

GET TO KNOW BDO – EXECUTIVE AND HR SERVICES

# EBP COMMENTATOR

THE NEWSLETTER OF THE BDO EMPLOYEE BENEFIT PLAN AUDIT PRACTICE



## CAUTION WHEN CORRECTING LATE DEPOSITS

We see it quite frequently during plan audits – employee elective deferrals and loan repayments to a plan are deposited to the plan's trust later than the time period allowed by the Department of Labor (DOL). Collectively, we refer to these as “late deposits.” DOL rules require that the plan sponsor deposit employee deferrals and loan repayments to the trust as soon as the sponsor is able, but no later than the 15th business day of the following month. This so-called “15 business day rule” is not a safe harbor. Small plans with fewer than 100 participants do have [a safe harbor of seven business days](#), but the safe harbor is not available to large plans (e.g., plans that require an audit).

It is the plan sponsor's policies, procedures and internal controls that dictate the amount of time it should take to segregate the employee elective deferrals and loan

repayments. A good way to determine whether deposits were made timely is to periodically evaluate all of the remittances that were made to the plan (or should have been made to the plan). For each remittance that would ordinarily have been made, the plan sponsor should determine the earliest date that the assets could have been segregated from the general assets of the plan sponsor (which may be as soon as the payroll withholding date) and compare that date to the actual deposit date. If any deposits exceed the time period the plan sponsor determined to be reasonable, the remittance is considered late and is considered a prohibited transaction. This is an area our clients frequently consult with us about. Once the sponsor has made a general determination of timeliness, the sponsor should consider formalizing this as the plan's remittance policy. As with all policies, this policy should be adhered to once set.

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## LATE DEPOSITS

The plan sponsor is not automatically eligible to use the DOL online calculator to determine the lost earnings on late deposits.

Correction of the late deposits includes several steps. The plan sponsor must make each affected plan participant whole by making an additional contribution to the plan that reimburses the participants' accounts for the lost earnings on the late deposits that were not invested in a timely manner. Such late deposits need to be reported on the Form 5500, *Annual Return/Report of Employee Benefit Plan*, and included in a supplemental schedule attached to the audited financial statements. Additionally, for non-403(b) plans, a Form 5330, *Return of Excise Taxes Related to Employee Benefit Plans*, must be filed by the plan sponsor to pay an excise tax equal to 15 percent on the amount of the lost earnings restored to the plan (e.g., the plan correction). There are two different methods for correcting the late deposits: DOL Voluntary Fiduciary Compliance Program (VFCP) or self-correction.

### ▶ VFCP OPTION

The VFCP is a program that allows a plan sponsor to report and correct late deposits to the DOL. In exchange, the plan sponsor obtains a "no action" letter from the DOL, which states that the DOL will not recommend the plan be audited for this issue.

What are the advantages to using VFCP? The [DOL online calculator](#) is used to determine the lost earnings needed to make plan participants' accounts whole. The interest rates in the DOL online calculator are set at the Internal Revenue Service (IRS) interest rates for underpayment (generally around 3-6 percent), which, depending on market conditions, may be less than the actual earnings for the plan and therefore more favorable to the plan sponsor. Other advantages of VFCP include 1) no required filing of Form 5330 if the excise tax is less than \$100 and 2) waiver of excise taxes over \$100 provided notice is given to the participants.

Why would VFCP not be preferable? Many plan sponsors decide to forgo the VFCP procedures because payment of the excise tax

can be less costly than the time incurred to prepare the VFCP-required paperwork and due to the participant notification requirements.

### ▶ SELF-CORRECTION OPTION

Use of VFCP is not required – in fact, most late deposits are corrected without going through VFCP. Rather, a plan sponsor may elect to self-correct by remitting a corrective contribution to the plan to make participants' accounts whole. The downside to self-correction is that the restoration to the plan must be the greater of the plan's actual rate of return or the IRS underpayment rate that is used in the DOL online calculator. The plan sponsor is not automatically eligible to use the DOL online calculator to determine the lost earnings on late deposits. Depending on the plan's actual rate of return for the years involved in the correction, the required corrective contribution to the plan may be considerably larger than the correction under VFCP automatically based on the DOL online calculator. The use of unreasonable rates of interest has recently been identified by the IRS as a recurring error in plan corrections.

