



October 20, 2014

The Honorable Jenny R. Yang
Chair
Equal Employment Opportunity
Commission
131 M Street, NE
Washington, DC 20507

The Honorable Constance S. Barker
Commissioner
Equal Employment Opportunity
Commission
131 M Street, NE
Washington, DC 20507

The Honorable Chai R. Feldblum
Commissioner
Equal Employment Opportunity
Commission
131 M Street, NE
Washington, DC 20507

The Honorable Victoria A. Lipnic
Commissioner
Equal Employment Opportunity
Commission
131 M Street, NE
Washington, DC 20507

Dear Commissioners:

We understand that the EEOC staff continues to investigate accounting firms organized as partnerships, apparently seeking to expand the scope of the Age Discrimination in Employment Act (ADEA) by requiring that partners in such firms be treated as “employees” for purposes of the ADEA.

As the world’s largest member association representing the accounting profession, with more than 400,000 members and a history of serving the public interest since 1887, the American Institute of CPAs (AICPA) remains concerned that such a significant expansion of the ADEA would be detrimental to the accounting profession and, thus, to the public at large.

As we wrote to you in June 2013, we respectfully request that the EEOC reject staff appeals to move forward with such matters.

We understand that the EEOC staff is currently investigating and considering litigation against accounting firms regarding the partner retirement provisions in their partnership agreements. You will recall that less than eighteen months ago, the EEOC staff completed a similar investigation of another large accounting firm. As the EEOC General Counsel’s office wrote in its July 25, 2013 informal comment letter¹, control – meaning whether partners control their own work and own and control a portion of their firms – is the touchstone to the determination that they are indeed partners rather than employees. Because of the nature of the accounting profession, we believe that the partners of our member firms – like the firms the staff is investigating – do have such control and that the EEOC should not bring actions against these firms.

¹ http://www.eeoc.gov/eeoc/foia/letters/2013/adea_accounting_firm_coverage_7_25.html

The AICPA represents CPAs in the more than 11,000 US accounting firms that almost exclusively operate as partnerships, as generally required under state accountancy statutes. Importantly, the public interest is protected by these statutes and the related AICPA Code of Conduct provisions that require that accounting firm owners also be actively engaged in the firm. Appropriately, hundreds of thousands of non-partner employees are covered by the ADEA. Accounting firm partners, as owners, however, are not covered by the ADEA, and we do not believe such partners should be considered employees, as the EEOC staff is apparently asserting.

We believe that any change in the EEOC's classification of accounting firm *partners* to "employees" for the purposes of anti-discrimination laws would be very disruptive to the accounting profession and its business practices. A change that treats accounting firm partners as "employees" would upend the long-established expectations and business reliance interests of the accounting profession. The members of our profession possess a high degree of business expertise. Those individuals have full knowledge and understanding of the compensation, capital contributions, buy outs, pensions, deferred compensation, voting rights, benefits, governance, termination policies, as well as mandatory retirement provisions, and agree to those terms when signing their firm's partnership agreement. Further, individuals have the option of choosing to remain employees rather than becoming partners.

Accounting firms and their partners have adopted these policies for sound business reasons. This business model has thrived and prospered for decades while also serving the public interest. In particular, retirement policy provisions allow for the predictable progression of lesser tenured, and often more diverse, individuals into the partnership, and facilitate the orderly transition of a firm's clients from senior partners to those who will succeed them.

We encourage the Commissioners of the EEOC to exercise their authority to reject any attempt by the General Counsel to file litigation with respect to accounting partnership retirement practices. Further, we encourage the Commissioners to direct the EEOC staff and General Counsel to stop these unwarranted and unnecessary investigations of accounting firm partnerships and utilize the Commission's resources in a more productive manner that will address actual discrimination practices.

Thank you for your consideration of our views.

Sincerely,

A handwritten signature in black ink, appearing to read "Barry C. Melancon". The signature is fluid and cursive, with a long horizontal stroke at the end.

Barry C. Melancon, CPA, CGMA
President and CEO

cc: Members of the Senate Committee on Health, Education, Labor and Pensions
Members of the House Committee on Education and the Workforce