

A stylized silhouette of a city skyline in shades of blue and black. The skyline includes various buildings, a prominent tower with a circular top, and a bridge with arches. The background is a light blue gradient with faint circular patterns.

# Tax in the City<sup>®</sup>

## A Women's Tax Roundtable

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## IRS/DOL Audit Focus Points

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# Overview of Benefit Plan Audits (Agencies Conducting Audits)

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- Internal Revenue Service (IRS)
  - Reviews both health and welfare plans and qualified retirement plans
  - Primary jurisdiction over qualified status of retirement plans
- Department of Labor (DOL)
  - Reviews both health and welfare plans and qualified retirement plans
  - Primary jurisdiction over the fiduciary standards, ACA reporting and disclosure requirements, and non-qualification matters
- Health and Human Services (HHS)
  - Limited to health and welfare plans
  - Primary enforcement of HIPPA requirements (Privacy, Security, and Breach Notification Rules) and ACA



# Overview of Benefit Plan Audits (Plans Being Audited)

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- **Qualified Retirement Plans**
  - 401(k) Plans
  - Profit Sharing/Stock Bonus Plans
  - ESOPs
  - Defined Benefit Plans
- **Health and welfare**
  - Medical, dental, vision, and prescription drug plans (including COBRA)
  - Life, disability, AD&D



# Overview of Benefit Plan Audits (Drivers of Audit Activity)

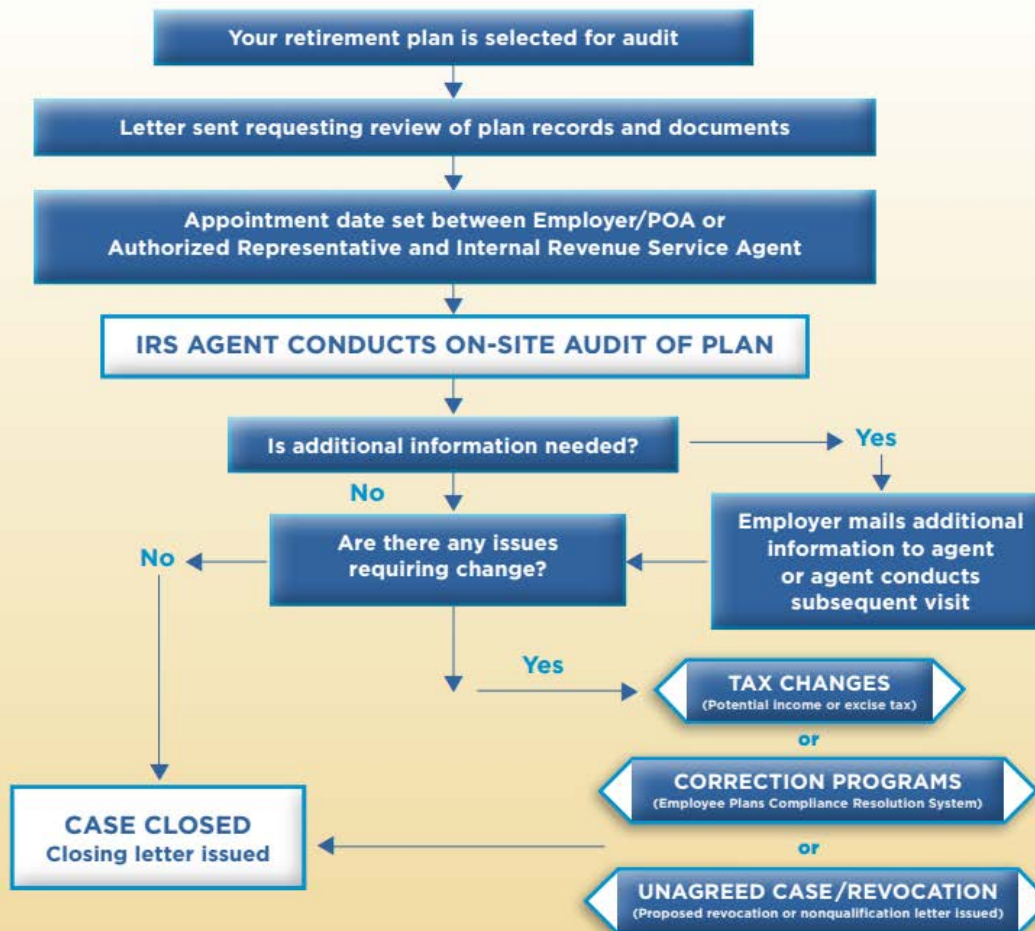
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- Random Selection
- Referral from Other Agencies
  - IRS/DOL shared reporting requires certain matters found on audit by either agency to be shared with the other (e.g., prohibited transaction matters)
- Identification of Abusive Transactions
- Participant Complaint
- Focused Areas of Audit
  - IRS – Larger Plans
  - DOL National Enforcement Priorities:  
<https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/enforcement/erisa-old>