### ▶ REPORTING OF LATE DEPOSITS

As noted above, late deposits are reported on the Form 5500 (and disclosed in the audited plan financial statements and supplemental schedules). The late deposits must continue to be disclosed every year, including the year in which they are fully corrected. Keep in mind that a late deposit is not considered fully corrected until the plan sponsor files a Form 5330 or obtains a waiver through VFCP. If there are amounts reported that are not ultimately corrected, this may be a red flag to the DOL.

Plan sponsors should monitor the timeliness of deposits throughout the year and ensure any corrections are made appropriately. They should also ensure appropriate policies, procedures and internal controls are implemented to avoid recurrences.

## PBGC PUBLISHES FINAL RULE IMPACTING LARGE PLAN FLAT-RATE PREMIUM DUE DATES

The Pension Benefit Guaranty Corporation (PBGC) published a final rule on Jan. 3, 2014, that moves the due date for the flat-rate premiums for large plans to coincide with the due dates for variable-rate premiums for single-employer plans. This final rule moves the flat-rate premium due date from Feb. 28, 2014 to Oct. 15, 2014. For more details, see <http://www.pbgc.gov/prac/pg/other/guidance/final-rules.html>.

## KEY UPCOMING 2014 FILING DEADLINES

**Form 11-K:** For plans subject to filing Form 11-K with the Securities and Exchange Commission (SEC), the filing is due 180 days after the plan's year-end. The deadline would generally be Monday, June 30, 2014, for calendar year-end plans.

**Form 5500:** The filing deadline is seven months after the plan year end, which would generally be Thursday, July 31, 2014, for calendar year-end plans. Form 5558 should be filed by the original Form 5500 due date in order to extend the Form 5500 filing by 2½ months (assuming a calendar year-end, the extended due date would be Wednesday, Oct. 15, 2014).

# ADDRESSING SOC 1 REPORT CARVE-OUTS



In our [Summer 2013](#) edition of the *EBP Commentator*, we provided a brief overview of SSAE 16 (Statement on Standards for Attestation Engagements No. 16) and, in particular, SOC 1 reports. This article continues that discussion by focusing on how to address the carve-outs of subservice organizations in a SOC 1 report. SOC 1 reports cover key controls at the organizations that provide various services to the plan (e.g., payroll providers, recordkeepers, custodians, etc.). These reports should be obtained and reviewed by the plan sponsor so they understand the systems in place at the service organization, including key controls that address financial statement assertions. The reports are also generally used by the auditor for performing the plan audit. We have found carve-outs of subservice organizations within the SOC 1 report (and how best to address them) to be a common hurdle in using the SOC 1 report effectively.

Subservice organizations are third-party entities that provide services to the service organization providing services to the plan. Some typical examples of carved out processes are IT general controls, pricing services and certain investment related services. Subservice organizations are required, under SSAE 16, to either report their controls in the SOC 1 report using the inclusive method or exclude them from the SOC 1 report using the carve-out method.

The inclusive method includes controls surrounding any key aspects of the subservice organization's system in the service organization's SOC 1 report. Under the carve-out method, controls for the subservice organization are excluded from the service organization's SOC 1 report and are referred to as carve-outs.

The plan sponsor would ordinarily obtain and review the service organization's SOC 1 reports and review and consider any complementary user entity controls (e.g., controls the plan sponsor is expected to have in place). This review would ordinarily be documented and address whether the complementary user entity controls are in place and operating effectively for the plan. The plan sponsor should also identify any carve-outs. Generally, carve-outs will be noted in the independent service auditor's report on the SOC 1 report. Sometimes, the carve-outs are located within the body of the report, often under the company information, overview and/or scope of report sections.

As a general rule, carve-outs are significant if they directly impact the plan and its data. For instance, consider whether there is another data processing center that has access to the plan's data or makes updates directly to the plan's records or a subservice organization that provides investment related services. This review and conclusion regarding the significance of carve-outs should be

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documented. If there are significant carve-outs, consider obtaining the subservice organization SOC 1 reports related to the carve-outs. These reports would be reviewed in a similar manner to the service organization's SOC 1 reports.

