figure 1](#) for an example of a document request letter/limited review open letter.

- e. Limited Review Investigation Dispositions.** Limited review investigations should have no results. Limited review investigations must be either closed or converted using the following dispositions:

Disposition	Actions	More Info
<i>No Violation(s) Found</i>	Prepare a closing ROI describing the basis for the review, the issues and documents reviewed, the individuals interviewed, and why EBSA found no violations exist and/or the reason for further investigation. Inform appropriate plan or service provider officials in a letter that includes the SBREFA ¹ notice, if applicable.	Form 203D Form 203 E Form 203F Form 203G Figure 2
<i>Potential Violations Found</i>	Notify your supervisor. The RO will consider converting the investigation to a retirement, health, or welfare investigation, in accordance with case management requirements.	Refer to sections on fiduciary/health and/or welfare investigations
<i>Potential Criminal Violations Found</i>	Inform your supervisor as soon as possible after uncovering evidence of possible criminal violation(s). The civil case will proceed. The RD will decide whether and who will conduct a criminal investigation.	Refer to section on Criminal Investigations of the Manual
<i>Potential Violations of Participant Rights</i>	If the review uncovers possible 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, convert the case to a Participant Rights investigation.	ERISA section 510 and section on Participants Rights of the Manual
<i>Prohibited Persons</i>	If the review indicates that a person barred from serving as an employee benefit plan fiduciary or service provider following a criminal conviction is acting in such a	ERISA section 411 and section on Prohibited

¹ 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. 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. The right to file a comment with the Ombudsman does not affect EBSA authority to enforce or otherwise seek compliance with ERISA. 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.

	capacity, convert the case to a Prohibited Persons investigation.	Persons of the Manual
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- f. Statute Control Date Analysis.** Investigators/Auditors must review all received, requested and related predicate issue documents to complete a statute analysis for all potential issues and document it in EBSA’s database.
- g. General Investigative Considerations under Limited Review Investigations.** Generally, the Department will not inform plan officials or others of the basis for its investigation except to state that the purpose of the limited review is to determine whether a violation of Title I of ERISA occurred or is about to occur. The RO should follow normal operating requirements, as reflected elsewhere in the Manual, for conducting and documenting interviews, receiving and maintaining records, and similar functions. However, the scope of records reviewed, interviews conducted, and third-party verifications made may be less under limited review investigations than under full-scope investigations.

Figure 1
P-77 Opening Letter

Month DD, YYYY

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

Re: XYZ Plan

Dear (Plan Administrator/Fiduciary):

We are conducting a limited investigation of (XYZ plan) to determine whether it complies with Title I of the Employee Retirement Income Security Act (ERISA). [If applicable: This is part of a broader inquiry of selected private employee benefit plans.] Please send copies of the materials listed below to: [EBSA field office address] within the next 15 days.

The requested items are: [list as appropriate]

1.

If you have any questions, please call 200-3211234 or write to the above address.

Thank you in advance for your cooperation.

Sincerely,

[INVESTIGATOR]
Regional Office

Enclosure (SBREFA Pamphlet)

Figure 2
P-77 Closing Letter – No Violations Detected

Month DD, YYYY

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

Re: XYZ Plan
Case Number

Dear (Plan Administrator/Fiduciary):

We concluded our limited investigation into XXX under the Employee Retirement Income Security Act (ERISA). Based on the information we've reviewed to date, we determined that XXX. We plan no further action at this time.

Please note that resolving this matter is limited to the specific issues reviewed in this investigation of the Plan. Our findings or absence of findings, including the absence of findings regarding any specific provision of the Plan, shall not bind the Department in:

- reviewing or investigating any other employee benefit plan or service provider, or
- any subsequent Plan review regarding issues not raised by this investigation.

Our decision is binding on the Department only. It does not prevent another individual or governmental agency from taking action.

Thank you for your cooperation.

Sincerely,
Regional Director

Enclosure: SBREFA Notice¹

Form 203d – ROI P77 (except Health Plans)

Report of Investigation
P77 Plans (except Health)

U.S. Department of Labor
Employee Benefits Security Administration



This document is the property of the Employee Benefits Security Administration. It is not to be disclosed to unauthorized persons.	File No. (77)
Subject: Name Address City, State Zip	Date:
	By: Name Investigator/Auditor
	Approved by:
EIN/PN:	Status: Closed

I. Predication

[State the reason for case opening and for conducting an investigation.]

