



Welcome!

2019 VIRTUAL EMPLOYEE
BENEFIT PLAN CONFERENCE



Presentation Schedule

1:00-1:30

2019 Audit and Accounting Update
Jackie M. Dunn, CPA, Partner | Calibre CPA Group

1:30-2:00

Preparing for a Department of Labor Audit: Best Practices Plan
Sponsors Should Consider
Glenn M. Eyrich, CPA, Partner | Calibre CPA Group
Joe M. Herishen, CPA, Partner | Calibre CPA Group

2:00-2:30

Update on Legislative Proposals / Relief for Multiemployer Defined
Benefit Plans
Mayoung Nham, Principal | Slevin & Hart, PCA

2:30-3:00

Top 10 Fraud Risks to Guard Against in Employee Benefit Plans
Art E. Budich, CPA, CFE, Partner | Calibre CPA Group

3:00-3:15

Employee Benefit Plan Q&A



EBP SEMINAR – A&A UPDATE

PRESENTED BY:

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ASU 2016-02 (ISSUED FEBRUARY 2016)

Effective

- Fiscal years beginning after 12/15/18 for a non-profit entity that has issued, or is a conduit bond obligor for securities that are traded, listed, or quoted on an exchange or an over-the counter market
- For other non-profit entities, effective for fiscal years beginning after 12/15/19

Application

- Early adoption is permitted

General Overview

- Targets to improve financial reporting regarding leasing transactions and will effect non-profits that lease assets (property and equipment)
- Require lessees to recognize, on the balance sheet, assets and liabilities for the rights and obligations created by those leases.

ASU 2016-02 MORE SPECIFICS

For Lessees

Prior to ASU 2016-02 (Current GAAP)

- Recognition, measurement and presentation of lease expenses and cash flows depended on whether it was a capital or operating lease
- Only capital leases were required to be recognized on the balance sheet

After ASU 2016-02 (Balance Sheet)

- Recognize right-of-use asset and a lease liability for virtually all leases over 12 months in term
- Liability equal to the present value of lease payments
- Asset will be based on the liability, subject to adjustment for initial direct costs.

ASU 2016-02 MORE SPECIFICS

For Lessees

After ASU 2016-02 (Income Statement)

- Leases will be required to be classified as either operating or finance
- Operating Leases - result in straight-line expense (similar to current operating leases)
- Finance Leases - result in a front-loaded expense pattern (similar to current capital leases).

New Disclosure requirements

ASU 2016-02 MORE SPECIFICS

- For Lessors
 - Similar to current GAAP.
 - Leases still classified as either operating, direct financing, or sales-type (Leveraged lease accounting has been eliminated)

DISCLOSURE REQUIREMENTS

Information about the nature of leases (and subleases)

- General description of leases
- Basis, and terms and conditions, on which variable lease payments are determined
- Existence, terms and conditions of options to extend or terminate the lease
- Existence, terms and conditions of lessee residual value guarantees
- Restrictions or covenants imposed by leases

DISCLOSURE REQUIREMENTS

Information about leases that haven't yet begun, but that create significant rights and obligations for lessees

Information about significant judgements and assumptions made in accounting for leases

- Determination of whether a contract contains a lease
- Allocation of the consideration in a contract between lease and non-lease components
- Determination of the discount rate

DISCLOSURE REQUIREMENTS

Main terms and conditions of any sale-leaseback transactions

Whether an accounting policy election was made for the short-term lease exemption. If so, lessees should disclose if the short-term lease expense doesn't reflect amounts attributable to the lessee's short-term lease commitments and the amount of its short-term lease commitments

ASU 2017-06 (ISSUED FEBRUARY 2017)

Effective

- Fiscal years beginning after December 15, 2018.

Application

- Early adoption is permitted. Should be applied retrospectively in the year update is first applied

General Overview

- Issued to improve consistency in reporting of master trusts between all types of employee benefit plans
- Update requires a plan's interest in that master trust and any change in that interest to be presented in separate line items in the statement of net assets available for benefits and in the statement of changes in net assets available for benefits, respectively.

ILLUSTRATIVE DISCLOSURES

	<u>Master Trust Balances</u>	<u>Plan's Interest in Master Trust Balances</u>
Mutual funds	\$ 13,560,000	\$ 6,816,800
Common stocks	2,245,000	1,638,200
U.S. government securities	575,000	-
Corporate bonds	327,500	-
Total investments at fair value	<u>16,707,500</u>	<u>8,455,000</u>
Plus:		
Due from broker for securities sold	225,000	100,000
Accrued interest and dividends	125,000	50,000
Less:		
Due to broker for securities purchased	(95,000)	(50,000)
Accrued expenses	(30,000)	(15,000)
Total	<u>\$ 16,932,500</u>	<u>\$ 8,540,000</u>

ASU 2017-07 (ISSUED MARCH 2017)

Effective

- Calendar year beginning after 12/15/18 and interim periods beginning after 12/15/19

Application

- Early adoption is permitted. Should be applied retrospectively in the year update is first applied

General Overview

- Changes in presentation, not calculation.
- Requires bifurcation of net benefit cost. The service cost component should be presented with other employee compensation costs in operating income. The other components will be reported separately outside of operations.

ASU 2017-07

Background

- Net benefit cost contains several components with different nature
- No GAAP guidance on presentation
- Reduced predictive value and usefulness of information to users
- Board added project

Presentation of net benefit cost in the income statement (retrospective application)

- Service cost in the same line item or items as other current employee compensation costs
- Remaining components in a separate line item or items outside operating items, if applicable

Capitalization of only service cost in assets (prospective application)

ASU 2018-13 (ISSUED AUGUST 2018)

Effective

- Calendar year beginning after 12/15/19

Application

- Early adoption is permitted. Some amendments should be applied prospectively; all others retrospectively

General Overview

- Amendments to Fair Value Measurement Disclosures

DISCLOSURE FRAMEWORK- FAIR VALUE MEASUREMENT

Removals

- Amount of and reasons for transfers between Level 1 and Level 2
- Policy for timing of transfers between levels
- Valuation processes for Level 3
- Nonpublic Entities Only: Unrealized gains and losses in earnings for Level 3 held at period end

Modifications

- Net asset value disclosure
- Measurement uncertainty disclosure
- Nonpublic Entities Only: Transfers, purchases and issues into or out of Level 3 in lieu of a rollforward

Additions

- Unrealized gains and losses in other comprehensive income for Level 3 held at period end (public entities only)
- Range and weighted average of significant unobservable inputs used to develop Level 3 fair value measurements (public entities only)

DISCLOSURE FRAMEWORK- DEFINED BENEFIT PLANS

Removed

- Next 12 months accumulated other comprehensive income
- Rollforward Level 3 assets for nonpublic entities
- Effect of 1 percent change in health care trend rates (previously required for public entities only)

Added

- Interest crediting rate for cash plans
- Reasons for significant gains or losses

Considered but Not Part of Final Update

- Add net asset value disclosures
- Remove accumulated benefit obligation

ASU 2018-14 (ISSUED AUGUST 2018)

Effective

- Calendar year ending after 12/15/20 (public business entities) year ending after 12/15/21, for all other entities

Application

- Early adoption is permitted. See next slide

General Overview

- Applies to all employers that sponsor defined benefit pension or other postretirement plans.

REMOVED DISCLOSURE REQUIREMENTS

- The amounts in accumulated other comprehensive income expected to be recognized as components of net periodic benefit cost over the next fiscal year.
- The amount and timing of plan assets expected to be returned to the employer.
- The disclosures related to the June 2001 amendments to the Japanese Welfare Pension Insurance Law.
- Related party disclosures about the amount of future annual benefits covered by insurance and annuity contracts and significant transactions between the employer or related parties and the plan.
- For nonpublic entities, the reconciliation of the opening balances to the closing balances of plan assets measured on a recurring basis in Level 3 of the fair value hierarchy. However, nonpublic entities will be required to disclose separately the amounts of transfers into and out of Level 3 of the fair value hierarchy and purchases of Level 3 plan assets.
- For public entities, the effects of a one-percentage-point change in assumed health care cost trend rates on the (a) aggregate of the service and interest cost components of net periodic benefit costs and (b) benefit obligation for postretirement health care benefits.

ADDED DISCLOSURE REQUIREMENTS

- The weighted-average interest crediting rates for cash balance plans and other plans with promised interest crediting rates
- An explanation of the reasons for significant gains and losses related to changes in the benefit obligation for the period.

OTHER CLARIFICATION

- The projected benefit obligation (PBO) and fair value of plan assets for plans with PBOs in excess of plan assets
- The accumulated benefit obligation (ABO) and fair value of plan assets for plans with ABOs in excess of plan assets.

WHAT TO EXPECT NEXT...