# The Audit Process: IRS Examination Process

## Employee Plan Examination Process



Note: Similar roadmap/structure for DOL audits.

Process is not linear – it is common (expected) to have follow up requests for information

Can be very time consuming and drawn out.

# Areas of Focus

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- Required Minimum Distributions
- Lost Participant Requirements
- Investment Issues
  - Asset investment process
  - Appropriate diversification
  - Plan expenses
- Accurate and Complete Form 5500s
- Timely Deposit of Participant Money
- Duty to Monitor Requirements



# Areas of Focus (Cont.)

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- Internal Controls (<https://www.irs.gov/retirement-plans/internal-controls-are-essential-in-retirement-plans>)
- Following policies and procedures
  - Participant loans
  - Distribution process
- Documentary Controls
- Discrimination Testing
- Benefit Calculation
  - Be cautious of: older plans, movement of information between TPAs, stale historical information
- Appropriate Tax Reporting
  - E.g., UBIT, 990-T requirements



# Best Practices/Life Before an Audit

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- **Plan Governance Structure**
  - Know who is responsible for what (Board of Directors vs. Plan Administrative Committee)
    - Decisions made by the wrong authority may be disregarded entirely
- **Administrative Procedures and Monitoring**
  - Process, Process, Process!
  - Evidence of the process is vital
  - Ensure continual monitoring of the process
- **Mini Review of Compliance With Plan Terms, Reporting and Disclosure Requirements**
  - The audit requests from the IRS and DOL will ask how the plan sponsor ensures it meets certain requirements
  - Evidence of internal audit is helpful
- **Maintenance of Plan Documents**





# Best Practices/Life Before an Audit

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- Organization is the Key - Top Factors in Successful Completion of an Audit
  - Organize a response team (ERISA counsel, HR, benefits, consultants, etc.) to review scope of investigation
  - Appoint 1 person for all contact with DOL investigator – generally ERISA Counsel
  - Have ERISA Counsel serve as conduit for all information and communication
  - Generally will need to seek additional time to respond; confirm in writing
  - Provide only the documents requested – Keep copies and keep in order produced so you can easily access when questions
  - Notify senior management and liability insurer
  - Work with ERISA counsel to prep employees for DOL interviews
  - Debrief employees after they meet with DOL investigator
  - Keep notes of all interviews and all responses
  - If agree you agree to voluntarily correct, clarify what must be done and by when
    - Develop a project plan and assign responsibility
    - Keep DOL investigator informed of progress



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# Helpful Resources



# IRS Guidelines

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- Helpful IRS Publications

- IRS Revenue Manual – EP Examination Guidelines (broken down by technical topics) [<http://www.irs.gov/Retirement-Plans/EP-Examination-Guidelines>]
- Form 5772 – Audit Plan (procedural and technical requirements reviewed by agents) [<http://www.irs.gov/pub/irs-tege/form5772.pdf>]
- Employee Plan Examination Process Brochure (identification of other helpful publications and common areas of review) [[http://www.irs.gov/pub/irs-tege/exam\\_overview.pdf](http://www.irs.gov/pub/irs-tege/exam_overview.pdf)]
- 401(k) Plan Checklist (identifies requirements for a 401(k) qualified plan) [<http://www.irs.gov/pub/irs-tege/pub4531.pdf>]