What if a carve-out SOC 1 report is not available? Possible alternative procedures that the plan sponsor may want to consider include, but are not limited to, the following:

- Perform a review of the current procedures in place at the plan sponsor to address the specific carve-out and document that the controls are properly covered. However, in most instances, this will likely not cover outsourced controls adequately.
- Contact either the service organization or the subservice organization directly, discuss the controls and procedures in place, document those discussions and obtain any supporting documentation to confirm such controls and procedures are in place. This discussion would ordinarily focus only on key processes and controls that impact the sponsor's plan.
- Request that the plan auditor work with the service organizations to perform the necessary steps to address and document these controls.
- Request that the subservice organizations have SOC 1 reports prepared.

Since reviews of SOC 1 reports are part of the audit planning process, the plan sponsor should consider obtaining the relevant SOC 1 reports and performing the reviews now. The time to review these reports can be lengthy, but it is the plan sponsor's responsibility to understand how the controls impact the plan's operations and controls. If the sponsor is proactive with this review, it generally results in a more efficient audit.

## WHERE WE'VE BEEN...

### AICPA Employee Benefit Plans Accounting, Auditing and Regulatory Update

In December 2013, members of our National Employee Benefit Audit Group participated in the American Institute of Certified Public Accountants (AICPA) Employee Benefit Plans Accounting, Auditing and Regulatory Update conference in Washington, D.C. As always, we found it to be an excellent resource for both sponsors and practitioners. The more interesting topics discussed are highlighted below.

At the conference, Phyllis Borzi, Assistant Secretary of Labor, US Department of Labor EBSA, announced a long-term project for Employee Stock Ownership Plans (ESOPs) relating to valuation issues. The DOL has concerns regarding the objectivity of the appraisers who are providing ESOP valuations. Ms. Borzi cited a study of stock valuations that found inconsistent valuation results that favored the party who paid for the valuation. ESOP valuations and the independence of appraisers will be a focus of the DOL. Be on the lookout for guidance and best practices relating to ESOP valuations.

BDO's Bob Lavenberg and Mikio (Mickey) Thomas, Analyst: TEGE/Employee Plans for the Director, EP Examinations, discussed the IRS's Final Report relating to the questionnaire it had sent to 1,200 randomly selected 401(k) plan sponsors. The questionnaire was intended to assist the IRS in evaluating the current status of the over 500,000 401(k) plans, including the form and operation of the plans, issues encountered by plan sponsors and the use and effectiveness of the IRS's correction programs for dealing with those issues. Although voluntary, there was a 98 percent response rate to the questionnaire (the IRS did reach out to the 2 percent of non-responders to determine whether there were any concerns with those plans).

Overall, the responses showed a robust community of 401(k) plans. The questionnaire covered a number of areas – from demographics and plan participation to optional features such as Roth and automatic enrollment. Almost two-thirds of the respondents were aware of the IRS's Employee

Plans Compliance Resolution System (EPCRS), with more awareness noted by sponsors of larger plans. The final report highlighted two key areas of concern related to more defaults of older loans and incorrect or incomplete responses from possibly top-heavy plans in regards to how those plans were addressing the top-heavy situation. More information and a copy of the final report can be found on the IRS's website at: [http://www.irs.gov/pub/irs-tege/401k\\_final\\_report\\_phoneforum\\_presentation.pdf](http://www.irs.gov/pub/irs-tege/401k_final_report_phoneforum_presentation.pdf).

Based on the questionnaire results, the IRS is in the process of reformulating the questionnaire as a Questionnaire Self Audit Tool (QSAT) that will be publicly available for plan sponsors to make use of in evaluating their own plans. The IRS hopes that plan sponsors will avail themselves of the tool in order to find, fix and/or avoid costly errors in plan operations. As we went to press, the QSAT had not been released, but is expected shortly.

### International Foundation of Employee Benefit Plans

Members of BDO's Executive and HR Services Group attended the 59th Annual Conference of the International Foundation of Employee Benefit Plans this past October in Las Vegas both as participants and exhibitors.