Standards in the Works

PROPOSED ASU FORMING AN OPINION AND REPORTING ON F/S OF EBP SUBJECT TO ERISA

- Response to DOL concern over the quality of EBP audits
 - AICPA Task Force formed where DOL representatives were a vital part of the task force
- Proposal issued April 2017
- Comment period ended September 2017 (extended from Aug. 2017)

PROPOSED ASU FORMING AN OPINION AND REPORTING ON F/S OF EBP SUBJECT TO ERISA

- Required audit procedures
 - Irrespective of planning, risk assessment or materiality
- Report of findings for required audit procedures
- Full scope audit report changes
- Limited scope audit report changes
- Required audit procedures on certified investment information in limited scope audit
- Additional audit acceptance procedures

PROPOSED ASU FORMING AN OPINION AND REPORTING ON F/S OF EBP SUBJECT TO ERISA

Required audit procedures

- Plan instrument
 - Eligibility
 - Benefit payments
 - Vesting provisions
 - EE and ER contributions calculated properly
- Identification and disclosure of prohibited transactions
- Proper allocation to participant accounts
- Forfeited non-vested accounts
- IRC Compliance

PROPOSED ASU FORMING AN OPINION AND REPORTING ON F/S OF EBP SUBJECT TO ERISA

Full scope audit report changes

- Additional disclosure of mgt's responsibilities
 - Maintaining current plan instrument and plan amendments
 - Administering the plan
 - Determining plan transactions are presented and disclosed in accordance with the plan document
 - Maintaining sufficient plan records
 - Determining what benefits are/will be due to participants

PROPOSED ASU FORMING AN OPINION AND REPORTING ON F/S OF EBP SUBJECT TO ERISA

ASB meeting highlights July 23-26, 2018

- Reviewed and revised a draft of the proposed SAS in response to 100 comment letters received
- Voted to issue as a final standard
 - Issue date to be aligned with the proposed Auditor Reporting standards in first half of 2019
 - Expected to be effective no earlier than for audits of periods ending on or after December 15, 2020
- The proposed requirement to report on specific plan provisions and include findings in the auditor's report has not been included in the final standard
- “Limited-scope audit” “ERISA section 103(a)(3)(c)” audit



PROPOSED SAS- AUDITOR REPORTING

- Exposure draft released November 2017 and comment period ended May 2018
- Resulted from users of financial statements wanting more information about significant aspects of the audit
- Three key themes when users of financial statements consulted
 - Like pass/fail nature of the auditor's report (unmodified v. modified)
 - Wanted more information about higher risk areas and significant judgements made by management or the auditor or significant transactions
 - Additional disclosures describing management's responsibilities for the preparation of the financial statements and the auditor's responsibilities for the audit in an attempt to address the expectation gap

PROPOSED SAS- AUDITOR REPORTING

Independent Auditor's Report

[Appropriate Addressee]

Report on the Audit of the Financial Statements

Opinion

We have audited the financial statements of ABC Company, which comprise the balance sheet as of December 31, 20X1, and the related statements of income, changes in the stockholders' equity, and cash flows for the year then ended, and the related notes to the financial statements.

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of ABC Company as of December 31, 20X1, and the results of its operations and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

PROPOSED SAS- AUDITOR REPORTING

Basis for Opinion

- We conducted our audit in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. **We are independent of ABC Company, and have fulfilled our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit.** We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

PROPOSED SAS- AUDITOR REPORTING

Emphasis of Matter

- As discussed in Note X to the financial statements, subsequent to the date of the financial statements, there was a fire in the Company's production facilities. Our opinion is not modified with respect to this matter.

Key Audit Matters

- Key audit matters are those matters that were communicated with those charged with governance and, in our professional judgement, were of most significance in our audit of the financial statements of the current period. **These matters were addressed in the context of our audit of the financial statements as a whole, and in forming our opinion thereon, and we do not provide a separate opinion on these matters.**
- **[Description of each key audit matter in accordance with proposed SAS**
Communicating Key Audit Matters in the Independent Auditor's Report.]

PROPOSED SAS- AUDITOR REPORTING

Responsibilities of Management and Those Charged with Governance for the Financial Statements

- Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.
- In preparing the financial statements, **management is responsible for assessing ABC Company's ability to continue as a going concern** in accordance with accounting principles generally accepted in the United States of America, and using the going concern basis of accounting unless management either intends to liquidate ABC Company or to cease operations, or has no realistic alternative but to do so.
- **Those charged with governance are responsible for overseeing ABC Company's financial reporting process.**

PROPOSED SAS- AUDITOR REPORTING

Auditor's Responsibilities for the Audit of the Financial Statements

- Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. **Reasonable assurance is a high level of assurance but is not absolute assurance** and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users made on the basis of these financial statements.
- As part of an audit in accordance with GAAS, we exercise professional judgement and maintain professional skepticism throughout the audit.

PROPOSED SAS- AUDITOR REPORTING

Auditor's Responsibilities for the Audit of the Financial Statements *(continued)*

We also:

- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, design and perform audit procedures responsive to those risks, and obtain audit evidence that is sufficient and appropriate to provide a basis for our opinion. **The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control.**
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of ABC Company's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.
- **Conclude on ABC Company's ability to continue as a going concern** and conclude on the appropriateness of management's use of the going concern basis of accounting.

PROPOSED SAS- AUDITOR REPORTING

Auditor's Responsibilities for the Audit of Financial Statements (continued)

- We communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, **including any significant deficiencies and material weaknesses in internal control that we identified during our audit.**

Report on Other Legal and Regulatory Requirements

- *[The form and content of this section of the auditor's report would vary depending on the nature of the auditor's other reporting responsibilities.]*

OTHER ACCOUNTING ISSUES PRESENTED TO FINREC

- Presentation of an Operating Entity Held for Investment Purposes
- Classification of Dual-Purpose Assets Used in Operations
- Disclosure Requirements for Funded Status of the Plan
- Presentation and Disclosure of Reciprocity (Reciprocal) Payments
- Presentation and Disclosure of Assessed Withdrawal Liability
- Required Financial Statement Disclosures
- Presentation and disclosure of benefit obligations in an apprenticeship plan

PRESENTATION OF AN OPERATING ENTITY HELD FOR INVESTMENT PURPOSES

- Divergence in practice relating to the presentation and disclosure when a ME plan owns and operates a business such as
 - Rental properties
 - Hotels
 - Golf course or parking lots
- How to record in the Statement of Changes in Net Assets?
- What should be disclosed?

OPERATING ENTITY HELD FOR INVESTMENT PURPOSES

In order to provide consistency in practice and more transparency for the users of the financial statements

- Rental or operating activity be presented net with investment income or loss in the statement of changes in net assets available for benefits
 - But separate from net appreciation or depreciation of investments
 - The gross income and expenses from the operating activity should be disclosed in the notes to the financial statements

CLASSIFICATION OF DUAL-PURPOSE ASSETS USED IN OPERATIONS

- Dual-purpose assets- when a plan uses only a portion of building and leases the remaining floors to third parties
- Divergence in practice exists as to how a ME plan should initially record these assets. Some plans record at fair value and others record at cost less accumulated depreciation. Amounts can be material
- No specific GAAP exists
- Differs from the Form 5500 requirement to record all assets at fair value
- What was management's intent when purchasing the property?

CLASSIFICATION OF DUAL-PURPOSE ASSETS USED IN OPERATIONS

- Assets owned by a ME plan may be classified as either operating assets or assets held for investment purposes depending on the plan's initial use and objectives.
- Board of Trustees considers the following when determining the initial recording of a dual-purpose asset:
 - The objective of holding the property for the intention of leasing unrelated parties thus generating cash flow to pay benefits or to use in plan operations to reduce expense
 - The predominant use of the building (for example, for lease or used in plan operations), or the use that is likely to be predominant over time

DISCLOSURE REQUIREMENTS FOR FUNDED STATUS OF THE PLAN

- Under the Pension Protections Act, ME plans are required to have an annual certification prepared by the plan's actuary as the plan's financial health (zone status)
- Benchmark measures were standardized to help the plan's board of trustees recognize plan funding deficiencies and establish long term solutions
- Disclosures are required for the employer under FASB ASC 715-80 but not the plan
- Divergence in practice as to whether disclosure of the plan's financial health (zone status) as certified by the plan's actuary should be disclosed

FIN REC RECOMMENDATION

- The financial statements include a disclosure when the plan has been certified to be in critical or endangered status because of the funding deficiencies
 - As well as a summary of the key provisions of a funding improvement or rehabilitation plan that has been adopted by the plan's board of trustees.

