



403(b) Retirement Plan Audits- Frequently Asked Questions (FAQs)

The AICPA 403(b) Plan Audit Task Force has prepared these questions and answers to assist plan auditors and plan administrators (hereinafter used to also refer to the plan sponsors or employers) in implementing the U.S. Department of Labor (DOL) financial statement audit requirements (and subsequent enforcement relief) for section 403(b) retirement plans that are subject to Title I of the Employee Retirement Income Security Act of 1974 (ERISA).

Financial Statement Audit Requirement and DOL Enforcement Relief

Beginning with 2009 plan year Form 5500 filings, ERISA-covered 403(b) plans with 100 or more eligible participants at the beginning of the plan year that file the Form 5500 as a large plan are required to have an annual audit of their financial statements.

In July 2009, the DOL issued Field Assistance Bulletin (FAB) 2009-02, *Annual Reporting Requirements for 403(b) Plans*, to provide enforcement relief for 403(b) plan administrators that make good faith efforts to transition for the 2009 plan year to ERISA's generally applicable annual reporting requirements. DOL FAB 2009-02 allows the plan administrator to exclude certain pre-January 1, 2009 annuity contracts and custodial accounts for ERISA reporting purposes. The plan administrator of a 403(b) plan may choose not to report as part of the employer's Title I plan or as plan assets for purposes of ERISA's annual reporting requirements (Form 5500, *Annual Return/Report of Employee Benefit Plan*), annuity contracts and custodial accounts that meet the following four criteria:

1. the contract or account was issued to a current or former employee before January 1, 2009;
2. the employer ceased to have any obligation to make contributions (including employee salary reduction contributions), and in fact ceased making contributions to the contract or account before January 1, 2009;
3. all of the rights and benefits under the contract or account are legally enforceable against the insurer or custodian by the individual owner of the contract or account without any involvement by the employer; and
4. the individual owner of the contract is fully vested in the contract or account.

DOL FAB 2009-02 states that the DOL will not reject a 403(b) plan Form 5500 on the basis of a qualified, adverse or disclaimed opinion if the accountant expressly states that the sole reason for such an opinion was because such pre-2009 contracts and accounts were not covered by the audit or included in the plan's financial statements.

In February 2010, the DOL issued Field Assistance Bulletin (FAB) 2010-01, *Annual Reporting and ERISA Coverage for 403(b) Plans*, which supplements DOL FAB 2009-02 and addresses questions the DOL received concerning the scope of FAB 2009-02 and the safe harbor regulations at 29 CFR 2510.3-2(f). DOL FAB 2010-01 addresses, among other things, the plan administrator's responsibility to determine whether the conditions of DOL FAB 2009-02 have been satisfied with respect to excluded contracts from the plan's annual report. DOL FAB 2010-01 states that if, as part of the audit the auditor

was engaged to perform, the auditor discovers that contracts were incorrectly excluded under DOL FAB 2009-02 from the plan's financial statements, the DOL expects that the auditor will alert the plan administrator. Plan administrators have an obligation to take reasonable steps to resolve questions concerning the exclusion of such contracts in their annual report. If the plan administrator and auditor do not agree with how to resolve issues relating to excluded contracts, the DOL expects these issues to be noted in the audit report.

Audit Requirement Questions and Answers

The following questions and answers should be considered in light of the particular facts and circumstance of each plan. Several factors can affect the scope of the audit, audit procedures performed, and the form of the auditor's report, including, but not limited to whether the plan administrator excludes contracts and accounts from the plan's financial statements that meet the requirements of FAB 2009-02, whether the plan administrator elects the limited scope audit exemption in accordance with ERISA, whether historical records exist and are available for reported contracts and accounts, and whether the plan has one or multiple vendors during the existence of the plan.

1. Does the DOL enforcement relief change the requirement to have an independent audit of the plan's financial statements?

