



**Deloitte & Touche LLP**  
695 E. Main Street  
Stamford, CT 06901-2150  
  
Tel: +1 203 761 3000  
Fax: +1 203 761 3013  
[www.deloitte.com](http://www.deloitte.com)

September 26, 2017

Ms. Sherry Hazel  
American Institute of Certified Public Accountants  
1211 Avenue of the Americas, 19th Floor  
New York, NY 10036-8775  
USA

**Re: Proposed Statement on Auditing Standards, *Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA***

Dear Ms. Hazel:

Deloitte & Touche LLP ("D&T", "our," or "we") is pleased to respond to the request for public comment from the Auditing Standards Board (the "ASB") of the American Institute of Certified Public Accountants (AICPA) on its proposed Statement on Auditing Standards (SAS), *Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA* (the "proposed SAS"). We support the issuance of this proposed SAS in order to enhance audit quality specifically as it relates to "improving the communicative value and relevance of the auditor's report"<sup>1</sup> for employee benefit plans (EBPs) subject to the Employee Retirement Income Security Act of 1974 (ERISA). We also believe that this proposed SAS will provide users with additional insights and more transparency pertaining to the scope of the responsibilities of both management and the auditor as described in the new form of auditor's report, when performing an engagement where management has imposed a limitation of the scope of the audit, as permitted by the Department of Labor's (DOL's) Rules and Regulations for Reporting and Disclosure under ERISA ("ERISA-permitted audit scope limitation").

However, while D&T understands the impetus for many of the changes included in the proposed SAS we have the following overarching concerns pertaining to:

- Reporting on findings from procedures performed on specific plan provisions relating to the ERISA plan financial statements
- Inconsistencies between reporting requirements for audits of ERISA plan financial statements and existing reporting standards for other audits
- The impact of impeding ASB exposures drafts related to auditor reporting
- The effective date of the proposed SAS

---

<sup>1</sup> Refer to the Explanatory Memorandum of the proposed Statement on Auditing Standards (SAS), *Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA*

### **Reporting on Findings from Procedures Performed on Specific Plan Provisions Relating to the ERISA Plan Financial Statements**

D&T does not believe it is appropriate for the auditor to be required to report findings on specific plan provisions (either in a separate section in the auditor's report on the ERISA plan financial statements or in a separate report, as required by paragraph 120 of the proposed SAS), for the following key reasons:

- Performing procedures "irrespective of the risks of material misstatement" (paragraph 15 of the proposed SAS) and reporting findings that are other than those that are "clearly inconsequential" (paragraph 121 of the proposed SAS) will likely cause confusion in application and inconsistency in practice.
- Performing certain required compliance-related procedures, while not addressing other compliance-related matters, may result in the user "over relying" on the findings in the auditor's report and inappropriately concluding that all instances of noncompliance have been identified.
- The required reporting of the individual findings will lack the appropriate context in order for the user to make an informed determination as to the relative importance, severity, or pervasiveness of the individual finding(s). The proposed SAS only requires the actual finding be reported, without consideration of the circumstances or nature of the finding; it is important for the user to understand whether, for example, it is an administrative matter or a "one-off" finding that was subsequently addressed by management.
- The reported findings will be publicly available information, which may have unintended consequences that could adversely affect the plan participants, management, and the plan sponsor alike. For example, this may result in an additional administrative burden for management resulting from providing explanations for finding(s) to plan participants or an adverse impact on the plan sponsor's ability to file confidentially under the various DOL and Internal Revenue Service (IRS) voluntary correction programs relating to noncompliance matters.
- The auditor is placed in the position of assuming certain administrative responsibilities for the EBP; however, those responsibilities are within the purview of the plan sponsor and management. We do not believe it is appropriate for the auditor to be providing original source information, because the plan sponsor and management are ultimately responsible for providing such information.

As such, we recommend that the requirements relating to the reporting of any findings (refer specifically to paragraphs 66-69, 110-112 and 119-124 of the proposed SAS, as well as other related paragraphs that address the requirement to include findings in the *Report on Specific Plan Provisions Relating to the Financial Statements*) be deleted. This recommendation should be contrasted with our belief that the performance of the procedures in paragraphs 15 and 16 of the proposed SAS may lead to improved audit quality.

### **Inconsistencies between Reporting Requirements for Audits of ERISA Plan Financial Statements and Existing Reporting Standards for Other Audits**

D&T believes that the form of auditor's report relating to audits of ERISA plan financial statements is overly complex and that in many instances should be more closely aligned to the existing reporting standards for other audits, in particular as it pertains to AU-C section 705, *Modifications to the Opinion in the Independent Auditor's Report* (AU-C 705); and AU-C section 725, *Supplementary Information in Relation to the Financial Statements as a Whole* (AU-C 725). This closer alignment will enhance consistency in the application of auditor reporting standards irrespective of the audit engagement being conducted by the auditor. D&T has the following concerns:

- Auditor’s Report When Management has Imposed the ERISA-Permitted Audit Scope Limitation

While D&T acknowledges that the ERISA-permitted audit scope limitation imposed by management is unique, we believe that this scope limitation should still be treated, and communicated, in a manner similar to the form and content of the auditor’s report when the auditor’s report is modified as required in AU-C 705. By doing so, we believe this will avoid confusion amongst auditors in applying the professional standards, and amongst users in interpreting auditors’ reports of the ERISA plan financial statements. D&T therefore recommends that when the ERISA-permitted audit scope limitation is imposed by management, the auditor should express a qualified opinion in the auditor’s report (including the use of a *Basis for Qualified Opinion* paragraph as well as a *Qualified Opinion* paragraph), and paragraphs 88–115 of the proposed SAS should be amended accordingly.

- Additional Modifications to the Auditor’s Report When Management has Imposed the ERISA-Permitted Audit Scope Limitation

With certain exceptions, paragraph 4 of the proposed SAS indicates that all the AU-C sections apply (which would include AU-C 705). This is also reiterated in paragraph 31 of the proposed SAS, which deals with modifications to an auditor’s report on ERISA plan financial statements when there is no ERISA-permitted audit scope limitation imposed, and in such circumstances, it is noted that AU-C 705 applies. However, the proposed standard has different reporting considerations as it relates to the form of the report when there are additional modifications beyond the ERISA-permitted audit scope limitation imposed by management (refer to paragraph 34 and the related application material of the proposed SAS). D&T does not believe it is necessary or appropriate to have different considerations for additional modifications to the auditor’s report and that AU-C 705 should apply to any such additional modifications.

- Reporting on ERISA Supplemental Schedules

D&T notes that when reporting on the required ERISA supplemental schedules, paragraph 4b of the proposed SAS specifically excludes the reporting elements in paragraph 9 of AU-C 725, and the related application material. These reporting elements are instead replaced by those in paragraph 118 of the proposed SAS (and include making specific reference to the DOL’s Rules and Regulations under ERISA). Yet it appears that no amendments were made to the underlying performance requirements in AU-C 725. While D&T agrees that certain of the wording in the auditor’s report (e.g., whether the opinion in the auditor’s report is unmodified or modified) needs to be amended to refer to the supplemental schedules as being required by the DOL’s Rules and Regulations under ERISA, we do not believe that other substantive changes are needed to the auditor’s report in terms of content, as fundamentally the procedures performed by the auditor in accordance with AU-C 725 for supplementary information are consistent with the procedures for evaluating the supplemental schedules required by ERISA. D&T therefore recommends that the requirements in paragraph 118 be more closely aligned with AU-C 725.

### **The Impact of Impending ASB Exposure Drafts Related to Auditor Reporting**

D&T believes that it would not be in the best interest of the public to vote final the proposed SAS that includes a new format of reporting for EBPs subject to ERISA, knowing that the reporting aspects of the proposed SAS would need to be revised and aligned with the proposed new auditor reporting standards almost immediately.

In addition, one of the possible impacts of the ASB disclosures project is that there is a proposal to amend and clarify the assertions relating to the account balances at the end of the period in paragraph A128b of AU-C section 315, *Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement* (AU-C 315). This would result in a consequential amendment to the proposed SAS as it relates to application material in paragraphs 15 and 16.

Given that the impending exposure draft, proposed SASs - *Auditor Reporting; Addressing Disclosures in the Audit of Financial Statements—Proposed Amendments*, includes three AU-C sections that are being superseded because of the pervasiveness of the new auditor reporting changes; namely AU-C section 700, *Forming an Opinion and Reporting on Financial Statements* (AU-C 700); AU-C 705; and AU-C section 706, *Emphasis-of-Matter Paragraphs and Other-Matter Paragraphs in the Independent Auditor's Report* (AU-C 706), it is likely that this proposed EBP SAS may also need to be superseded. This would necessitate re-exposure to allow those interested parties an opportunity to comment on the impact of the new auditor reporting changes.

D&T notes that the requirements relating to the Form 5500 filing in paragraphs 36-48 of the proposed SAS are based on extant AU-C section 720, *Other Information*, and as such the terminology would also need to be amended to align with that used in the impending exposure draft, proposed SAS - *The Auditor's Responsibilities Relating to Other Information Included in Annual Reports*, so as not to cause confusion amongst the profession when implementing the auditing standards.

We recommend that the issuance of the various exposure drafts (impending or otherwise released) as final auditing standards should be more closely aligned, such that the proposed SASs are released collectively as a suite of new auditor reporting standards. This will afford the ASB the opportunity to address the numerous interrelated matters that affect these auditor reporting standards, while allowing auditors and other users the opportunity to seamlessly adopt and enact the new auditing reporting standards.

### **The Effective Date of the Proposed SAS**

We believe that the proposed effective date of "audits of ERISA plan financial statements for periods ending on or after December 15, 2018" does not allow sufficient time for the auditor, the plan sponsor, or management of such employee benefit plans (including service providers and legal counsel) to adequately prepare for the implementation of the proposed SAS.

We believe that the effective date of the proposed SAS should be aligned with the effective date of the proposed Form 5500 Series, *Annual Return/Report of Employee Benefit Plan* ("Form 5500"), as released by the DOL's Employee Benefits Security Administration, the IRS, and the Pension Benefit Guaranty Corporation (PBGC). This would serve to avoid any unnecessary confusion amongst auditors and users of the ERISA plan financial statements when implementing the proposed SAS and complying with the filing requirements of the proposed Form 5500. It is anticipated that the proposed Form 5500 would be effective with the plan year 2019 Form 5500 Series returns/reports.

It is also anticipated that the proposed Form 5500 will permit the new form of auditor's report (as contemplated by paragraphs 88-115 of the proposed SAS), when the ERISA-permitted audit scope limitation is imposed by management, to be filed. Until such time as the proposed Form 5500 is effective, assuming an earlier effective date for the proposed SAS, D&T recommends that the DOL issue timely guidance noting the acceptable and appropriate manner in which to file the new form of auditor's report, when the ERISA-permitted audit scope limitation has been imposed.

In addition, D&T notes that the proposed Form 5500 will require management to disclose to the DOL certain matters relating to the audit engagement, such as "material internal control weaknesses"<sup>2</sup>, which are not required in the proposed SAS. It would be beneficial to all interested parties to coordinate a practical and comprehensive approach to address both proposals at the same time given the overlapping impact on the audit engagement.

Finally, the proposed SAS does not include transitional guidance, for example, as it relates to making reference to the prior year in the auditor's report. We recommend that implementation guidance be

---

<sup>2</sup> Refer to proposed Form 5500 Series, *Annual Return/Report of Employee Benefit Plan*, Schedule H, *Financial Information*; Part III, *Accountant's Opinion*; paragraph 3f

released simultaneously with the finalization of the proposed SAS, such that auditors and other interested parties can plan accordingly.

For all the aforementioned reasons, as well as those relating to the impact of impending exposure drafts for the new auditor reporting standards, D&T recommends that the effective date be at the earliest for audits of those ERISA plan financial statements with a plan year ending on or after December 15, 2019.

These and other matters are discussed in further detail in the following appendices, as applicable:

- Appendix A—Issues for Consideration (specific feedback requested by the ASB)
- Appendix B—Other Specific Issues (areas for additional discussion)
- Appendix C—Editorial Recommendations
- Appendix D—Illustrative Auditor’s Reports

\* \* \*

D&T recommends that the ASB consider the weight and implications of these overarching concerns in determining a path forward as it relates to the finalization of the proposed SAS. We would be pleased to discuss our letter with you at your convenience. If you have any further questions, please contact Dora Burzenski at +1 206 716 7881.

Sincerely,

*Deloitte & Touche LLP*

## **APPENDIX A—ISSUES FOR CONSIDERATION**

### **Issue 1. Required Procedures When the ERISA-Permitted Audit Scope Limitation is Imposed**

D&T believes that the procedures and application guidance included in the proposed SAS relating to when the ERISA-permitted audit scope limitation is imposed will assist in driving improved and appropriate behavior in practice. However, there are a number of issues that we believe should be addressed in this section of the proposed SAS, *Procedures When ERISA-Permitted Audit Scope Limitation is Imposed* (refer to paragraphs 20 and 21, and related application material), in order to enhance and clarify the requirements. These issues are as follows:

- Management’s assessment (paragraph 20b).

D&T believes that the evaluation as outlined in paragraph 20b of the proposed SAS relating to whether the certification is issued (or transmitted) by a qualified institution should be based on management’s assertion, and not management’s assessment. Management should be making an assertion that the statement relating to assets held for investment of the plan (“investment information”) is prepared and certified by a qualified institution in accordance with ERISA, and the auditor should, based on professional judgment, perform appropriate audit procedures in order to evaluate that assertion.

- Prepared and Certified by a Qualified Institution

Title 29 U.S. Code of Federal Regulations (CFR) Part 2520.103-5 (29 CFR 2520.103-5) of the DOL’s Rules and Regulations for Reporting and Disclosure under ERISA requires that the qualified institution “transmit and certify such information as needed by the administrator...” for annual reporting purposes. In addition, 29 CFR 2520.103-8 states that the “report of an independent qualified public accountant need not extend to any statement or information prepared and certified by [a qualified institution].” In neither instance is there a reference to the *issuance* of the certification, rather *transmittal* is used in 29 CFR Part 2520.103-5. D&T believes that the activity of the qualified institution extends to both preparation and certification. This required (and duly certified) statement relating to investment information is then transmitted to the plan administrator.

D&T noted a number of instances where only “prepared” is used in the requirements of the proposed SAS. We believe that this may result in the auditor inappropriately inferring that it is acceptable for one bank or similar institution or insurance carrier, as applicable in the circumstances, to prepare the statement relating to investment information, and for another bank or similar institution or insurance carrier to certify such a statement, one of which would be the qualified institution. D&T therefore recommends that the phrase “prepared and certified” be used consistently throughout the proposed SAS, and that “transmitted” replace “issued” so as to align with the wording used in the DOL’s rules and regulations. This recommendation also extends to management’s assertion and written representation.

Examples of the singular use of “prepare” include:

- Paragraphs 12d(b) and 20a of the proposed SAS refer to the certification being prepared by a qualified institution.
- Paragraph 22d(b) of the proposed SAS requires that a written representation be obtained from management that acknowledges management’s responsibility to evaluate “whether the certification is prepared by a qualified institution.”
- Paragraph 96ai of the proposed SAS where management’s responsibility extends to an evaluation of whether the “certification is prepared by a qualified institution”

- Applicability of AU-C 705 (paragraph A42).

As discussed previously, we believe the auditor should express a qualified opinion when the ERISA-permitted audit scope limitation is imposed by management.

- Certification does not provide sufficient appropriate audit evidence on its own (paragraph A45).

The application material indicates that the certification “does not provide sufficient appropriate audit evidence on its own,” but does not provide the appropriate context for the auditor to make the determination as to what would constitute sufficient appropriate audit evidence or the assertions or risks of material misstatement for which the audit evidence is not sufficient. Therefore, clarification as to the assertions or risks of material misstatement that the certification as audit evidence is responsive to, is needed. Additionally, to provide further clarity, the application material should indicate that the audit procedures required in paragraphs 20a–d of the proposed SAS are necessary in order for the auditor to rely on the certification as audit evidence.

