



## Agenda Item 4

### Reporting on ERISA Plan Financial Statements — Cover Letter and Issues Paper

#### Objective

To consider a discussion draft of a proposed standard that addresses special considerations in the application of generally accepted auditing standards when auditing employee benefit plans subject to the Employee Retirement Income Security Act of 1974 (ERISA), including the form and content of the auditor's report for such audits.

#### EBP Task Force

The Employee Benefit Plan Reporting Task Force (the EBP task force) members are:

- Darrel Schubert (Chair)
- Josie Hammond
- Jerry Murray
- Scot Philips (TIC representative)
- Alice Wunderlich
- Michael Auerbach (DOL)

#### Agenda Items Presented

Item 4 – Cover Letter and Issues Paper

Item 4A – Proposed SAS *Special Considerations—Audits of Employee Benefit Plan Financial Statements Subject to ERISA* (clean)

Item 4B – Proposed SAS *Special Considerations—Audits of Employee Benefit Plan Financial Statements Subject to ERISA* (marked from May 2016 ASB meeting)

Item 4C – Illustrative Auditor's Report—Employee Benefit Plan Subject to ERISA when Management Imposes a Limitation on the Scope of the Audit as Permitted by ERISA

Item 4D – Illustrative Auditor's Report—Special Considerations Relating to Selected Plan Provisions

Mr. Schubert will lead the discussion through the issue paper (Agenda Item 4) and the illustrative reports (Agenda Items 4C and 4D) first, and then will walk through the proposed SAS (Agenda Item 4A) with the ASB.

## Issues Paper

### Background

In January 2015 a special task force of the Auditing Standards Board (EBP task force) was formed to consider a proposal to improve the quality of employee benefit plan (EBP) audits by strengthening the EBP auditor's report. The Employee Benefits Security Administration (EBSA) of the Department of Labor (DOL) asked us to rethink the EBP auditor's report to help auditors better understand their responsibilities and to provide users with more information about what auditors do, especially when management imposes a limitation on the scope of the audit, as permitted by the DOL's rules and regulations for reporting and disclosure under the Employee Retirement Income Security Act of 1974 (ERISA). The DOL provided specific suggestions on ways to improve auditor reporting for plans.

### Prior ASB Discussions

The ASB discussed this topic at the July 2015, October 2015, and May 2016 ASB meetings. The ASB provided the EBP task force with direction on various aspects of this project. The highlights from the ASB meetings summarize the ASB's discussions.

At the May 2016 ASB meeting the ASB discussed reporting on compliance, the limited-scope auditor's report, and other reporting elements, such as Form 5500 considerations. In addition, the ASB reconsidered reporting on internal control over financial reporting. The ASB directed the EBP task force to continue to move forward with developing a report on compliance, while reporting on internal control over financial reporting was removed from the scope of the project and will be considered by the auditor reporting task force. The highlights from the May 2016 ASB meeting summarize the ASB discussion.

### Subsequent Task Force Discussions

Subsequent to the May 2016 ASB meeting, the EBP task force held conference calls to consider the comments from the ASB meeting and discuss various aspects of the proposed SAS. In particular, the EBP task force considered ways to better streamline the auditor's report when management imposes a limitation on the scope of the audit as permitted by ERISA, and the task force considered ways to report on the plan's compliance with selected plan provisions that ties to the audit of the employee benefit plan financial statements.

### Issues for ASB discussion

#### Reporting on Compliance

At the May 2016 ASB meeting, the ASB directed the task force to continue to move forward with a requirement for employee benefit plans subject to ERISA to report on compliance. The task force

discussed ways to better link the compliance reporting to the audit of the employee benefit plan financial statements, and for ways to clarify what this type of reporting involves.