PRESENTATION AND DISCLOSURE OF RECIPROCITY (RECIPROCAL) PAYMENTS

- Divergence in practice as to the presentation and disclosure of the amounts related to reciprocal agreements
- Amounts received or paid are netted with employer contributions regardless of whether a right offset exists
- It is misleading to include accrued amounts payable to other plans with employer contributions receivable
- Amounts owed to other plans are comprised of employer contributions received that are to be paid out under the reciprocal agreements to other plans, i.e. not income of the plan

RECIPROCITY (RECIPROCAL) PAYMENTS

For the plan receiving reciprocal contributions:

- Amounts receivable from other plans be either included with employer contributions receivable or shown separately as “amounts due under reciprocal agreements” in the statement of net assets available for benefits
- Amounts received from other plans under such agreements be shown either as employer contributions or shown separately as “reciprocal contributions” in the statement of changes in net assets available for benefits

RECIPROCITY (RECIPROCAL) PAYMENTS

- For the plan paying reciprocal amounts:
 - Amounts payable to other plans under such agreements be shown as “amounts due other plans under reciprocal agreements” in the statement of net assets available for benefits and not netted with contributions receivable
 - Amounts paid to other plans under such agreements are not reflected in the statement of changes in net assets available for benefits as the amounts paid out are not an expense of the plan

RECIPROCITY (RECIPROCAL) PAYMENTS

- The existence of such reciprocity agreements, the general terms, and disclosure of any amounts that are included with employer contributions receivable or employer contributions received when the amounts of such payments are not shown separately in the statement of net assets available for benefits or statement of changes in net assets available for benefits

PRESENTATION AND DISCLOSURE OF ASSESSED WITHDRAWAL LIABILITY

- Divergence in practice as to when to record a withdrawal liability receivable and what to disclose
- Likelihood that the assessed withdrawal liability will not be fully collected
- Many plans only record the transaction on a cash basis
- Appropriate disclosures are often not included in the financial statements

ASSESSED WITHDRAWAL LIABILITY

- FASB ASC 960-310-25-3A: The plan should record the receivable, net of any allowance for an amount deemed uncollectible, when entitlement has been determined.
- The assessed withdrawal liability income is generally shown as a separate line item in the statement of changes in net assets available for benefits.

ASSESSED WITHDRAWAL LIABILITY

- Notes to the financial statements include:
 - A general description of the assessed withdrawal liability
 - The assessed amount
 - The number of employers with assessed withdrawal liabilities
 - The number of employers that were assessed a withdrawal liability during the current period
 - The general terms and conditions of payment
 - The allowance for doubtful accounts, even if the likelihood of collection is remote.

ACCOUNTING ISSUE FOR APPRENTICESHIP PLANS

- Apprenticeship plans are a type of welfare plan as defined by FASB ASC 965-10-20.
- When an apprenticeship plan files with the DOL, the format of the financial statements would generally be presented in the same format as other H&W benefit plans
 - The statements of net assets available for benefits would be comparative and a statement of benefit obligations and changes in benefit obligations may or may not be applicable.

ACCOUNTING ISSUE FOR APPRENTICESHIP PLANS

- Depending on the plan's accounting policy adopted and disclosed, current training program expenses payable are either shown as an *accrued liability* in the statement of net assets available for benefits or as a current obligation in the statement of *benefit obligations*.
- Other benefits, such as tuition reimbursements or scholarships owed to participants or eligible depends at year-end, are recorded as obligations in the statement of obligations or in the notes to the financial statements.
 - As such, these amounts should not be accrued as liabilities on the plan's statement of net assets available for benefits.

ACCOUNTING ISSUE FOR APPRENTICESHIP PLANS

- Apprenticeship plans generally do not recognize benefit obligations because benefits
 - Do not vest or accumulate
 - Are not allocated to an individual participant, and
 - Are not attributable to service already rendered.
- However, benefits that represent a promise for future tuition reimbursements or scholarships to a participant or their eligible dependents are amounts currently due and may result in a claims or benefits payable that would be recorded as part of obligations

ADDITIONAL MATTERS

New Audit Guide Chapter- Multiemployer Plans

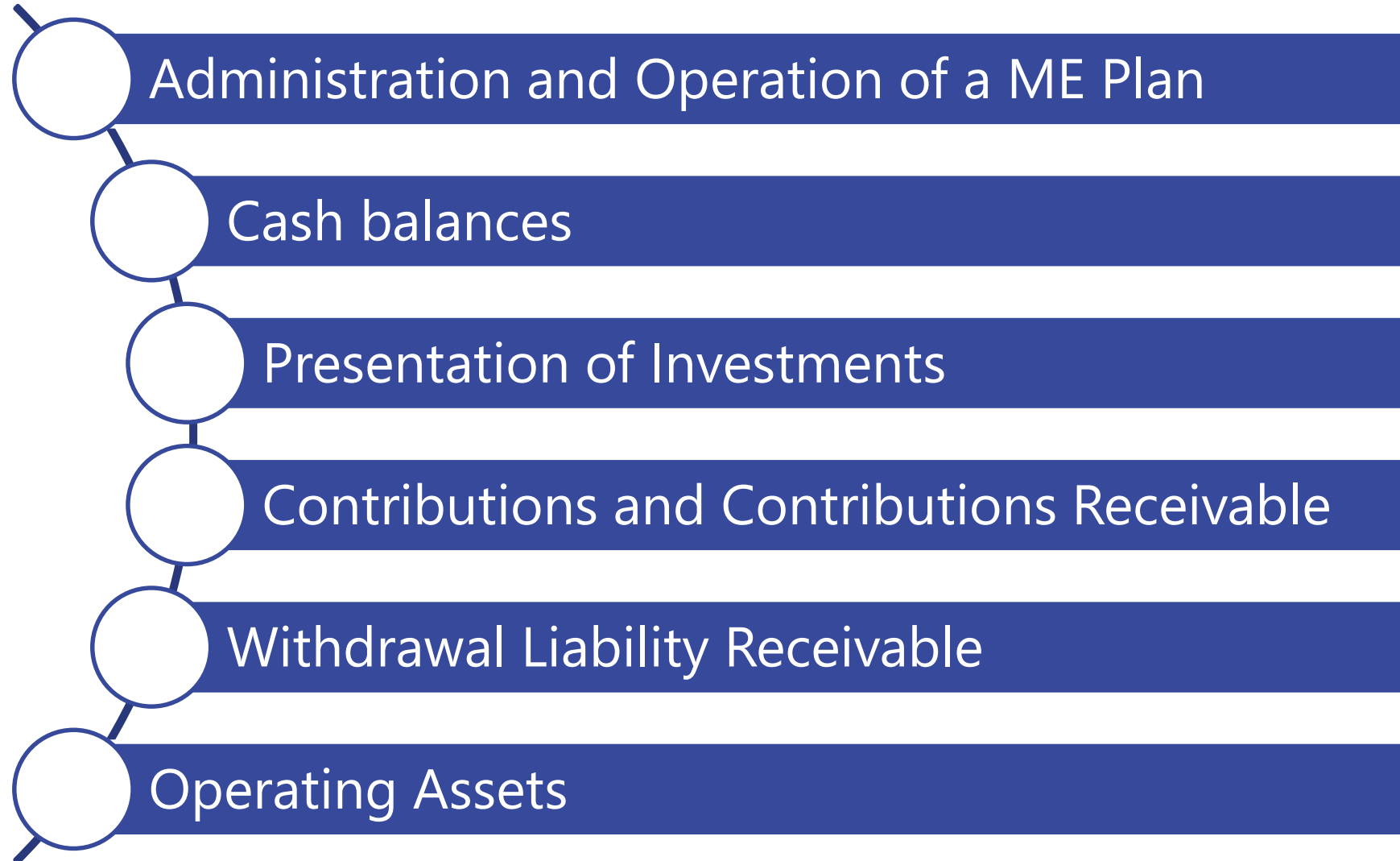
MULTIEMPLOYER CHAPTER- AICPA EBP GUIDE

- Chapter to include all types of plans
 - DB, DC, H&W, and Apprenticeship
 - Focused on accounting, reporting and auditing considerations unique to multiemployer plans
 - Appendix- Regulation, Administration, and Operation of a ME Plan
 - Illustrative financial statements for DB, H&W and Apprenticeship plans
- Accounting issued presented to the Financial Reporting Executive Committee (FinREC)
- Additional required disclosures
- Potential audit issues for the Auditing Standards Board (ASB)

STATUS OF CHAPTER

- Completed drafting of accounting section, appendix, and illustrative financial statements.
 - Exposure draft issued on September 7, 2018
 - Comment period ended November 6, 2018
 - Anticipate will be included in the 2020 EBP guide
- The audit section of the chapter is in process which will then need to be reviewed by the ASB

MAJOR ACCOUNTING TOPICS INCLUDED IN CHAPTER



MAJOR ACCOUNTING TOPICS INCLUDED IN CHAPTER





Questions



PREPARING FOR A DEPARTMENT OF LABOR AUDIT: BEST PRACTICES

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INTRODUCTION AND BACKGROUND



Goals and Objectives

- Conduct a comprehensive review of the Department of Labor (DOL) audit process
- Identify certain best practices in preparing for and responding to inquiries by the DOL
- Share our relevant experiences with respect to DOL audits from the fund's service provider perspective
- Explain the "Key Takeaways"

THE DOL AUDIT PROCESS

The Authority of the DOL

- ERISA §504
 - Investigate for violations of Title I of ERISA (e.g., fiduciary duties and prohibited transactions)
- ERISA §506
 - Investigate criminal violations under Title 18 of the IRC that relate to employee benefit plans
- IRS and DOJ coordination is possible