# DOL – Sample Request Letter (Retirement Plan)

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## SAMPLE REQUEST LETTER

1. Signed originals of the Plan Document, Trust Agreement, and all amendments thereto;
2. Most recent Summary Plan Description and any Summaries of Material Modification;
3. Summary Annual Reports;
4. Most recent IRS letter of qualification determination;
5. Most recent Fidelity Bond Policy, including all endorsements and riders;
6. Most recent Fiduciary Liability Insurance Policy, including all endorsements and riders;
7. Annual Reports (Form 5500 series) and any associated financial statements/schedules, accountant's opinions and/or management letters;
8. Current detailed listing of assets owned by the Plan;
9. Documents regarding Plan policies and/or procedures;
10. Minutes from Trustee and/or Administrative Committee meetings;
11. Agreements or contracts between and/or among third party service providers, the Plan and the Plan's sponsor, and all amendments to such agreements,
12. Documentation regarding any ERISA individual prohibited transaction exemptions that have been applied for;



# DOL – Sample Request Letter (Retirement Plan)

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## SAMPLE REQUEST LETTER – CONT'D

13. Payroll information summarizing deductions from participants' salaries for contributions to the Plan, including monthly, semi-monthly, bi-weekly or weekly payroll reports of participant contributions
14. Canceled checks and/or wire transfers which verify the deposit of participant contributions made by the plan sponsor to the Plan;
15. Documentation regarding employer contributions from the plan sponsor to the Plan;
16. Correspondence between the Plan's custodian/trustee and the plan sponsor relating to any late or delinquent contribution remittances to the Plan;
17. Organizational chart for the plan sponsor;
18. Documentation pertaining to participant loans, including the Plan's loan policy and for each outstanding loan, the following items (for plans with more than 25 loans, a sample will be selected during the onsite visit):
  - (a) Signed loan application,
  - (b) Promissory note,
  - (c) Collateral agreement,
  - (d) Amortization schedule,
  - (e) Cancelled front/back copy for the loan proceeds,
  - (f) Maximum loan calculation,
  - (g) Identification whether the loan is in default; and
19. Sample benefit statement distributed to participants after the close of the most recent plan year or quarter.



# DOL – Sample Request Letter (Health and Welfare Plan)

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## SAMPLE REQUEST LETTER

1. Plan document.
2. Summary Plan Description (SPD), including summaries of material modifications, if any, as well as any insurance booklets or other materials provided to participants and beneficiaries that describe benefits under the Plan.
3. All contracts with insurance companies for the provision of health benefits.
4. If self-insured, all contracts for claims processing, administrative services, and reinsurance.
5. Documents such as premium schedules which describe the responsibilities of both the employer and employees with respect to the payment of the costs associated with the purchase and maintenance of health and welfare benefits.
6. In accordance with the Health Insurance Portability and Accountability Act of 1996, please provide the following records:
  - a. A copy of the Plan's rules for eligibility (including continued eligibility) to enroll under the terms of the Plan (should this not appear in the plan's SPD).
  - b. A sample of the certification provided to those employees who have lost health care coverage which certifies Creditable Coverage earned under this plan.
  - c. A copy of the record or log of all Certificates of Creditable Coverage for individuals who lost coverage under the Plan or requested certificates in the past 2 years.
  - d. A copy of the written procedure for individuals to request and receive certificates.