II. Background

Plan Sponsor:
Plan Type:
Other Plans Reviewed:
As of / / Assets: \$ Participants:
Period Covered by Investigation: / / to / /

Service Providers

Plan Administrator:
Trustee(s):
Financial Institution, Custodian, or other Parties Holding Plan Assets:
Investment Advisor(s) or Investment Manager(s):
Third Party Administrators:
Other Key Service Providers:

If relevant to the fiduciary issues in the case, identify other service providers such as brokers, accountants, actuaries, insurance companies, etc., and explain their role in plan administration.

III. Areas Examined – Describe all areas examined.

IV. Records Reviewed – List records reviewed. For each item listed, supporting documentation obtained during the investigation should be retained in the case file.

Other Records Reviewed:

If plan has filed for bankruptcy, obtain bankruptcy advisement to all affected plans.

V. **Interviews Conducted** – *Provide the name and title/position of each individual interviewed. Supporting documentation for each interview conducted should be retained in the case file.*

VI. **Issues Identified & Resolution**

[Provide a brief description of the issues reviewed, identified and the facts showing that the allegations/issues were not violations.]

VII. **Referrals and Final Communications**

- | | |
|---|---|
| A. IRS Referral | Yes <input type="checkbox"/> N/A <input type="checkbox"/> |
| B. OCA Referral | Yes <input type="checkbox"/> N/A <input type="checkbox"/> |
| C. Participant Complaint Disposition Notice | Yes <input type="checkbox"/> N/A <input type="checkbox"/> |
| D. SBREFA Notice | Yes <input type="checkbox"/> N/A <input type="checkbox"/> |

SBREFA notice is required when a plan sponsor, plan or plan service provider has less than 100 participants or employees during the course of an ERISA Title I civil investigation.

Form 203e – ROI P77 Financial Institutions

Report of Investigation
P77 Financial Institution

U.S. Department of Labor
Employee Benefits Security Administration



This document is the property of the Employee Benefits Security Administration. It is not to be disclosed to unauthorized persons.	File No. (77)
Subject: Name Address City, State Zip	Date:
	By: Name Investigator/Auditor
	Approved by:
EIN:	Status: Closed

I. Predication

[State the reason for case opening and for conducting an investigation.]

II. Background

Type of Financial Institution:
 As of / / No. of ERISA Plan Clients: Managed Assets:
 Period Covered by Investigation: / / to / /
 Other:

III. Areas Examined – Describe all areas examined.

IV. Records Reviewed – List records reviewed. For each item listed, supporting documentation obtained during the investigation should be retained in the case file.

V. Interviews Conducted – Provide the name and title/position of each individual interviewed. Supporting documentation for each interview conducted should be retained in the case file.

VI. Issues Identified & Resolution

[Provide a brief description of the issues reviewed, identified and the facts showing that the allegations/issues were not violations.]

VII. Referrals and Final Communications

A. IRS Referral Yes N/A

B. OCA Referral Yes N/A

C. Participant Complaint Disposition Notice Yes N/A

D. SBREFA Notice Yes N/A

SBREFA notice is required when a plan sponsor, plan or plan service provider has less than 100 participants or employees during the course of an ERISA Title I civil investigation.

Form 203f – ROI P77 Service Providers

Report of Investigation
P77 Service Provider

U.S. Department of Labor
Employee Benefits Security Administration



This document is the property of the Employee Benefits Security Administration. It is not to be disclosed to unauthorized persons.	File No. (77)
Subject: Name Address City, State Zip	Date:
	By: Name Investigator/Auditor
	Approved by:
EIN:	Status: Closed

I. Predication

[State the reason for case opening and for conducting an investigation.]