THE DOL AUDIT PROCESS

The Make-Up of the DOL

- EBSA: 300+ trained investigators, ten regional offices, three district offices
 - Regional offices: Boston, New York, Philadelphia, Atlanta, Cincinnati, Chicago, Kansas City, Dallas, Los Angeles, San Francisco
 - District offices: Miami, Seattle, Washington D.C.
- Office of the Solicitor
 - Civil litigation

THE DOL AUDIT PROCESS

The Statistics of the DOL—FY 2018

Total Monetary Recoveries				
Total Recoveries	Recoveries from Enforcement Actions	Voluntary Fiduciary Correction Program	Abandoned Plan Program	Monetary Benefit Recoveries from Informal Complaint Resolution
\$ 1.6B	\$ 1.1B	\$ 10.8M	\$ 33.4M	\$ 443.2M

THE DOL AUDIT PROCESS

Monetary Results (Historical Analysis)

Year	Total Results	Recoveries from Enforcement Actions	PTs Corrected/Plan Assets Protected	Plan Assets Restored/Participant Benefits Recovered	VFCP	Monetary Benefit Recoveries from Informal Complaint Resolution	Abandoned Plan Program
2018	1.6B	1.1B			10.8M	443.2M	33.4M
2017	1.1B	682.3M	300M		10M	418.7M	27.9M
2016	775.5M	352M	171.9M		9.5M	394.2M	21.8M
2015	696.3M			265M	14.3M	402.9M	13.8M
2014	599.7M			204.9M	20.2M	356.2M	18.4M
2013	1.69B		911.3M	423.6M	72.1M		
2012	1.27B		911.7M	188M	12.2M		
2011	1.38B		766.3M	140.3M	9M		
2010	1.05B		697.1M	347.8M	13.8M		

THE DOL AUDIT PROCESS

The Inquiries of the DOL

- Types of investigations
 - Compliance
 - Fiduciary duty
 - Prohibited transaction
 - Criminal
- DOL generally does not identify to plan sponsor the reason for investigating (unless it is a criminal investigation)

THE DOL AUDIT PROCESS

The Inquiries of the DOL (Historical Analysis)

Year	Total Inquiries	Monetary Benefit Recoveries from Informal Complaint Resolution	Investigations Opened from Inquiry Referrals
2018	170,909	443.2M	524
2017	174,603	418.7M	617
2016	193,669	394.2M	662
2015	201,894	402.9M	589
2014	213,664	356.2M	687
2013	239,551	281.3M	775
2012	239,520	260.7M	814
2011	233,780	478.1M	896
2010	376,965	164.6M	1,064

THE DOL AUDIT PROCESS

The Triggers of the DOL

- Participant complaints (about 25%)
 - DOL assesses complaints
 - Complainant generally remains anonymous
- DOL initiatives
 - Missing participants
- IRS coordination
 - Form 5500, compliance questions
- Service provider review
 - Audit of plan's auditor may trigger investigation
- Random
 - Common DOL explanation for audit

THE DOL AUDIT PROCESS

The Common Findings of the DOL

- No fidelity bond
- Failure to comply with procedures (most common violation based on DOL statistics)
- Expense reimbursement (e.g., first class, alcohol, personal expenses)
- Service provider fees
- Lack of documented policies and procedures
- Late participant contributions

THE DOL AUDIT LIFE CYCLE

- ✓ DOL selects plan
- ✓ Letter/subpoena seeking documents and production
- ✓ Meeting appointment and interviews
- ✓ On-site review (or desk audit)
- ✓ Follow-up document request
- ✓ Final steps (case closed; ten-day compliance letter; referral to solicitor, IRS or DOJ)

INITIATION LETTER AND RESPONSE

DOL will seek production of documents; varies by type of plan

- DOL may request an appointment to gather documents, but generally accepts production
- Plan should appoint a “point person” to be the primary point of contact with the DOL and to gather documents
- No need to create what does not exist
- Only produce what the DOL requests
- Organization is key (keep record of entire production)

INITIATION LETTER

U.S. Department of Labor

Employee Benefits Security Administration
33 Whitehall St.—Suite 1200
New York, NY 10004



February 3, 2014

After we review the documents, we will call you to schedule an appointment. Please note that this document request is not all-inclusive, and the U.S. Department of Labor may need to review other documents, to photocopy additional selected documents, and/or to interview representatives as warranted.

Dear :

The Employee Benefit Security Administration of the U.S. Department of Labor (the "Department") is responsible for the administration and enforcement of Title I of the Employee Retirement Income and Security Act of 1974 (ERISA). Title I establishes standards governing the operation of employee benefit plans such as the [REDACTED] (the "Plan").

The Plan is scheduled for investigation by this office. Investigative authority is vested in the Secretary of Labor by Section 504 of ERISA, 29 U.S.C. 1134, which states in part:

The Secretary [of Labor] shall have the power, in order to determine whether any person has violated or is about to violate any provision of this title or any regulation or order thereunder...to make an investigation, and in connection therewith to require the submission of reports, books, and records, and the filing of data in support of any information required to be filed with the Secretary under this title....

twenty (20) working days

We have found in the past that submission of relevant documents to our office prior to the inception of an on-site field investigation can lessen the time subsequently spent with, and the administrative burden placed on, plan and corporate officials, and may eliminate the need for an on-site visit entirely. To that end, we ask that you submit to this office, within **twenty (20) working days** of your receipt of this letter, the documentation listed on the enclosed **Attachment A**. If any items are not applicable, please so indicate and provide an explanation. Please be advised this initial information requested will be reviewed and additional information may be requested if necessary. If any requested documents or items are maintained in an electronic format, please produce this Electronically Stored Information (ESI), in its electronic form. When producing ESI, the material should be produced as maintained on your computer system, i.e., ESI should be produced with all files, folders and sub-folders intact, and emails should be produced with all attachments intact.

We encourage you to submit the documents in electronic form. Please assist us in our efforts to maximize resources by submitting electronic files using the least number of discs possible or by e-mail to richards.zack@dol.gov. After we review the documents, we will call you to schedule an appointment. Please note that this document request is not all-inclusive, and the U.S. Department of Labor may need to review other documents, to photocopy additional selected documents, and/or to interview representatives as warranted.

If you have any questions, please contact me by telephone at 212-607-8685 or by e-mail. Thank you for your anticipated cooperation and assistance in this matter.

SAMPLE SUBPOENA

SUBPOENA

UNITED STATES OF AMERICA
DEPARTMENT OF LABOR
Employee Benefits Security Administration

To

You are hereby required to appear before

of the Employee Benefits Security Administration, U.S. Department of Labor, at

in the City of

on the day of at o'clock a.m. of that day, to testify in the
Matter of an investigation of

being conducted pursuant to Section 504 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. Section 1134, in order to determine whether any person has violated or is about to violate any provision of Title I of ERISA or any regulation or order thereunder;

SAMPLE SUBPOENA

And you are hereby required to bring with you and produce at said time and place the following books, papers, and documents:

Fail not at your peril.



In testimony whereof I have hereunto affixed my signature and the seal of the United States Department of Labor

at _____,
this _____ day of _____,

Regional Director

(Rev. 06-12) BBSA 200

Return of Service

I hereby certify that the original of the within subpoena was duly served on the person named herein.

(Check method used)

- in person*
- by certified or registered mail*
- other (specify) _____*
- by leaving at principal office or place of business, to wit:*

on _____
(Month, day, year)

(Name of person making service)

(Official Title)

INITIATION LETTER AND RESPONSE

Standard request items

- Plan and trust documents
- Plan policies/procedures
- SPD (summary plan description)
- Meeting minutes
- Form 5500 annual reports and associated documents . . .

INITIATION LETTER AND RESPONSE

Timing and period covered

- Short deadline possible (ten business days to produce documents is typical)
- Some regional offices will issue a subpoena
- Will likely cover past three years, but possibly six
- Tolling agreement possible?