# DOL – Sample Request Letter (Health and Welfare Plan)

## SAMPLE REQUEST LETTER – CONT.

6. In accordance with the Health Insurance Portability and Accountability Act of 1996, please provide the following records:
  - e. A sample general notice of preexisting condition informing individuals of the exclusion period, the terms of the exclusion period, and the right of individuals to demonstrate creditable coverage (and any applicable waiting or affiliation periods) to reduce the preexisting condition exclusion period, or proof that the plan does not impose a preexisting condition exclusion.
  - f. Copies of individual notices of preexisting condition exclusion issued to certain individuals per the regulations (including any lists or logs an administrator may keep of issued notices), or proof that the Plan does not impose a preexisting condition exclusion.
  - g. Records of claims denied in the past 2 years due to the imposition of the preexisting condition exclusion (as well as the Plan's determination and reconsideration of creditable coverage, if applicable), or proof that the Plan does not impose a preexisting condition exclusion
  - h. A copy of the written procedures that provide special enrollment rights to individuals who lose other coverage and to individuals who acquire a new dependent, if they request enrollment within 30 days of the loss of coverage, marriage, birth, adoption, or placement for adoption, including any lists or logs an administrator may keep of issued notices.
  - i. A copy of the written claims and appeal procedures established by the Plan (should this not appear in the plan's SPD).
7. A copy of the Plan's rules regarding coverage of medical/surgical and mental health benefits, including information as to any aggregate lifetime dollar limits and annual dollar limits (should this not appear in the plan's SPD).
8. The Plan's Newborns' Act notice (should this this not appear in the plan's SPD), including lists or logs of notices an administrator may keep of issued notices.
9. A copy of the Plan's rules regarding pre-authorization for a hospital length of stay in connection with childbirth.



# DOL – Sample Request Letter (Health and Welfare Plan)

## SAMPLE REQUEST LETTER – CONT.

10. A sample of the written description of benefits mandated by WHCRA required to be provided to participants and beneficiaries upon enrollment.
11. A sample of the written description of benefits mandated by WHCRA required to be provided to participants and beneficiaries annually.
12. Materials describing any wellness programs or disease management programs offered by the plan (e.g., offering a non-smoker discount). If the program offers a reward based on an individual's ability to meet a standard related to a health factor, the plan should also include its wellness program disclosure statement regarding the availability of a reasonable alternative.
13. If the Plan is claiming or has claimed grandfathered health plan status within the meaning of section 1251 of the Affordable Care Act, please provide the following records:
  - a. A copy of the grandfathered health plan status disclosure statement that was required to be included in plan materials provided to participants and beneficiaries describing the benefits provided under the Plan.
  - b. Records documenting the terms of the Plan in effect on March 23, 2010 and any other documents necessary to verify, explain or clarify status as a grand Fathered health plan. This may include documentation relating to the terms of cost sharing (fixed and percentage), the contribution rate of the employer or employee organization towards the cost of any tier of coverage, annual and lifetime limits on benefits, and if applicable, any contract with a health insurance issuer, which were in effect on March 23, 2010.
14. Regardless of whether the Plan is claiming grandfathered status, please provide the following records in accordance with section 715 of ERISA as added by the Affordable Care Act:
  - a. In the case of a plan that provides dependent coverage; please provide a sample of the written notice describing enrollment opportunities relating to dependent coverage of children to age 26.
  - b. If the Plan has rescinded any participant's or beneficiary's coverage in the past 2 years, supply a list of participants or beneficiaries whose coverage has been rescinded, the reason for the rescission, and a copy of the written notice of rescission that was provided 30 days in advance of any rescission of coverage.





# DOL – Sample Request Letter (Health and Welfare Plan)

## SAMPLE REQUEST LETTER – CONT.

14. Regardless of whether the Plan is claiming grandfathered status, please provide the following records in accordance with section 715 of ERISA as added by the Affordable Care Act:
  - a. If the Plan imposes a lifetime limit or has imposed a lifetime limit at any point since September 23, 2010, please provide documents showing the limits applicable for each plan year on or after September 23, 2010. Please also provide a sample of any notice sent to participants or beneficiaries stating that the lifetime limit on the dollar value of all benefits no longer applies and that the individual, if covered, is once again eligible for benefits under the plan.
  - b. If the Plan imposes an annual limit or has imposed an annual limit at any point since September 23, 2010, please provide documents showing the limits applicable for each plan year on or after September 23, 2010.
15. If the Plan is NOT claiming grandfathered health plan, please also provide the following records:
  - a. A copy of the choice of provider notice informing participants of the right to designate any participating primary care provider, physician specializing in pediatrics in the case of a child, or health care professional specializing in obstetric or gynecology in the case of women, and a list of participants who received the disclosure notice.
  - b. If the Plan provides any benefits with respect to emergency services in an emergency department of a hospital, please provide copies of documents relating to such emergency services for each plan year on or after September 23, 2010.
  - c. Copies of documents relating to the provision of preventive services for each plan year on or after September 23, 2010.
  - d. Copy of the Plan's External Review Processes.
  - e. If applicable, any contract or agreement with any independent review organization or third party administrator providing external review.
16. Copies of a notice of adverse benefit determination, notice of final internal adverse determination notice, and, if applicable, notice of final external review decision.
17. Except to the extent previously provided, all documentation regarding Plan policies and procedures.



