



**BDO Seidman, LLP**  
Accountants and Consultants

**THE NEWSLETTER OF THE  
BDO SEIDMAN NATIONAL  
EMPLOYEE BENEFIT PLAN  
AUDIT PRACTICE**

**August 2009**

**BDO Seidman EBP Practice**

BDO Seidman is nationally recognized in the field of consulting and auditing employee benefit plans. We audit nearly 1,000 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, coming soon, 403(b) plans!), defined benefit (pension, cash balance) and health and welfare plans. We have extensive ERISA knowledge of audit and filing requirements, including full-scope, limited-scope, Form 11-K filings and Master trusts.

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 best auditing practices. Our professionals are regular presenters at local, state and national seminars. BDO continues to be extensively involved as Chair of 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 serve on various AICPA committees, such as the Executive Committee of the Employee Benefit Plan Audit Quality Center (Vice-Chair) and have served on the Employee Benefit Plan Expert Panel.

**For more information or the name of your local BDO Seidman EBP professional please contact:**

**Robert A. Lavenberg**

National Employee Benefit Plan Audit  
Practice Leader  
(212) 885-8313  
[rlavenberg@bdo.com](mailto:rlavenberg@bdo.com)



## 403(b) News!

**On July 20, 2009 the Department of Labor ("DOL") Employee Benefits Security Administration ("EBSA") issued Field Assistance Bulletin ("FAB") 2009-02 *Annual Reporting Requirements for 403(b) Plans* which provides some relief with regard to the reporting requirements for 403(b) plans beginning with the 2009 plan year.**

See <http://www.dol.gov/ebsa/regs/fab2009-2.html>

In November 2007, the DOL issued regulations that changed the reporting requirements for 403(b) – Tax-Sheltered Annuity Plans – that are subject to the Employee Retirement Income Security Act of 1974 ("ERISA") Title I, from a simplified registration statement to full completion of the Form 5500 *Annual Return/Report of Employee Benefit Plan*. See <http://www.dol.gov/ebsa/regs/fedreg/notices/20071116.pdf>. For large plans, (those with more than 100 participants at the beginning of the plan year), full completion will generally also require the plan administrator to engage an independent public accountant to audit the accompanying financial statements.

A major challenge for most plans is the collection of data relating to former participants and information regarding their accrued benefits under the plan. This could significantly impact not only the determination of the number of participants in the plan at the beginning of the plan year, but also whether any financial information being reported is materially correct.

A major challenge for most plans is the collection of data relating to former participants and information regarding their accrued benefits under the plan.

FAB 2009-02, recognizing these challenges, may allow plan sponsors to disregard certain pre-2009 contracts and accounts, provided the contracts or accounts meet certain criteria including: the contract or account was issued before January 1, 2009; the employee is 100% vested in and can enforce the contract or account, and no contributions were made to the contract or account after December 31, 2008.

BDO's EBP specialists are available to assist plan sponsors in understanding and implementing these new rules.

The American Institute of Certified Public Accountants ("AICPA") held its annual national conference on employee benefit plans for practitioners, administrators and plan sponsors. Leading regulators and practitioners, including several individuals from BDO, addressed both the tax and audit side of employee benefits. As discussed below, the conference included regulatory, audit, accounting, and reporting updates, as well as sessions focusing on specific and complex issues, such as FAS 157 and 403(b) plan audits.

## Regulatory Developments

### Suspension of Required Minimum Distribution Requirement

One of the many provisions in the Worker, Retiree, and Employer Recovery Act, which was signed into effect in December 2008 by then President Bush, provided for a one-year suspension of the required minimum distribution ("RMD") payments for certain retirement plan accounts.

As a result of the suspension, RMDs that would otherwise have been made for the 2009 plan year are no longer required.

Under current law, the RMD rules provide that participants in "qualified plans" and individual retirement arrangements ("IRAs") are generally required to begin taking distributions of their accounts no later than April 1 of the year after they attain age 70 ½. However, where an individual is still actively employed and is not a five-percent owner of the employer maintaining the retirement

plan, commencement of the distribution of the RMD is delayed to April 1 of the year subsequent to the individual's retirement.

As a result of the suspension, RMDs that would otherwise have been made for the 2009 plan year are no longer required. This relief applies to 2009 RMD payments only. Any 2008 RMD payments for participants who attained age 70 ½ in 2008 and deferred payment until April 1, 2009, are not excluded.