Refer to Appendix C for edits to the relevant paragraphs that take into account the reasons for the matters addressed above as well as other editorial recommendations, and Appendix D for the related edits to Illustrations 3 and 7 of paragraph A148, Exhibit—*Illustrations of Auditor’s Reports on Financial Statements of Employee Benefit Plans Subject to ERISA*.

## **Issue 2. The Form and Content of the Auditor’s Report on ERISA Plan Financial Statements with the ERISA-Permitted Audit Scope Limitation**

With the exception of the *Reporting on Specific Plan Provisions Relating to the Financial Statements* section (refer to paragraphs 110–112 of the proposed SAS) included in a management-imposed ERISA-permitted audit scope limitation auditor’s report, D&T believes that the new form of auditor’s report (as contemplated by paragraphs 88–115 of the proposed SAS), will provide improved transparency and additional clarity to users, in particular, as it relates to highlighting and describing the responsibilities of management and the auditor.

D&T does, however, have proposed edits to the management-imposed ERISA-permitted audit scope limitation reporting requirements to align the elements in paragraphs 88–109 and paragraphs 113–115 of the proposed SAS with existing requirements and application guidance in (a) paragraphs 49–65 and paragraphs 70–72 of the proposed SAS, where appropriate; (b) AU-C 705; and (c) AU-C 706. The more significant editorial recommendations are as follows:

- Basis for Limitation on the Scope of the Audit (paragraphs 93 and 94).

As highlighted in Appendix A—Issue 1, D&T believes the ERISA-permitted audit scope limitation imposed by management should be described in the auditor’s report in a manner similar to scope limitations as required in AU-C 705 and included instead as a paragraph under the *Basis for Qualified Opinion* heading in the auditor’s report. Where the auditor is unable to obtain sufficient appropriate audit evidence due to a management-imposed ERISA-permitted audit scope limitation (albeit allowed by the DOL’s Rules and Regulations under ERISA), D&T believes that the auditor’s report should be appropriately modified to reflect such a qualified opinion. We believe that this will more accurately reflect the nature of the ERISA-permitted audit scope limitation imposed by management as described in the proposed SAS, while also allowing for the auditor’s opinion to be qualified.

- Auditor’s Responsibility (Including Responsibility for the Certified Investment Information (paragraphs 98–104).

D&T recommends that the statement highlighting the auditor’s responsibility with respect to the ERISA-permitted audit scope limitation imposed by management as it relates to the certified investment information be amended so as to be reflective of the responsibilities that the auditor actually performs, as opposed to those areas the auditor did not address. This

makes for a more positive statement of responsibilities in this section of the auditor's report. Further, D&T notes that the procedures listed should not be limited, as the auditor may, based on professional judgment, perform additional procedures and this would imply the auditor's report would need to be amended to encompass any additional procedures the auditor performs.

- Auditor's Opinion with the ERISA-Permitted Audit Scope Limitation of the Financial Statements (paragraphs 105–106)

For reasons noted above, D&T believes that the ERISA-permitted audit scope limitation as imposed by management results in a qualified audit opinion.

Refer to Appendix C for edits to the relevant reporting element paragraphs that take into account the reasons for the significant changes addressed above as well as other editorial recommendations, and Appendix D for the related edits to Illustrations 3 and 7 of paragraph A148.

### **Issue 3. Modifications to the Opinion in the Independent Auditor's Report**

D&T believes that the section in the proposed SAS dealing with the *Form of Opinion* (refer to paragraphs 29–35 of the proposed SAS), particularly as it relates to those requirement paragraphs addressing modifications to the auditor's report where management has imposed the ERISA-permitted audit scope limitation, is overly complex and does not readily align with the existing requirements in AU-C 705 and, therefore, does not provide the additional transparency that the changes seek to provide.

D&T's concerns as they relate to amending the independent auditor's report when there are modifications to the opinion are addressed below:

- Impact on Introductory paragraph (paragraph 34)

D&T believes that the statement required by paragraph 92b of the proposed SAS (which requires that the introductory paragraph in the auditor's report state that the auditor performed an audit subject to the limitation on the scope of the audit imposed by management, as permitted by ERISA), should be included in the introductory paragraph irrespective of whether or not there are additional modifications to the auditor's opinion beyond the ERISA-permitted audit scope limitation imposed by management. We believe that this information is essential for the user's understanding of the ERISA plan financial statements and will provide additional clarity to the user as to the scope of the audit engagement that is being performed by the auditor.

- Applicability of AU-C 705 (paragraph 34)

AU-C 705 should be applicable in all instances when there are modifications to the auditor's report for those instances beyond the management-imposed ERISA-permitted audit scope limitation. We believe this will result in the reporting requirements of the proposed standard being consistently applied in practice, that otherwise may be inadvertently misinterpreted because of unnecessary nuances in the treatment of additional modifications specific to the management-imposed ERISA-permitted audit scope limitation auditor's report. For example, we believe that the description of the ERISA-permitted audit scope limitation imposed by management and the effects relating thereto should be a requirement in the proposed SAS and included as part of the basis for modification consistent with paragraph 22b of AU-C 705.

Refer to Appendix C for edits to the relevant paragraphs that take into account the reasons for the matters addressed above as well as other editorial recommendations, and Appendix D for the related edits to Illustrations 1, 3, and 7 of paragraph A148.

#### Issue 4. Required Emphasis-of-Matter Paragraphs

D&T believes that the situations required in paragraph 116 of the proposed SAS are appropriate to be included in an emphasis-of-matter paragraph; however, we believe that these situations should be included as application material. Essential to the determination of whether an emphasis-of-matter paragraph is necessary, is the ability of the auditor, based on the “the auditor’s professional judgment,” to include in the auditor’s report those matters that are fundamental to the users’ understanding of the financial statements. We believe that requiring these situations to be included as emphasis-of-matter paragraphs is overly prescriptive and does not allow for auditor judgment. It is also not clear whether the list is complete. Consequently, we believe that the examples should instead be included as application material. Further, it should be made clear that paragraph 116 of the proposed SAS does not preclude the auditor from including any other emphasis-of-matter paragraphs in accordance with AU-C 706.

Refer to Appendix C for edits to paragraph 116 of the proposed SAS.

#### Issue 5. Reporting Internal Control Deficiencies

D&T believes that the current reporting of internal control deficiencies to those charged with governance and management in accordance with AU-C section 265, *Communicating Internal Control Related Matters Identified in an Audit* (AU-C 265), is sufficient and appropriate.

#### Issue 6. Certain Requirements for Audits of ERISA Plan Financial Statements and Related Required Report on Specific Plan Provisions Relating to the Financial Statements

##### 1. With respect to the required procedures in paragraphs 15–16

- a. **Will these requirements enhance the consistency and quality of the audit work performed relating to matters that could have a direct effect on the financial statements, including related disclosures, and if not, why?**

##### Paragraph 15

D&T believes that complying with the requirements specifically outlined in paragraph 15 of the proposed SAS would further enhance audit quality, and drive consistency in practice. It should, however, be noted that performing substantive procedures relating to the items outlined in paragraph 15 of the proposed SAS are likely already considered as the auditor identifies and responds to the assessed risks of material misstatement when performing existing ERISA plan financial statement audits.

In addition, we do not concur that these items should be performed “irrespective of the risks of material misstatement,” as these items should be considered by the auditor as part of, and in the context of, identifying and assessing the risks of material misstatement in accordance with AU-C 315. Consequently, when forming an opinion on the ERISA plan financial statements, the auditor would evaluate the results of the substantive procedures performed in response to the assessed risks of material misstatement, which may include certain items in paragraph 15 of the proposed SAS, as part of obtaining reasonable assurance about whether the ERISA plan financial statements are free from material misstatement. Our view is also supported by the fact that the lead-in to the *Report on Specific Plan Provisions Relating to the Financial Statements* starts “as part of obtaining reasonable assurance about whether ABC 401(k) Plan’s financial statements are free from material misstatement, we are required to perform certain procedures ...” Performing procedures “irrespective of the risk of material misstatement” is not consistent with how the report of findings is portrayed in the context of the EBP audit engagement. Therefore, it is recommended that the lead-in to paragraph 15 of the proposed SAS be amended; refer to Appendix C for edits that take into account the reasons for the matters addressed

above as well as other editorial recommendations. Further, we also recommend that paragraph A14 of the proposed SAS be revised to make clear that risks of material misstatement identified as part of considering the items in paragraph 15 of the proposed SAS are required to be addressed in accordance with AU-C section 330, *Performing Audit Procedures in Response to Assessed Risks and Evaluating the Audit Evidence Obtained*.

#### Paragraph 16a

We believe that the requirement as drafted does not provide appropriate parameters as to what relevant Internal Revenue Code (IRC) compliance tests are to be addressed. Paragraph A36 of the proposed SAS provides a reference to Exhibit B— *Nondiscrimination and Other Operating Tests for Plan Qualification* of the proposed SAS, which lists the compliance tests contemplated, but the requirement states that only those relevant IRC compliance tests need to be addressed. It is, therefore, unclear as to whose responsibility it is to determine which compliance tests are relevant to the requirement (i.e., the auditor's or management's).

In addition, audit procedures are performed so as to obtain sufficient appropriate audit evidence in order to provide reasonable assurance about whether the ERISA plan financial statements are free from material misstatement. It is unclear how performing these compliance-related procedures and evaluating the related results would impact the auditor's conclusion about whether the ERISA plan financial statements as a whole are free from material misstatement.

Paragraph A35 of the proposed SAS states that "the auditor's testing of whether the plan has performed and passed, corrected, or intends to correct failures of relevant IRC compliance tests is often performed through inquiry and inspection and may not include substantive audit procedures." As paragraph 10 of AU-C section 500, *Audit Evidence*, only identifies three types of audit procedures (risk assessment procedures, tests of controls, and substantive procedures), it is unclear what is intended by stating that the inquiry and inspection do not constitute substantive procedures, as this would mean they are either risk assessment procedures (which would not be sufficient for purposes of the audit opinion) or tests of controls, which it does not appear they are. We suggest deleting the phrase "...and may not include substantive audit procedures," as its purpose and meaning are not clear.

Further, the time frame referred to in paragraph 16a of the proposed SAS may straddle an audit period, so in that instance it may be difficult for the auditor to determine "whether the plan has performed and passed, corrected, or intends to correct failures of relevant IRC compliance tests within the time provided by the regulation." Additional factors may contribute to delays in the timing, including, for example, extensions obtained by the plan administrator, as well as possible delays on the part of the regulator. Consequently, D&T recommends that paragraph 16a of the proposed SAS be deleted.

#### Paragraph 16b

Paragraph 16b of the proposed SAS appears to be broadly encompassed by paragraph 15i of the proposed SAS, and, as such, we believe that the paragraphs may be combined.

- b. Does the proposed SAS provide appropriate guidance on achieving these requirements, including:**
- i. which provisions of the plan instrument should be tested; and**
  - ii. to what extent testing should be performed?**

Our response to the issue encompasses the following four areas:

### Irrespective of the risks of material misstatement

Paragraph 15 of the proposed SAS requires that substantive procedures be performed “irrespective of the risks of material misstatement.” D&T believes this will result in inconsistency in application, as it may not clearly be understood what the auditor is intended to do. One of the underlying principles of a risk-based audit approach is the concept of identifying and assessing the risks of material misstatement and then developing audit procedures in response to the assessed risks. This audit approach is based on the auditor’s professional judgement. The requirement in paragraph 15 of the proposed SAS is contrary to that fundamental principle. (Refer to Appendix A—Issue 6-1a for further discussion)

D&T also believes that the objective of the testing in paragraphs 15 and 16 of the proposed SAS needs to be more clearly articulated. If the intent is to denote the extent of testing to be performed (as discussed in paragraph A16 of the proposed SAS, which states that “some relevant testing is expected to be performed for each of the matters in paragraphs 15–16”), then the proposed SAS needs to be clear in that regard, and this concept should be incorporated into paragraph 15 of the proposed SAS, so that the auditor’s performance requirements are clear.

While we understand that the identification and assessment of the risks of material misstatement in accordance with AU-C 315 is conducted without consideration of the effects of internal control, it is unclear whether the relevant testing is to be performed irrespective of whether or not a control reliance strategy is adopted (that is, whether the testing performed can be reduced if the operating effectiveness of the relevant control is tested). Paragraph 15 of the proposed SAS and the related application material do not address engagement circumstances where the auditor has adopted a control reliance strategy or when a Service Organization Controls Report (Type 2) is used. Furthermore, paragraph 16 of the proposed SAS uses the phrase “...should perform audit procedures”; as audit procedures include tests of controls and risk assessment procedures, it would seem acceptable that these would be appropriate procedures to perform to address the requirements in paragraph 16 of the proposed SAS. D&T believes application material is needed to address these and other similar situations, which would include guidance on the performance of the substantive procedures as well as the extent of testing.

### Types of transactions

The matters addressed in paragraph 15 of the proposed SAS do not specify the types of transactions that should be subjected to the substantive testing, for example, the types of benefit payments (such as lump-sum, hardship, in-kind, Qualified Domestic Relations Order), employee contributions (such as pre-tax, rollover, Roth 401(k)), and employer contributions (such as noncash, matching, profit-sharing). It is unclear whether the relevant testing should apply to benefit payments in total or to each type of benefit payment; this lack of clarity will result in inconsistent application of the requirements. D&T believes that further guidance in this area is necessary to assist auditors in understanding how to address the requirement.

### Cash balance plan

The proposed SAS is applicable to all EBPs as indicated in paragraph 1. However, D&T does not believe that the requirements and related application material are clear in paragraphs 15g, 15i, and 16b of the proposed SAS, as to whether a defined benefit plan with individual cash balance accounts would be subject to the required substantive procedures. The application material related to paragraphs 15g, 15i, and 16b of the proposed SAS currently illustrates the participant account activity of a defined contribution plan.

For example, paragraph A27 of the proposed SAS refers to ERISA section 3(34) and goes on to state that “an individual account plan means a pension plan that provides for an individual account for each participant ...” However, when referring to ERISA section 3(35)B, it indicates that a defined benefit plan “...shall be treated as an individual account plan to the extent benefits are based upon the separate account of a participant and as a defined benefit plan with respect to the remaining portion of benefits under the plan.” It is D&T’s understanding that as a cash balance plan meets the criteria in ERISA section 3(35)B, such a type of defined benefit plan would be treated as an individual account plan and the auditor should also perform procedures to address the matter in paragraph 15g of the proposed SAS. Paragraph A27 of the proposed SAS also notes that “health and welfare plans may also contain individual account plans as defined in this paragraph.”

D&T recommends that the proposed SAS be clarified to address that defined benefit plans with individual cash balance accounts would also be subjected to substantive procedures and that health and welfare plans are not the only other type of plan that may contain individual account plans. Further, we do not believe that it is appropriate to “define” individual account plans in a guidance paragraph, rather a reference should be made to the applicable regulation.

#### Plan expenses

D&T notes that paragraph 15f of the proposed SAS only discusses whether expenses have been allocated between plans in accordance with an appropriate allocation formula, and does not address whether plan expenses are allowable, are reasonable and recorded at the appropriate amount, and paid to the correct party. D&T believes that the proposed SAS should also require auditors to perform substantive procedures to evaluate whether expenses are permissible or excessive in accordance with ERISA and the plan instrument, as applicable. D&T notes that where an expense is not permissible, it will likely be a prohibited transaction and would need to be reported by management in the supplemental schedules.

**c. What procedures related to other plan provisions or specific areas of the financial statements should be included in the required testing to enhance the usefulness of the proposed reporting of the findings?**

See response following in Appendix A—Issue 6-2a-f.

**2. With respect to the reporting on the findings resulting from performing procedures related to the areas in paragraphs 119–124, whether there are opportunities to enhance the proposed requirements and guidance including whether:**

**a. Including the list of individual areas tested is appropriate and if so whether there are other items that should also be included (if not, why not).**

D&T does not support reporting the findings identified as a result of performing substantive procedures to respond to the requirements in paragraphs 15 and 16.

**b. The requirement to exclude findings that are “clearly inconsequential” is appropriate, and if so is there guidance the ASB can consider to drive consistency in application in practice?**

It is our opinion that the action of reporting individual findings will not improve audit quality. As previously mentioned, we believe that the requirement to present individual findings without the appropriate context in order for the user to make an informed determination as to the relative importance, severity or pervasiveness of the individual

finding does not lend itself to an appropriate level of transparency and clarity. Further, D&T believes that there will be diversity in practice, without appropriate guidance, as to how to apply the criteria in paragraph 121, especially in circumstances where auditors may differ in the determination of applying the concept of “clearly inconsequential.”