INITIATION LETTER AND RESPONSE

Timing after initial document production

- Do not interpret gap in time after record production as clean bill of health from DOL
- Not unusual for several months to elapse between stages of audit before DOL takes next step
- DOL follow-up often comes with short production deadline
- Reflect that plan remains under audit on fiduciary liability insurance renewal and applications

INITIATION LETTER AND RESPONSE

Best Practices in Preparing

- Self-audit before the DOL send the initiation letter
- Identify documents, policies and procedures often request during audit; prepare them and index them
- Inquire with fund's counsel, auditor, actuary and investment consultant as to whether fiduciary conduct is consistent with DOL guidance and DOCUMENT that effort; creating a strong and defensible fiduciary record

INITIATION LETTER AND RESPONSE

Best Practices in Preparing (continued)

- Know the fund's fiduciary insurance policy
 - Have fund's counsel review policy for coverage limitations
 - An alleged breach of fiduciary duty is likely covered
 - Assessed penalties are likely covered
 - Legal fees will covered at a certain point (even pre-claim)
 - Provide all required notices under the policy
 - Coordinate with insurance carrier—provide updates and gauge carrier's interest in resolution

MEETING APPOINTMENT AND INTERVIEW

DOL will likely seek to interview one or two trustees

- DOL may notice depositions, but generally voluntary interviews
- Attorneys may be present during interview, but role will be limited
- Review of personal background before more specific questions, including on provided documents

MEETING APPOINTMENT AND INTERVIEW

Best Practice

- Review DOL's Enforcement Manual
 - Serves as a roadmap for DOL investigations, including interview process
 - Includes checklists and investigation procedures
 - <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/enforcement/oe-manual>
- Treat interview like a deposition
 - Only respond to questions asked—don't volunteer
 - "I don't know" or "I don't recall" acceptable if accurate

MEETING APPOINTMENT AND INTERVIEW

Best Practice *(continued)*

- Set aside a designated room
 - Ensure the records are orderly
 - Make the investigator comfortable (e.g., water)
- Do not allow the agent to roam
 - No ad hoc interview sessions with staff
- Ensure entire office is clean and presentable

MEETING APPOINTMENT AND INTERVIEW

Best Practice *(continued)*

- Have all documents organized
- If agent requests documents, pursue delivery at future date to allow legal counsel to review
- If documents are produced during inspection, make copies and keep a record of what is provided (obtain document receipt if producing an original)

DOL RESPONSE

- Investigator will eventually compile findings into final letter
 - Timing could range from weeks to years from date of first contact
- General types of letters include:
 - No violations letter
 - Ten-day voluntary compliance letter
 - Referral letter

DOL RESPONSE

No violation letter

- Case is closed
- Alert the plan's fiduciary carrier if a notice had previously been sent

DOL RESPONSE

Ten-day voluntary compliance letter

- If DOL identified issues, letter will detail alleged problem and identify proposed correction
- Letter may identify possible penalties. ERISA section 502(I) imposes a 20% penalty for certain damages paid pursuant to a settlement with DOL.
- Written response normally required within ten days, but may receive an extension
- DOL may refer to IRS if excise tax is due

DOL RESPONSE

U.S. Department of Labor

Employee Benefits Security Administration
33 Whitehall Street, Suite 1200
New York, NY 10004
Phone: (212) 607-8600
Telefax: (212) 607-8681



Conclusion

In our view, for the reasons cited above, you are in violation of Part 7 of ERISA and will remain so as long as the Part 7 violations outlined above remain uncorrected. We invite you to discuss with us how these violations may be corrected and any losses restored to the Plan.

We have provided the foregoing statement of our views to help you evaluate your obligations as fiduciaries within the meaning of ERISA. Should you fail to take corrective action, this matter may be referred to the Office of the Solicitor of Labor for possible legal action. In addition to any possible legal action by the Department, you should also be aware that the Secretary pursuant to section 504(a) of ERISA, is authorized to furnish information to "any person actually affected by any matter which is the subject" of an ERISA investigation. Further, even if the Secretary decided not to take any legal action in this matter, you would nonetheless remain subject to suit by other parties including plan fiduciaries and plan participants or their beneficiaries.

If you take proper corrective action, then the Department will not bring a civil lawsuit with regard to these issues. Further, you should understand that the Department is speaking only for itself and only with regard to the issues discussed above. The Department has no authority to restrain any third party or any other governmental agency from taking any action it may deem appropriate.

In addition, corrective action should include reviewing all claims that were submitted and denied because of the above-cited violations. All such claims should be reprocessed and paid to the participants, beneficiaries, or medical providers, as appropriate. Please advise us how many of such claims have been reprocessed for each violation cited and the aggregate dollar amount of claims paid for each violation.

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

December 3, 2014

Re: .
Case No:

Dear

The U. S. Department of Labor (the "Department") has responsibility for the administration and enforcement of Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"). Title I establishes standards governing the operation of employee benefit plans such as the [REDACTED] (the "Plan").

This office has concluded its investigation of the Plan and of your activities as Trustees. Based on the facts gathered in this investigation, and subject to the possibility that additional information may lead us to re-evaluate our views, it appears that as Trustees, you may have violated certain provisions of ERISA, including Title I, Part 7. The purpose of this letter is to advise you of our findings and to give you an opportunity to comment before the Department determines what, if any, action to take.

This office has concluded its investigation of the Plan and of your activities as Trustees. Based on the facts gathered in this investigation, and subject to the possibility that additional information may lead us to revise our views, it appears that as Trustees, you may have violated certain provisions of ERISA, including Title I, Part 7. The purpose of this letter is to advise you of our findings and to give you an opportunity to comment before the Department determines what, if any, action to take.

DOL RESPONSE

Litigation referral to solicitor, IRS or DOJ

- Generally only receive direct referral for certain matters, such as:
 - Proposed correction will take a long time
 - Possible fraud or criminal charges
 - Removing a fiduciary
 - Unique or complex ERISA violation
 - Violation of other laws

DOL RESPONSE

Best Practices *(continued)*

- Consider seeking an extension if correction will take more time or the plan will challenge all or some of the DOL's conclusions (ten-day letter generally imposes an unreasonably short deadline)
- DOL may raise statute of limitations issues; if not already implemented, consider a tolling agreement to eliminate sense of urgency

RESOLUTION

Best Practices *(continued)*

- Seek a resolution that avoids admitting fault and avoids penalties under ERISA section 502(I)
- ERISA section 502(I) penalties apply to settlement agreements; seek to resolve without a settlement agreement
- Take care when exchanging correspondence with DOL. Agency may use it to take position that there has been a “settlement” of a fiduciary violation, resulting in a ERISA 502(I) penalty.

RESOLUTION

Best Practices *(continued)*

- Correction can involve plan reimbursement, adoption of revised procedures or both
- If negotiations with agent deadlock, seek to discuss with regional office director or national office
- If mutual resolution cannot be reached, DOL could refer to Solicitor's Office for litigation

RESOLUTION

Best Practices *(continued)*

- If the plan corrects a prohibited transaction, excise taxes may need to be paid to IRS
- The fiduciary insurance may need to pay the excise tax; cannot use plan assets

CONDUCTING A SELF-AUDIT

Hire the right qualified professionals

1. Attorney—ERISA experience
2. Auditor—experience in EBP audits
3. Investment consultant
4. Actuary
5. Administrators

CONDUCTING A SELF-AUDIT

- Make sure all fund documents are updated
- Review all policy and procedures every three years.
 1. Are there updated written investments, collections and written expense allocation policies?
 2. Is there a written policy for travel expenses? (coach vs. first class; alcohol)
 3. Is there an updated record retention policy?

CONDUCTING A SELF-AUDIT

- Review health fund compliance (HIPAA, ACA, MHPAEA); DOL is currently focusing on this area
- Monitor DOL announcements on enforcement and initiative programs;
- DOL health plan self compliance checklist at:
<https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/publications/compliance-assistance-guide-appendix-a.pdf>

KEY TAKEAWAYS

- Conduct a self-audit
- Educate trustees on compliance issues
- Correct identified issues before they are detected under audit
- Update fund policies and procedures
- Review fiduciary liability insurance policy at each renewal to determine if latest and most effective coverage is in place
- Create strong and defensible fiduciary record during decision-making



Questions



CALIBRE

UPDATE ON LEGISLATIVE

PROPOSALS / RELIEF FOR

MULTIEMPLOYER DEFINED BENEFIT

PLANS:

PRESENTED BY:

MAYOUNG NHAM

SLEVIN & HART, P.C.

WASHINGTON, D.C.

MNHAM@SLEVINHART.COM

PBGC PROJECTIONS

- Without changes in current law, the PBGC's Multiemployer Program is likely to run out of money by the end of FY 2025.
- As of September 30, 2017, the Multiemployer Program had assets of \$2.3 billion to cover a projected liability of \$67.3 billion for 187 plans that will need financial assistance (\$65 billion deficit). These plans fall into 3 categories:
 - Plans currently receiving financial assistance (72 plans; 93,000 participants; \$2.7 billion);
 - Terminated plans that have not yet started receiving financial assistance (68 plans; 78,000 participants; \$2 billion); and
 - Ongoing plans that PBGC expects will need financial assistance within 10 years (47 plans; 1,160,000 participants; \$62.7 billion).

PRIOR LEGISLATIVE FIXES

- Pension Protection Act of 2006 (PPA)
- Multiemployer Pension Reform Act of 2014 (MPRA)
 - Designed to address the sunset of the PPA provisions
 - MPRA created new ability to “suspend” benefits otherwise protected under law if certain conditions are met.
 - Benefit suspensions can occur even if payee is already retired/in pay status (unlike benefit reductions that are permitted under a RP). However, plan participants must approve the suspensions.
 - MPRA also made it easier for the PBGC to assist plans with mergers and partitions in order to avoid insolvency.

APPLICATIONS FOR BENEFIT SUSPENSION

- To date, 26 plans have applied for benefit suspensions (applications posted at: <https://www.treasury.gov/services/pages/plan-applications.aspx>)
 - 10 applications have been approved;
 - 7 are under review;
 - 4 were withdrawn (and not re-submitted); and
 - 5 were denied.