II. Background

Type of Service Provider:

Type of Clients: Health Retirement Other

As of / / No. of ERISA Plan Clients: No. of Participants:

Period Covered by Investigation: / / to / /

Services Provided:

- | | |
|--|---|
| <input type="checkbox"/> Claims/Benefit Determination | <input type="checkbox"/> COBRA Administration |
| <input type="checkbox"/> Claims/Benefit Payments | <input type="checkbox"/> Benefit Consulting |
| <input type="checkbox"/> Pre/Maintenance Participant Records | <input type="checkbox"/> Investment |
| <input type="checkbox"/> Bonding | <input type="checkbox"/> Utilization Review |
| <input type="checkbox"/> Legal | <input type="checkbox"/> Actuarial |
| <input type="checkbox"/> Document Preparation - <input type="checkbox"/> 5500 <input type="checkbox"/> Plan Document <input type="checkbox"/> SPD <input type="checkbox"/> SAR | |

Other:

III. Areas Examined – Describe all areas examined.

IV. Records Reviewed – List records reviewed. For each item listed, supporting documentation obtained during the investigation should be retained in the case file.

V. Interviews Conducted – Provide the name and title/position of each individual interviewed. Supporting documentation for each interview conducted should be retained in the case file.

VI. Issues Identified & Resolution

[Provide a brief description of the issues reviewed, identified and the facts showing that the allegations/issues were not violations.]

VII. Referrals and Final Communications

- A. IRS Referral Yes N/A
- B. OCA Referral Yes N/A
- C. Participant Complaint Disposition Notice Yes N/A
- D. SBREFA Notice Yes N/A

SBREFA notice is required when a plan sponsor, plan or plan service provider has less than 100 participants or employees during the course of an ERISA Title I civil investigation.

Form 203g – ROI P77 Health Plans

Report of Investigation
P77 Health Plans

U.S. Department of Labor
Employee Benefits Security Administration



This document is the property of the Employee Benefits Security Administration. It is not to be disclosed to unauthorized persons.	File No. (77)
Subject: Name Address City, State Zip	Date:
	By: Name Investigator/Auditor
	Approved by:
EIN/PN:	Status: Closed

I. Predication

[State the reason for case opening and for conducting an investigation.]

II. Background

Plan Sponsor: **Single Employer Plan:** Yes No

Funding Type: Self-funded Fully-funded Mix-funded **MEWA:** Yes No

Funding Arrangement for Distribution of Benefits:

Insurance Trust General Assets of Sponsor IRC § 412 Insurance Contracts

Premiums Paid by: Employer Only Employer and Employee No Premiums

Contract Types: **Prototype:** Yes No

Indemnity PPO HMO POS Other (identify)

Contract(s) Period (s):

Benefit Types:

Health (other than Dental/Vision) Health and Dental Health and Vision
 Health and Non-Health Health, Dental and Vision Health, Dental and Non-Health
 Health, Dental, Vision and Non-Health Other (identify)

Other Plans Reviewed:

As of / / **Assets:** \$ **Participants:**

Period Covered by Investigation: / / to / /

Service Providers:

- Plan Administrators:
- Claims Processors, Adjudicators:
- Trustees:
- Insurance Companies (indicate if ASO):
- Network Providers (e.g., PPO, PBM):
- Third Party Administrators:
- Financial Institutions, Custodians, or other Parties Holding Plan Assets:
- Actuaries
- Other (e.g., accountants, brokers, investment advisors/managers, etc.):

III. Areas Examined – Describe all areas examined.

IV. **Records Reviewed** – *List records reviewed. For each item listed, supporting documentation obtained during the investigation should be retained in the case file.*

V. **Interviews Conducted** – *Provide the name and title/position of each individual interviewed. Supporting documentation for each interview conducted should be retained in the case file.*

VI. **Issues Identified & Resolution**

[Provide a brief description of the issues reviewed, identified and the facts showing that the allegations/issues were not violations.]

VII. **Referrals and Final Communications**

A. OHPSCA Approval (include explanation) Yes N/A

B. IRS Referral Yes N/A

C. OCA Referral Yes N/A

D. Participant Complaint Disposition Notice Yes N/A

E. SBREFA Notice Yes N/A

SBREFA notice is required when a plan sponsor, plan or plan service provider has less than 100 participants or employees during the course of an ERISA Title I civil investigation.

F. Other Referrals (*e.g., State Department of Insurance
State Attorney General's Office, etc.*) Yes N/A