

Center for Plain English Accounting

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Employee Benefit Plan Audits **Current Accounting, Auditing, & Regulatory Considerations**

By: Robert Durak, CPA

As practitioners perform or prepare to perform current-year audits of employee benefit plans (EBPs), we highlight in this report¹ accounting, auditing, regulatory, and legislative developments that may affect the preparation and auditing of EBP financial statements and EBP filings.

Audit Landscape

- 87,028 EBPS are subject to audit
- 134.2 million participants
- \$9.90 trillion in assets subject to audit
- 4,557 CPA firms performing EBP audits

From 2011 to 2019, the Form 5500 database indicates a 40% reduction in the number of CPA firms performing EBP audits.

Source: DOL Update, 2022 AICPA CIMA Employee Benefit Plans Conference

Accounting and Auditing Considerations

Statement on Auditing Standards (SAS) 136

Auditors will be following SAS 136, *Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA*, to perform and report on EBP financial statement audits. SAS 136, as amended, is codified in AU-C 703, *Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA*, and is effective for audits of financial statements for periods ending on or after

¹ Some of the material for this report was extracted from the AICPA's EBP Audit Quality Center. We thank the EBPAQC for use of their materials.

December 15, 2021. See our CPEA [report](#) on SAS 136 issued in April for an in-depth understanding of SAS 136.

Practice Note: SAS 136 was amended by subsequent SASs. As such, auditors should refer to AU-C 703 instead of the originally issued SAS 136 for the most up-to-date requirements. Moreover, auditors should consider all recently effective SASs, including the SAS 134-140 suite of standards, provisions of which are applicable to EBP audits.

SAS 136 particularly impacts limited scope audits. SAS 136 now refers to such audits as an “ERISA section 103(a)(3)(C) audit.” ERISA section 103(a)(3)(C) permits plan management to elect to exclude from the audit certain investment information a qualified institution holds and certifies. These were referred to as “limited-scope audits.” SAS 136 does not and cannot change anything in ERISA and, therefore, plan management’s ability to elect such an audit continues. SAS 136 clarifies what is expected of the auditor, including specific procedures when performing an ERISA section 103(a)(3)(C) audit, and establishes a new form of report.

Practice Note: The AICPA issued an EBP industry FAQ, [Employee Benefit Plans Industry FAQ with Illustrative Auditor's Reports for Initial Year of Implementation of SAS No. 136, as Amended](#), with illustrative auditor’s reports for the initial year of implementation of SAS 136, as amended. The FAQ addresses what the auditor’s report will look like, whether the auditor is the continuing auditor or a successor auditor.

Form 5500 Accountant’s Opinion

A number of auditors have asked for clarification about filling out the Accountant’s Opinion section of Form 5500. Below are two illustrations² of Schedule H, Part III of Form 5500, with helpful guidance related to completing the schedule. As indicated in the illustration, line 3(a) addresses the type of audit opinion issued and line 3(b) addresses the type of audit performed.

² Excerpted from the “Audit & Accounting Update” presentation delivered by Jennifer Allen (Crowe LLP) and Josie Hammond (RSM US LLP) at the 2022 AICPA CIMA Employee Benefit Plans Conference.

Form 5500 Accountant's Opinion

SCHEDULE H (Form 5500) <small>Department of the Treasury Internal Revenue Service</small> <small>Department of Labor Employee Benefits Security Administration</small> <small>Pension Benefit Guaranty Corporation</small>	Financial Information This schedule is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974 (ERISA), and section 6058(a) of the Internal Revenue Code (the Code). ▶ File as an attachment to Form 5500.	OMB No. 1210-0110
		2021
		This Form is Open to Public Inspection

Part III Accountant's Opinion

3 Complete lines 3a through 3c if the opinion of an independent qualified public accountant is attached to this Form 5500. Complete line 3d if an opinion is not attached.

a The attached opinion of an independent qualified public accountant for this plan is (see instructions):
 (1) Unmodified (2) Qualified (3) Disclaimer (4) Adverse

b Check the appropriate box(es) to indicate whether the IQPA performed an ERISA section 103(a)(3)(C) audit. Check both boxes (1) and (2) if the audit was performed pursuant to both 29 CFR 2520.103-8 and 29 CFR 2520.103-12(d). Check box (3) if pursuant to neither.
 (1) DOL Regulation 2520.103-8 (2) DOL Regulation 2520.103-12(d) (3) neither DOL Regulation 2520.103-8 nor DOL Regulation 2520.103-12(d).