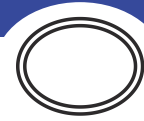
CENTRAL STATES PENSION FUND

- The Central States Pension Plan application was denied on May 6, 2016.
- Central States concluded that it is now too late for it to seek relief under MPRA and declined to re-submit its application.
- Central States is projected to be insolvent by 2025.
- Central States has approximately 400,000 participants.

CURRENT LEGISLATIVE EFFORTS

- Loans and Financial Assistance
 - The Butch Lewis Act
 - Curing Troubled Multiemployer Pension Plans (UPS)
 - Emergency Multiemployer Plan Financing Act (NCCMP)
 - American Families for Pension Security Proposal
 - American Miners Pension Act of 2017
- Discount Rates
 - June 25, 2018 and July 6, 2018 NCCMP Letter to Joint Select Committee
- Composite Plans
 - Prior NCCMP Proposal
 - Give Retirement Options to Workers (GROW) Act
- Keep our Pension Promises Act (KOPPA)
- Joint Select Committee Proposal

LOANS AND FINANCIAL ASSISTANCE



- The Butch Lewis Act
- American Miners Pension Act of 2017
- Curing Troubled Multiemployer Pension Plans (UPS)
- Emergency Multiemployer Plan Financing Act (NCCMP)

THE BUTCH LEWIS ACT

- S. 2147, the Butch-Lewis Act of 2017, and H.R. 4444, the Rehabilitation for Multiemployer Pensions Act
 - Introduced by Sen. Sherrod Brown (D) and Rep. Richard Neal (D)
- Creates the Pension Rehabilitation Authority (PRA) to provide loans equal to total lifetime amount of benefits for participants in pay status at time of loan.
- PRA oversees the use of loan proceeds by plans.

THE BUTCH LEWIS ACT

- Loans funded through proceeds from Treasury bonds.
- Plans must either (1) use loan to purchase annuity contracts or (2) keep loan in portfolio that is unlikely to lose value,
- Plans pay interest for 29 years and repay loan principal in year 30.
- No reduction in participant benefits.
- If loan is insufficient to prevent insolvency, Plan can apply for financial assistance from PBGC.

CURING TROUBLED MULTIEMPLOYER PENSION PLANS (UPS PROPOSAL)

- UPS has been working with lawmakers on its own proposal – “Curing Troubled Multiemployer Pension Plans” (<http://src.bna.com/qLf>). Proposal has not been introduced as legislation.
- Provide loans to critical and declining plans whose actuaries certify that loans would correct funding issues and can be repaid.
- Loan is equal to amount calculated to pay “shortfall” for next 5 years. Shortfall is calculated as 5 times the projected income from contributions and earnings minus the projected benefit payments (not reduced) and reasonable plan administrative expenses.
- 20% benefit reduction for all participants.

CURING TROUBLED MULTIEMPLOYER PENSION PLANS (UPS PROPOSAL)

- Loans are made at 1% interest and amortized over 30 years.
- Five years after the initial loan, a plan can apply for a 2nd loan if the plan remains in critical and declining status. Ten years after the initial loan, a plan can apply for a 3rd (and final) loan still in critical and declining status.
- Loan repayment includes interest payments only for the first 5 years (10 years if 2 loans, 15 years if 3 loans).

CURING TROUBLED MULTIEMPLOYER PENSION PLANS (UPS PROPOSAL)

- If a plan can not pay 100% of its yearly loan repayment, it can request funds from a risk reserve pool to pay its loan payment.
- The risk reserve pool would be funded by:
 - \$7 increase in the per participant PBGC premiums paid by all multiemployer plans, regardless of zone status;
 - \$2 per month (\$24 per year) per active participant from participating employers;
 - \$2 per month (\$24 per year) from participants; and
 - \$2 per month (\$24 per year) per active participant from participating unions.

EMERGENCY MULTITEMPLOYER PLAN FINANCING ACT OF 2018 (NCCMP PROPOSAL)

- Targets plans that do not qualify or were rejected for relief under MPRA.
- Loan program includes:
 - 1% loan for 30 years
 - Interest only payments for first 15 years; level payments of interest and principal for next 15 years
 - Plan must demonstrate that it can maintain solvency and repay the loan using an investment return assumption no greater than 5.5%
 - Benefit reductions proposed as part of loan application and additional benefit reductions permitted
 - Loan must be kept separately from plan assets in a loan account

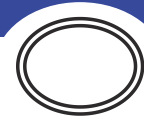
AMERICAN FAMILIES FOR PENSION SECURITY PROPOSAL

- Low interest Treasury loans provided to plans in critical and declining status. Plans can apply for a 5 or 10-year loan deficit amount.
- Establish the Multiemployer Financial Innovation Coordinating Committee to create special-purpose credit union for multiemployer plan participants.
- Create a Reserve Pool Fund comprised of profits from loans and credit cards. Reserve Pool Fund would be used to help plans repay and secure the loans.

AMERICAN MINERS PENSION ACT OF 2017

- S. 1911 and H.R. 3913, the American Miners Pension Act of 2017
 - Introduced by Sen. Joe Manchin (D) and Rep. David McKinley (R)
- Provides financial assistance to United Mine Workers of America (UMWA) 1974 Pension Plan
- UMWA 1974 Plan is 3rd largest multiemployer pension plan (by participant count) in critical and declining status.
- Financial assistance provided through Treasury in form of (1) direct financial assistance from the General Fund and (2) loans.

DISCOUNT RATE



June 25, 2018 and July 8, 2018 NCCMP
Letters to the Joint Select Committee on
Discount Rate Changes

NCCMP LETTERS ON DISCOUNT RATE CHANGES

- Proposal to change the discount rates to either the 30-year Treasury rate or single-employer plan interest assumptions.
- As a supplement to its April 18, 2018 testimony and May 24, 2018 submission to the Joint Select Committee, the NCCMP sent letters regarding its concerns about the proposed change to discount rates currently used by multiemployer plans.
- NCCMP asked Horizon and Segal to analyze the impact of the changes, and their reports were submitted to the Joint Select Committee.

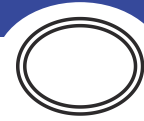
HORIZON REPORT

- Horizon concluded that most plans would be forced to decrease benefits and increase contributions to a level that is not sustainable by employers.
- Horizon analysis showed:
 - Over 60% of multiemployer plans are currently in the green zone. This drops to 7% if discount rates are based on corporate bond rates, and down to 2% if based on current 30-year Treasury yields.
 - Using corporate bond rates increases the amount of unfunded liability increases by 171% to \$461 billion. When using 30-year Treasury rates, the increase is 258% to \$609 billion.
 - Likely to result in contribution volatility – considerable changes from year-to-year as a result of discount rate fluctuations.

SEGAL REPORT

- Segal modeled the impact on 2 plans of changing the discount rates to either the 30-year Treasury rate or single-employer plan rates.
- Segal stated that changes “would have the unintended consequence of destabilizing the entire multiemployer retirement system as well as hurting the economy as a whole.”
- Their analysis showed:
 - Decline in funding status from green zone to yellow or red zone for Plan A, and from green zone to red zone for Plan B.
 - Contribution increases ranging from double to triple current rates for Plan A, and from 25% each year for 5 years to 4-times each year for 2 years for Plan B.

COMPOSITE PLANS



- Prior NCCMP Proposal
- Give Retirement Options to Workers (GROW) Act

NCCMP COMPOSITE PLAN PROPOSAL

- NCCMP introduced a composite plan proposal as part of its “Solutions Not Bailouts” proposals.
- The composite plan proposal was incorporated into the Multiemployer Pension Modernization Act.
- Composite plan would contain features of both defined benefit and defined contribution plans.

NCCMP COMPOSITE PLAN PROPOSAL

- Composite plan features include:
 - Participant's benefit amount would be based on a formula and payable as a life annuity.
 - Employer contributions remain at a fixed amount (as negotiated between labor and management) and would not be required to increase in response to underfunding.
 - Plan required to maintain a projected funding ratio of 120%. If the amount of the plan's assets were insufficient to pay 120% of the promised benefits, the plan would be required to take corrective action (benefit reductions, contribution increases if agreed to by bargaining parties) to restore the funding ratio to 120%.
 - Not covered by PBGC.
 - No withdrawal liability.

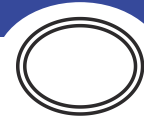
NCCMP COMPOSITE PLAN PROPOSAL

- Existing multiemployer defined benefit plans could adopt a composite plan feature.
 - Existing plan would be considered the “legacy plan.”
 - Participants in the legacy plan whose employers opted for the composite plan would stop accruing benefits under the legacy plan and begin accruing benefits under the composite plan.
 - Employers would be required to contribute to the legacy plan at minimum funding levels designed to restore the legacy plan’s funding to 100%.

GIVE RETIREMENT OPTIONS TO WORKERS ACT

- H.R. 4977, the Give Retirement Options to Workers Act (GROW Act)
 - Introduced by Reps. Phil Roe (R) and Donald Norcross (D)
- Amends ERISA and IRC to permit composite multiemployer plans.
- Based on NCCMP proposal for composite plans that did not get incorporated into MPRA.
- In addition to subsidized loan program, NCCMP supports the GROW Act.