The Annual Conference is the flagship training event for trustees of U.S. and Canadian plans, including single corporate employer, public employer (government plans) and multiemployer plans. There were more than 5,000 participants and more than 200 exhibitors servicing the employee benefit community in attendance. The Annual Conference program offered timely sessions including health care, pension, fiduciary responsibility, communication and technology topics, with a focus on educating the plan fiduciary.

### Society for Human Resource Management (SHRM) Annual Conference and Exposition

BDO was an exhibitor and participant at the 65th Annual Conference & Exposition, which was held in Chicago, Ill., June 16-19, 2013. This conference is the world's largest association of HR management professionals. We enjoyed meeting with other attendees at this vibrant event. There were more than 15,000 attending, and the four-day event included key name speakers and events. We recommend this conference for your company's HR personnel who are looking to continue to grow and innovate.

## PLAN AUDIT PREPARATION REMINDERS FOR PLAN SPONSORS

- Have you requested and reviewed the applicable SOC 1 Reports (SSAE No.16 Internal Control Reports)? For more details, refer to the article in this edition.
- Have you requested the plan audit package (year-end reports) for your auditor? Request or ensure that on-line access is available for the year-end plan reports and that the service provider creates any customized reports needed by the plan auditor.
- Have you updated the plan's fair value measurement disclosures? Now is the perfect time to work with your plan service providers to ensure you obtain the information needed to properly prepare the disclosures related to ASC 820. Don't forget to update your documentation of the assumptions, inputs and pricing sources used in the plan's procedures and controls for the fair value measurement process.

## WE ARE PLEASED TO ANNOUNCE...

### WITH A GLOBAL WORKFORCE COMES A WORLD OF COMPLEXITY: REGULATORY COMPLIANCE, CROSS-BORDER TAX IMPLICATIONS, EXECUTIVE COMPENSATION ISSUES AND MORE.

**W**e are pleased to announce our Executive and HR Services Group, which offers a suite of services tailored for executive and human resources professionals. Our services offer a comprehensive, client-focused approach designed to help companies of all sizes manage and optimize their human capital infrastructure – bringing together BDO's employee benefit assurance, compensation and benefits, global employer, human capital outsourcing and consulting services to meet growing client demand with an aligned service approach.

#### Executive and HR Services

ERISA Services

Global Executive Services

BDO Consulting

Human Capital Outsourcing

#### ► ERISA SERVICES

We are nationally recognized in the field of EBP consulting and auditing. Our professionals have extensive knowledge of ERISA audit and filing requirements associated with defined contribution, defined benefit, and health and welfare plans, including full-scope, limited-scope, Form 11-K filings and Master trusts. In addition to traditional audit services, we are frequently engaged to assist plan fiduciaries in a variety of other services, such as plan corrections (including preparation of Form

5330), preparation for annual plan audits, regulatory audits (e.g., DOL, IRS, etc.) and Form 5500 preparation.

#### ► GLOBAL EXECUTIVE SERVICES

Our Global Executive Services professionals provide executive compensation and expatriate services. We work with executives on all elements of their compensation and find that constant monitoring of the plans and changes are usually needed to keep pace with the changing competitive environment. Companies continue to ask key employees to take on global assignments that result in extended stays around the world. We help companies large, medium and small manage the expatriate process, including the complicated tax planning and compliance issues.

#### ► BDO CONSULTING

Our consulting services group includes a team of investigative due diligence professionals who assist companies in exposing various hidden risks and mitigating overall corporate liability. We work to deliver value-added business intelligence and assist with confident decision-making through a variety of services, including exposing employee misconduct, ensuring compliance with anti-corruption laws and guiding companies through all phases of the complex e-discovery process.

#### ► HUMAN CAPITAL OUTSOURCING

Our Human Capital Outsourcing group assists companies in identifying human capital gaps and areas for improvement. We also can help create "best-in-class" HR programs, provide ongoing HR support and offer strategic insight on how to make the most of a company's human capital investments.

### MARK YOUR CALENDAR

#### AICPA Employee Benefit Plans Conference

May 13-15, 2014

It is back in Las Vegas, Nev., this year. BDO looks forward to our continued participation in the conference.

#### Society for Human Resource Management (SHRM) Annual Conference & Exposition

June 22-25, 2014

BDO will be returning as an exhibitor and participant for the 2014 Annual Conference and Exposition, which is to be held in Orlando, Fla.

