

support of its argument that there should be a distinction in the treatment of “pension” and “deferred compensation” ESOPs for Government contract costing purposes:

ESOPs that meet the requirements of a qualified pension plan are subject to laws and regulations governing pension costs that should be considered in the cost accounting standards. ESOPs that do not meet the requirements of a qualified retirement plan should be addressed in CAS 9904.415 as deferred compensation subject to the individual contracts between the employer and the employee.

The Board notes that Boeing recognized that a uniform approach is needed for all ESOPs for cost measurement purposes, but was not specific as to the section of CAS that should be amended for that purpose. Although, the DOD IG stated that a distinction should be made between “pension” and “deferred compensation” ESOPs for Government contract costing purposes, several other commenters, including DynCorp and AIA, indicated that the “status quo” is acceptable and no further action by the Board is needed. Since the current practice recognizes, in effect, a distinction between these two types of ESOPs, then acceptance of the “status quo” would also imply that these commenters believe that distinguishing between the two types of ESOPs would be useful in the government contract costing environment. Therefore, the notion that there are two different types of ESOPs, “pension” and “deferred compensation” ESOPs, may have more support than indicated by the sole affirmative response received to this question.

*Response:* It is widely recognized that the two different types of ESOPs, “pension” and “deferred compensation” ESOPs, are recognized only in the Government contract costing environment. The Government was compelled to make this distinction as the result of the ASBCA’s decision in *Ralph Parsons Co.*, supra. The ASBCA held that since FAR 31.205–6(j)(8) (ESOPs) is included in the pension section of the cost principle, it does not apply to ESOPs that do not meet the definition of a pension. Therefore, those ESOPs that do not meet the definition of a pension are considered to be deferred compensation covered by FAR 31.205–6(k), which incorporates CAS 9904.415 in its entirety.

The DOD IG’s comments about qualified pensions refer to ERISA, not to CAS. The only distinction between pensions and deferred compensation in the CAS is the requirement that pension benefits be payable for life. This

distinction is not found in ERISA. The Board does not agree that ERISA qualification for pension plans should be the sole determining factor for which CAS should be applied in the measurement and assignment of ESOP costs for Government contracting purposes.

The Board agrees with the majority of commenters that no distinction should be made between “pension” and “deferred compensation” ESOPs in measurement and assignment of cost. Therefore, the proposed amendments would eliminate this distinction in the measurement and assignment of ESOP costs. As a consequence, a significant step will be taken to improve uniformity and consistency in the cost accounting practices among Government contractors in like circumstances—a primary objective of the Board. Furthermore, the current differences in the recognition and measurement of the interest element in the ESOP cost calculations among the two different types of ESOPs will be eliminated.

In summary, the Board proposes that CAS 9904.412 be amended to ensure that no ESOP is subject to the provisions of that Standard. At the same time, it is proposed that CAS 9904.415 be amended so that all the ESOPs become subject to that Standard.

### Question 3

If you believe that a distinction between ESOP types is useful and should be included in any future CAS promulgations, do you also believe that amendments, or an interpretation, to CAS 9904.412 and/or CAS 9904.415 is the appropriate action for the Board to take?

*Comments:* Since in response to Question 2, only one commenter indicated that a distinction between ESOP types is useful, it might have been expected that a single response would be obtained to this question. However, a total of nine commenters provided their opinion as to which Standard should be changed. Of the remaining seven commenters, five responded that no amendments or clarifications to either CAS 9904.412 or 9904.415 are required, and the other two (ESOP Association and Abt Associates Inc.) provided no specific response to this question.

Of the nine commenters who recommended that changes are required, three stated that CAS 9904.415 should be amended (DOD, ABA and POGO); two believe that CAS 9904.412 should be amended (Parsons, Brinkerhoff and United Technologies), three expressed no preference as to which standard should be amended (NDIA, Darrell J.

Oyer & Co., and McDermott, Will & Emery); and one (the DOD IG) recommended that both CAS 9904.412 and 9904.415 be amended.

In addition, two commenters (United Technologies and DynCorp), who consider ESOPs defined contribution plans, believe that, given the *Ball* decision, CAS 9904.412 and 9904.415 would produce the same results.

The Boeing response reflects the view of the five commenters who thought that no amendments to existing Standards are required (Boeing, Lockheed Martin, AIA, ALCOA, DynCorp):

We believe the current provisions of CAS 9904.412 and 9904.415 are adequate if properly interpreted. If clarification is desired to avoid interpretive disputes, amendments or interpretations to existing standards could be useful \* \* \*.

*Response:* The purpose of this question was to solicit opinions as to what format any Board action in this area should take. However, the responses that were obtained varied greatly and did not clearly point to any specific course of action.

Regarding the main thrust of the question, whether it would be more appropriate to deal with ESOPs under CAS 9904.412 or 9904.415, the Board believes that ESOPs have more in common with deferred compensation plans than with pension plans. Therefore, the Board proposes amendments to CAS 9904.415 to provide for the measurement and assignment of ESOP costs, and to CAS 9904.412 to clearly state that it is not applicable to ESOPs, including those plans which provide benefits that are “payable for life.”

### Question 4

Do you believe that the fair value of the shares released by an ESOP to individual employee accounts should be established at the date when the title to these shares is transferred to the ESOP or should it be the date when the shares are committed to be released to employee accounts? If you would like to propose a different date or a modified version of the two dates referred to above, please explain.

*Comments:* The majority of commenters (13 of 16) indicated that for shares transferred to an ESOP trust, the fair value should be established at the date when the title to these shares is transferred to the trust. Several commenters expanded on this basic response. It was frequently stressed that the contribution to the trust could be in the form of cash as well as shares, and thus, the critical date should be the date when an irrevocable transfer is made to