OTHER ALTERNATIVES

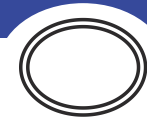


Keep Our Pension Promises Act

KEEP OUR PENSION PROMISES ACT (KOPPA)

- S. 1076 and H.R. 2412, the Keep Our Pension Promises Act
 - Introduced by Sen. Bernie Sanders (I) and Rep. Marcy Kaptur (D)
- Repeals provisions of MPRA that allow benefit suspensions.
- Plans already approved for benefit reductions would be required to apply for partitioning and to restore reduced benefits.
- Creates a legacy fund in PBGC for troubled multiemployer plans.
- Legacy fund is funded by repealing 2 tax shelters: (1) taxes required when real estate and art investors trade property; (2) limit of \$5m saved in 401(k) or IRA.

JOINT SELECT COMMITTEE ON SOLVENCY OF MULTIEMPLOYER PENSION PLANS



Joint Select Committee Proposal and Next Steps

JOINT SELECT COMMITTEE ON SOLVENCY OF MULTIEMPLOYER PENSION PLANS

- Bipartisan Budget Act of 2018 created a new joint select committee of the House and Senate – the Joint Select Committee on Solvency of Multiemployer Pension Plans (Joint Select Committee).
- 16 members of the House and Senate – chosen by party leaders of each chamber.
- November 30, 2018 deadline to issue report and proposed legislation.

JOINT SELECT COMMITTEE PROPOSAL

- On November 20, 2018, *The Washington Post* reported on a draft proposal by the JSC.
- The draft proposal included proposed changes to the PBGC minimum guarantee, benefit suspension rules, discount rates assumptions, and PBGC funding methods.

JOINT SELECT COMMITTEE PROPOSAL

- Increased PBGC minimum guarantee to \$70 per month per year of service, with a minimum benefit of \$3,000 per year.
- Repeals MPRA provisions:
 - A plan previously approved for MPRA suspensions must restore benefits prospectively and will become eligible for plan partition.
 - A plan within 5 years of insolvency after benefit restoration will have benefit cuts to the increased PBGC guarantee and then will be terminated.

JOINT SELECT COMMITTEE PROPOSAL

- Liability Removal Program: certain liabilities removed through partition for current most-distressed plans.
- Plan Funding Rule Changes:
 - Discount rate capped at corporate long bond rate of +2% for all plans.
 - Limited asset smoothing.
 - Limitation of credit balances.
 - 30-year amortization for increase in unfunded liability as a result from change in rates/assets.
 - Endangered and Critical funding zones with new triggers

JOINT SELECT COMMITTEE PROPOSAL

- PBGC Funding Changes: PBGC to receive additional funding through increased premiums and transfers from Treasury.
 - New variable rate premium of 1% of unfunded current liability with an average per participant cap of \$100 adjusted within a range of \$50 to \$150 to reflect average benefit levels in plan.
 - New “stakeholder” premiums to be paid by retirees → 0% for UMWA Plan, 0% for Green plans, 2% for Yellow plans, 3% for Red plans, 4% for Declining and for Insolvent plans; 6% for plans with Liability Removal.
 - New stakeholder premium to be paid by unions and employers of \$2 per month per active participant.
 - New exit premium to be paid by employers of 20 times an employer’s proportionate share of plan premiums, paid by exiting employers and 20 times per participant rate for participants that exit the plan due to receipt of benefits paid as a lump sum under plan amendments adopted after enactment.
 - Annual transfer from Treasury equal to the lesser of \$3 Billion or the amount of partition payments.

JOINT SELECT COMMITTEE: NEXT STEPS

- The draft proposal was ultimately not finalized.
- The Committee issued a statement indicating that they would not meet the November 30 deadline to issue proposed legislation, but pledging to continue working on a proposal past the deadline.
- The Committee terminated on December 31, 2018 pursuant to the Bipartisan Budget Act of 2018.
- Unclear what the next Congress will do.



Questions



Fraud Risks to Guard Against in Employee Benefit Plans

PRESENTED BY

ART BUDICH, CPA, CFE | PARTNER

CALIBRE CPA GROUP PLLC

BETHESDA, MD

ABUDICH@CALIBRECPA.COM



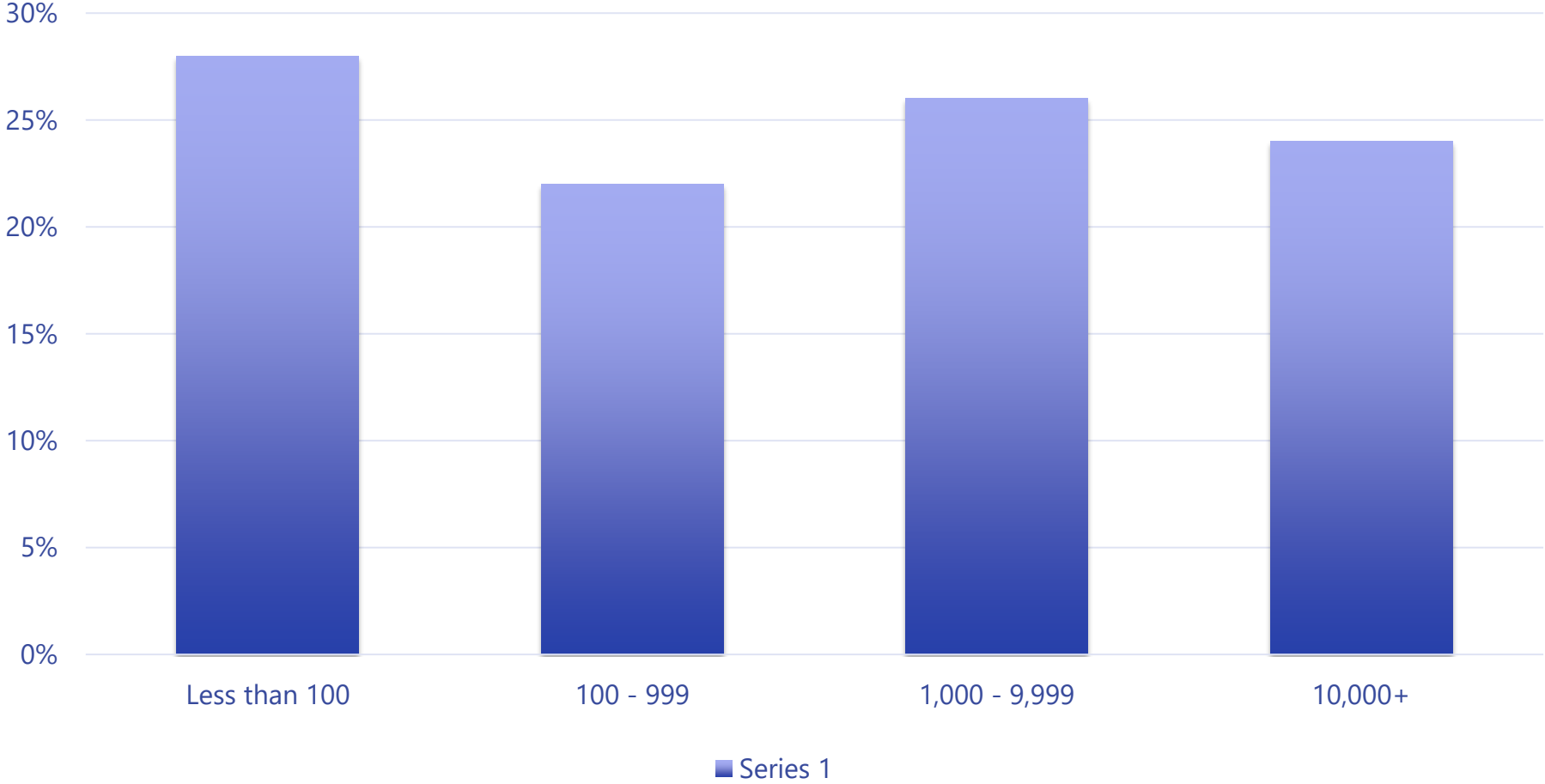
**FRAUD IS A DECEPTION DELIBERATELY PRACTICED
IN ORDER TO SECURE UNFAIR OR UNLAWFUL GAIN**

The two main types of fraud

- ❑ Misappropriation of assets – theft of organization’s assets
- ❑ Fraudulent financial reporting – misrepresentations in financial reports



Percentage of Fraud Cases



Schemes

- Pension Benefit Disbursements
- Health and Welfare Claims
- Contributions
- Investments
- Forfeitures



Pension Benefit Schemes

Deceased pensioners

- The Plan unknowingly continues to make payments to a deceased participant.



Pension Benefit Schemes - continued

Fictitious pensioners

- Controls at the Plan have not been set up appropriately segregating the ability to add a participant from the benefit payment process.

Pension Benefit Schemes - continued

Participant data

- Controls do not exist to prevent or allow for the detection of changes made to participant data.

Health Benefit Schemes

Fictitious participants

- Controls at the Plan have not been set up appropriately segregating the ability to add a participant from the benefit payment process.



