

Testimony before the ERISA Advisory Council

June 25, 2019

Good morning, Chairman Reddy, Vice Chair Kritz, Issue Chair Greenfield, Issue Vice-Chair O'Connor, members of the Issue Group Drafting Team, Members of the ERISA Advisory Council, Executive Secretary Good, staff to the ERISA Advisory Council, attending members of the public, and representatives from the press. My name is Dennis Mahoney and I serve as the Director of the Certified Employee Benefit Specialist (CEBS) Program through the Executive Education Department in the Wharton Business School at the University of Pennsylvania. The Certified Employee Benefit Specialist Program, commonly referred to as the CEBS Program, is a professional education certification program co-sponsored by the Wharton School of the University of Pennsylvania and the International Foundation of Employee Benefit Plans (IFEBP).

The CEBS Program confers a professional designation that can be earned by those working in the employee benefits industry by demonstrating knowledge and competencies in the field of employee benefits. Participants in the CEBS Program complete a curriculum of study developed by the Wharton School and exhibit mastery of this material by passing examinations upon the completion of each specific course in the Program.

In designing the CEBS curriculum, course developers at Wharton look to employee benefits law; regulatory pronouncements from the Department of Labor, the Internal Revenue Service, and other governmental regulatory agencies; as well as professional standards developed by professional associations such as the American Institute of Certified Public Accountants (AICPA), the Society of Actuaries, and other professional organizations whose expertise is widely recognized regarding the administration and oversight of employee benefits. We also are able to avail ourselves of a rich body of knowledge and reservoir of talent from the International Society of Certified Employee Benefit Specialists (ISCEBS), the practitioners who have successfully completed the CEBS Program. ISCEBS members work in all facets of the employee benefits industry both domestically and internationally. We also have the good fortune to work with colleagues at the International Foundation of Employee Benefit Plans (IFEBP), a nonprofit educational organization dedicated to providing the diverse employee benefits community with objective, solution-oriented education, research and information. In addition to tapping the expertise of these diverse organizations possessing specialized knowledge, course developers also conduct literature searches and review the latest research to stay abreast of marketplace trends and environmental changes that will impact the context in which overall business and employee benefit plans operate.

The CEBS Program was established in 1977. Since inception the CEBS Program has undergone multiple curriculum revisions to stay aligned with the latest developments and best practices which characterize the employee benefits industry. Though continually updated, the CEBS curriculum experienced a rather comprehensive redesign effort that began around 2015. From 2015 through 2016 course developers at the Wharton School engaged with information

from the sources previously cited as well as our colleagues from Dalhousie University in Canada, our colleagues who oversee the Canadian CEBS Program, to re-design the CEBS Program. With much effort expended in this re-design initiative, the new CEBS Program was launched in 2017 with the final course in the curriculum made available in 2018. One objective of this re-design effort was to streamline the curriculum centering the curriculum on the most pressing and important information necessary to function as a benefits professional.

Of note to this issue group is that one of the modules contained in our Strategic Benefits Management Course is titled “Overseeing and Managing Plan Audits.” I have made available to the issue group the elements of the study materials associated with this learning module so they can familiarize themselves with the learning objectives and the extent to which the CEBS curriculum delves into this important topic area. As noted previously, the CEBS Program very recently underwent a major curriculum review, yet those evaluating the curriculum felt that it was important to include in the curriculum a module which deals with how a benefits professional interacts with professional accountants conducting a plan audit. Since this module is included in our base curriculum, no one can earn the CEBS designation and hold themselves out to the public as a Certified Employee Benefit Specialist without studying this module in the Strategic Benefits Management Course.

Among the Learning Objectives associated with the module are the following:

1. Explain the modern accounting regulatory framework that applies to employee benefit plans, and describe the major types of information that must be included in the annual financial statements of a defined benefit plan.
2. Understand the importance of high-quality plan auditing for plan sponsors, and describe the strategies for selecting professional plan auditors.
3. Describe the compliance-related communications that auditors must obtain or provide to perform and complete the audit of plan financial statements.
4. Describe the communications auditors issue related to internal control matters that are identified in a plan audit.
5. Summarize the conditions that are conducive to fraud, how to detect it and how to deter and minimize it.

In order to assure that these learning objectives are accomplished, participants in the CEBS Program are provided readings by highly regarded professionals who work in these specialized areas. The first reading in this series, “Accounting for Employee Benefits Plans,” seeks to provide a knowledge of the Financial Accounting Standards Board (FASB) and its standards that are applicable to employee benefit plans. The reading provides background and an overview of these applicable standards, as well as how the Accounting Standards Codification (ASC or Codification) altered how the originally issued standards are presently referenced. This reading also provides a summary of the accounting and reporting requirements of ASC Topic 960. The intent of this reading is not to equip CEBS practitioners with the knowledge to compile financial statements for a defined benefit plan, nor to carry out a comprehensive plan audit, but

rather to equip them with sufficient background knowledge so that they can reasonably engage with a plan auditor to determine whether the plan auditor is conducting a comprehensive, high quality audit.