Most common for ERISA Section 103(a)(3)(C) audits

Use this box for non-Section 103(a)(3)(C) audits

Form 5500 Accountant's Opinion - Disclaimers

SCHEDULE H (Form 5500) <small>Department of the Treasury Internal Revenue Service</small> <small>Department of Labor Employee Benefits Security Administration</small> <small>Pension Benefit Guaranty Corporation</small>	Financial Information This schedule is required to be filed under section 104 of the Employee Retirement Income Security Act of 1974 (ERISA), and section 6058(a) of the Internal Revenue Code (the Code). ▶ File as an attachment to Form 5500.	OMB No. 1210-0110
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 (1) DOL Regulation 2520.103-8 (2) DOL Regulation 2520.103-12(d) (3) neither DOL Regulation 2520.103-8 nor DOL Regulation 2520.103-12(d).

Select either:
 3b(1) for ERISA Section 103(a)(3)(C) or
 3b(3) for non-Section 103(a)(3)(C)

Disclaimers were and expected to continue to be common for 403(b) plan due to records issues associated with beginning of year balances or exclusion of certain contracts under the DOL FAB 2009-02

AICPA EBP Guide Changes

The latest edition of the AICPA's EBP Audit and Accounting Guide (EBP Guide) is dated August 1, 2021 and contains a number of changes from the last edition. The EBP Guide includes the new performance and reporting requirements of AU-C 703 and contains other enhancements. The EBP Guide chapters have been renumbered as indicated in the following table²:

Renumbered AICPA EBP Guide – August 01, 2021

<i>2021 Chapter #</i>	<i>2020 Guide Chapter #</i>	<i>Chapter Name (2021 guide)</i>
Preface		Preface
1	1	Introduction and Background
2	2	Planning and General Auditing Considerations
3	3	Audit Risk Assessment
4	4	Internal Control
5	5A	Defined Contribution Retirement Plans
6	5B	Employee Stock Ownership Plans
7	6	Defined Benefit Pension Plans
8	7	Health and Welfare Benefit Plans
9	New	Multiemployer Plans
10	—	Reserved
11	8	Investments
12	9	Plan Tax Status
13	10	Concluding the Audit and Other Auditing Considerations
14	11	The Auditor Reports

Chapter 14 of the EBP Guide includes numerous example auditor's reports for non-Section 103(a)(3)(C) audits and ERISA Section 103(a)(3)(C) audits, for various types of ERISA plans.

Other important changes to the EBP Guide include:

- A new chapter and appendix related to multiemployer benefit plans accounting and auditing (chapter 9), including:
 - Determining the audit strategy and describing relevant assertions when auditing multiemployer plans, including apprenticeship plans
 - Examples of the more common identified risks of material misstatement at the relevant assertion level and example audit procedures responsive to the identified risks of material misstatement
 - Relevance of participant census data and testing

- As indicated in paragraph 9.219, the plan auditor needs to evaluate whether an adequate number of participating employers are tested each year to provide the auditor with sufficient appropriate audit evidence relating to the completeness and accuracy of participant census data and contributions
 - Using the work of internal auditors or others related to payroll compliance audits, and considering the adequacy of the payroll compliance audit function
 - As indicated in paragraph 9.241, it is not enough to just review a summary of the results of the payroll audits -- Reperformance of some of the body of work of the payroll compliance audit function that the plan auditor intends to use in obtaining audit evidence is required
 - Unique audit considerations such as dual-purpose assets used in operations, funded status of the plan, reciprocity agreements and withdrawal liabilities
 - The Financial Reporting Executive Committee (FinREC) recommended accounting, reporting, or disclosure treatment of transactions or events applicable to multiemployer benefit plans
 - Examples of multiemployer defined benefit pension plan, health and welfare plan, and apprenticeship plan financial statements
- Guidance on the applicability of FASB ASC 606, *Revenue from Contracts with Customers*, to EBPs -- A table of typical income (cash inflow) streams in an EBP with considerations for determining whether the income streams are subject to the guidance on FASB ASC 606 (Exhibit A-4)

FASB ASC 606 Applicability to EBPs

FinREC clarified in the EBP Guide that employees (plan participants) and employers (plan sponsors), regardless of plan type, are not considered customers as defined by FASB ASC 606, because neither obtains goods or services that are an output of the entity's ordinary activities in exchange for the contribution. Rather, employee and employer contributions to defined contribution retirement and defined benefit pension plans are similar to deposits held for the benefit of the participant, and the plan acts as the vehicle for plan investments. As such, FinREC believes that contributions are not considered revenue to a plan (EBP Guide, par. 2.159)

FinREC also indicated that in multiemployer plans, a collective bargaining agreement is not considered a contract between the plan and the plan participants but, rather, is a contract between the employer and the union. However, in some more limited situations, multiemployer plans may enter into contracts with plan participants. For example, when plan participants receive goods or services from the plan (such as books or tuition) and the participant pays the plan for those goods or services. In such instances, the

transaction is considered a contract with the customer (within the scope of FASB ASC 606) between the plan and the participant, to the extent that the criteria in paragraphs 1 and 4 of FASB ASC 606-10-25 are met.