- c. The findings should also include any matters identified by management or the plan administrator? [Note: As currently drafted, the proposed SAS required the auditor to include findings that were noted as part of the auditor’s work performed in relation to paragraphs 15 and 16.]**

The proposed SAS, as it relates to the report of findings, is structured in such a way that the auditor is inappropriately being held responsible for certain fiduciary, administrative and operational actions that are the function of the plan administrator and management. We believe that management should be directly responsible for reporting findings to the DOL, similar to the current correction methods available when management or the plan administrator reports certain fiduciary breaches, and other administrative or operational control failures.

- d. The reporting illustrations included in the Exhibits to the proposed SAS specific to reporting the findings are clear and result in sufficient information to the user of the report?**

D&T does not support reporting the findings identified as a result of performing substantive procedures to respond to the requirements in paragraphs 15 and 16 of the proposed SAS. The findings are also listed in the reporting illustrations without the appropriate background in order to provide the user of the auditor’s report the context with which to assess the severity and/or pervasiveness of the individual findings. We do not believe this provides any transparency or benefit to the user.

- e. There may be unintended consequences from including the findings in the auditor’s report, and if so, what those unintended consequences may be and how might they be mitigated?**

Unintended consequences include litigation against both the EBP and the plan sponsor, as the report of findings is a general use report and will be included in a public filing. This may result in frivolous cases being pursued causing unnecessary administrative costs and burden on the EBP, the plan administrator, and the plan sponsor. Such exposure will inevitably divert attention from performing a quality audit, to one of focusing on the client relationship including frequent correspondence with general counsel, and the detailed documentation by the auditor of those findings deemed to be “clearly inconsequential.” Ultimately, the focus of an audit of financial statements of an EBP will be on reporting findings, and the application of the “clearly inconsequential” criteria as well as the related discussions with the plan sponsor, which will not serve to increase audit quality.

- f. There are alternatives to reporting the findings in the auditor’s report that would achieve the objectives related to enhancing audit quality?**

A finding, whether administrative, operational, systematic, or isolated, may represent a breakdown in internal control, although not necessarily a breakdown in internal control over financial reporting in all instances.

In accordance with AU-C 265, if the auditor has identified one or more deficiencies in internal control, the auditor should evaluate each deficiency to determine, based on the audit work performed, whether, individually or in combination, they constitute a significant

deficiency or material weakness in internal control over financial reporting, and to communicate to those charged with governance and management. This communication is in writing. Where the deficiency in internal control over financial reporting is neither a significant deficiency nor material weakness, and such other deficiency has not been communicated to management by others and, in the auditor's professional judgment, is of sufficient importance to merit management's attention. This communication may be in writing or oral.

Paragraph 12d of AU-C section 260, *Communicating Internal Control Related Matters Identified in an Audit* (AU-C 260), requires the auditor to communicate with those charged with governance "other findings or issues, if any, arising from the audit that are, in the auditor's professional judgment, significant and relevant to those charged with governance regarding their responsibility to oversee the financial reporting process." This communication may be in writing or oral, depending on the auditor's professional judgment.

AU-C 260 applies to internal control more broadly and encompasses the "achievement of the entity's objectives with regard to the reliability of financial reporting, effectiveness and efficiency of operations, and compliance with applicable laws and regulations."<sup>3</sup>

Nothing in AU-C 265 precludes the auditor from communicating to those charged with governance or management other internal control matters that the auditor has identified during the audit. Likewise, nothing in AU-C 260 prohibits the auditor from communicating any other matter to those charged with governance, including those findings considered not significant by the auditor.

Whether a finding is insignificant or pervasive and significant in nature, such finding may be reported to the DOL or the IRS through their respective formal correction programs (e.g. the Voluntary Fiduciary Correction Program, or the Employee Plans Compliance Resolution System, amongst other programs), so as to maintain the EBP's tax qualified status under ERISA. These correction programs largely provide plan sponsors the ability to self-correct certain fiduciary breaches, and other administrative or operational control failures that may have occurred without reporting these matters directly to the DOL or the IRS. In certain instances these matters may be reported on an anonymous basis in accordance with the guidelines of the requisite correction program. D&T believes that the reporting of findings required by the proposed SAS will interfere with, and may possibly result in the EBP no longer qualifying for, the self-correction programs already in place, for example, timing issues relating to when the finding is disclosed in the auditor's report versus being appropriately resolved in accordance with a correction program. Consequently, we believe that the proposed SAS compromises the ability of plan sponsors to address and correct EBP non-compliance matters within the parameters of these correction programs. Further, it is our view that by requiring the auditor to report findings, it has redirected the obligation of reporting such matters to the auditor. The obligation of reporting and correcting findings is a fiduciary responsibility and should remain the responsibility of the plan sponsor only.

An alternative to reporting the findings in the auditor's report could be to amend both AU-C 260 and AU-C 265 specifically for audits of EBP, such that the following communications to those charged with governance or management should be in writing:

- Communication of other deficiencies of sufficient importance to merit management's attention (AU-C 265), and

---

<sup>3</sup> Refer to paragraph 4 of AU-C section 315, *Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement*

- Communication of other significant findings (AU-C 260).

This would ensure that those with a fiduciary responsibility for the administration for the EBP would be made formally aware of pertinent internal control matters.

In conjunction with the recommendation above, D&T believes that the rules and regulations of the applicable reporting and correction programs available through the IRS and DOL should be amended to require the plan sponsor to disclose any written communications received by those charged with governance or management, as appropriate, from the auditor relating to internal control matters or findings pertaining to the EBP audit engagement, on a non-public basis.

### **3. Whether the required additional procedures and reporting of findings will result in additional costs, and if so, views as to the extent of those costs and whether they outweigh the potential benefits of enhanced audit quality?**

D&T believes that the required procedures may result in an incremental work effort, with the consequent increase in hours and related fees for auditors. This may occur as the substantive procedures need to be performed irrespective of the risks of material misstatement, thereby increasing the extent of testing. D&T does acknowledge that one of the potential benefits of performing the procedures, in paragraphs 15 and 16 of the proposed SAS, would be to enhance the quality of the audit by directing the auditor's attention to specific areas of the EBP audit engagement and having granular requirements that drive consistency in the application of the substantive procedures.

However, for reasons articulated above, we do not believe the incremental costs associated with the reporting of the individual finding(s) would lead to enhanced audit quality and, as such, do not support either the inclusion in the auditor's report of a separate section detailing the findings, or a separate report relating thereto.

### **Issue 7. Required Procedures Relating to the Form 5500**

We agree that the requirements in paragraphs 36–48 of the proposed SAS, as well as the related application guidance, provide the appropriate procedures necessary to assess whether there are material inconsistencies between the ERISA plan financial statements on which the auditor is reporting and the Form 5500, leading to improved and increased consistency in this area of the ERISA plan financial statement audit engagement.

### **Issue 8. Proposed New Reporting Standard and Amendments to Other AU-C Sections**

D&T believes the proposed approach of creating a new reporting model for reporting on ERISA plan financial statement audits, except for the *Reporting on Specific Plan Provisions Relating to the Financial Statements* that is proposed to be included in a separate section in the auditor's report on the ERISA plan financial statements or in a separate report, as applicable (refer to paragraphs 66-69, 110-112 and 119-124 of the proposed SAS), will provide for additional clarity. In particular, the proposed reporting will enhance transparency for the intended users of the ERISA plan financial statements.

The proposed amendments to the other AU-C sections are appropriate. It is, however, noted that when referring to AU-C 700 and AU-C section 703, *Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA (AU-C 703)*, in various AU-C sections in Appendix B—Amendments to Various Sections in SAS No. 122, *Statements on Auditing Standards: Clarification and Recodification, as Amended*, that in certain instances the connector “and” is used, and in others “or” is used. It was also noted that there was an inconsistent use of the modifier “as applicable” when referring to AU-C 700 and AU-C 703. D&T recommends a consistent approach be taken in order to conform the wording used as appropriate in the context. For example:

AU-C section 450, *Evaluation of Misstatements Identified During the Audit*

- Paragraph .A12—there is a reference to “[s]ection 700 **and** section 703,” yet the footnote references to the specific paragraphs also add the qualifier “**as applicable**”

AU-C section 510, *Opening Balances—Initial Audit Engagements, Including Reaudit Engagements*

- Paragraph .A15—there is a reference to “[s]ection 700 **and** section 703, **as applicable**,” yet the footnote references to the specific paragraphs do not add the qualified “as applicable”

D&T does not anticipate that other sections would need to be amended at this time to reflect the provisions of the proposed SAS.

### **Issue 9. Proposed Effective Date**

This issue is addressed as an overarching concern in our comment letter.

## **APPENDIX B—OTHER SPECIFIC ISSUES**

### **Plan Instrument (paragraph 14)**

D&T believes that the reference to the plan instrument in paragraph 14 of the proposed SAS should be qualified to reference those “significant documents comprising the plan document.” D&T believes there are valid circumstances when not all documents are necessary to be provided (e.g., because they are insignificant, inconsequential, or not essential to understanding the plan), and therefore, this requirement is onerous and not necessary.

### **Assets Held for Investment (paragraphs 20 and 21) and Written Representations (paragraph 22)**

Paragraph 6 of the proposed SAS refers to “assets held for investment of the plan prepared and certified by a bank or similar institution or an insurance carrier ... .” D&T acknowledges that the DOL has never defined the term “held/hold” for investment; however, it is our view that the proposed SAS uses the underlying concepts of “hold” and “custody” interchangeably (although “custody” is not explicitly referred to in the proposed SAS). Determining whether assets are being held for investment is a legal interpretation and beyond the scope of the auditor’s engagement. However, in order to comply with the requirements in paragraphs 20 and 21, we believe that there should be application material to address what is intended when a qualifying institution “holds” investments.

As it pertains to paragraph 20b of the proposed SAS, D&T believes that management should also assert that the appropriate bank or similar institution or insurance carrier is preparing and certifying the statement relating to investment information, as well as transmitting that statement to the plan administrator. By doing so, the responsibility is on management to make the determination as to whether the appropriate bank or similar institution or insurance carrier is in a position to make the certification. Likewise the written representation requested from management in paragraph 22d(b) should refer to the statement that is both prepared and certified by the appropriate qualified institution. This will also ensure that management is aware of their responsibilities as it relates to certification in accordance with 29 CFR 2520.103-5 and 29 CFR 2520.103-8, including understanding the following:

- Whether the third-party that holds (or has custody of) assets for investment, is an appropriate bank or similar institution or insurance carrier preparing and certifying the statement relating to investment information.
- Whether the appropriate bank or similar institution or insurance carrier preparing and certifying the statement relating to investment information, actually holds (or has custody of) the assets for investment.
- If the statement relating to investment information is transmitted by a third-party other than the appropriate qualified institution holding the investments, that such third-party is authorized to represent the qualified institution.

D&T recommends that this issue be clarified by highlighting in paragraphs 12d(b), 20b and 22d(b) of the proposed SAS (related to management’s responsibilities, assertion and written representations, respectively) that it is the certification transmitted by the “appropriate qualified institution” that is relevant when the auditor performs the required procedures when the ERISA-permitted audit scope limitation is imposed. This would also impact the related reporting elements – refer to paragraphs 96ai and 102b of the proposed SAS. We believe this is an area that may result in confusion and inconsistency in application.

We do note that there are differences in the requirement paragraphs of the proposed SAS when comparing management’s responsibility (paragraph 12d(b) of the proposed SAS), management’s written representation (paragraph 22d(b) of the proposed SAS) and management’s responsibility as stated in the auditor’s report (paragraph 96ai of the proposed SAS) to the procedures performed by

the auditor to evaluate management's assertion (paragraph 20b of the proposed SAS) and the auditor's responsibility as stated in the auditor's report (paragraph 102b of the proposed SAS). D&T believes the edits proposed in Appendix C are appropriate and address the inconsistencies, while also taking into consideration the wording in 29 CFR 2520.103-5 and 29 CFR 2520.103-8.

### **"Type" of Employee Benefit Plan**

It is noted that certain of the requirements in paragraphs 15 and 16 of the proposed SAS as well as the related application material are not sufficiently precise when referring to the type of employee benefit plan; therefore, additional clarity is requested. For example:

Paragraph 16b—When referencing the individual account plans, it is not clear whether the plan is a defined contribution plan or a defined benefit cash balance pension plan. If the latter, then the listing of items to evaluate should also include that the interest rate, i.e. the interest rate used when calculating interest income to be credited to the individual account plans, is in accordance with the plan instrument provisions.

## **APPENDIX C—EDITORIAL RECOMMENDATIONS**

The editorial recommendations are highlighted as follows: Additions are noted in bold underline and deletions are noted in strike-through text. The markup of the paragraphs follows the same numerical sequence/ordering of sections as structured in the proposed SAS.

### **Scope of This Proposed Statement on Auditing Standards (paragraphs 1–8, and related application material)**

The following edits are recommended to address other considerations identified by D&T, primarily to conform to terms already defined in paragraphs 1 and A3 as well as align with recommendations relating to paragraphs 92, 96d, 101b, and 106 of the proposed SAS below, relevant to this section in the proposed SAS:

#### Paragraph A4

D&T recommends that the application material references “Form 5500” instead of “an annual filing with the DOL,” as it is already described and referenced in paragraph 2 of the proposed SAS. The listing of the regulatory bodies should be in the sequential order as previously described in paragraph 2 of the proposed SAS. “Plan management” is also previously described in paragraph A3 of the proposed SAS as “management,” D&T recommends aligning the wording accordingly.

A4. Under ERISA, the DOL and IRS have the authority to issue regulations governing the administration of EBPs, including reporting and disclosure requirements to be included in **the Form 5500**~~an annual filing with the DOL~~. The DOL does not establish the financial reporting framework; for example, the DOL does not set generally accepted accounting principles for ERISA plan financial statements. The selection of an acceptable financial reporting framework is the responsibility of management. The PBGC guarantees participants in most private-sector defined benefit pension plans certain minimum pension benefits if the plan terminates without sufficient money to pay all benefits, and it administers terminated plans in certain circumstances. The **DOL, IRS, IRS, DOL,** and PBGC have consolidated their reporting and disclosure requirements into the Form 5500 to minimize the filing burden for ~~plan~~ management.

#### Paragraph 4

We believe that the paragraph should state simply that all AU-C sections should apply. We also noted other edits of a more clerical nature that would improve the clarity of the paragraph.

4. When performing an audit of ERISA plan financial statements, **all the** AU-C sections ~~200, General Principles and Responsibilities, through 700, Audit Conclusions and Reporting, in AICPA, Professional Standards,~~ apply except for the following AU-C sections or portions thereof that are not applicable to an **audit of ERISA plan financial statements** ~~audit engagement~~ because the requirements and **related application and other explanatory** material are specifically covered in this proposed SAS:
  - a. AU-C section 700, Forming an Opinion and Reporting on Financial Statements (AICPA, Professional Standards)
  - b. Paragraph .09 of AU-C section 725, *Supplementary Information in Relation to the Financial Statements as a Whole* (AICPA, Professional Standards), **including the related application and other explanatory material**

...

## Considerations When Forming an Opinion and Reporting on ERISA Plan Financial Statements (heading immediately preceding paragraph 12)

D&T believes that the word *considerations* is inappropriately being utilized in the heading. The requirements following are more than considerations, they are presumptively mandatory requirements<sup>4</sup> as indicated by the use of the word *should* in each of the paragraph. We believe that the words “Considerations When” in the heading are not necessary and should be deleted.

## Engagement Acceptance (paragraphs 12 and 13, related application material)

D&T suggests amending the wording in paragraph 12c of the proposed SAS that addresses the purpose of ERISA section 107 and 209 to more closely align with the words in the paragraph A50 of the proposed SAS that more fully describes the applicable ERISA sections. A cross-reference to where the ERISA sections are more comprehensively discussed is added. Also, refer to the editorial recommendations below relating to this matter in paragraph 22b and the related application material of the proposed SAS.