ERISA-covered plans with 100 or more eligible participants at the beginning of the plan year are required to have an annual audit of their financial statements. If the exclusion of participant contracts or accounts under FAB 2009-02 reduces the number of eligible participants below 100 then the plan would not be required to have an annual financial statement audit. See FAB 2009-02 and Q 5 of FAB 2010-01 for further clarification.

2. Does the DOL enforcement relief change the auditor's responsibility to perform a financial statement audit?

FAB 2009-02 provides enforcement relief for administrators of ERISA-covered 403(b) plans that make good faith efforts to transition to ERISA's annual reporting requirements. FAB 2009-02 does not, however, relieve large 403(b) plans (i.e. - plans with 100 or more eligible participants) from having an independent audit of the plan's financial statements as required by ERISA and DOL regulations. ERISA section 103(a) (3) (A) requires the plan administrator of an employee benefit plan to engage an independent qualified public accountant to audit the financial statements using generally accepted auditing standards (GAAS), and to prepare an opinion as to whether the financial statements (and any supplemental schedules required to be included in the annual report) are presented fairly in conformity with generally accepted accounting principles (GAAP).

3. Can the plan administrator of a 403(b) plan elect the limited scope audit exemption in accordance with DOL regulation 29 CFR 2520.103-8?

Yes. ERISA allows the plan administrator to instruct the auditor not to perform any auditing procedures with respect to investment information prepared and certified by a bank or similar institution or by an insurance carrier that is regulated, supervised, and subject to periodic examination by a state or federal agency, who acts as trustee or custodian. The election is available, however, only if the qualified trustee or custodian certifies both the accuracy and completeness of the information submitted. The limited scope audit exemption does not apply to investment information not held by a qualified trustee or custodian such as a broker-dealer or a mutual fund company. Plan

investments not held by a qualified trustee or custodian and any other investment or investment information not covered by the certification, including investment elections and income allocations to participant accounts, would be subjected to appropriate audit procedures. Consistent with the obligation of employee benefit plan administrators to file complete and accurate annual reports, it is the responsibility of the administrator to determine whether the conditions for limiting the scope of the audit, as set forth in ERISA and the DOL regulations, have been satisfied.

Although the auditor is not required to audit certain investment information when the plan administrator has elected the limited scope audit exemption, if the auditor becomes aware that the certified information is incomplete, inaccurate, or otherwise unsatisfactory, further inquiry may be necessary which might result in additional testing or modification to the auditor's report. In certain instances, a plan administrator's election for a limited scope audit exemption may no longer be appropriate.

When the plan administrator elects the limited scope audit exemption, the auditor is still required to perform the appropriate audit procedures for all noninvestment related information (for example, benefit payments, employer or employee contributions, and receivables), which are the same audit procedures as for a full scope audit.

4. If the plan administrator excludes some contracts or accounts from the plan's financial statements that meet the requirements of FAB 2009-02, and the plan administrator elects the limited scope audit exemption as permitted by DOL regulation 29 CFR 2520.103-8, what is the impact on the auditor's report?

The AICPA Audit and Accounting Guide *Employee Benefit Plans* provides an illustration of an auditor's report when the plan administrator has elected the limited scope audit exemption as permitted by 29 CFR 2520.103-8. If the plan administrator excludes some contracts or accounts from the plan's financial statements that meet the requirements of FAB 2009-02, then the form of report illustrated in Chapter 13 of the Guide may no longer be appropriate. The auditor should consider the need to modify the form of the auditor's report in accordance with AU Section 508, *Reports on Audited Financial Statements*, of the AICPA Professional Standards, and consider any impact on reporting on the supplemental schedules required by ERISA and the DOL. Also, it likely will not be appropriate for the auditor to opine on the form and content of the supplemental schedules as being presented in compliance with the Department of Labor's Rules and Regulations for Reporting and Disclosure under ERISA.