Exhibit A4 of the EBP Guide includes examples of typical cash inflow streams in an EBP with considerations for FinREC's determination of whether the streams are subject to the guidance in FASB ASC 606. The Exhibit indicates that investment income, contributions, revenue sharing, and grants, among other items, are not subject to the guidance in FASB ASC 606.

ASU 2018-14

The amendments in ASU 2018-14, *Compensation—Retirement Benefits—Defined Benefit Plans—General (Subtopic 715-20): Disclosure Framework—Changes to the Disclosure Requirements for Defined Benefit Plans*, are effective for fiscal years ending after December 15, 2020, for public business entities and for fiscal years ending after December 15, 2021, for all other entities. The amendments in ASU 2018-14 remove disclosures that no longer are considered cost beneficial, clarify the specific requirements of disclosures, and add disclosure requirements identified as relevant for employers that sponsor defined benefit pension or other postretirement plans.

Regulatory and Legislative Considerations

2021 Form 5500 Changes

Changes to the 2021 Form 5500 have been made to address reporting aggregate account balance information by employer for defined contribution multiple employer pension plans, pooled employer plans, retroactively adopted plans permitted by the Setting Every Community Up for Retirement Enhancement (SECURE) Act, administrative penalties, and revisions to Schedules MB and SB. For details on the changes, see the “Changes to Note” section of the [2021 instructions](#).

401(k) and Profit-sharing Plan Contribution Limits

For 2021, the limit on employee elective deferrals is \$19,500. If permitted by the plan, participants age 50 or over at the end of the calendar year can also make catch-up contributions of up to \$6,500 in 2021. For 2021, compensation limits for contributions are \$290,000.

New Mortality Tables and Scales

The Society of Actuaries' Retirement Plans Experience Committee (SOA RPEC) released in October 2021 its [Mortality Improvement Scale MP-2021](#). The report reflects one additional year of historical population data for 2019. The Scale MP-2021 mortality

improvement rates presented are slightly higher than the corresponding Scale MP-2020 rates.

The MP-2021 projection scale is based upon historical mortality information through calendar year 2019, before the COVID-19 pandemic. Accordingly, MP-2021 does not reflect any historical or potential future effects of COVID-19.

U.S. generally accepted accounting principles (U.S. GAAP) require the use of a mortality assumption that reflects the best estimate of the EBP's future experience for purposes of estimating the EBP's obligation as of the current measurement date (that is, the date at which the obligation is presented in the financial statements. Accordingly, auditors should be aware of the absence of COVID-related adjustments to the MP-2021 projection scale.

As indicated in the MP-2021 report, there remains a good deal of uncertainty within the actuarial community and more broadly about the near and long-term effects of COVID-19. The Committee decided that it would be best if the effects, if any, of COVID-19 on future mortality improvement for a particular pension population were an assumption chosen by individual practitioners. To facilitate this, the MIM-2021 Application Tool includes a COVID-19 adjustment section so that users could more easily incorporate their COVID-19 adjustments into a projection scale.

AICPA Technical Questions and Answers TIS 3700.01, *Effect of New Mortality Tables on Nongovernmental Employee Benefit Plans (EBPs) and Nongovernmental Entities That Sponsor EBPs*, discusses the effect of new mortality tables on nongovernmental EBPs and nongovernmental entities that sponsor plans. Click [here](#) to access the AICPA TQAs.

ARPA Defined Benefit Pension Plan Guidance

The American Rescue Plan Act of 2021 (ARPA) provides further funding relief for single employer pension plans in the form of interest rate stabilization and lengthening the period for amortizing funding shortfalls. Specifically, ARPA:

- Extends the 7-year amortization period for funding shortfalls to a 15-year period
- Extends interest rate stabilization rules that were set for phase-out starting in 2021 and modified the interest rate floor and corridor.

[IRS Notice 2021-48](#), *Guidance on Single-Employer Defined Benefit Pension Plan Funding Changes under the American Rescue Plan Act of 2021*, includes guidance on the changes to the funding rules.