Edits have also been made to paragraphs 12d(b), 20a, 22d(b) and 96ai of the proposed SAS to reflect that the statement relating to assets held for investment of the ERISA plan should be prepared and certified by a qualified institution to address inconsistencies in the proposed SAS. Edits have also been made to paragraphs 20b and 102b to reflect that the certification is transmitted by a qualified institution. (refer to Appendix A—Issue 1 and Appendix B—*Assets Held for Investment and Written Representations* for further discussion).

We also recommend that there be additional application material to alert the auditor that more than one certification may be needed where the underlying investments are held by more than one custodian.

12. In addition to the requirements in AU-C section 210, the auditor should obtain the agreement of management that it acknowledges and understands its responsibility for (Ref. par. A11)

- a. ...
- b. ...
- c. maintaining ~~sufficient~~ records **in sufficient detail** with respect to each of the participants ~~in accordance with ERISA section 107 and 209~~ to ~~permit-determine~~ the benefits **to be properly calculated and paid when** due or which may become due to such participants, **in accordance with ERISA sections 107 and 209 (Ref: par. A50)**
- d. ~~When~~ the ERISA-permitted audit scope limitation is imposed, **(Ref: par. A11A)**
  - a. ~~D~~determining ...
  - b. ~~E~~valuating whether the **statement relating to investment information** certification is prepared **and certified** by ~~the~~ **appropriate** qualified institution **(Ref. par. A45B)**
  - c. ...

**A11A. The auditor may need to obtain certifications from additional qualified institutions where the assets of the plan are held for investment by more than one qualified institution.**

---

<sup>4</sup> Refer to paragraph 25 of AU-C section 200, *Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance With Generally Accepted Auditing Standards*.

### Certain Requirements for Audits of ERISA Plan Financial Statements (paragraphs 14–19, and related application material)

D&T does not believe that the heading, “Certain Requirements for Audits of ERISA Plan Financial Statements” conveys the intent of the proposed SAS. The requirements following are in addition to requirements already being performed in accordance with all the AU-C sections, the requirements in paragraphs 14-19 of the proposed SAS are merely specific to audits of ERISA plan financial statements. The use of *certain* implies a selection of requirements, and not others. We recommend that the heading be amended as follows:

~~Certain~~ Requirements **Specific to** Audits of ERISA Plan Financial Statements

The following edits are recommended to address the matters noted in Appendix A—Issue 6-1a

#### Paragraph 15

15. ~~In~~ ~~respect~~ ~~of~~ ~~the~~ ~~risks~~ ~~of~~ ~~material~~ ~~misstatement~~ ~~In~~ ~~applying~~ ~~AU-C~~ ~~section~~ ~~315~~, ~~as~~ ~~part~~ ~~of~~ **identifying and assessing the risks of material misstatement**, the auditor should **consider whether risks of material misstatement exist** ~~perform substantive procedures~~ for the following **items**: ...

### Procedures When ERISA-Permitted Audit Scope Limitation is Imposed (paragraphs 20 and 21, and related application material)

The following edits are recommended to address the matters noted in Appendix A—Issue 1, as well as other considerations identified by D&T relevant to this section in the proposed SAS:

#### Paragraph 20

When performing procedures related to information not covered by the certification, the auditor does so based on the identified and assessed risks of material misstatement. We believe the wording should be amended to reflect the basis for designing and performing further audit procedures as required by paragraph 26 of AU-C 315.

We also propose edits to paragraph 20a of the proposed SAS to address the issues relating to the qualified institution preparing and certifying the statement relating to investment information (Refer to Appendix A—Issue 1 and Appendix B—*Assets Held for Investment and Written Representations* for further discussion).

D&T believes that the evaluation as outlined in paragraph 20b of the proposed SAS relating to whether the certification is transmitted by the appropriate qualified institution should be based on management’s assertion, and not management’s assessment (refer to Appendix A—Issue 1 for further discussion).

We believe the reference to “entity” in paragraph 20b of the proposed SAS should be more closely aligned with the terminology already used in paragraph 6 of the proposed SAS, as well as in the management-imposed ERISA-permitted audit scope limitation auditor’s report—refer to paragraph 94a of the proposed SAS.

In addition, the edits are proposed to align the wording in the required procedures in paragraphs 20a–d, with the language in the reporting elements as described in paragraph 102 of the proposed SAS.

20. When management imposes an ERISA-permitted **audit** scope limitation ~~on the audit~~, the auditor should perform audit procedures on the information not covered by the certification, including noninvestment-related information and investment information not covered by the certification, based on the **identified and** assessed risk of material misstatement. Plans may hold investments, only a portion of which are covered by a certification by a qualified institution. In that case, the auditor should perform auditing procedures on the investment information that has

not been properly certified. The auditor should also perform the following procedures on the certified investment information: (Ref. par. A42-A43 ~~and A43A~~)

- a. obtain from management and read the certification, ~~particularly~~ as it relates to investment ~~related~~ information, prepared **and certified** by a qualified institution; (Ref. par. A44-~~A45~~)
- b. evaluating management's ~~assertion~~ assessment of whether the **bank or similar institution or insurance carrier** ~~entity~~ **preparing and certifying the statement relating to investment information, and transmitting such statement** ~~issuing the certification~~ is **the appropriate** qualified institution under ~~ERISA-DOL rules and regulations~~; **(Ref. par. A45A-A45B)**
- c. compare the certified investment information with the related information **presented and disclosed** ~~included~~ in the ERISA plan financial statements ~~and related disclosures~~; (Ref. par. A46)
- d. evaluate whether the form and content of the ~~ERISA plan financial statement disclosures related to the~~ **certified investment** information **presented and disclosed in the ERISA plan financial statements** ~~prepared and certified by a qualified institution are~~ **is** in accordance with the applicable financial reporting framework. (Ref. par. A47-A48)

#### Paragraph A42

D&T believes that the ERISA-permitted audit scope limitation imposed by management should be treated, and disclosed, in a manner similar to that required in AU-C 705 (refer to Appendix A— Issue 1 for further discussion). As such, D&T recommends the following edits be made to the application material:

A42. Performing an audit of ERISA plan financial statements when management imposes a limitation on the scope of the audit as permitted by ERISA does not eliminate the need for the auditor to plan and perform the audit in accordance with GAAS. Such limitation on the scope of the audit is unique to EBPs, ~~and differs from the scope limitations discussed in AU-C section 705. Unlike other scope limitations, w~~ **When** the scope of the audit is limited **by management** as permitted by ERISA, the auditor is required to perform certain audit procedures on the certified investment information even though the scope of the audit is limited.

#### Paragraph A43

Similar to paragraph 20 of the proposed SAS, the audit procedures to be performed pertaining to noninvestment-related information and investment information not covered by the certification is based on the identified and assessed risk of material misstatement. Note the following proposed edits to this paragraph.

A43. The need to perform audit procedures based on the **identified and** assessed risk of material misstatement for noninvestment-related information (for example, benefit payments, employer or employee contributions, and accruals) and investment information not covered by the certification is the same for all ERISA plans, regardless of whether management imposes an ERISA-permitted audit scope limitation.

#### Paragraph A45 (renumbered as A43A)

D&T believes that this paragraph should be moved to improve the flow of the application material in this section of the proposed SAS. D&T recommends that it be moved to after paragraph A43 of the proposed SAS (as new paragraph A43A), and cross-referenced to paragraph 20 of the proposed SAS. We recommend that the appropriate context be included in the guidance as it relates to the certification, so that the auditor is able to determine what constitutes sufficient appropriate audit evidence (Refer to Appendix A—Issue 1 for further discussion).

~~A45-A43A.~~ Although the certification provides audit evidence, **as it relates to the accuracy and completeness of investment information when the ERISA-permitted audit scope limitation is imposed. The certification together with the procedures performed by the auditor in paragraphs 20a-d** it does not provide sufficient appropriate audit evidence on its own. Rather, it ~~is~~ **are** considered part of audit evidence relating to the certified investment information when determining whether the form of opinion required by paragraph 30 can be used.

#### Paragraphs A45A and A45B (new)

We believe that the proposed SAS should address the fact that it is firstly management's responsibility to determine if the party certifying the investment information is a qualified institution and is in fact holding (has custody of) the underlying investments. D&T recommends language be included in the application material highlighting this fact, as well as a reference to the written representations to be requested from management in paragraph 22d of the proposed SAS.

D&T also notes that in most instances the party transmitting the certification is more often than not a qualified institution; however, we believe that in making the evaluation of management's assertion, the auditor's procedures may include whether it is the appropriate party that is making the requisite certification. We recommend that new application material be added to this effect. (Refer to Appendix A—Issue 1 and Appendix B—*Assets Held for Investment and Written Representations* for further discussion)

#### **A45A. Management is responsible for determining if the**

- **Third-party that holds for investment the underlying asset(s) and executes investment transactions, is an appropriate qualified institution preparing and certifying the statement relating to investment information**
- **Appropriate qualified institution preparing and certifying the statement relating to investment information, actually holds the underlying asset(s) and executes investment transactions**
- **Statement relating to investment information is transmitted by the appropriate qualified institution, or a third party authorized to represent the qualified institution.**

**As part of performing audit procedures, the auditor is required by AU-C section 580 and paragraph 22d of this proposed SAS to request written representations from management relating to their responsibilities when the ERISA-permitted audit scope limitation is imposed.**

**A45B. When performing the evaluation of management's assertion, the auditor may include procedures to determine whether the qualified institution providing the certification is the appropriate bank or similar institution or insurance carrier to be making such a statement.**

#### Paragraph A47

We do not believe that the wording indicating that "the auditor has no responsibility to test the information related to assets held for investment of the plan that has been certified by the qualified institution" is accurate. Paragraph A7 of the proposed SAS indicates that the ERISA-permitted audit scope limitation imposed by management is only available as to the accuracy and completeness of the investment information. Consequently, D&T recommends the following edits to paragraph A47 of the proposed SAS.

A47. When management limits the scope of the audit as permitted by ERISA, the auditor has no responsibility to **perform procedures to address risks related to the accuracy and completeness of** ~~test~~ the information related to assets held for investment of the plan that has been **prepared and** certified by the qualified institution. However, the auditor may need to understand the types of investments held by the plan to evaluate whether the form and content of

the ERISA plan's financial statement disclosures for those investments are in accordance with the applicable financial reporting framework.

#### Paragraph A48

When making the inquiries, as noted in paragraph A48c of the proposed SAS, we believe it is also appropriate for the auditor to obtain an understanding of the appropriateness of the valuation methodology used for the types of investments when determining the level in the fair value hierarchy.

As drafted, paragraph A48d of the proposed SAS is not a procedure and should be reworded to be consistent with the other subparagraphs. In addition, we recommend that examples of general types of classification be provided so as to address the risk that the investments are misclassified in the ERISA plan financial statements.

D&T recommends the following edits to the paragraphs referred above:

A48. ...

c. Inquire of management about how investments at fair value are leveled in the fair value hierarchy table, **including obtaining an understanding of the appropriateness of the valuation methodology used for the type of investment to determine the level in the fair value hierarchy table.**

d. **Evaluate** ~~Consider~~ the appropriateness of the classification **(by general type, for example, mutual fund versus a pooled separate account)** of investments by management in the ERISA plan financial statements.

#### Paragraph 21 and paragraph A49A (new)

D&T does not believe that inquiry is the only alternative when the certified investment information is incomplete, inaccurate, or otherwise unsatisfactory. Furthermore, it is unclear as to the purpose of the inquiry. Instead, the auditor should perform additional procedures to determine the appropriate course of action. These additional procedures may result in a modification to the auditor's opinion, and as such should be appropriately included as application material. We recommend the following edits to paragraph 21, as well as the addition of a new guidance of paragraph A49A.

21. If, as part of the audit procedures performed, the auditor becomes aware that the certified investment information is incomplete, inaccurate, or otherwise unsatisfactory, the auditor should perform ~~further inquiry, which might result in~~ additional ~~audit~~ procedures **to determine the appropriate course of action** ~~or modification to the auditor's opinion in accordance with AU-C section 705. (Ref. par. A49A)~~

**A49A. The additional procedures may result in a modification to the auditor's opinion in accordance with AU-C section 705.**

#### **Written Representations (paragraphs 22)**

D&T notes that the detail in paragraph A50 of the proposed SAS provides a more complete description of ERISA sections 107 and 209. We recommend aligning the wording in paragraph 22b more closely with that of the actual ERISA regulation in the guidance paragraph. As drafted, the descriptions in paragraph 22b and A50 of the proposed SAS are inconsistent, for example, paragraph 20b of the proposed SAS refers to *maintaining sufficient records*, while paragraph A50 of the proposed SAS refers to records required to be *maintained in sufficient detail*. Also, the reference to the ERISA sections in the application material should be reversed such that ERISA section 107 is described first, followed by ERISA section 209.

We recommend adding a reference to the appropriate qualified institution in paragraph 22d(b) of the proposed SAS to address the matters noted in Appendix A—Issue 1 and Appendix B—*Assets Held for Investment and Written Representations*, as well as a cross-reference to new application material in paragraph A45B.

22. In addition to the requirements in AU-C section 580, the auditor should request the following written representations from management in an audit of ERISA plan financial statements: (Ref. par. A49)

- a. ...
- b. Acknowledgement of its responsibility for administering the plan and determining that the plan's transactions that are presented and disclosed in the financial statements are in conformity with the plan's provisions, including maintaining ~~sufficient~~ records **in sufficient detail** with respect to each of the participants, ~~in accordance with ERISA sections 107 and 209, to permit determine the benefits~~ **to be properly calculated and paid when due or which may become due to such participants, in accordance with ERISA sections 107 and 209.** (Ref. par. A50)
- c. ...
- d. When management imposes an ERISA-permitted audit scope limitation, acknowledgement that management is responsible for the financial statements, and for
  - a. ...
  - b. evaluating whether the ~~certification~~ **statement relating to investment information** is prepared **and certified** by ~~the~~ **appropriate** qualified institution (Ref: par. A45B),
  - c. ...

### Form of Opinion (paragraphs 29–35, and related application material)

The following edits are recommended to address the matters noted in Appendix A—Issue 3, as well as other considerations identified by D&T relevant to this section in the proposed SAS:

#### Headings

D&T also believes that to further enhance the flow of the requirements in the section *Form of Opinion* of the proposed SAS, additional subheadings should be inserted and the paragraphs re-ordered. As drafted, it is not readily apparent whether paragraphs 29–35 in the proposed SAS are referring to an ERISA plan financial statement audit engagement with or without the management-imposed ERISA-permitted audit scope limitation, as the paragraphs are intermingled, and some paragraphs address both “types” of EBP engagement.

Paragraphs 31 (renumbered as paragraph 30), 30 (renumbered as paragraph 31), and 33

Extant paragraphs 30 and 33 are essentially duplicative, and D&T recommends combining them as renumbered paragraph 31, and striking paragraph 33 of the proposed SAS.

#### **Auditor's Report on ERISA Plan Financial Statements When there is No ERISA-Permitted Audit Scope Limitation**

29. The auditor should express ....

~~31.~~ **30.** ~~Except as discussed in paragraph 30 of this proposed SAS, the~~ auditor should modify the opinion ...

#### **Auditor's Report on ERISA Plan Financial Statements When Management Limits the Scope of the Audit as Permitted by ERISA**

~~30.~~ **31.** When the ERISA-permitted audit scope limitation is imposed by management, and there are no other limitations on the scope of the audit and no identified material misstatements of the ERISA plan financial statements exist, then the auditor should follow the provisions in paragraphs 88-115 of this proposed SAS and AU-C section 705 does not apply.