# DOL – Sample Request Letter (Health and Welfare Plan)

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## SAMPLE REQUEST LETTER – CONT.

18. Minutes from any administrative committee meetings relating to the administration of the Plan.
19. New hire and open enrollment documentation with respect to the Plan.
20. Current fiduciary insurance policy, including all endorsements and riders.
21. With respect to Plan finances:
  - a. Health insurance billing invoices and payroll records of withholdings for benefits for the last three months.
  - b. Proof of payment of the last three months of premiums/claims.
  - c. All records relating to delinquent contributions and any collection activities.
  - d. Records depicting, or in support of, the allocation of shared expenses between the Plan and any related parties.
22. Records depicting, or in support of, the allocation of shared expenses between the Plan and any related parties.
  - a. The Plan's most recent two Annual Reports (Form 5500 series) and any associated financial statements/schedules and accountant's opinions.
  - b. Access to all books and records supporting the items listed in the Annual Reports, including, but not limited to, the auditors' work papers (access to be provided on date of appointment).
23. Current detailed asset listing.
24. Summary Annual Reports.
25. Current fidelity bond policy, including all endorsements and riders.
26. Signed original of the Trust Agreement.
27. Access to monthly benefit payment records for the past 2 years, including copies of canceled checks and claims for both medical and dental services (access to be provided on date of appointment).
28. Summary of Benefits and Coverage (SBC) and Uniform Glossary.



# Know Your Compliance Requirements

## Important Dates and Things to Remember (Calendar Year Plan)

- Jan. 1 – Diversification notices must be provided to participants eligible to diversify in the ESOP (generally age 55 plus 10 years of plan participation). Participants have 90 days to make their election
- Jan. 31 – Form 1099-R must be mailed to participants who received a distribution in the prior calendar year
- Jan. 31 – Form 945 must be filed, but only if there was Federal withholding from distributions paid during the year.
- Jan. 31 – Form W-2 must be mailed to participants
- Jan. 31 – Form 5500 must be approved for filing
- Jan. 31 – Summary Annual Report (SAR) must be approved for distribution
- Feb. 28 –file disclosure with CMS on Medicare Part D creditable coverage status (electronic filing only)
- Feb 28 - Form 1096 must be sent to IRS for participants who received a 1099-R
- Feb 28 - Pay PBGC estimated flat-rate premium payments (Apr 30 if small plan)
- Mar. 15 - Corporate tax return due & plan contributions must be deposited unless tax return is put on extension
- Mar. 15 - ADP test must be done for 401(k) plan and refunds must be made for failed test results
- Mar 29 - Actuary for any defined benefit pension plan should issue certified AFTAP
- Apr. 1 – Required Minimum Distributions (RED) must be paid to certain participants who have attained age 70½
- Apr 15 – Extended deadline for Form 5500 approval for filing



# Know Your Compliance Requirements

## Important Dates and Things to Remember (Calendar Year Plan)

- Apr 15 – Extended deadline for SAR approval for distribution
- Apr 30 - Distribute Annual Funding Notice for defined benefit pension plans with more than 100 participants
- July 31 – Form 5500 due unless deadline is extended (to extend, Form 5558 is due on or before July 31)
- July 31 – Tax on Self-Funded Medical Plan Plans due (PCORI Fee)
- Sept. 15 – Extended deadline for corporation tax return due & plan contributions must be deposited
- Sept. 30 –SAR must be distributed to participants unless Form 5500 filing deadline was extended
- Oct. 15 – Extended deadline for Form 5500 filing
- Oct 15 - Distribute notice of Part D creditable coverage (unless that has already been provided in open enrollment materials)
- Oct – Nov – Summary of Benefits and Coverage must be provided on first day of open enrollment
- Dec. 1 – Deadline for safe harbor and qualified default investment alternative (QDIA) notices
- Dec. 15 – Extended deadline for distributing SAR to participants
- Dec. 31 – Deadline for certain discretionary amendments
- Dec 31 - Annual required minimum distributions from retirement plans are due to be paid