#### International Foundation of Employee Benefit Plans Annual Conference

October 12-15, 2014

BDO will again participate in the 2014 Annual Conference to be held in Boston, Mass.

### HELPFUL WEBSITES

<http://www.dol.gov/ebsa/>

<http://www.efast.dol.gov>

<http://www.irs.gov/>

<http://ebpaqc.aicpa.org>

<http://asc.fasb.org>

## BDO OUTSOURCED FINANCIAL SERVICES

Strategy & Business Planning **S**  
 Human Capital Solutions **H**  
 Accounting & Finance **A**  
 Regulatory & Compliance **R**  
 Platform Design & Implementation **P**



### Human Capital Solutions

*An organization's success depends on its ability to attract and retain excellent people. We help develop strategies for talent acquisition, compensation and employee benefits, as well as provide customized outsourcing for a full range of HR and compliance functions.*

### SPOTLIGHT ON BDO'S HUMAN CAPITAL OUTSOURCING GROUP:

Within our Outsourced Financial Services group, our team of Human Capital Outsourcing professionals focuses on outsourced accounting and human capital outsourcing, tailored to fit client needs. We have expertise in delivering a human resources strategy that both drives and facilitates client business objectives. From providing a full-service HR model, to providing guidance on complex matters and regulatory compliance, we engage leadership to align HR activities with corporate strategy that help achieve bottom-line goals. Our areas of expertise include:

- Interim HR Support
- Talent Acquisition
- HR Best Practice and Compliance including expertise in: Service Contract Act (SCA), Defense Contract Audit Agency (DCAA) and Office of Federal Contract Compliance Programs (OFCCP) Support and Compliance
- Total Rewards: Compensation and Benefit Benchmarking, Design and Implementation
- Mergers and Acquisitions Due Diligence and Post Integration Support
- HR Infrastructure Development and Business Strategy: Licensed Management Consulting Professionals
- Human Resources Information Systems (HRIS) Design and Implementation
- Talent Acquisition Strategy and Support
- Performance Management

- Employee Engagement Initiatives
- Employee Relations
- Employee Handbook Review and Design
- HR Audits
- Payroll Support

#### Ways we can help you:

- Are you outsourcing some of your back office support and/or do you have concerns with your current outsourced provider?
- Have your needs outgrown your current staff's expertise?
- Do you want to reduce operating costs, but lack the budget resources to add full-time personnel?
- Has your company's accounting or HR department experienced significant turnover?
- Are your company's controller/CFO/CEO overwhelmed with their regular functions and do they no longer have the time to devote to support tasks?
- Is your company in full compliance with employment law and regulations?
- Does your company lack business procedures or focus on strategic initiatives?

To learn how we can assist your company, please contact Maureen Miller, Director, Human Capital Solutions Group, at 703-770-6330 or at [mamiller@bdo.com](mailto:mamiller@bdo.com).

### BDO EBP PRACTICE

BDO is nationally recognized in the field of employee benefit plan consulting and auditing. We audit over 1,100 plans nationwide, ranging from 100 participants to close to 300,000 participants. Our engagements are staffed with accountants experienced with all types of audits including defined contribution (401(k), profit sharing, ESOP, and 403(b) plans), defined benefit (pension, cash balance) and health and welfare plans.

In addition, BDO has a National Employee Benefit Plan Audit Group that meets regularly to develop training and guidance and discuss updates in the industry and auditing practices. Our professionals are regular presenters at local, state and national seminars. BDO's professionals continue to be extensively involved with the American Institute of Certified Public Accountants (AICPA) National Conferences on Employee Benefit Plans. Many of our professionals serve in leadership roles in the accounting profession as senior advisors and are active members of several governing boards and CPA societies. For example, our professionals currently serve on various AICPA committees, such as the AICPA's Joint 403(b) Plan Audit Task Force (we are proud to have representation at the chair level for this committee) and the AICPA Technical Standards Subcommittee of the Professional Ethics Executive Committee. BDO's EBP professionals have also served on the AICPA Employee Benefit Plan Audit Quality Center Executive Committee (immediate past chair) and the Employee Benefit Plan Expert Panel in the past.

### ABOUT BDO USA

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