~~33.~~ ~~Paragraphs 88-115 of this proposed SAS describe the requirements for the auditor's report when the ERISA-permitted audit scope limitation is imposed, and there are no other~~

~~limitations on the scope of the audit and no identified material misstatements of the ERISA plan financial statements exist.~~

Paragraphs 34 (renumbered as paragraph 32), A62, A63 (renumbered as paragraph A62A), and A64 (renumbered as paragraph 33). New paragraphs 34, 35, A62B, and A62C

We believe that the wording in extant paragraph 34 (renumbered as paragraph 32) can be amended to more succinctly convey the requirements relating to the modifications to the auditor's report when there is a management-imposed ERISA-permitted audit scope limitation by appropriately referring to the application of AU-C 705 (refer to Appendix A—Issue 3 for further discussion). The reasons for the recommendation are as follows:

- D&T notes that where there are modifications to the auditor's report beyond the ERISA-permitted audit scope limitation imposed by management, the statement required by paragraph 92b of the proposed SAS<sup>5</sup> should not be included. D&T believes that the statement is relevant information and should be included in the introductory paragraph irrespective of the modification (i.e., whether a qualified opinion, adverse opinion, or a disclaimer of opinion). The heading immediately following the introductory paragraph when the auditor issues a modification to the auditor's opinion refers to management's responsibility and the relating limitation on the scope of the audit; it would, therefore, appear appropriate for the ERISA-permitted audit scope limitation wording to be included in the introductory paragraph as well (refer to Appendix A—Issue 3 for further discussion).
- D&T, for reasons discussed in Appendix A—Issue 2, does not believe that a Basis for Limitation on the Scope of the Audit section as required by paragraphs 93–94 is appropriate and as such would not be included in a modified report.
- D&T believes that, given our view that AU-C 705 is applicable, it is not necessary to indicate that certain reporting elements included in paragraphs 88–115 of the proposed SAS are not appropriate to include in the auditor's report.

D&T does not believe that the application guidance in extant paragraph A62 is needed and should be deleted.

Extant paragraph A63 (renumbered as paragraph A62A) provides an example when a modification of the auditor's report is appropriate and we believe should be appropriately cross-referenced to paragraph 32.

Extant paragraph A64 (renumbered as paragraph 33), and new paragraph 34 address the various modifications to the auditor's report as required by AU-C 705, and as such are appropriately also reflected as requirements in this proposed SAS. In doing so, there will also be consistency in the application of the proposed SAS and AU-C 705.

The proposed SAS provided application guidance, in both the second bullets of extant paragraphs 34 and A62, that the description of the ERISA-permitted audit scope limitation imposed by management may be included with the basis for modification. D&T recommends that this should instead be a requirement, as reflected in new paragraph 35, consistent with the treatment in paragraph 22a of AU-C 705. AU-C 705 requires that the auditor "describe in the basis for modification paragraph any other matters of which the auditor is aware that would have required a modification to the opinion and the effects thereof..." In doing so, we would be consistent with the treatment of modifications to the auditor's report in this proposed SAS.

---

<sup>5</sup> Refer to paragraph 92b of the proposed SAS "...the auditor performed an audit subject to the limitation on the scope of the audit imposed by management, as permitted by the Employee Retirement Income Security Act of 1974"

New paragraphs A62B and A62C provide for additional application material by providing guidance as to how to describe the management-imposed ERISA-permitted audit scope limitation in an auditor's report where there are additional modifications.

~~34.~~ **32. AU-C section 705 should apply when the opinion in the auditor's report for the ERISA plan financial statements is modified** ~~When there are other limitations on the scope of the audit, beyond what is permitted by the ERISA-permitted audit scope limitation imposed by management as discussed in paragraph 31. AU-C section 705 discusses the decision regarding which type of modified opinion is appropriate.~~ ~~section 103(a)(3)(C), or when the auditor has identified material misstatements of the financial statements of the ERISA plan, the following reporting elements are not appropriate to include in the auditor's report and the auditor should modify the auditor's opinion in accordance with AU-C section 705: (Ref: par. A62 A64A62A)~~

- ~~• The statement required by paragraph 92.b) of this proposed SAS~~
- ~~• A separate section for the basis for limitation on the scope of the audit as required by paragraphs 93-94 of this proposed SAS; however, the content in paragraph 94.a of this proposed SAS may be included in the basis for modified opinion paragraph, if appropriate.~~
- ~~• The opinion language in paragraphs 105-106 of this proposed SAS~~

~~A62. When AU-C section 705 applies and the auditor is issuing a modified opinion on the ERISA plan financial statements it is not appropriate to~~

- ~~• include the words from paragraph 92.b) of this proposed SAS in the introductory paragraph because doing so differentiates the report required by paragraph 30 of this proposed SAS from the modified opinion being issued.~~
- ~~• Include a section with the Basis for Limitation on the Scope of the Audit in paragraphs 93-94 of this proposed SAS because including such a section may overshadow the modification to the opinion. It may be appropriate to include the content from paragraph 94.a of this proposed SAS in the basis for modified opinion paragraph.~~
- ~~• Use the opinion as required by paragraphs 105-106 of this proposed SAS because the auditor is precluded from using such opinion when there are other limitations on the scope of the audit or there is a material misstatement of the ERISA plan financial statements.~~

~~A63. A62A.~~ As discussed in paragraph ~~34~~**32** of this proposed SAS, ~~certain of the reporting elements are not appropriate to be included~~ **AU-C section 705 applies when the opinion in the auditor's report for the ERISA plan financial statements is modified beyond when the ERISA-permitted audit scope limitation is imposed.** ~~when there are other limitations on the scope of the audit beyond what is permitted by ERISA section 103(a)(3)(C). For example, when the plan has not maintained sufficient accounting records and supporting documents (at either the plan level or the participant data level, or both) such that the auditor is unable to perform auditing procedures sufficient to determine the extent to which the ERISA plan financial statements may have been affected by the lack of books and records, AU-C section 705 applies and the auditor is required to modify the auditor's opinion accordingly.~~

~~A64. 33.~~ AU-C section 705 discusses the decision regarding which type of modified opinion is appropriate. ~~When deciding on the appropriate modified~~ **issuing a qualified opinion on the ERISA plan financial statements when an ERISA-permitted audit scope limitation is imposed**, the possible effects of the ERISA-permitted audit scope limitation ~~are also considered along with~~ **in addition to** any other scope limitation or material misstatement of the ERISA plan financial statements. **A description of the matters giving rise to both modifications and may should be included in a paragraph immediately before the opinion paragraph in the auditor's reports and use a heading that includes "Basis for Qualified Opinion," as required by paragraph 17 of AU-C section 705.** ~~the basis for the modified opinion paragraph.~~ [fn 14]

**34. When issuing an adverse opinion or disclaimer of opinion on the ERISA plan financial statements when the ERISA-permitted audit scope limitation is imposed, the auditor is required by paragraph 17 of AU-C section 705 to include a paragraph in the auditor's report that provides a description of the matter giving rise to the modification. This paragraph is placed immediately before the opinion paragraph in the auditor's reports and a heading is used that includes "Basis for Adverse Opinion," or "Basis for Disclaimer of Opinion," as appropriate. (Ref. par. A62B)**

**35. When issuing an adverse opinion or disclaimer of opinion on the ERISA plan financial statements when the ERISA-permitted audit scope limitation is imposed, paragraph 22b of AU-C section 705 requires the auditor to describe in the basis for modification paragraph any other matters that the auditor has identified that would have required a modification to the opinion. The auditor should, therefore, also include under the heading "Basis for Adverse Opinion," or "Basis for Disclaimer of Opinion," as appropriate, a paragraph describing the ERISA-permitted audit scope restriction and the related effects. (Ref. par. A62B-A62C)**

**A62B. It may be appropriate to include subheadings to distinguish the basis for adverse opinion or the basis for disclaimer of opinion, as appropriate, from the ERISA-permitted audit scope limitation imposed, for example "Basis for Disclaimer," "Basis for Adverse Matter," versus "Other Identified Matter."**

**A62C. The other identified matter relating to the ERISA-permitted audit scope limitation imposed may be described in the auditor's report as follows:**

**In addition, as permitted by 29 CFR 2520.103-8 of the Department of Labor's Rules and Regulations for Reporting and Disclosure under ERISA, management imposed a limitation on the scope of the audit. Under the authority of section 103(a)(3)(C) of ERISA, the audit need not extend to investment information prepared and certified by a bank or similar institution or insurance carrier which is regulated and supervised and subject to periodic examination by a State or Federal agency, provided that the statements or information regarding assets so held are prepared and certified by the bank or similar institution or insurance carrier in accordance with 29 CFR 2520.103-5 and 29 CFR 2520.103-8 of the Department of Labor's Rules and Regulations for Reporting and Disclosure under ERISA. We have been informed by management that a qualified institution holds the investments and executes investment transactions. Management has obtained certifications from the qualified institution as of December 31, 20X2 and 20X1, and for the year ended December 31, 20X2, stating that the investment information, described in Note X to the financial statements, is complete and accurate.**

**Had we not disclaimed an opinion on these financial statements, we would have been required to modify our opinion to refer to the ERISA-permitted audit scope limitation imposed by management. The effects of any adjustments to the certified investment information relating to such scope limitation are unable to be determined.**

35. Paragraph ~~34~~ **32** also applies when the auditor is unable to ...

A65. If the auditor determines that the auditor's report required by paragraph ~~33~~ **31** of this proposed SAS is not appropriate in the circumstances ...

### **Fair Presentation**

~~32.~~ **35A.** If the auditor concludes that the ERISA plan financial statements do not achieve fair presentation ...

~~A60.~~ **A65A.** There may be cases when the ERISA plan financial statements, although prepared ...

~~A61.~~ **A65B.** The "Accounting Principles Rule" ...

Footnote 14 See Illustration ~~37~~ of the exhibit.

### **Auditor's Report on ERISA Plan Financial Statements When there is No ERISA-Permitted Audit Scope Limitation (paragraphs 49–65; paragraphs 70–72)**

The following edits are recommended to address other considerations identified by D&T, primarily to align with the recommendations in paragraphs 92, 96d, 101b, and 106 of the proposed SAS below, relevant to this section in the proposed SAS:

#### *Introductory Paragraph*

52. The introductory paragraph in the auditor's report should (Ref. par. A82-A83)

- a. Identify the entity whose financial statements have been audited,
- b. State that the financial statements have been audited, **and the entity is an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (ERISA).**
- c. Identify the title of each statement that the financial statements comprise, and
- d. Specify the date or period covered by each ~~financial~~ statement that the financial statements comprise.

#### *Management's Responsibility for Financial Statements of an Employee Benefit Plan Subject to ERISA*

54. The auditor's report should describe ... It should also state that management is responsible for (Ref. par. A84-A85)

- a. ...
- b. administering the plan and determining that the plan's transactions that are presented and disclosed in the financial statements are in conformity with the plan's provisions, including maintaining sufficient records with respect to each of the participants, in accordance with sections 107 and 209 of ~~ERISA the Employee Retirement Income Security Act of 1974~~, to determine the benefits due or which may become due to such participants

#### *Auditor's Responsibility*

59. The auditor's report should describe an audit by stating that

- a. ...
- b. the procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the ~~plan's entity's~~ preparation and fair presentation of the financial statements 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 the ~~plan's entity's~~ internal control, and accordingly, no such opinion is expressed.
- c. ...

### Auditor's Opinion

62. When expressing an unmodified opinion on ERISA plan financial statements, the auditor's opinion should state that the financial statements present fairly, in all material respects, the [...] in accordance with [the applicable financial reporting framework]. (Ref. par. A90)

### Auditor's Report on ERISA Plan Financial Statements When Management Limits the Scope of the Audit as Permitted by ERISA (paragraphs 88–109, paragraphs 113–115)

The following edits are recommended to address the matters noted in Appendix A—Issue 2, as well as other considerations identified by D&T relevant to this section in the proposed SAS:

#### Paragraph 92

D&T recommends defining "Employee Retirement Income Security Act of 1974" as "ERISA" and the phrase "limitation on the scope of the audit as permitted by ERISA" (or similar) as "the ERISA-permitted audit scope limitation" in the introductory paragraph as this will facilitate the consistent use of these defined terms/phrases throughout the auditor's report.

92. The introductory paragraph in the auditor's report should (Ref. par. A82-A83)
  - a. Identify the entity whose financial statements have been audited
  - b. State that the **financial statements have been audited, the entity is an employee benefit plan** ~~auditor performed an audit~~ subject to **the Employee Retirement Income Security Act of 1974 (ERISA), and the management has imposed a** limitation on the scope of the audit ~~imposed by management,~~ as permitted by **ERISA** ~~the Employee Retirement Income Security Act of 1974~~ **(ERISA-permitted audit scope limitation)**.
  - c. Identify the title of each statement that the financial statements comprise, and
  - d. Specify the date or period covered by each statement that the financial statements comprise.

#### Paragraphs 93 and 94

D&T recommends deleting paragraphs 93 and 94 of the proposed SAS and instead include this language in a paragraph under the heading *Basis for Qualified Opinion* as noted in new paragraphs A104A and A104B below (refer to Appendix A—Issue 2 for further discussion).

#### ~~*Basis for Limitation on the Scope of the Audit*~~

- ~~93. The auditor's report should include a section with the heading "Basis for Limitation on the Scope of the Audit."~~
- ~~94. The auditor's report should include
  - a. A statement that as permitted by 29 CFR 2520.103-8 of the Department of Labor's Rules and Regulations for Reporting and Disclosure under the Employee Retirement Income Security Act of 1974, management imposed a limitation on the scope of the audit. Under the authority of section 103(a)(3)(C) of the Employee Retirement Income Security Act of 1974, the audit need not extend to information related to assets held for investment of the plan prepared and certified by a bank or similar institution or insurance carrier which is regulated and supervised and subject to periodic examination by a State or Federal agency, provided that the statements or information regarding assets so held are prepared and certified to by the bank or insurance carrier in accordance with 29 CFR 2520.103-5 and 29 CFR 2520.103-8. (Ref. par. A120)
  - b. A statement that the auditor has been informed by management that a qualified institution holds the investments and executes investment transactions.~~

- ~~e. A statement that management has obtained a certification[s] from the qualified institution as of [date] and for the period under audit [year end date] stating that the information described in [insert note reference] the financial statements is complete and accurate.~~

#### Paragraphs 95-97

D&T suggests that terms and phrases be used consistently throughout the headings and paragraphs in the proposed SAS, as well as in the proposed illustrative auditor's reports.

*Management's Responsibility for Financial Statements **of an Employee Benefit Plan Subject to ERISA When the ERISA-Permitted Audit Scope Limitation Is Imposed** and the Limitation on the Scope of the Audit*

95. The auditor's report should include a section with the heading "Management's Responsibility for the Financial Statements **of an Employee Benefit Plan Subject to ERISA When the ERISA-Permitted Audit Scope Limitation Is Imposed** and the Limitation on the Scope of the Audit".
96. The auditor's report should describe ... It should also state that: (Ref. par. A84-A85)
- a. management is also responsible for determining whether a limitation on the scope of the audit is permissible in the circumstances, in accordance with ~~ERISA~~ **ERISA** the Employee Retirement Income Security Act of 1974, including evaluating whether
    - i. the **statement relating to assets held for investment of the plan (investment information)** certification is prepared **and certified by the appropriate** qualified institution, and
    - ii. the certified investment information is complete and accurate.
  - b. the ~~limitation on the scope of the audit~~ **ERISA-permitted audit scope limitation** does not affect management's responsibility for the financial statements.
  - c. ...
  - d. management is also responsible for maintaining a current plan instrument, including all plan amendments, administering the plan and determining that the plan's transactions that are presented and disclosed in the financial statements are in conformity with the plan's provisions, including maintaining sufficient records with respect to each of the participants, in accordance with sections 107 and 209 of ~~ERISA~~ **ERISA** the Employee Retirement Income Security Act of 1974, to determine the benefits due or which may become due to such participants.

#### Paragraphs 98-104

D&T noted that the audit description makes reference to the "internal control relevant to the entity" or the "entity's internal control." We believe that this should be reworded to reflect that it is the plan's internal control that is relevant.

D&T recommends rewording elements of the auditor's responsibility to reflect those procedures the auditor actually performed (refer to Appendix A—Issue 2 for further discussion).

We believe that the auditor's responsibility extends to evaluating management's assertion, and not management's assessment, of whether the bank or similar institution or insurance carrier preparing and certifying the statement relating to investment information is a qualified institution under ERISA (refer to Appendix A—Issue 1 for further discussion).

Additionally, in order to more appropriately align with paragraph 27 of AU-C 705, D&T recommends that the wording in the Auditor's Responsibilities section be amended such that where the auditor expresses a qualified opinion, the auditor should state that the audit evidence the auditor has obtained is sufficient and appropriate to provide a basis for the auditor's qualified audit opinion.