5. Generally, what initial audit procedures would the auditor perform on the beginning of year (e.g. – January 1, 2009) contract and accounts?

Audit procedures include testing the accuracy and completeness of the beginning balances of reported contracts and accounts. The nature, timing, and extent of auditing procedures applied by the auditor are a matter of judgment and will vary with such factors as the length of time the plan has been in existence, adequacy of past records, the significance of beginning balances and the complexity of the plan's operations (such as the number and consistency of vendors). In accordance with Chapter 5 of the AICPA Audit and Accounting Guide, *Employee Benefit Plans*, areas of special consideration are the completeness of participant data and records of the prior years, especially as they relate to participant eligibility, the amounts and types of benefits, the eligibility for benefits, and account balances.

The auditor should also make inquiries of the plan administrator and outside service providers, as applicable, regarding the plan's operations during those earlier years. The

auditor also may wish to obtain relevant information (for example, trust statements, recordkeeping reports, reconciliations, minutes of meetings, and reports prepared in accordance with Statement on Auditing Standards (SAS) No. 70, *Service Organizations* [AICPA, Professional Standards, vol. 1, (AU sec. 324)] for earlier years, as applicable, to determine whether there appear to be any errors during those years that could have a material effect on current year balances. Further, the auditor should gain an understanding of the accounting practices that were followed in prior years to determine that they have been consistently applied in the current year. Based on the results of the auditor's inquiries, review of relevant information, and evidence gathered during the current year audit, the auditor would determine the necessity of performing additional substantive procedures (including detailed testing or substantive analytics) on earlier years' balances. (See AICPA TIS 6933.01 Initial Audit of a Plan (AICPA Technical Practice Aids, vol.1) for additional discussion of initial audits.)

The inability of the auditor to obtain sufficient appropriate audit evidence supporting the accuracy and completeness of beginning balances of reported contracts and accounts is considered a restriction on the scope of the audit and may require the auditor to modify his or her opinion.

6. What procedures does the auditor need to apply to the comparative statements of net assets available for benefits?

ERISA requires that audited plan financial statements present comparative statements of net assets available for benefits (for example, December 31, 2009 plan year would present a comparative December 31, 2008 statement of net assets available for benefits.) The prior year comparative statements of net assets available for benefits may be compiled, reviewed, or audited. Practically speaking, however, although a compilation or review of the prior year is acceptable, the auditor would need to apply sufficient auditing procedures on the beginning balance of net assets available for benefits in the current year to obtain reasonable assurance that there are no material misstatements that may affect the current year's statement of changes in net assets available for benefits. (See AICPA TIS 6933.01 *Initial Audit of a Plan* (AICPA Technical Practice Aids, vol.1)

7. What if historical records do not exist or are not available for reported contracts and accounts?

The DOL has indicated that they expect the plan administrator to use "good faith efforts" to locate and provide all of the necessary records in accordance with its fiduciary responsibilities under ERISA. If historical records (such as payroll records and participant data) do not exist or are not available for the reported contracts and accounts, and the amounts of reported contracts and accounts are material, the auditor may need to modify the report because of a restriction on the scope of the audit.

8. If the plan receives a modified auditor's report in the first year, will the auditor be able to issue an unqualified opinion in subsequent years?

If the reasons that gave rise to the modification(s) in the auditor's report continue to exist, the modification(s) to the auditor's report would continue to be appropriate in subsequent years. However, if over time the auditor is able to conclude that the impact of such matters on the plan's financial statements has become immaterial, the modification(s) could be removed.

9. If the plan administrator excludes some contracts or accounts from the plan's financial statements that meet the requirements of FAB 2009-02, or if the plan has inadequate historical records for reported contracts and accounts, what impact will these circumstances have on the auditor's communications with those charged with plan governance?

The auditor should communicate with those charged with governance the auditor's responsibilities under generally accepted auditing standards, an overview of the planned scope and timing of the audit, and significant findings from the audit. (See AU section 380 *The Auditor's Communication With Those Charged With Governance* (AICPA, Professional Standards, vol. 1).