### **Issue 1 — Reporting on Specific Considerations Relating to Selected Plan Provisions**

The task force decided to change the name of the report and not use the term “compliance” in the proposed SAS because such reference was confusing to users and wasn’t clear what compliance items were included in the report. By changing the name of the report to relate to “selected plan provisions” the task force believes there will be less confusion as to the scope of items covered by the report. Paragraphs .35-.44 of the proposed SAS (Agenda Item 4A) contain the requirements relating to reporting on specific considerations relating to selected plan provisions.

Paragraph .37 (and related application material) of the proposed SAS (Agenda Item 4A) contains the required procedures the auditor should perform to report on specific considerations relating to selected plan provisions. These procedures form the basis for the report on compliance and have not changed from those procedures contained in the May 2016 proposed SAS.

These procedures relate to selected plan provisions that are typically tested, as part of the audit of the employee benefit plan financial statements. Accordingly, the EBP Task force has identified relevant assertions to demonstrate to the ASB the link between the testing of these items and the audit of the employee benefit plan financial statements (paragraph .37 of the proposed SAS). The EBP task force believes that these areas are often overlooked in the audit of employee benefit plan financial statements because they relate to plan provisions.

#### ***Action Requested of the ASB — Issue 1***

1. Does the ASB support renaming this report to “Report on Specific Considerations Relating to Selected Plan Provisions”?
2. The ASB is asked for feedback on the relevant assertions that have been included in paragraph .37 of the proposed SAS and whether this provides a sufficient link to the audit of the employee benefit plan financial statements.

### **Issue 2 — Listing of Findings and the DOL’s Voluntary Fiduciary Correction Program**

Paragraph .40 of the proposed SAS requires the auditor to include in the *Report on Specific Considerations Relating to Selected Plan Provisions* the findings from the testing that was performed (renamed from the “instances of noncompliance” from the May 2016 ASB meeting). At the May 2016 ASB meeting, the ASB continued to support including the findings from such testing, pending further information from the EBP task force on the implications for the DOL’s Voluntary Fiduciary Correction Program (VFCP). The VFCP is a voluntary enforcement program that encourages the correction of possible violations of Title I of ERISA. ERISA is the

federal law that covers most employee benefit plans in the private sector. The U.S. Department of Labor (Department), Employee Benefits Security Administration (EBSA), enforces many parts of ERISA.

The VFCP allows plan officials to identify and fully correct certain transactions such as prohibited purchases, sales and exchanges, improper loans, delinquent participant contributions, and improper plan expenses. The Program includes 19 specific transactions and their acceptable means of correction, eligibility requirements, and application procedures. If an eligible party documents the acceptable correction of a specified transaction and satisfies the terms of the Program, a no action letter is issued.

Based on task force discussions, when the auditor includes findings in the report when testing the plan's conformity with selected plan provisions, the task force believes that the employee benefit plan would have time to enter the VFCP, even if the findings became public. Employee benefit plans are eligible to enter the VFCP provided they are not under investigation therefore there is time for the plan administrator to determine its course of action. The EBSA members of the task force feel strongly that the reporting on findings in the auditor's report (as included in the proposed SAS) should not impair the ability of the plan administrator to come under the VFCP. Further, the DOL will often work with plan administrators to notify them when they may be a candidate for the VFCP program and will allow the plan administrator time to correct. The task force believes that such reporting could improve the timing of a plan's correction of such items.

The following are selected "frequently asked questions" the DOL has issued relating to the VFCP.

*Who is eligible to participate in the Program?*

EBSA will consider an application if neither the plan nor the applicant is "Under Investigation" (as defined in the Program) and if the application contains no evidence of potential criminal violations as determined by EBSA. We have made the Program available to more applicants by revising the definition of who is "Under Investigation."