### Final Rule on Investment Advice Exemption for 401(k) Plans and IRAs

The DOL published a final rule in January 2009 to make investment advice more accessible for participants in 401(k) plans and IRAs. The rule includes a regulation that implements the new statutory exemption for investment advice added to ERISA by the Pension Protection Act of 2006 ("PPA"). The PPA amended ERISA by adding a new prohibited transaction exemption that allows greater flexibility for investment advisors to give advice to participants of 401(k) plans and IRAs.

### Automatic Contribution Arrangements

In February 2009, the Treasury Department published final rules related to the automatic contribution arrangements. The final rules clarified the effects of mid-year increases in the default contribution percentage under qualified automatic contribution arrangements ("QACA"). An eligible automatic contribution arrangement ("EACA") is a feature in a 401(k) plan that provides for automatic enrollment of a uniform default percentage for all

*continues on next page*

### BDO's Employee Benefit Plan Audit Practice in the News

**Kristen McCarthy**, Assurance Partner – Orange County Office, **Anthony Ferguson**, Assurance Partner – Los Angeles Office, **Rick Wagner**, Principal, Compensation and Benefits Group – Orange County Office, **Anita Samuelson**, Senior Manager, Compensation and Benefits Group – Orange County Office, and **Darlene Bayardo**, Assurance Senior Manager, National and Orange County Assurance – Employee Benefit Plan Audits, presented a webinar on **Compensation & Benefit Plan Strategies in Challenging Economic Times** in April 2009. The webinar focused on understanding contemporary solutions to compensation and benefit challenges and the impact of the current economic environment on qualified benefit plans. The presentation is available online through the end of September 2009 at <https://bdoevents.webex.com>. Click the "View Event Recordings" link in the upper right hand corner of the screen.

**Bob Lavenberg**, National Employee Benefit Plan Audit Practice Leader, **Lara Stanton**, Director, National Assurance, Audits of Employee Benefit Plans, and **Roland O'Brien**, Director Employee Benefit Plans – Philadelphia Office, instructed at the Pennsylvania Institute of Certified Public Accountants Employee Benefit Plans Conference on May 4th and 5th 2009 in Harrisburg, Pennsylvania.

**Bob Lavenberg** was the Co-Chairperson and a speaker at the AICPA National Conference on Employee Benefit Plans held in May 2009 in Orlando, Florida. **Andrew Gibson**, Partner, National Practice Leader for Executive Compensation and Benefits – Atlanta Office, **Tricia Van Vliet**, Director, National Employee Benefit Plan Practice, and **Melissa Hooley**, National Employee Benefit Plan Audit Team Alliance Liaison and partner at Anton Collins Mitchell, LLP, also presented at the Conference.

*continues on page 3*

covered employees who do not have an affirmative deferral election in effect. Originally, it was to be applied uniformly to all employees. These final regulations allow employers to specify in the plan document the employees that will and will not be covered by the EACA. It permits multiple EACAs with different default deferral percentages. A participant in an EACA must request withdrawal within 90 days of the first pay date upon which the deferrals were withheld. Under the PPA the QACA is effective for plan years beginning in 2008 or later and EACA on or after January 1, 2010.

## Suspension of Safe Harbor Nonelective Contributions

In May 2009, proposed regulations issued by the Internal Revenue Service ("IRS") permit plan sponsors of 401(k) safe harbor retirement plans to suspend or reduce safe harbor nonelective contributions mid-plan-year when they experience a substantial business hardship. These proposed regulations do not allow for the suspension of safe harbor matching contributions. Previously, plans were only permitted to cease safe harbor nonelective contributions upon termination of the plan for specified situations. The proposed regulations are effective for amendments adopted after May 18, 2009 and, according to the IRS, may be relied upon for guidance pending the issuance of final regulations.

## 2009 Form 5500

Plans and service providers will be required to comply with the changes to the 2009 Form 5500 and the electronic filing of the Form 5500 on the due date for the Plan's 2009 Form 5500.

Among the changes to the 2009 Form 5500 are:

- A new simplified annual reporting form for small plans with easy to value investments;
- Expanded reporting by large plans of compensation received by plan service providers (See *Fee Disclosures* article on page 4);
- Realignment of the reporting rules for Internal Revenue Code section 403(b) pension plans subject to Title I of ERISA to make them on par with 401(k) plans; and
- Annual reporting changes required by the PPA for defined benefit pension plans and multiemployer plans.