101. The auditor's report should describe an audit by stating that

~~i-a.~~ an audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements.

~~ii-b.~~ the procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the ~~plan's entity's~~ preparation and fair presentation of the financial statements 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 the ~~plan's entity's~~ internal control, and accordingly, no such opinion is expressed.

~~iii-c.~~ an audit also includes evaluating the appropriateness of the accounting policies used and the reasonableness of significant accounting estimates made by management, as well as the overall presentation of the financial statements.

In circumstances when the auditor also has a responsibility to express an opinion on the effectiveness of internal control in conjunction with the audit of the financial statements, the auditor should omit the phrase required in paragraph 101(b) that the auditor's consideration of internal control is not for the purpose of expressing an opinion on the effectiveness of internal control, and accordingly, no such opinion is expressed.

102. The auditor's report should state that, with respect to the **ERISA-permitted audit scope limitation imposed by management as it relates to** certified investment information ~~that management instructed the auditor not to audit, the auditor did not assess the risks of material misstatement nor did the auditor consider internal control over the certified investment information, and that the procedures were limited to~~, **the auditor is responsible for the following:**

- a. obtaining and reading the certification
- b. evaluating management's ~~assertion~~ assessment of whether the **[insert bank or similar institution or insurance carrier, as applicable]** ~~entity issuing~~ **preparing and certifying the certification statement relating to investment information, and transmitting such statement, is the appropriate** qualified institution under **ERISA** ~~the Employee Retirement Income Security Act of 1974~~
- c. ...
- d. evaluating whether the form and content of the certified investment information presented and disclosed in the financial statements ~~is~~ are in accordance with the applicable financial reporting framework

103. ...

104. The auditor's report should state whether the auditor believes that the audit evidence the auditor has obtained is sufficient and appropriate to provide a basis for the auditor's **qualified** opinion ~~with the ERISA-permitted audit scope limitation~~ on the financial statements

#### Paragraphs 104A (new) and 104B (new)

As noted above, D&T believes the report elements previously included in the Basis for Limitation on the Scope of the Audit section are more appropriately included under the Basis for Qualified Opinion paragraph. Additional wording is inserted so that the reporting elements align with paragraph 21 of AU-C 705.

#### **Basis for Qualified Opinion**

**104A. The auditor's report should include a section with the heading "Basis for Qualified Opinion"**

**104B. The auditor’s report should include a statement that**

- a. **as permitted by 29 CFR 2520.103-8 of the Department of Labor’s Rules and Regulations for Reporting and Disclosure under ERISA, management imposed a limitation on the scope of the audit. Under the authority of section 103(a)(3)(C) of ERISA, the audit need not extend to investment information prepared and certified by a bank or similar institution or insurance carrier which is regulated and supervised and subject to periodic examination by a State or Federal agency, provided that the statements or information regarding assets so held are prepared and certified by the bank or similar institution or insurance carrier in accordance with 29 CFR 2520.103-5 and 29 CFR 2520.103-8 of the Department of Labor’s Rules and Regulations for Reporting and Disclosure under ERISA. (Ref. par. A120)**
- b. **the auditor has been informed by management that a qualified institution holds the investments and executes investment transactions.**
- c. **management has obtained a certification[s] from the qualified institution as of [date], and for the period under audit [year end date] stating that the investment information, described in [insert note reference] to the financial statements is complete and accurate.**
- d. **because of the ERISA-permitted audit scope limitation imposed by management, the auditor was unable to obtain sufficient appropriate audit evidence about the certified investment information of the plan as of [date], and for the period under audit [year end date]. Consequently, the auditor was unable to determine whether any adjustments to these amounts were necessary.**

Paragraphs 105–106

D&T believes that the ERISA-permitted audit scope limitation imposed by management results in a qualified audit opinion (refer to Appendix A—Issue 2 for further discussion). The wording suggestions in this paragraph appropriately align with paragraph 24 of AU-C 705.

~~Auditor’s **Qualified** Opinion with the ERISA-permitted audit scope limitation on the Financial Statements~~

105. The auditor’s report should include a paragraph with the heading “~~Auditor’s **Qualified** Opinion with the ERISA-permitted Audit Scope Limitation on the Financial Statements~~”

106. When the ERISA-permitted audit scope limitation **imposed** is the only limitation on the scope of the audit ~~and the auditor has not identified any material misstatements,~~ the auditor’s report should include a statement that in the auditor’s opinion, **except for the possible effects of the matter described in the Basis for Qualified Opinion** ~~based on the audit and based on the use of the certification of the investment information, that the auditor was instructed not to audit,~~ the financial statements **[referred to above]** present fairly, in all material respects, the [...] ~~in accordance with [the applicable financial reporting framework].~~

107. ...

Paragraph 115

D&T believes that the date of the auditor’s report is that date on which sufficient appropriate audit evidence is obtained, which includes obtaining evidence that an appropriate certification has been obtained. See the following proposed recommendation:

115. The auditor's report should be dated no earlier than the date on which the auditor ~~has obtained an appropriate certification and~~ has obtained sufficient appropriate audit evidence on which to base the auditor's opinion on the ERISA plan financial statements, including evidence that

**a. a certification from the appropriate qualified institution(s) has been obtained;**

~~a-b.~~ the audit documentation has been reviewed;

~~b-c.~~ all the statements that the ERISA plan financial statements comprise, including the related notes, have been prepared; and

~~e-d.~~ management has asserted that they have taken responsibility for those ERISA plan financial statements. (Ref. par. A100-A102)

### Emphasis-of-Matter Paragraphs (paragraph 116)

The following edits are recommended to otherwise reflect the required emphasis-of-matter as application material in the proposed SAS (Refer Appendix A—Issue 4 for further discussion).

116. **In addition to complying with the requirements of AU-C section 706, the auditor should determine whether any situations specific to the ERISA plan financial statements should be disclosed in the auditor's report.** ~~The auditor's report on ERISA plan financial statements should include an emphasis-of-matter paragraph, under an appropriate heading, when the following situations exist:~~

Note: Paragraphs 116a–c would be included as examples in the application material to paragraph 116 of the proposed SAS.

### ERISA Supplemental Schedules Reporting (paragraphs 117–118, and related application material)

The following edits address the overarching concern highlighted in the comment letter as well as other considerations identified by D&T relevant to this section in the proposed SAS. Refer to Appendix D for the related edits to Illustrations 1, 3, and 7 of paragraph A148, Exhibit—*Illustrations of Auditor's Reports on Financial Statements of Employee Benefit Plans Subject to ERISA*.

#### Terminology

D&T noted an inconsistent use of the phrase "supplementary information" versus "supplemental schedules" in paragraphs 117 and 118 of the proposed SAS. When referring to the required supplemental reporting requirements for ERISA plan financial statements, we believe that "supplemental schedules" should be used as this would also be consistent with both the heading of the section in the proposed SAS and in the various illustrative reports.

#### Separate Report for Supplemental Schedules Required by ERISA

AU-C 725 permits the auditor to issue a separate report on supplementary information (as well as including an other-matter paragraph in accordance with AU-C 706). Paragraph 118 of the proposed SAS indicates this is also permissible; however, it is unclear if the DOL's Rules and Regulations under ERISA allow for separate reporting on the supplemental schedules. Paragraph 117 of the proposed SAS indicates that "ERISA requires that certain supplemental schedules accompany the ERISA plan financial statements." D&T requests that the ASB clarify this matter. In making an assessment of the applicability of paragraph 10 of AU-C 725, consideration should be given to the possible impact on paragraphs 4b and 118 of the proposed SAS.

#### Reporting Elements and Underlying Required Procedures

Paragraph 1 of AU-C 725 notes that "[t]his section also may be applied, with the report wording adapted as necessary, when an auditor has been engaged to report on whether required supplementary information is fairly stated, in all material respects, in relation to the financial

statements as a whole.” While D&T acknowledges that the supplemental schedules are not the required supplementary information as defined in paragraph 4 of AU-C section 730, *Required Supplementary Information*, since the DOL is not a designated standard setter, it would appear appropriate for AU-C 725 to be applicable to the required ERISA supplemental schedules by analogy.

D&T concurs that certain report wording changes are necessary and appropriate to convey that the supplemental schedules are as required by ERISA; however we believe that other added reporting elements are not needed, as they do not otherwise address additional procedures specific to the ERISA supplemental schedules. It is noted that no amendments were made in the proposed SAS to the performance requirements in paragraphs 5–8 of AU-C 725 (only the reporting elements included in paragraph 9 of AU-C 725 have been replaced by those in paragraph 118 of the proposed SAS). D&T has made certain edits to the paragraphs below to address this issue.

#### Paragraphs 117 and 118

Moved first sentence of paragraph 118 to paragraph 117 of the proposed SAS because paragraph 118 addresses reporting requirements and not the underlying performance requirements.

117. ERISA requires that certain supplemental schedules accompany the ERISA plan financial statements, if applicable. When auditing ERISA plan financial statements, the auditor should report on whether such supplemental schedules are fairly stated, in all material respects, in relation to the financial statements as a whole, in accordance with AU-C section 725. **AU-C section 725 also addresses the performance requirements where the auditor evaluates the presentation of the supplementary information in relation to the financial statements as a whole.** (Ref. par. A127-A128)

#### Paragraph A127

The wording in paragraph A127 of the proposed SAS should align with paragraph A5 of the proposed SAS and with the requirement in paragraph 117 of the proposed SAS where it states that the supplemental schedules accompany the ERISA plan financial statements.

- A127. According to 29 CFR 2520.103-10 the administrator of a plan filing an annual report pursuant to ERISA section 2520.103-1(a)(2) should, as provided in the ~~instructions to the~~ Form 5500 *Annual Return/Report of Employee Benefit Plan* **instructions**, include as part of the annual report certain ~~supplemental separate financial~~ **supplemental schedules that accompany the ERISA plan financial statements. ERISA also contains a requirement for the auditor to report on whether certain supplemental schedules, as identified in ERISA section 103, are presented fairly, in all material respects, in relation to the financial statements as a whole.**

#### Paragraph 118

D&T has proposed edits to more closely align the reporting elements in paragraph 118 of the proposed SAS with those reporting elements in AU-C 725—see details below.

In addition, paragraph 118 of the proposed SAS also pertains only to unmodified opinions and qualified opinions; for adverse or disclaimer of opinions, paragraph 11 of AU-C 725 is relevant. D&T believes that the proposed SAS should be amended to include a reporting requirement as it relates to adverse and disclaimer of opinions as there are no reporting elements currently drafted in the proposed SAS to direct the auditor to include wording in the modified auditor’s report that the supplemental schedules are required by the DOL’s Rules and Regulations under ERISA (e.g., similar to what is included in Paragraph 118(f)).

*Paragraph 118b*—Edits to use the ERISA reference to the phrase “supplemental schedules.” D&T notes that it is appropriate to refer to the regulator requiring the supplementary information.

*Paragraph 118c*—Conforming changes made to align with the terminology with that in the illustrative reports.

*Paragraph 118d*—Deleted text as it is not included in the reporting elements in paragraph 9 of AU-C 725, as D&T believes that the reporting elements in AU-C 725 and in the proposed SAS should align in principle. Further, the procedure in paragraph 7f of AU-C 725 requires the auditor to “evaluate the appropriateness and completeness of the supplementary information, considering the results of the procedures performed and other knowledge obtained during the audit of the financial statements.” There is no specific requirement to “test the completeness and accuracy” of the supplemental schedules. In addition, the application material in paragraph A13 of AU-C 725 addresses that the auditor may consider testing accounting or other records” in evaluating the appropriateness and completeness of the supplementary information.

*Paragraph 118e*—For purposes of clarity, we recommend that the complete text required to be used be included in the reporting elements consistent with the layout elsewhere in paragraph 118. In addition, D&T does not believe that there is an underlying performance requirement, neither in paragraphs 5–8 of AU-C 725 nor in paragraphs 20–21 of the proposed SAS, that instructs the auditor to determine whether the supplemental schedules are fairly stated, when the ERISA-permitted audit scope limitation is imposed by management, in all material respects, in relation to the ERISA plan financial statements. D&T recommends that an additional requirement be added to address the omission.

*Paragraph 118f*—D&T does not believe that the reporting element is necessary. When performing the procedures in AU-C 725 as it relates to the required ERISA supplemental schedules, the auditor is not performing any additional procedures to those already prescribed by AU-C 725. As such, D&T does not believe it is necessary to highlight in the auditor’s report aspects of the engagement that were not previously addressed in the reporting elements in paragraph 9 of AU-C 725. Further, paragraph 7a of AU-C 725 already indicates that the auditor should inquire as to the criteria to be used by management (in this instance, the criteria are established by a regulator), and paragraph 7b of AU-C 725 notes that the auditor should determine whether the form and content complies with the applicable criteria. Neither of these aspects of the engagement was previously highlighted in the AU-C 725 reporting elements, and we believe that in order to align the standards and to ensure consistency, this paragraph should be deleted. If, however, the ASB believes that the reference to “form and content,” pertaining to the ERISA supplemental schedules in the auditor’s report, is useful information for the users of the ERISA plan financial statements and should be retained as a required element in the proposed SAS, then we recommend instead that a conforming amendment be made to AU-C 725. The conforming amendment would require the same wording be included as a required element in either the other-matter paragraph or in a separate report whenever we are reporting on supplementary information in accordance with AU-C 725.

*Paragraph 118g*—D&T has made edits to this paragraph to reflect our view that the ERISA-permitted audit scope limitation imposed by management results in a qualified opinion. Also, as per paragraph 118f, we do not believe that it is necessary to include a statement regarding form and content (and such treatment is consistent with AU-C 725).

*Paragraph 118h*—D&T made edits to include the reference to the management-imposed ERISA-permitted audit scope limitation, consistent with our view that such an ERISA audit engagement results in a modified audit report.

*Paragraph 118i*—Deleted paragraph as the modification relating to the management-imposed ERISA-permitted audit scope limitation is included in paragraph 118h of the proposed SAS as noted above.

118. ~~AU-C section 725 addresses the performance requirements as well as the form and content of the report on supplementary information in relation to the financial statements as a whole.~~ When an entity presents the **supplemental schedules** ~~supplementary information~~ with the ERISA plan financial statements, AU-C section 725 requires the auditor to report on the supplementary information in either (a) an other-matter paragraph in accordance with AU-C section 706, or (b) in a separate report on the supplementary information. When performing an audit of ERISA plan financial statements, the reporting elements discussed in paragraph .09 of AU-C section 725 should be replaced with the following:

- a. ...
- b. A statement that the ~~supplemental schedules~~ **supplementary information is are** presented for purposes of additional analysis and ~~are is~~ not a required part of the financial statements, but ~~are is~~ supplementary information required by the Department of Labor's Rules and Regulations for Reporting and Disclosure under ~~ERISA, the Employee Retirement Income Security Act of 1974~~
- c. A statement that the ~~such supplementary~~ information is the responsibility of management and was derived from, and relates directly to, the underlying accounting and other records used to prepare the financial statements.
- d. A statement that the ~~supplementary~~ information has been subjected to the auditing procedures applied in the audits of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, ~~performing procedures to test the completeness and accuracy of the information presented in the supplemental schedules,~~ and other additional procedures, in accordance with auditing standards generally accepted in the United States of America.
- e. When reporting on an audit of ERISA plan financial statements when the ERISA-permitted audit scope limitation is imposed, the paragraph in 118d. should be revised to **state that the information has been subjected to the auditing procedures applied in the audits of the financial statements, when management has imposed the ERISA-permitted audit scope limitation as it relates to certified investment information, and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures, in accordance with auditing standards generally accepted in the United States of America** reflect the use of certification of investment information as part of the audit. Further, the report should include a statement that the auditor's procedures with respect to the certified investment information ~~included~~ **encompassed** in the supplemental schedules ~~include~~ were limited to those procedures described in the Auditor's Responsibility (Including Responsibility for the Certified Investment Information) section. (Ref. par. A129)
- ~~f. A statement that in forming the opinion on the supplemental schedules, the auditor evaluated whether the supplementary information, including its form and content, is presented in conformity with the Department of Labor's Rules and Regulations for Reporting and Disclosure under the Employee Retirement Income Security Act of 1974.~~
- g. If the auditor issues an unmodified opinion on the ERISA plan financial statements ~~or has issued an opinion with the ERISA-permitted audit scope limitation, as permitted in paragraph 106,~~ and the auditor has concluded that the supplementary information is fairly stated, in all material respects, in relation to the financial statements as a whole, a statement that, in the auditor's opinion, the ~~supplementary~~ information **in the accompanying schedules** is fairly stated, in all material respects, in relation to the financial statements as a whole, ~~and the form and content are presented in conformity with the Department of Labor's Rules and Regulations for Reporting and Disclosure under the Employee Retirement Income Security Act of 1974.~~ (Ref. par. A130-A133)
- h. If the auditor issues a qualified opinion on the ERISA plan financial statements, **including a qualified opinion when the ERISA-permitted audit scope limitation is imposed,** and the qualification has an effect on the supplementary information, a

statement that, that in the auditor's opinion, except for the **possible** effects on the **supplemental schedules** supplementary information of [~~refer to **description in the Basis for Qualified Opinion** paragraph in the auditor's report explaining the qualification~~], such **the** information **in the accompanying schedules** is fairly stated, in all material respects, in relation to the financial statements as a whole.