The impact of ARPA affects each plan differently; however, most plan sponsors will see reductions in the minimum required contributions calculated under prior law. If a plan sponsor amends a previously filed Form 5500, auditors will want to consider how the amended Form 5500 may affect subsequent audited financial statements and the

auditor's report. In addition, the plan auditor will want to discuss with plan management how amendments made by ARPA may affect the plan's minimum required contribution for each plan year that will be reported in the plan financial statements and the Form 5500 (Schedule H, Financial Information and Schedule SB, Single Employer Defined Benefit Plan Actuarial Information). ARPA also provides various types of relief to multiemployer pension plans.

SECURE Act and CARES Act

The SECURE Act (effective 1/1/20) and the Coronavirus Aid, Relief, and Economic Security (CARES) Act (effective 3/27/20) contain numerous provisions affecting EBPs. The provisions are not mandatory and, if adopted, plan amendments are required. Generally, the deadline for adopting any plan amendments is the last day of the first plan year beginning on or after January 1, 2022. The amendments can be retroactively adopted.

Practice Note: Because SECURE Act and CARES Act provisions may be implemented before amending the plan instrument, auditors should inquire whether any such provisions were implemented during the year that are not yet reflected in the plan instrument.

SECURE Act provisions that may be voluntarily adopted and require the plan to be amended include:

- Increasing the cap on payroll contributions from 10 percent to 15 percent for automatic-enrollment safe harbor plans (section 102)
- Allowing long-term part-time workers to participate in 401(k) plans (except in the case of collectively bargained plans) (section 112) (Note that the SECURE Act requires certain long-term, part-time employees to be given the opportunity to make salary deferrals to a 401(k) plan (i.e., not voluntary for certain employees)
- Allowing in-service withdrawals for childbirth and adoption expenses (section 113)
- Allowing retirees to delay taking required minimum distributions (RMDs) until age 72, up from the current age of 70 1/2, for participants in 401(k) and other defined-contribution plans, defined benefit pension plans (section 114)

CARES Act provisions that may be voluntarily adopted and require the plan to be amended include:

- Allowing participants to take a coronavirus-related distribution (CRD) of up to \$100,000 (not to exceed the participant's account balance) from their retirement plan without a 10% early withdrawal penalty -- Eligible distributions can be taken up to December 31, 2020 -- CRDs may be repaid within three years -- The plan

management may rely on an employee's certification that the employee satisfies the conditions for a CRD (section 2202 -- Special rules for use of retirement funds)

- Allowing participants to borrow up to \$100,000 from qualified plans – an increase from \$50,000 previously allowed under Internal Revenue Code section 72(p) – for loans made from March 27, 2020 through September 22, 2020, and repayment can be delayed (section 2202. Special rules for use of retirement funds)
- Allowing suspension of loan payment due March 27, 2020 through December 31, 2020 for up to one year (section 2202(b)(2))
- Allowing suspension of 2020 required minimum distributions (section 2203).

IRS Revenue Procedure 2021-30

IRS [revenue procedure 2021-30](#) updates the Employee Plans Compliance Resolution System (EPCRS). EPCRS permits any plan sponsor of a retirement plan to correct plan failures. The IRS made significant changes and revisions to EPCRS that may be beneficial to plan sponsors, participants, and the retirement plan community.

Missing or Nonresponsive Participants

The U.S. Department of Labor's (DOL's) Employee Benefits Security Administration (EBSA) announced new guidance to help plan fiduciaries meet their obligations under ERISA to locate and distribute retirement benefits to missing or nonresponsive participants of defined benefit and defined contribution plans. The guidance includes:

- [Best Practices for Pension Plans](#) describes best practices that fiduciaries of retirement plans, such as 401(k) plans, should consider to help reduce missing participant issues and ensure that plan participants receive promised benefits when they reach retirement age
- Compliance Assistance Release 2021-01 outlines the general investigative approach that will guide all EBSA's Regional Offices under the Terminated Vested Participants Project and facilitate voluntary compliance efforts by plan fiduciaries
- Field Assistance Bulletin 2021-01 authorizes, as a matter of enforcement policy, plan fiduciaries of terminating defined contribution plans use of the PBGC missing participant program for missing or nonresponsive participant's account balances

Auditors may wish to share these resources with plan clients.

DOL Audit Quality Study

The DOL EBSA Office of the Chief Accountant (OCA) is conducting a study to assess the quality of audit work performed by independent qualified public accountants (IQPAs) with respect to financial statement audits of EBPs covered under ERISA for the 2020 Form

5500 filing year (plan years beginning in 2020). This includes calendar year 2020 filings filed on extension by October 15, 2021.