The next reading in this module, “A Practical Road Map to Engaging a Qualified Employee Benefit Plan Auditor,” continues along this continuum by acquainting aspiring CEBS designees with information uncovered by the DOL Employee Benefits Security Administration (EBSA) Office of the Chief Accountant (OCA) and the American Institute of Certified Public Accountants (AICPA) which determined a number of deficiencies in plan audits. The results of this research conducted in 1988, 1997, 2004 and 2014 paint a rather disappointing and dismal picture on the overall quality of plan audits. The research provides a context for benefit professionals to be aware of—to realize that plan audits require specialized knowledge and that certain factors, such as the number of plan audits conducted per year by a CPA firm, are associated with higher quality audits. Additionally, this reading identifies certain “red flags” that are likely to foretell a less-than-quality audit. The intent of this particular reading is to assist the plan administrator in finding a qualified auditor and establishing a means to ascertain whether or not a quality audit is being conducted at all stages of the audit process beginning with pre-audit work and commencement of the engagement.

The next two readings drill down deeper into this subject matter examining guidance provided by the Department of Labor on compliance-related communications that auditors must obtain or provide to perform and complete the audit of a plan’s financial statements, which include the engagement letter, management representation letter, and communication with those charged with governance. The two readings, Part 1 and Part 2, are entitled, “Audit 101: A Guide to Employee Benefit Plan Audits—Per the Department of Labor—Auditor Communications.” In addition to reviewing the hallmarks of the aforementioned communications as summarized in Part 1, Part 2 discusses communications auditors issue related to internal control matters that are identified in an audit. This particular reading details common deficiencies and themes that arise concerning internal controls.

The final reading contained within this course module is: “Audit 101: A Guide to Employee Benefit Plan Audits—The Current World of Fraud.” As the name to this reading implies, fraud in today’s world is pervasive and benefit plans are not immune from this threat, even if they have implemented anti-fraud controls. The reading seeks to acquaint benefit professionals with fraud risk factors, how to detect fraud and how to implement safeguards to best protect plan assets and the interests of plan participants and their beneficiaries. The reading stresses that fraud protection is a key duty in one’s fiduciary responsibility.

In order to assist participants preparing for their CEBS examinations, the study materials include a Study Guide that highlights the most important concepts contained in the assigned readings. The Study Guide supplies an explanatory overview of the topic contained in the Module, lists the assigned readings from the course textbook, provides an outline of knowledge, identifies key terms/concepts, then details a comprehensive content knowledge review characterized by incisive questions and well-sculpted answers retrieved from the text readings.

As alluded to earlier in my testimony, the CEBS Program underwent a comprehensive curriculum re-design in the very recent past. Among the most exciting elements of that re-design effort was the realization that learning the best practices of employee benefits management and administration involved much more than technical expertise and knowledge of ERISA and regulatory pronouncements. For a long time, this specialized technical knowledge was coupled with general business management courses typically found in undergraduate and graduate business curriculums and it was believed that the job of preparing benefit specialists for their roles in overseeing ERISA qualified plans was complete. However, when the educators and practitioners charged with re-designing the CEBS curriculum began their work, it was recognized that the world of benefits management and oversight has evolved quite a bit and the skills and expertise required to oversee and lead the employee benefit plan management function is much more involved today owing to the complexity accompanying a global technological marketplace. Whereas benefit specialists of yesteryear might have overseen a benefits program characterized by a single health plan option and a solitary defined benefit plan, today's benefits professional is responsible for the workings of defined contribution plans with a plethora of investment options, myriad health plan choices with disparate delivery platforms for medical care, and a host of specialty vendors who service outsourced benefit functions using the most advanced technological tools.

Accordingly today's benefits specialists are required to interact with all of these specialty areas and integrate functionality maintaining quality, cohesion and stellar customer service. Whereas the CEBS curriculum of the past had a dominant focus on governmental regulation and technical knowledge, today's curriculum must retain its commitment to imparting this technical knowledge but also convey the expertise in accessing the very best benefit services and integrating their delivery. Such expertise requires sophisticated managerial and political skills as well as strong leadership capabilities. With recognition of these requirements, the CEBS curriculum re-design team and its interested stakeholders decided to infuse the curriculum with case studies that illustrate the real life challenges that arise in the application of benefits knowledge. For the first time ever, the CEBS curriculum introduced these case studies with the launch of the new CEBS curriculum in 2017. Each one of the CEBS courses now contains four Benefits-In-Action mini-cases, as well as a much larger Integrated Case Study at the conclusion of the course. The Benefits-In-Action cases apply knowledge from a single learning module to a practical real world application. The Integrated Case Study at the conclusion of a course involves specialized knowledge from several course modules which must be applied to a complex, challenging real-world benefits situation.