- ~~i. When reporting on an audit of ERISA plan financial statements when the ERISA-permitted audit scope limitation is imposed, and the auditor has concluded that the supplementary information is fairly stated, in all material respects, in relation to the financial statements as a whole, a statement that, in the auditor's opinion, and based on the auditor's use of the certification of the investment information which the auditor was not required to audit, the supplementary information is fairly stated, in all material respects, in relation to the financial statements as a whole and is in conformity with the DOL's Rules and Regulations for Reporting and Disclosure under the Employee Retirement Income Security Act of 1974.~~

Paragraph 118A (new)

Paragraph 118 of the proposed SAS addresses the wording changes that are necessary to the auditor's report, including the reference to the fact that the supplemental schedules are required by "the Department of Labor's Rules and Regulations for Reporting and Disclosure under ERISA." Paragraph 118 of the proposed SAS only applies to unmodified opinions and qualified opinions. When the auditor has been engaged to report on the required ERISA supplemental schedules and the auditor has issued either an adverse opinion or disclaimer of opinion on the ERISA plan financial statements, paragraph 11 of the AU-C 725 would be applicable. It is then unclear as to what reporting elements one would refer to—paragraph 9 of AU-C 725 or paragraph 118 of the proposed SAS, and this may cause confusion when applying the proposed SAS. In addition, there are no requirements in AU-C 725 that would instruct the auditor to otherwise amend paragraph 11 of AU-C 725 for the reference to the DOL's Rules and Regulations under ERISA. D&T recommends that the following paragraph be added to the proposed SAS to clarify this fact. Paragraph 4b of the proposed SAS would also need to be amended to exclude paragraph 11 of AU-C 725 from being applicable.

**118A. When performing an audit of ERISA plan financial statements, and the auditor has been engaged to report on whether the supplemental schedules are fairly stated, in all material respects, in relation to the ERISA plan financial statements as a whole, and the auditor's report contains either an adverse opinion, or a disclaimer of opinion, the auditor is precluded from expressing an opinion on the supplemental schedules. When permitted by law or regulation, the auditor may withdraw from the engagement to report on the supplemental schedules. If the auditor does not withdraw, the reporting elements discussed in paragraph .11 of AU-C section 725 should be replaced with the following:**

- a. if the auditor's report contains an adverse opinion, a statement that the audit was conducted for the purpose of forming an opinion on the financial statements as a whole, or if the auditor's report contains a disclaimer of opinion, a statement that the auditor was engaged for the purpose of forming an opinion on the financial statements as a whole**
- b. a statement that the supplemental schedules are presented for purposes of additional analysis and are not a required part of the financial statements, but are supplementary information required by the Department of Labor's Rules and Regulations for Reporting and Disclosure under ERISA**

**c. a statement that because of the significance of the matter described above in [refer to the Basis for Adverse Matter or Basis for Disclaimer paragraph, as applicable], it is inappropriate to and the auditor does not express an opinion on the supplemental schedules**

## **APPENDIX D—ILLUSTRATIVE AUDITOR’S REPORTS**

The proposed edits to Illustrations 1, 3, and 7 of paragraph A148, Exhibit—*Illustrations of Auditor’s Reports on Financial Statements of Employee Benefit Plans Subject to ERISA*, are included below. These illustrations reflect the recommended edits as highlighted in *Appendix C—Editorial Recommendations* of our comment letter. Editorial recommendations are highlighted as follows: Additions are noted in bold underline and deletions are noted in strike-through text. The edits include those recommendations in Appendix C that directly affect the auditor’s reports.

Note: The main headings in all of the illustrative reports should not be in *italics*, only subheadings should be *italicized*. This change has been reflected throughout Appendix D.

### **Illustration 1—An Auditor’s Report on Financial Statements for a Defined Contribution Retirement Plan Subject to ERISA**

Circumstances include the following:

- Audit of a complete set of general purpose financial statements for a 401(k) plan subject to ERISA (comparative statement of net assets available for benefits and a single year statement of changes in net assets available for benefits).<sub>2</sub>
- The financial statements are prepared in accordance with U.S. GAAP.<sub>2</sub>
- The Plan merged with another plan. The merger was disclosed in the notes to the financial statements and the auditor included an emphasis-of-matter paragraph in the auditor’s report.
- **The auditor’s reporting on the supplemental schedules required by ERISA is included as an other-matter paragraph.**
- ~~The Report on Specific Plan Provisions Relating to Financial Statements is included with the auditor’s report and includes findings. The auditor performed procedures relating to participant eligibility, benefit payments, participant vesting provisions, employer and employee contributions, disclosure of prohibited transactions, IRC compliance tests, participant asset allocations, use of forfeitures, and recording of account activity.~~

#### **Independent Auditor’s Report**

[Appropriate Addressee]

We have audited the accompanying financial statements of ABC 401(k) Plan, **an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (ERISA)**, which comprise the statements of net assets available for benefits as of December 31, 20X2 and 20X1, and the related statement of changes in net assets available for benefits for the year ended December 31, 20X2, and the related notes to the financial statements.

#### **Management’s Responsibility for the Financial Statements of an Employee Benefit Plan Subject to ERISA**

Management is responsible for the preparation and fair presentation of these 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.

Management is also responsible for maintaining a current plan instrument including all plan amendments, administering the plan and determining that the plan's transactions that are presented and disclosed in the financial statements are in conformity with the plan's provisions, including maintaining sufficient records with respect to each of the participants, in accordance with sections 107 and 209 of ~~the Employee Retirement Income Security Act of 1974~~ **ERISA** to determine the benefits due or which may become due to such participants.

### **Auditor's Responsibility**

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the ~~plan's~~ **plan's** preparation and fair presentation of the financial statements 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 the ~~plan's~~ **plan's** internal control. Accordingly, we express no such opinion. An audit also includes evaluating 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.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### **Opinion**

In our opinion, the financial statements referred to above, present fairly, in all material respects, the net assets available for benefits of ABC 401(k) Plan as of December 31, 20X2 and 20X1, and the changes in its net assets available for benefits for the year ended December 31, 20X2, in accordance with accounting principles generally accepted in the United States of America.

### **Emphasis of Matter Relating to Plan Merger**

As discussed in Note X to the financial statements, XYZ Plan was merged into ABC 401(k) Plan effective December 31, 20X2. Our opinion has not been modified with respect to this matter.

### **Other Matter Relating to the Supplemental Schedules Required by ERISA**

Our audits were conducted for the purpose of forming an opinion on the financial statements as a whole. The supplemental schedules of [*identify title of schedules and period covered*] are presented for purposes of additional analysis and are not a required part of the financial statements, but are supplementary information required by the Department of Labor's Rules and Regulations for Reporting and Disclosure under ~~ERISA~~ **ERISA** ~~the Employee Retirement Income Security Act of 1974~~. Such information

is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audits of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, ~~performing procedures to test the completeness and accuracy of the information presented in the supplemental schedules~~, and other additional procedures in accordance with auditing standards generally accepted in the United States of America.

~~In forming our opinion on the supplemental schedules, we evaluated whether the supplementary information, including its form and content, is presented in conformity with the Department of Labor's Rules and Regulations for Reporting and Disclosure under the Employee Retirement Income Security Act of 1974.~~

In our opinion, the information in the accompanying schedules is fairly stated in all material respects in relation to the financial statements as a whole, ~~and the form and content are presented in conformity with the Department of Labor's Rules and Regulations for Reporting and Disclosure under the Employee Retirement Income Security Act of 1974.~~

### **~~Report on Specific Plan Provisions Relating to the Financial Statements~~**

~~As part of obtaining reasonable assurance about whether ABC 401(k) Plan's financial statements are free from material misstatement, we are required to perform certain procedures to test whether the plan and plan transactions are in accordance with specific plan provisions. We performed procedures relating to participant eligibility, benefit payments, participant vesting provisions, employer and employee contributions, disclosure of prohibited transactions, Internal Revenue Code compliance tests, participant asset allocations, use of forfeitures, and recording of account activity for the year ended December 31, 20X2 as required by generally accepted auditing standards for audits of employee benefit plans subject to the Employee Retirement Income Security Act of 1974 as set forth in AU-C section 703, *Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA*. However, these procedures were not performed for the purpose of providing an opinion on compliance with those provisions and, accordingly, we do not express such an opinion.~~

~~During our audit, we noted the following findings relating to whether the plan and plan transactions are in accordance with specific plan provisions. However, the audit was not designed to identify all instances when the plan and plan transactions are not in accordance with those specific plan provisions. Our opinion on the financial statements is not modified with respect to these findings.~~

- ~~• We noted instances when vesting was not calculated in accordance with the plan instrument which resulted in the plan not paying the appropriate benefits.~~

### ~~*Purpose of this Report*~~

~~The purpose of this report on specific plan provisions relating to the financial statements is solely to describe the results of our procedures relating to specific plan provisions, and not to provide an opinion on the plan's compliance with ABC 401(k) Plan's provisions. This report on specific plan provisions relating to the financial statements is an integral part of an employee benefit plan audit performed in accordance with generally accepted auditing standards. Accordingly, this communication is not suitable for any other purpose.~~

~~[Auditor's signature]~~

**Auditor's** City and state report is issued

[Date of the auditor's report]

**Illustration 3—An Auditor’s Report on Financial Statements for a Defined Contribution Retirement Plan Subject to ERISA When Management Imposes a Limitation on the Scope of the Audit as Permitted by ERISA**

Circumstances include the following:

- ~~Management imposed a limitation on the scope of the audit, as permitted by 29 CFR 2520.103-8 of the DOL’s Rules and Regulations for Reporting and Disclosure under ERISA,~~ **Audit of a complete set of general purpose financial statements for a 401(k) plan subject to ERISA (comparative statement of net assets available for benefits and a single year statement of changes in net assets available for benefits), when management has imposed a limitation on the scope of the audit, as permitted by 29 CFR 2520.103-8 of the DOL’s Rules and Regulations for Reporting and Disclosure under ERISA<sup>6</sup> with respect to the certified investment information for a complete set of general purpose financial statements of a 401(k) plan. The auditor considered the possible effects of the management-imposed ERISA-permitted audit scope limitation on the auditor’s opinion.**
- **The appropriate qualified institution is a bank.**
- No other scope limitations were imposed and the financial statements are not materially misstated.
- The financial statements are prepared in accordance with U.S. GAAP.
- There are no matters disclosed in the notes to the financial statements that require an emphasis-of-matter paragraph to be included in the auditor’s report.
- **The auditor’s reporting on the supplemental schedules required by ERISA is included in an other-matter paragraph.**
- ~~The Report on Specific Plan Provisions Relating to Financial Statements is included with the auditor’s report and includes findings. The auditor performed procedures relating to participant eligibility, benefit payments, participant vesting provisions, employer and employee contributions, disclosure of prohibited transactions, IRC compliance tests, participant asset allocations, use of forfeitures, and recording of account activity.~~

**Independent Auditor’s Report**

[Appropriate Addressee]

We have ~~performed an audit of~~ **audited** the accompanying financial statements of ABC 401(k) Plan, **an employee benefit plan** subject to **the Employee Retirement Income Security Act of 1974 (ERISA), when management has imposed a** limitation on the scope of the audit **as permitted by ERISA**~~imposed by management, (ERISA-permitted audit scope limitation) as permitted by Employee Retirement Income Security Act of 1974.~~ The financial statements, **which** comprise the statements of net assets available for benefits as of December 31, 20X2 and 20X1, and the related

<sup>6</sup> Although not as common, the plan administrator may limit the scope of the audit of 103-12 investment entities as permitted by the Employee Retirement Income Security Act of 1974. If the scope limitation imposed by management is under 29 CFR 2520.103-12 then the wording in this illustrative report may need to change to reflect the circumstances of the engagement.

statement of changes in net assets available for benefits for the year ended December 31, 20X2, and the related notes to the financial statements.

#### **~~Basis for Limitation on the Scope of the Audit~~**

~~As permitted by 29 CFR 2520.103-8 of the Department of Labor's Rules and Regulations for Reporting and Disclosure under the Employee Retirement Income Security Act of 1974, management imposed a limitation on the scope of the audit. Under the authority of section 103(a)(3)(C) of the Employee Retirement Income Security Act of 1974, the audit need not extend to information related to assets held for investment of the plan (investment information) prepared and certified by a bank or similar institution or insurance carrier which is regulated and supervised and subject to periodic examination by a State or Federal agency, provided that the statements or information regarding assets so held are prepared and certified to by the bank or insurance carrier in accordance with 29 CFR 2520.103-5 and 29 CFR 2520.103-8.~~

~~We have been informed by management that a qualified institution holds the investments and executes investment transactions. Management has obtained certifications from the qualified institution as of December 31, 20X2 and 20X1, and for the year ended December 31, 20X2, stating that the investment information, described in Note X to the financial statements, is complete and accurate.~~

#### **Management's Responsibility for the Financial Statements of an Employee Benefit Plan Subject to ERISA When the ERISA-Permitted Audit Scope Limitation Is Imposed ~~and the Limitation on the Scope of the Audit~~**

Management is responsible for the preparation and fair presentation of these 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.

Management is also responsible for determining whether a limitation on the scope of the audit is permissible in the circumstances, in accordance with **ERISA** ~~the Employee Retirement Income Security Act of 1974~~, including evaluating whether

- the **statement relating to assets held for investment of the plan (investment information)** ~~certification~~ is prepared **and certified** by **the appropriate** ~~qualified~~ institution, and
- the certified investment information is complete and accurate.

The ~~limitation on the scope of the audit~~ **ERISA-permitted audit scope limitation** does not affect management's responsibility for the financial statements. Management is responsible for determining whether the certified investment information is appropriately measured, presented and disclosed in accordance with accounting principles generally accepted in the United States of America.

Management is also responsible for maintaining a current plan instrument including all plan amendments, administering the plan and determining that the plan's transactions that are presented and disclosed in the financial statements are in conformity with the plan's provisions, including maintaining sufficient records with respect to each of the participants, in accordance with sections 107

and 209 of ~~ERISA~~the Employee Retirement Income Security Act of 1974, to determine the benefits due or which may become due to such participants.

### **Auditor's Responsibility (Including Responsibility for the Certified Investment Information)**

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the ~~plan's entity's~~ preparation and fair presentation of the financial statements 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 the ~~plan's entity's~~ internal control. Accordingly, we express no such opinion. An audit also includes evaluating 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.

With respect to the ~~ERISA-permitted audit scope limitation imposed by management as it relates to~~ certified investment information, ~~that management instructed us not to audit, we did not assess the risks of material misstatement nor did we consider internal control over the certified investment information. Our procedures were limited to~~ **we are responsible for** the following:

- (a) obtaining and reading the certification
- (b) evaluating management's ~~assertion~~assessment of whether the ~~bank entity issuing preparing and certifying the certification statement relating to investment information, and transmitting such statement,~~ is ~~the appropriate~~ qualified institution under ~~ERISA~~the Employee Retirement Income Security Act of 1974
- (c) comparing the certified investment information with the related information presented and disclosed in the financial statements
- (d) evaluating whether the form and content of the certified investment information presented and disclosed in the financial statements ~~is~~are in accordance with accounting principles generally accepted in the United States of America

Other than with respect to the certified investment information, our audit procedures were not limited for other amounts and disclosures in the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our **qualified** audit opinion ~~with the ERISA-permitted audit scope limitation~~ on the financial statements.