# Know Your Compliance Requirements

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## Internal Controls

- Provide census & trust data to your TPA
- Discuss compliance/discrimination test completion with your TPA
- Participant loan repayments (if applicable)
- If your plan requires an auditor's opinion to be attached to the Form 5500
  - Provide financial information to audit firm
  - Coordinate with your TPA and auditing firm as to completion dates
- Once plan administration is completed, determine participants eligible to receive distributions under the plan(s) and establish when the distribution forms need to go to the participants and plan for dates to cut checks
- Monitor hardship distribution requirements
- Review your fidelity bond to insure that it is enough to cover all plans as required



# Know Your Compliance Requirements

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## Internal Controls

- Review your plan documents for any necessary (or desired) amendments (coordinate with ERISA attorney).
- Ensure participants receive required notifications
- **SAFE HARBOR NOTICE**
  - Strict compliance with timing requirements.
  - The notice must contain:
    - Safe harbor contribution formula
    - Any other contribution to the plan and the conditions under which such contributions are made
    - The plan to which the safe harbor contribution will be made
    - The type of compensation that can be deferred
    - Information on how to make elective deferrals, including the periods available for making such election
    - Withdrawal provisions of the plan
    - Vesting provisions of the plan
    - Information on how to easily obtain additional information



# Know Your Compliance Requirements

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## Internal Controls

### ▪ More SUMMARY PLAN DESCRIPTION

- A new participant is required to receive a Summary Plan Description (“SPD”) within 90 days after becoming a participant.
- In the case of a participant’s death, the spouse and/or designated beneficiary is required to receive an SPD within 90 days after first receiving benefits.
- For a NEW plan, the last date for distribution of an SPD is 120 days after the adoption date (or if later 120 days after the plan’s effective date).
- For an AMENDED plan, the last date for distribution of a Summary of Material Modifications (“SMM”) or an amended SPD is 210 days after the end of the plan year in which the amended or restated plan is effective.
- Some practitioners are of the opinion that the SMM or SPD should be provided no later than 60 days after the later of the adoption date or effective date of the amendment, so be sure to check with your advisors.



# Know Your Compliance Requirements

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## Internal Controls

### ▪FORM 1099-R/1096

- Any participant who receives a distribution of more than \$10 from a qualified retirement plan is required to be reported on Form 1099-R. The Form must be mailed to the participant no later than Jan. 31 following the year of the distribution.
- The Form 1096 is used to transmit the Forms 1099-R to the IRS. This Form must be postmarked by Feb. 28.





# Know Your Compliance Requirements

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## Internal Controls

### •FORM 5500

- The Form 5500 (except Schedule E and Schedule SOSA) must be open to inspection by Plan participants. Participants may also request copies of the Form.
- Participants may also view prior year's Forms online at [www.freeerisa.com](http://www.freeerisa.com).

### •SUMMARY ANNUAL REPORT

- The Summary Annual Report must be furnished to all participants of the Plan within nine months after the close of the plan year or two months after the close of the period for which an extension of time to file the Annual Report was granted.
- According to the Department of Labor regulations, the Summary Annual Report must be distributed to active participants, terminated participants with beginning or ending balances and beneficiaries receiving or entitled to receive benefits from the Plan.
- If there are fewer than 100 participants, 25% of which are literate in the same non-English language, or more than 100 participants, 10% of which are literate in the same non-English language, you must provide these participants with an English language Summary Annual Report along with a common non-English language notice outlining the procedures to follow in order to obtain assistance in translating the Report.