Of relevance to the ERISA Advisory Council's examination of education and training for benefits specialists in connection with plan audits is a Benefits-In-Action mini-case vignette entitled "Auditing the Auditor." This mini-case follows the technical knowledge presented in Module 5 of the Strategic Benefits Management Course. In this particular Benefits-In-Action scenario, the pension plan administrator of a small regional company receives the defined benefit plan audit report from the firm's external plan auditor. Throughout the plan audit, the audit partner at the external CPA firm in charge of the audit engagement has primarily interacted with the corporate controller and has conducted the plan audit following the annual closing and audit

of the corporate financial statements. Upon receipt of the plan audit, the pension administrator reflects on whether to methodically file the audit report, as she has done in the past, or engage in a much more thorough examination of the document. As part of the mini-case, the pension administrator reads a professional journal article which summarizes the cooperative work between the DOL and the AICPA on pension plan audit quality. Recounting the discouraging results of these studies, the pension administrator feels compelled to more carefully examine the thoroughness of the audit. The mini-case Apply Your Knowledge questions recount the procedural steps which should have occurred between the auditors and the pension administrator's staff throughout the engagement. The questions also direct the pension administrator to queries that should have surfaced prior to the start of field work. The Test Your Knowledge section of the mini-case identifies the sources of knowledge that the benefits professional possesses which empower him or her to engage in relevant dialogue with the plan auditors. Finally, the mini-case illustrates what sort of action the pension administrator should take when dissatisfied with her assessment of the thoroughness and completeness of a quality audit. In this particular case, the pension administrator advises the controller, the main contact with the auditing partner, that she is raising questions concerning the pension plan audit. She does not want to "blind side" this internal stakeholder with her queries on the audit. Nevertheless, she intends to directly interact with the CPA firm conducting the audit and issuing the audit report.

Some of the key "take-aways" from this mini-case are the following:

1. It is a well-documented fact that a significant number of employee benefit plan audits are flawed and suffer from serious deficiencies.
2. A benefits professional has a responsibility to review both audit processes and audit findings as part of their professional responsibilities and fiduciary duty.
3. Benefits professionals, when properly trained, possess the knowledge base and practical tools and insights to assess the work products of their colleagues and professional peers who are charged with conducting plan audits.
4. A benefits professional who is fulfilling his or her professional responsibilities to insure the thoroughness and quality of a plan audit may very likely encounter resistance from either an internal stakeholder, such as the financial controller, or an external stakeholder, the audit partner of the CPA firm. These stakeholders may have a near-term interest, (i.e., to finalize the firm's financial closing and sign-off on the firm's financial statements), that is not aligned with the objective to conduct a thorough quality plan audit.

An objective of presenting a mini-case, such as "Auditing the Auditor," is to bring to life the technical knowledge presented in the learning module and illustrate how such knowledge may need to be applied in practice. It is important for benefits professionals to realize that even though they know what should technically be done in conducting a plan audit, there can be impediments that arise because of competing priorities and conflicting stakeholder interests. It is hoped that presenting this vignette will prompt those pursuing the CEBS designation to model the behavior displayed in the mini-case and be willing to confront their financial peers if they

perceive a less-than-thorough audit. Too often in the past, according to some of our advisers on curriculum development, benefits practitioners felt they failed to possess financial expertise and therefore needed to defer to financial professionals when it came to issues of plan audits. The intention of this Benefits-In-Action mini-case is to curtail such a belief which leads to inaction on the part of a plan sponsor.

As previously noted, use of these cases and mini-cases in the CEBS Program educational materials is a relatively new development having begun in 2017. However, even at this early date, it can be reported that the Benefits-In-Action mini-cases and the Integrated Case Studies have been well received by both participant learners in the Program and by instructors who have taught CEBS courses. The feedback that we are receiving is that for the first-time a realism is brought to the study materials that illustrate the challenges that exist in the workplace when applying the theory and technical knowledge associated with benefit plan administration.