Health Benefit Schemes - continued

Improper and/or unreasonable claims

- Controls are not adequately established to detect:
 - Claims for unreasonable or unnecessary services.
 - Unreasonably frequent claims
 - Claim coding irregularities

Contributions

Self pay premiums

- Controls are not properly designed to ensure self pay.
- Premiums are applied to the correct account



Contributions - continued

Underreporting of participants/ contributions

- Controls have not been adequately designed to detect and/or prevent the underreporting of participants and payment of contributions by employers.

Investments

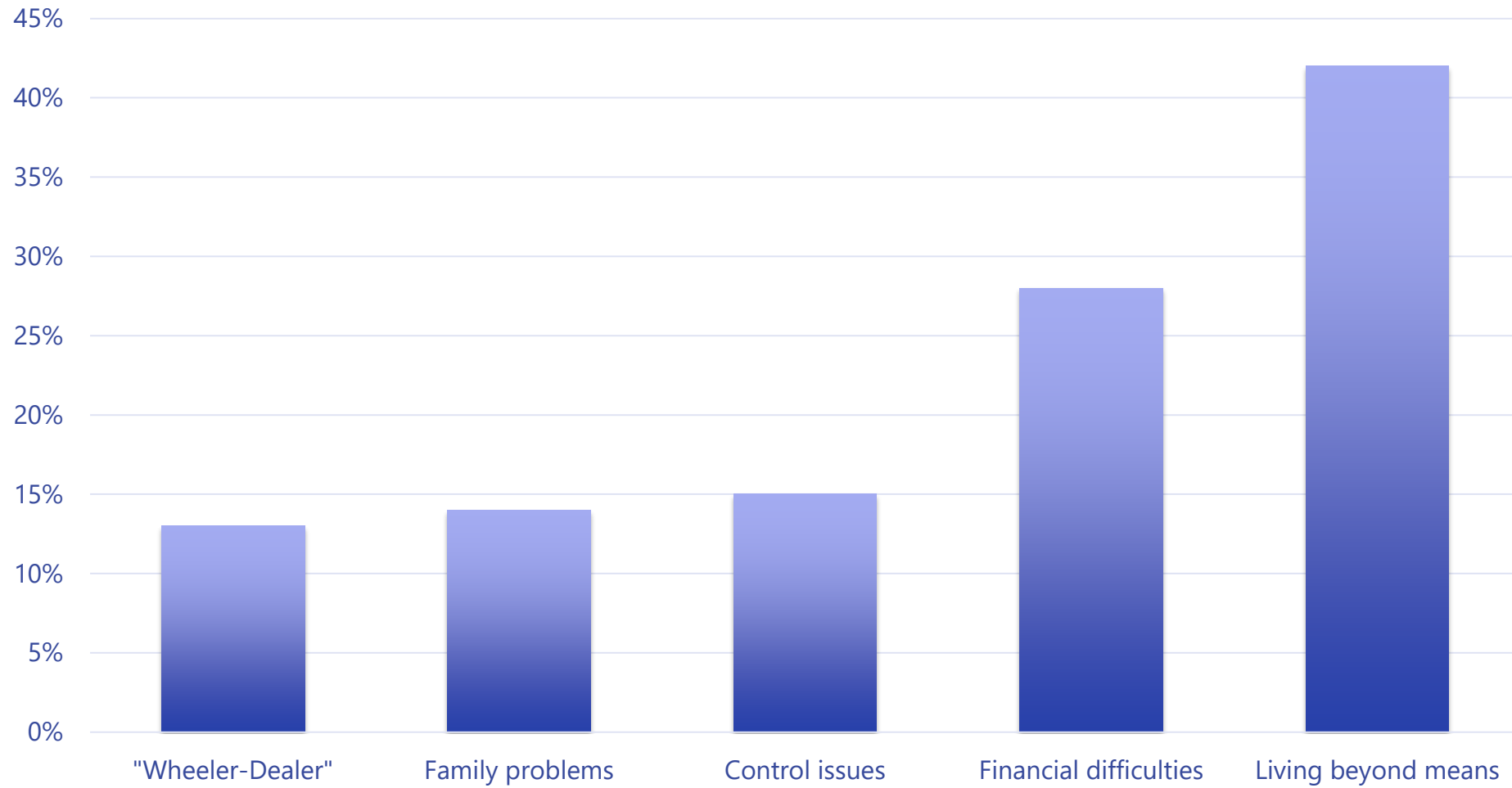
- Proper segregation of duties and control over investments.
- Proper investment policies, oversight by Trustees



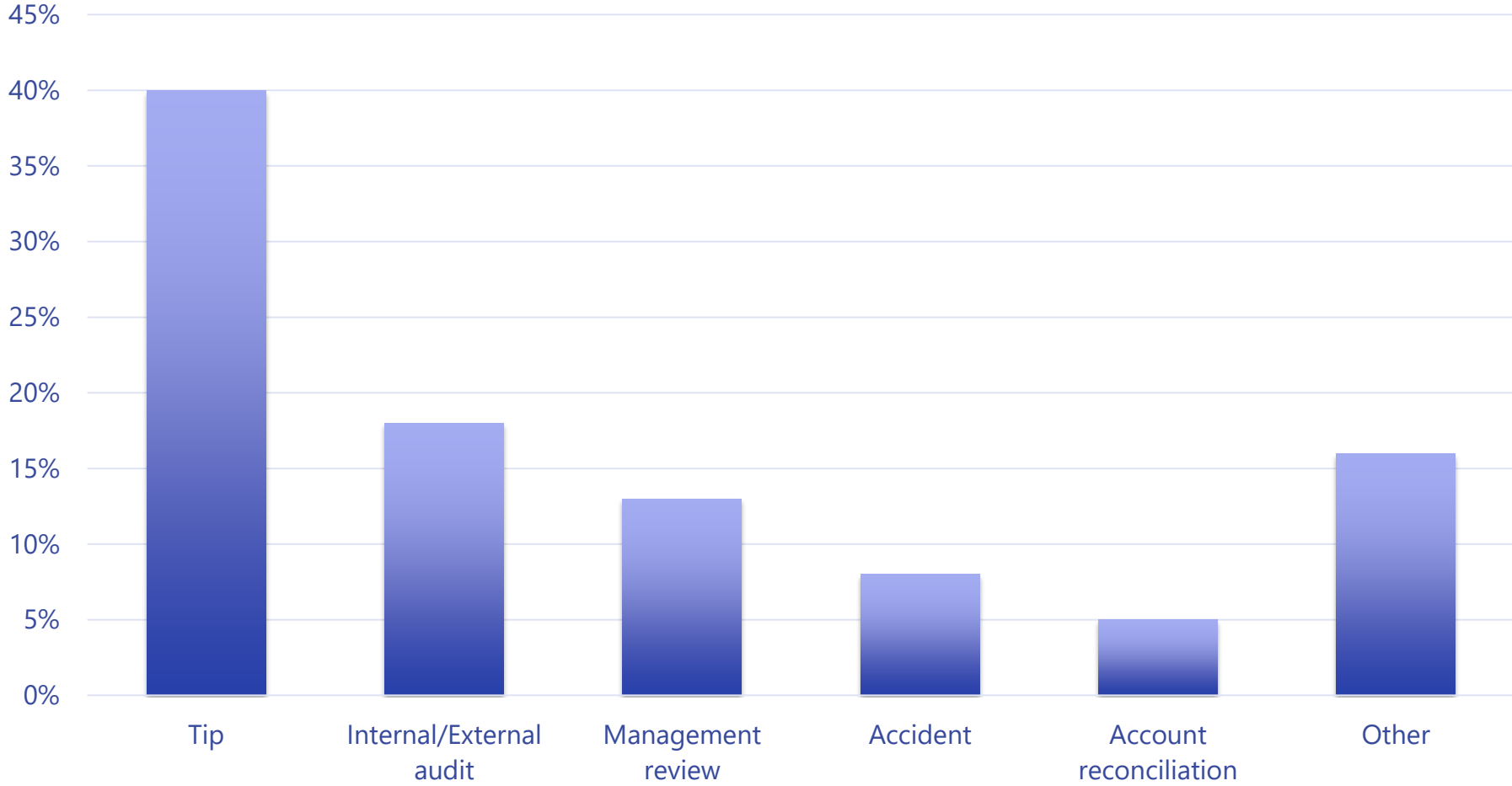
Forfeitures

The Plan does not have sufficient controls over forfeited accounts to ensure amounts are used pursuant to plan policies.

Behavioral Red Flags



How is Fraud Detected?



Preventative Measures

1. Tone at the top
2. Proper segregation of duties
 - Cash receipts
 - Eligibility
 - Benefits

ALL SHOULD BE SEPARATE!
3. Tip lines
4. Clear policies and procedures
5. Employee training



Preventative Measures - continued

6. Exception reports (and management review of the reports)
7. Social security searches
8. Payroll/compliance audit programs
9. Claims audit programs
10. Active involvement by Trustees and regular meetings





Audience

Q&A



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