Further, the auditor should communicate deficiencies identified during the audit that upon evaluation are considered significant deficiencies or material weaknesses. These matters should be communicated in writing to management and those charged with governance as a part of each audit. (See AU section 325 *Communicating Internal Control Related Matters Identified in an Audit* (AICPA, Professional Standards, vol. 1).

Therefore the restriction on the scope of the audit, inadequacy of records or a departure from GAAP may be covered in one or both of these communications.

10. Are there financial statement disclosure requirements if the plan administrator excludes contracts or accounts from the plan's financial statements that meet the requirements of FAB 2009-02?

Yes. Department of Labor regulations 29 CFR 2520.103-1(b) require that, among other things, the administrator of a plan disclose in the notes to the financial statements the accounting principles and practices reflected in the financial statements and any variances from generally accepted accounting principles.

Plan Investment Questions and Answers

11. Who is responsible for determining the value of plan investments?

In accordance with AU section 328, *Auditing Fair Value Measurements and Disclosures* (AICPA Professional Standards, vol. 1), management is responsible for making the fair value measurements and disclosures in the financial statements. Thus, for a benefit plan, the plan administrator is responsible to determine if investments are properly valued and disclosed. Plan management can outsource the valuation process, but they cannot assign the responsibility for properly reporting fair value of the plan's investments, even in situations where the plan obtains an investment certification by a qualified institution in accordance with DOL regulation 29 CFR 2520.103-8. Therefore, the plan administrator will need to have sufficient understanding of the nature of the plan's investments and the valuation methodologies, key assumptions and inputs used to determine fair value, particularly when a valuation specialist is used.

12. What if fair value of investments is not or cannot be estimated?

According to FASB ASC 962-325-35, *Plan Accounting-Defined Contribution Plans*, defined contribution plan investments are generally to be presented at their fair value at the reporting date. AU section 328, *Auditing Fair Value Measurements and Disclosures* (AICPA Professional Standards, vol. 2) states that management needs to establish an accounting and financial reporting process for determining fair value measurements and disclosures, select appropriate valuation methods, identify and adequately support any

significant assumptions used, prepare the valuation and ensure the presentations and disclosures of the fair value measurement are in accordance with GAAP. If fair value of investments is not or cannot be estimated, this may result in a departure from GAAP and may result in a modification to the auditor's report in accordance with AU section 508, *Reports on Audited Financial Statements*. In addition, the auditor may conclude that a material weakness or significant deficiency needs to be reported to those charged with governance in accordance with AU section 325, *Communicating Internal Control Related Matters Identified in an Audit*.

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Helpful Resources

DOL EBSA 403(b) Website- <http://www.dol.gov/ebsa/403b.html>

EBPAQC 403(b) Plan Resource Center-
<http://ebpaqc.aicpa.org/Resources/Accounting+and+Auditing+Resource+Centers/403%28b%29+Plans.htm>

DOL FAB 2007-02- <http://www.dol.gov/ebsa/regs/fab2007-2.html>

DOL FAB 2009-02 - <http://www.dol.gov/ebsa/regs/fab2009-2.html>

DOL FAB 2010-01- <http://www.dol.gov/ebsa/regs/fab2010-1.html>

IRS 403(b) Resources- <http://www.irs.gov/retirement/article/0,,id=172430,00.html>

The Employee Benefit Security Administration's (EBSA) toll-free Form 5500 help desk is available from 8:00 am to 8:00 pm, Eastern Time, at 1-866-GO-EFAST (866-463-3278).

Questions concerning the information contained in the Field Assistance Bulletins may be directed to the DOL's Division of Coverage, Reporting and Disclosure at 202-693-8523.

Questions concerning individual plans facing specific transition issues should be directed to EBSA's Office of the Chief Accountant at 202-693-8360.

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