*Who is "Under Investigation" in the Program?*

A plan or potential applicant is "Under Investigation" if:

- EBSA is conducting an investigation of the plan;
- EBSA is conducting an investigation of the potential applicant or plan sponsor in connection with an act or transaction directly related to the plan;
- any governmental agency is conducting a criminal investigation of the plan, or of the potential applicant or plan sponsor in connection with an act or transaction directly related to the plan;
- the Tax Exempt and Government Entities Division of the IRS is conducting an Employee Plans examination of the plan; or
- the Pension Benefit Guaranty Corporation (PBGC), any state attorney general, or any state insurance commissioner is conducting an investigation or examination of the plan, or of the applicant or plan sponsor in connection with an act or transaction

directly related to the plan, unless the applicant notifies us, in writing, of the investigation or examination at the time of the application

The plan must have received written or oral notice of the investigation or examination to be considered “under investigation.”

*What if the U.S. Department of Labor receives an application from a plan sponsor that has not adequately corrected a violation?*

We may need to negotiate with the sponsor for full correction. In that case, the Section 502(l) penalty may apply to amounts restored as a result of the negotiation. Depending on the facts, EBSA may also need to conduct a civil or criminal investigation or take other action, such as seeking removal of persons from positions of authority with a plan.

*May I submit an application before I correct?*

No. The Program requires that you submit proof of corrective action with the application. If EBSA enters into negotiations with you because the violation hasn't been properly corrected prior to submission, the correction could lead to a settlement within the meaning of Section 502(l) and the assessment of the penalty.

Agenda Item 4D – *Illustrative Auditor’s Report—Special Considerations Relating to Selected Plan Provisions* provides an example of what such a report looks like under the proposed SAS.

#### **Action Requested of the ASB — Issue 2**

3. Does the ASB support including the auditor’s findings in the *Report on Specific Considerations Relating to Selected Plan Provisions* as required by paragraph .40 of the proposed SAS (Agenda Item 4A)?
4. The ASB is asked to provide the EBP task force with feedback on the illustrative report in Agenda Item 4D.
5. The ASB is asked to provide the EBP task force with feedback on paragraphs .35-.44 of the proposed SAS (Agenda Item 4A).

#### **Auditor’s Report when Management Imposes a Limitation on the Scope of the Audit as Permitted by ERISA**

The EBP task force discussed ideas to improve reporting on audits of employee benefit plan financial statements when management imposes a limitation on the scope of the audit, as permitted by ERISA. The EBP task force supports creating a new form of standard auditor’s report for an audit of employee benefit plan financial statements when management imposes such a limitation. The new form of report is intended to better explain this special type of engagement. In such situations, the auditor performs certain limited audit procedures on the amounts that have been

certified by a qualified institution and also performs audit procedures on the other material amounts in the financial statements.

At the July 2015 ASB meeting, the ASB supported the development of a standard that would address the form and content of the auditor's report when management imposes a limitation on the scope of the audit as permitted by ERISA. By developing a new standard the EBP task force can create a reporting model specific to fit the circumstances of such engagements.

### **Issue 3 — Revised Report when ERISA-Permitted Scope Limitation is Imposed**

Based on comments received from the May 2016 ASB meeting, the EBP task force has revised and streamlined the report. *Agenda Item 4C – Illustrative Auditor's Report—Employee Benefit Plan Subject to ERISA when Management Imposes a Limitation on the Scope of the Audit as Permitted by ERISA*, contains an example of the proposed report. In addition, paragraphs .11-.16 and paragraph .18 of the proposed SAS (Agenda Item 4A) contain the requirements relating to the auditor's report on employee benefit plan financial statements when management imposes such a limitation on the scope of the audit.

#### ***Action Requested of the ASB — Issue 3***

6. The ASB is asked to provide the EBP task force with feedback on the illustrative report in agenda item 4C and paragraphs .11-.16 and .18 of the proposed SAS (agenda item 4A).

### **Proposed SAS**

The EBP task force has revised the proposed SAS to reflect comments received from the ASB at the May 2016 meeting. Agenda Item 4A contains the proposed SAS, redlined to reflect changes from the May 2016 meeting materials.

#### ***Action Requested of the ASB***

7. The ASB is asked to provide the EBP task force with feedback on proposed SAS in agenda Item 4A.