The DOL, IRS and the Pension Benefit Guaranty Corporation ("PBGC") created the ERISA Filing Acceptance System ("EFAST") to streamline the Form 5500 and the method by which it is filed and processed. The EFAST system is being replaced. The new filing system, EFAST2, will receive only electronic filing submissions (including the independent auditors' report in pdf format) and will not accept paper filings. Any such paper filings will not be processed and will be returned to the filer.

Plans and service providers will be required to comply with the changes to the 2009 Form 5500 and the electronic filing of the Form 5500 on the due date for the Plan's 2009 Form 5500.

To assist plan sponsors and service providers in preparing for the changes to the Form 5500 and the electronic filing requirement, the DOL has scheduled a series of webcasts and other educational outreach programs throughout 2009. The 2009 Form 5500 package and the related Federal Register notices are available on the DOL's EBSA EFAST web site at [www.efast.dol.gov](http://www.efast.dol.gov).

*continues on next page*

## BDO's Employee Benefit Plan Audit Practice in the News (continued)

**Tricia Van Vliet**, presented at the Michigan Association of Certified Public Accountants 2009 Employee Benefit Plan Audit Workshop on June 2, 2009. **Tricia** presented at the Colorado Society of Certified Public Accountants 2009 Employee Benefits Conference on June 9, 2009. She also spoke at the Employee Benefit Plan Audit breakout sessions at the CPE Mega Conference on June 30, 2009 and at the 2009 Small Firm/Practitioners Conference on August 20, 2009 for the Michigan Association of Certified Public Accountants.

**Bob Lavenberg**, presented at the BDO Alliance Conference in Las Vegas, Nevada and the New Jersey Society of Certified Public Accountants first annual Audits of Employee Benefits Conference in Edison, New Jersey in June 2009.

## Mark Your Calendars.....

December 7 – 8, 2009

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

Greater Washington, DC

This conference, chaired by Bob Lavenberg, provides insights and best practices directly from the standard setters and leading practitioners, including members of BDO Seidman Employee Benefit Plan Audit Practice. These experts will break down the critical issues on the administration and oversight of employee benefit plans.

# Audit, Accounting, and Reporting Updates

## Fair Value Measurements

Statement of Financial Accounting Standards No. 157, *Fair Value Measurements* ("FAS 157"), continues to pose challenges for plans that hold investments that, based on their nature, are expected to be classified as either level 2 or 3 within the fair value hierarchy established by FAS 157. Such investments may include common collective trusts, (including stable value funds), pooled separate accounts, guaranteed and bank investment contracts (GICs and BICs), synthetic GICs, participant loans (in a defined contribution plan), various debt instruments, non-publicly traded employer stock, American Depository Receipts (ADRs), private equity funds, hedge funds, real estate, real estate funds, limited partnerships, futures, swaps, options, foreign currency contracts, or other alternative or hard-to-value investments.

Plan sponsors are responsible for implementation of FAS 157 and the valuation of investments. If they haven't already, plan sponsors should contact the plan's service providers (trustees, custodians or other investment service providers) to understand how the level 2 and 3 assets are valued and what information the service providers will provide in reports and certifications to support the assertions of fair value. Plan sponsors must have a sufficient understanding of the nature of the plan's investments and valuation methodologies, key assumptions and inputs used to determine fair value. Furthermore, plan sponsors must determine that the methods used are appropriate under the FAS 157 fair value definition, that the values presented are as of the plan's year end and obtain additional information about the valuation inputs to make the appropriate footnote disclosures required by FAS 157.

## Fee Disclosures

Effective for plan years beginning on or after January 1, 2009, there are new requirements for reporting service provider fees and other compensation on Schedule C – Service Provider Information of the 2009 Form 5500 *Annual Return/Report of Employee Benefit Plan*.

The revised schedule will require fees paid to service providers to be classified as either direct or indirect compensation. Direct compensation is compensation paid directly by the plan to the service provider such as recordkeeping fees and custodial fees. These fees should be relatively easy to identify and disclose. Indirect compensation is compensation paid by sources other than directly from the plan, such as fees charged to investment funds, and often netted in the value of the plan's investments or return on investment. These fees will be more challenging to identify.