### **Basis for Qualified Opinion ~~Limitation on the Scope of the Audit~~**

As permitted by 29 CFR 2520.103-8 of the Department of Labor's Rules and Regulations for Reporting and Disclosure under ~~ERISA~~the Employee Retirement Income Security Act of 1974, management imposed a limitation on the scope of the audit. Under the authority of section 103(a)(3)(C) of ~~ERISA~~the

~~Employee Retirement Income Security Act of 1974, the audit need not extend to information related to assets held for investment of the plan (investment information) prepared and certified by a bank or similar institution or insurance carrier which is regulated and supervised and subject to periodic examination by a State or Federal agency, provided that the statements or information regarding assets so held are prepared and certified to by the bank or similar institution or insurance carrier in accordance with 29 CFR 2520.103-5 and 29 CFR 2520.103-8~~ **of the Department of Labor's Rules and Regulations for Reporting and Disclosure under ERISA.**

We have been informed by management that a qualified institution holds the investments and executes investment transactions. Management has obtained certifications from the qualified institution as of December 31, 20X2 and 20X1, and for the year ended December 31, 20X2, stating that the investment information, described in Note X to the financial statements, is complete and accurate.

**Because of the ERISA-permitted audit scope limitation imposed by management, we were unable to obtain sufficient appropriate audit evidence about the certified investment information of ABC 401(k) Plan as of December 31, 20X2 and 20X1, and for the year ended December 31, 20X2. Consequently, we were unable to determine whether any adjustments to these amounts were necessary.**

~~**Auditor's Qualified Opinion With the ERISA-Permitted Audit Scope Limitation on the Financial Statements**~~

In our opinion, **except for the possible effects of the matter described in the Basis for Qualified Opinion** ~~based on our audit and based on our use of the certification of the investment information that we were instructed not to audit,~~ the financial statements referred to above present fairly, in all material respects, the net assets available for benefits of ABC 401(k) plan as of December 31, 20X2 and 20X1, and the changes in net assets available for benefits for the year ended December 31, 20X2, in accordance with accounting principles generally accepted in the United States of America.

**Other Matter Relating to the Supplemental Schedules Required by ERISA**

Our audits were conducted for the purpose of forming an opinion on the financial statements as a whole. The supplemental schedules of [*identify title of schedules and period covered*] are presented for purposes of additional analysis and are not a required part of the financial statements, but are supplementary information required by the Department of Labor's Rules and Regulations for Reporting and Disclosure under ~~ERISA~~ ~~the Employee Retirement Income Security Act of 1974~~. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the financial statements. The information has been subjected to the auditing procedures applied in the audits of the financial statements, **when management has imposed the ERISA-permitted audit scope limitation as it relates to certified investment information** ~~and the use of the certification of the investment information, that we were instructed not to audit,~~ and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, ~~performing procedures to test the completeness and accuracy of the information presented in the supplemental schedules,~~ and other additional procedures in accordance with auditing standards generally accepted in the United States of America.

Our procedures with respect to the certified investment information ~~included~~ **encompassed** in the supplemental schedules ~~include~~ ~~were limited to those procedures~~ described in the Auditor's Responsibility (Including Responsibility for the Certified Investment Information) section.

~~In forming our opinion on the supplemental schedules, we evaluated whether the supplementary information, including its form and content, is presented in conformity with the Department of Labor's Rules and Regulations for Reporting and Disclosure under the Employee Retirement Income Security Act of 1974.~~

In our opinion, **except for the possible effects on the supplemental schedules of the ERISA-permitted audit scope limitation imposed by management as it relates to certified investment information**~~based on our audit and based on our use of the certification of the investment information that we were instructed not to audit, the information in the accompanying schedules is fairly stated in all material respects in relation to the financial statements as a whole, and the form and content are presented in conformity with the Department of Labor's Rules and Regulations for Reporting and Disclosure under the Employee Retirement Income Security Act of 1974.~~

### **~~Report on Specific Plan Provisions Relating to the Financial Statements~~**

~~As part of obtaining reasonable assurance about whether ABC 401(k) Plan's financial statements are free from material misstatement, we are required to perform certain procedures to test whether the plan and plan transactions are in accordance with specific plan provisions. We performed procedures relating to participant eligibility, benefit payments, participant vesting provisions, employer and employee contributions, disclosure of prohibited transactions, Internal Revenue Code compliance tests, participant asset allocations, use of forfeitures, and recording of account activity for the year ended December 31, 20X2 as required by generally accepted auditing standards for audits of employee benefit plans subject to the Employee Retirement Income Security Act of 1974 as set forth in AU-C section 703, *Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA*. However, these procedures were not performed for the purpose of providing an opinion on compliance with those provisions and, accordingly, we do not express such an opinion.~~

~~During our audit, we noted the following findings relating to whether the plan and plan transactions are in accordance with specific plan provisions. However, the audit was not designed to identify all instances when the plan and plan transactions are not in accordance with those specific plan provisions. Our opinion with the ERISA-permitted audit scope limitation on the financial statements is not modified with respect to this finding:~~

- ~~• We noted instances when vesting was not calculated in accordance with the plan document, which resulted in the plan not paying appropriate benefits.~~

#### ~~*Purpose of this Report*~~

~~The purpose of this report on specific plan provisions relating to the financial statements is solely to describe the results of our procedures relating to the specific plan provisions, and not to provide an opinion on the plan's compliance with ABC 401(k) Plan's provisions. This report on specific plan provisions relating to the financial statements is an integral part of an employee benefit plan audit performed in accordance with generally accepted auditing standards. Accordingly, this communication is not suitable for any other purpose.~~

~~[Auditor's signature]~~

~~[Auditor's city and state ~~report is issued~~]~~

~~[Date of the auditor's report]~~

**Illustration 7—An Auditor’s Report Containing a Disclaimer of Opinion, Due to the Auditor’s Inability to Obtain Sufficient Appropriate Audit Evidence Because the Plan Has Not Maintained Sufficient Accounting Records, on Financial Statements of a Defined Contribution Retirement Plan Subject to ERISA When Management Imposes a Limitation on the Scope of the Audit as Permitted by ERISA**

Circumstances include the following:

- The auditor was engaged to perform an audit of a complete set of general purpose financial statements for a 401(k) plan subject to ERISA (comparative statement of net assets available for benefits and a single year statement of changes in net assets available for benefits), ~~subject to the~~ **when management has imposed a** limitation on the scope of the audit, as permitted by 29 CFR 2520.103-8 of the DOL’s Rules and Regulations for Reporting and Disclosure under ERISA.<sup>7</sup>
- **The appropriate qualified institution is a bank.**
- The financial statements are prepared in accordance with GAAP.
- The auditor was unable to obtain sufficient appropriate audit evidence because the plan has not maintained sufficient accounting records and supporting documents. The possible effects of this inability to obtain sufficient appropriate audit evidence are deemed to be both material and pervasive to the financial statements. ~~In addition, the auditor also considers the effect of the ERISA-permitted audit scope limitation on the auditor’s opinion because the opinion provided in paragraph 105 of this proposed SAS is not appropriate.~~ Accordingly, the auditor’s opinion contains a disclaimer of opinion.
- **The auditor also describes in the basis for modification any other matters of which the auditor is aware that would have required a modification to the opinion, including the management-imposed ERISA-permitted audit scope limitation, and the effects thereof.**
- There are no matters disclosed in the notes to the financial statements that require an emphasis-of-matter paragraph to be included in the auditor’s report.
- The auditor is precluded from expressing an opinion on the supplemental schedules when the auditor issues a disclaimer of opinion on the financial statements in accordance with AU-C section 725 *Supplementary Information in Relation to the Financial Statements as a Whole*. The auditor’s ~~reporting communication~~ **reporting communication** on the supplemental schedules **required by ERISA is included in an other-matter paragraph, and** has been revised accordingly.
- ~~The Report on Specific Plan Provisions Relating to Financial Statements is included with the auditor’s report and includes findings. The auditor performed procedures relating to participant eligibility, benefit payments, participant vesting provisions, disclosure of prohibited transactions, IRC compliance tests, participant asset allocations, use of forfeitures, and recording of account activity. However, due to the lack of accounting records the auditor was not able to perform all required testing, in particular, the auditor was unable to test benefit payments.~~

**Independent Auditor’s Report**

---

<sup>7</sup> Although not as common, the plan administrator may limit the scope of the audit of 103-12 investment entities as permitted by the Employee Retirement Income Security Act of 1974. If the scope limitation imposed by management is under 29 CFR 2520.103-12 then the wording in this illustrative report may need to change to reflect the circumstances of the engagement.

[Appropriate Addressee]

We were engaged to audit the accompanying financial statements of ABC 401(k) Plan, **an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (ERISA), when management has imposed a limitation on the scope of the audit as permitted by ERISA (ERISA-permitted audit scope limitation)**, which comprise the statements of net assets available for benefits as of December 31, 20X2 and 20X1, and the related statement of changes in net assets available for benefits for the year ended December 31, 20X2, and the related notes to the financial statements.

**Management's Responsibility for the Financial Statements of an Employee Benefit Plan Subject to ERISA When the ERISA-Permitted Audit Scope Limitation Is Imposed and the Limitation on the Scope of the Audit**

Management is responsible for the preparation and fair presentation of these 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.

Management is also responsible for determining whether a limitation on the scope of the audit is permissible in the circumstances, in accordance with **ERISA**~~the Employee Retirement Income Security Act of 1974~~, including evaluating whether

- the **statement relating to assets held for investment of the plan (investment information)**~~certification~~ is prepared **and certified** by **the appropriate** qualified institution, and
- the certified investment information is complete and accurate.

The ~~limitation on the scope of the audit~~ **ERISA-permitted audit scope limitation** does not affect management's responsibility for the financial statements. Management is responsible for determining whether the certified investment information is appropriately measured, presented and disclosed in accordance with accounting principles generally accepted in the United States of America.

Management is also responsible for maintaining a current plan instrument including all plan amendments, administering the plan and determining that the plan's transactions that are presented and disclosed in the financial statements are in conformity with the plan's provisions, including maintaining sufficient records with respect to each of the participants, in accordance with sections 107 and 209 of **ERISA**~~the Employee Retirement Income Security Act of 1974~~, to determine the benefits due or which may become due to such participants.

**Auditor's Responsibility**

Our responsibility is to express an opinion on these financial statements based on conducting the audits in accordance with auditing standards generally accepted in the United States of America. Because of the matters described in the Basis for Disclaimer of Opinion paragraphs, however, we were not able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion.

## Basis for Disclaimer of Opinion <sup>8</sup>

### **Basis for Disclaimer**

ABC 401(k) plan has not maintained sufficient accounting records and supporting documents. Accordingly, we were unable to apply auditing procedures sufficient to determine the extent to which the accompanying financial statements may have been affected by these conditions.

### **Other Identified Matter**

**In addition,** ~~As~~ permitted by 29 CFR 2520.103-8 of the Department of Labor's Rules and Regulations for Reporting and Disclosure under ~~ERISA~~ ~~the Employee Retirement Income Security Act of 1974~~, management imposed a limitation on the scope of the audit. Under the authority of section 103(a)(3)(C) of ~~ERISA~~ ~~the Employee Retirement Income Security Act of 1974~~, the audit need not extend to ~~investment~~ information ~~related to assets held for investment of the plan~~ prepared and certified by a bank or similar institution or insurance carrier which is regulated and supervised and subject to periodic examination by a State or Federal agency, provided that the statements or information regarding assets so held are prepared and certified ~~to~~ by the bank or **similar institution or** insurance carrier in accordance with 29 CFR 2520.103-5 and 29 CFR 2520.103-8 **of the Department of Labor's Rules and Regulations for Reporting and Disclosure under ERISA**. We have been informed by management that a qualified institution holds the investments and executes investment transactions. Management has obtained certifications from the qualified institution as of December 31, 20X2 and 20X1, and for the year ended December 31, 20X2, stating that the investment information, described in Note X to the financial statements, is complete and accurate.<sup>9</sup>

**Had we not disclaimed an opinion on these financial statements, we would have been required to modify our opinion to refer to the ERISA-permitted audit scope limitation imposed by management. The effects of any adjustments to the certified investment information relating to such scope limitation are unable to be determined.**

### **Disclaimer of Opinion ~~on the Financial Statements~~**

Because of the significance of the matters described in the Basis for Disclaimer ~~of Opinion~~ paragraphs, we have not been able to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion. Accordingly, we do not express an opinion on these financial statements.

---

<sup>8</sup> Paragraphs **s 34 and 35 of this proposed SAS require both the basis for disclaimer and the ERISA-permitted audit scope limitation to be included under the heading** ~~precludes the auditor from including a section for the Basis for Limitation on the Scope of the Audit; however, the auditor concluded that it was appropriate to include such content as part of the Basis for the Disclaimer of Opinion Paragraph~~ in accordance with AU-C section 705.

<sup>9</sup> ~~Paragraph 35 precludes the auditor from including a section for the Basis for Limitation on the Scope of the Audit; however, the auditor concluded that it was appropriate to include such content as part of the Basis for the Disclaimer of Opinion Paragraph in accordance with AU-C section 705.~~

## Other Matter Relating to the Supplemental Schedules Required by ERISA

We were engaged for the purpose of forming an opinion on the ~~basic~~ financial statements as a whole. The supplemental schedules of [*identify title of schedules and period covered*] are presented for the purposes of additional analysis and are not a required part of the financial statements, but are supplementary information required by the Department of Labor's Rules and Regulations for Reporting and Disclosure under ~~ERISA~~ the Employee Retirement Income Security Act of 1974. Because of the significance of the matters described in the Basis for Disclaimer of Opinion paragraphs, **it is inappropriate to and** we do not express an opinion on the supplemental schedules.

## ~~Report on Specific Plan Provisions Relating to the Financial Statements~~

~~As part of obtaining reasonable assurance about whether ABC 401(k) Plan's financial statements are free from material misstatement, we are required to perform certain procedures to test whether the plan and plan transactions are in accordance with specific plan provisions. We performed procedures relating to participant eligibility, benefit payments, participant vesting provisions, disclosure of prohibited transactions, Internal Revenue Code compliance tests, participant asset allocations, use of forfeitures, and recording of account activity for the year ended December 31, 20X2 as required by generally accepted auditing standards for audits of employee benefit plans subject to the Employee Retirement Income Security Act of 1974 as set forth in AU-C section 703, *Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA*. However, these procedures were not performed for the purpose of providing an opinion on compliance with those provisions and, accordingly, we do not express such an opinion.~~

~~During our audit, we noted the following findings relating to whether the plan and plan transactions are in accordance with specific plan provisions. However, we were unable to complete all testing necessary due to the lack of adequate accounting records as discussed in the Basis for Disclaimer of Opinion Paragraph in the report on the financial statements. Further, the audit was not designed to identify all instances when the plan and plan transactions are not in accordance with those specific plan provisions.~~

- ~~• We noted instances when vesting was not calculated in accordance with the plan instrument, which resulted in the plan not paying appropriate benefits.~~
- ~~• We were unable to perform procedures relating to whether benefit payments were calculated in accordance with the plan instrument because of the matters described in the Basis for Disclaimer of Opinion paragraph in the auditor's report on the financial statements.~~

### ~~Purpose of this Report~~

~~The purpose of this report on specific plan provisions relating to the financial statements is solely to describe the results of our procedures relating to specific plan provisions, and not to provide an opinion on the plan's compliance with ABC 401(k) Plan's provisions. This report on specific plan provisions relating to the financial statements is an integral part of an employee benefit plan audit performed in accordance with generally accepted auditing standards. Accordingly, this communication is not suitable for any other purpose.~~

[Auditor's signature]

[Auditor's ~~city and state~~ report is issued]

[Date of the auditor's report]