There have been four previous audit quality studies:

- 1988 – 23% of audits had deficiencies
- 1995 – 19% of audits had deficiencies
- 2004 – 33% of audits had deficiencies
- 2014 – 39% of audits had deficiencies

As the results of the studies indicate, EBP audit quality has worsened over the years.

The DOL is deliberately conducting the current study before the implementation of SAS 136, to establish a pre-SAS 136 quality baseline.

If selected for review, the IQPA firm will be asked to provide the EBSA OCA with a full set of audit workpapers supporting the audit containing all documentation, including workpapers kept in other related files (DOL will not permit supplemental submissions). Auditors are encouraged to adequately document their audits as a record of auditing procedures applied, evidence obtained, and conclusions reached by the auditor in the engagement.

Plan Investments in Cryptocurrencies

The DOL ESBA issued Compliance Assistance Release No. 2022-01, which cautions plan fiduciaries to exercise extreme care before they consider adding a cryptocurrency option to a 401(k) plan's investment menu for plan participants. The DOL has serious concerns about the prudence of a fiduciary's decision to expose a 401(k) plan's participants to direct investments in cryptocurrencies, or other products, where value is tied to cryptocurrencies. These investments present significant risks and challenges to participants' retirement accounts, including significant risks of fraud, theft, and loss.

EBSA expects to conduct an investigative program aimed at plans that offer participant investments in cryptocurrencies and related products, and to take appropriate action to protect the interests of plan participants and beneficiaries with respect to these investments. The plan fiduciaries responsible for overseeing such investment options or allowing such investments through brokerage windows should expect to be questioned about how they can square their actions with duties of prudence and loyalty in light of the risks described above.

DOL Cybersecurity Guidance

On April 14, 2021, the DOL issued [guidance](#) for plan sponsors, plan fiduciaries, record keepers, and plan participants on best practices for maintaining cybersecurity. For more

information about that guidance and information about an auditors' responsibilities related to cybersecurity risks, see our CPEA [report](#) on the topic issued in July 2021.

EBSA Disaster Relief Notice 2020-01

As a reminder, [EBSA Disaster Relief Notice 2020-01](#) is still in effect. The DOL will not take enforcement action for participant payments and withholdings not made within prescribed timeframes, if the plan administrator determines the delay was caused solely on the basis of a failure attributable to the COVID 19 outbreak. In these circumstances, the amounts do not need to be reported on Form 5500, Schedule H, line 4a, or on the Supplemental Schedule of Delinquent Participant Contributions. This applies during the “national emergency” due to COVID 19. The “national emergency” was extended beyond March 1, 2022 by President Biden.

Pooled Plan Providers

The SECURE Act allows for a new pooled employer plan (PEP), a type of 401(k) multiple employer plan in which unrelated employers may participate and which is established by a pooled plan provider (PPP). Plans that satisfy the PEP requirements are characterized as open multiple employer plans and are treated as a single plan for purposes of satisfying the requirements of ERISA. The PPP is responsible for the fiduciary and administrative duties related to the PEP. Each participating employer in a PEP is treated as the plan sponsor with respect to the portion of the plan attributable to employees of such employer (or beneficiaries of such employees). PPPs are required to register with the DOL using a new form—EBSA Form PR (Pooled Plan Provider Registration) and were permitted to begin operating on January 1, 2021. Plans established in 2021 that do not meet the exemption rules will require an audit in 2022.

Clients and auditors may have questions regarding PEP audit engagement acceptance and independence. The AICPA Professional Ethics staff updated the [Frequently Asked Questions: Application of the independence rules to affiliates of employee benefit plans](#) concluding that a PPP is an affiliate of a PEP (and vice-versa). Participating employers would not be considered an affiliate of the PEP. However, if a firm auditing the PEP is providing non-attest services to a participating employer, the firm would need to consider the threats and safeguards to independence under the AICPA Conceptual Framework for Independence.

Defined Contribution Group (DCG) Reporting Arrangements

Section 202 of the SECURE Act created a group of plans arrangement, which is now known as a defined contribution group (DCG) reporting arrangement. Per the SECURE Act, these arrangements are individual account plans or defined contribution plans that have the same trustee, the same named fiduciary(ies), the same administrator, plan years

beginning on the same date, and provide the same investments or investment options to participants and beneficiaries. Employers and providers may comply in good faith with the law's requirements until regulatory guidance is available.

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