In developing these cases, the Wharton School has a rich reservoir of knowledge and professional practice from which to draw from. Between the faculty and researchers at our institution, and the network of practitioners who have already earned the CEBS designation and are active in the International Society of Certified Employee Benefit Specialists' professional association, we have a talented pool of knowledgeable stakeholders. We also look to several other sources from which to draw for these best practices. One such source is certainly both the ERISA Advisory Council and the Department of Labor. In fact, two of our Integrated Case Studies drew on groundbreaking research conducted by the ERISA Advisory Councils in 2014 and 2016. One of our cases dealt with a benefits manager seeking to rein in pharmaceutical expense increases. In this situation, the benefits manager must not only confront internal politics where a newly appointed interim VP of Human Resources is seeking to garner favor to be appointed as the permanent VP of Human Resources, but has challenges procuring data from the company's Pharmacy Benefit Manager (PBM) whose disclosure on drug pricing is somewhat opaque. This particular case made extensive use of the findings of the 2014 ERISA Advisory Council on disclosure of information by PBMs. The case was supplemented by testimony from practitioners who had testified before the Council. Additionally, another Integrated Case drew on the research of the 2016 ERISA Advisory Council which produced a framework for dealing with cybersecurity risks to employee benefit plans. I would be remiss if I did not thank Executive Secretary Good for his graciousness and assistance in facilitating the ability of the International Foundation of Employee Benefit Plans to procure permissions to reprint some of the ERISA Advisory Council's materials in connection with these cases.

Because of the receptiveness of participants in the CEBS Program to the presentation of the case scenarios, I would suggest that such a format may be effective for the Department or the ERISA Advisory Council to use when either issuing regulations, providing insights on best practices or making recommendations for actions to be taken by plan sponsors. Such materials would be welcomed by the CEBS Program as resources for enhancing the quality of our learning materials. In the past we have learned much from the pronouncements coming from both the Department and the ERISA Advisory Council and wholeheartedly expect to learn from the pronouncements made in the future and expect that these pronouncements will be incorporated

into the body of knowledge presented in the CEBS curriculum to the benefit of the benefits profession and the plan participants and beneficiaries that are served by the profession.

The education of a CEBS designee does not end with attainment of the CEBS designation and completion of the base curriculum. The Wharton School, the International Foundation of Employee Benefit Plans and the International Society of Certified Employee Benefit Specialists stress the importance of lifelong learning for those who acquire the CEBS designation. The organizations encourage CEBS designees to be continuing professional education (CPE) compliant by acquiring a prescribed number of continuing education credits within incremental time periods. Additionally, members of the International Society of Certified Employee Benefit Specialists can attain Fellowship status by taking a course designed by the Wharton School which is developed each year. Those members of the Society who successfully complete the course and demonstrate competency via an examination are awarded Fellowship status for a two year period.

It is interesting to note that in casually reviewing the topic areas contained in recent Fellowship courses, the subject of plan audits is present in both the 2017 and 2019 courses. In 2017, the course included a reading from the *Journal of Compensation and Benefits* (January/February 2016 edition) entitled “Five Key Audit Examination Issues for Entities that Sponsor Defined Benefit Plans.” Similarly the 2019 course contained two readings from the *Journal of Pension Benefits* which involved learning involving audits—“Common Operational Errors in Large-Plan Audits” (March 2018) and “Where’s My Money? An Upsurge in Identity Theft and Fraud Is Putting Participants, Plan Sponsors, and Recordkeepers at Risk” (Autumn 2018).

Each CEBS designee upon the completion of their studies takes the CEBS Pledge involving adherence to ethical behavior. I would like to reprint the pledge here.

“As a Certified Employee Benefit Specialist, I pledge to abide by the CEBS Principles of Conduct in all my fiduciary, business and professional relationships, and to participate only in activities that conform with the spirit of those principles; I shall strive at all times to maintain and uphold the highest standards of honor and integrity, so that the quality of my work will reflect credit on the CEBS designation, my profession and the employee benefits field.”

When the re-design team commenced their work on the CEBS curriculum, it quickly became apparent that the employee benefits field has changed dramatically from an earlier era. Today’s benefits professional must draw on the expertise of a broad array of professionals in order to fulfill his or her high calling as a fiduciary. In order to fulfill this mission, he or she must become adept at accessing the specialized knowledge of a wide array of professions, access continually evolving technology, and be ever cognizant of marketplace trends and a complex regulatory environment that continually changes. He or she must become adept at vendor management and integrate the offerings of the “community of expertise” which services and makes possible the provision of state-of-the-art benefits. It is not easy to fulfill the high calling of

the CEBS Pledge in today's complex world. Overseeing and managing plan audits is but one important task in the myriad challenges that a benefits professional faces.

I hope my testimony is helpful to the Council in illustrating how the CEBS Program attempts to educate plan sponsors on this important topic and will assist your deliberations concerning recommendations to further enhance the quality and oversight of plan audits in the future.