The EBSA has released 40 frequently asked questions ("FAQ") to help plan administrators and service providers comply with the new Schedule C requirements. The FAQs cover such issues as the alternative reporting option for eligible indirect compensation, electronic

The revised schedule will require fees paid to service providers to be classified as either direct or indirect compensation.

*continues on next page*

## Helpful Links

AICPA Employee Benefit Plan Audit Quality Center – <http://ebpaqc.aicpa.org>

U.S. Department of Labor Employee Benefits Security Administration – <http://www.dol.gov/ebsa/>

Internal Revenue Service – <http://www.irs.gov/>

## Some Friendly Reminders.....

- Communicate now with service providers regarding information needed for the implementation of FAS 157
- Request from the service providers the auditor's year end reporting package
- Request and evaluate SAS 70 reports from all plan service providers
- Form 5500 filing deadline is 7 months after the plan's year end, generally July 31, 2009 for calendar year-end plans (an extension of 2 ½ months may be requested using Form 5558)

## 10 Reasons for Choosing BDO Seidman to Audit your Employee Benefit Plans.....

1. Focus on EBP Audits
2. Breadth of Experience
3. Nationally Recognized Professionals
4. National and Local Technical Resources
5. Specific Benefit Plan Audit Training
6. Efficient and Effective Audits
7. Frequent Communication
8. The Right Combination
9. Experienced Stand Alone Alternative
10. Our Commitment to Clients

disclosure of fee information by service providers, fee reporting for brokerage window options in participant directed plans, and reporting on gifts, entertainment and other non-monetary compensation.

The FAQs on Schedule C reporting can be found at [www.dol.gov/ebsa](http://www.dol.gov/ebsa).

## FASB Accounting Standards Codification

On July 1, 2009, the FASB Accounting Standards Codification™ (“ASC”) became the single official source of authoritative, nongovernmental U.S. generally accepted accounting principles (“GAAP”), superseding existing FASB, AICPA, EITF, and related literature. Only one level of authoritative GAAP now exists, plus the guidance issued by the SEC. All other literature will be nonauthoritative.

The topics of FASB ASC specific to employee benefit plans are as follows:

- 960, Plan Accounting – Defined Benefit Pension Plans
- 962, Plan Accounting – Defined Contribution Pension Plans
- 965, Plan Accounting – Health and Welfare Benefit Plans

## Pension Plans - Great Time to Engage Clients

### **Contributed by Actuarial Risk Management (BDO Seidman, LLP Business Resource Network (“BRN”) Alliance Firm)**

The old adage, “timing is everything” seems to resonate with the many pension plan sponsors who have frozen their defined benefit plans and are waiting for the right market conditions to terminate those plans. With the recent up tick in the markets, some plan sponsors would now like to focus on strategies to accomplish this goal. On the flip side, some plan sponsors are thinking about unfreezing their plans, albeit in a form that provides reduced benefits. The trend towards freezing defined benefit plans has been high throughout this decade. However, some companies are picking up where they left off after the freeze. Devastated, but now, recovering capital markets, Chapter 11 filings, and changes in tax law, beg for a rethinking of retirement benefit delivery or a continuation on the path of plan termination.

Regardless of the reasons or needs – long, as well as, short-term strategies focused on benefit delivery – investment strategy and plan administration have never been more relevant. Surveys by large consulting firms show that many organizations that need to make further workforce cuts and intend to terminate their pension plans have no current investment strategy to accomplish an effective end to their obligations.

Plan sponsors should perform a thorough independent analysis of the current state of their plan design, investment strategy (including the mismatch between assets and liabilities as well as asset allocation), plan management and administration services.

*Actuarial Risk Management (ARM), an independent BRN partner, is in a favorable position of bringing the correct resources to review retirement plan strategies. ARM is ready to help renew these strategies in the current environment and work to implement changes.*

**BDO Seidman, LLP** is a national professional services firm providing assurance, tax, financial advisory and consulting services to a wide range of publicly traded and privately held companies. Guided by core values including, competence, honesty and integrity, professionalism, dedication, responsibility and accountability for almost 100 years, we have provided quality service and leadership through the active involvement of our most experienced and committed professionals.

BDO Seidman serves clients through 37 offices and more than 400 independent alliance firm locations nationwide. As a Member Firm of BDO International, BDO Seidman, LLP serves multi-national clients by leveraging a global network of 1,095 offices in 100 countries. BDO International is a worldwide network of public accounting firms, called BDO Member Firms. Each BDO Member Firm is an independent legal entity in its own country.