

DOL and AICPA Independence Rule Comparison

Note: The Center has prepared the following summary to assist members in understanding some of the more common independence rules that affect auditors of employee benefit plans. Information about the DOL rules is excerpted from [29 CFR 2509.75-9, Interpretive Bulletin](#) relating to guidelines on independence of accountant retained by Employee Benefit Plans. Information about the AICPA's independence rules is based on the [AICPA "Independence Rule" \[ET 1.200.001\] and its interpretations](#). Where AICPA staff was not able to identify any specific DOL rules addressing certain topics, members should contact the DOL to determine its position. Marcus Aron (DOL) can be reached at 202-693-8371.

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<p>Definition of a Firm "Member" DOL independence guidance defines the term "member" to include all partners (or partner equivalents) or shareholder employees in the firm and all professional employees participating in the audit or located in an office of the firm participating in a significant portion of the audit.</p>	<p>Definition of a Firm "Member" AICPA independence rules related to <i>financial relationships</i> use an "engagement team-focused" approach whereby only covered members (i.e. managers, partner equivalents, or partners who provide more than 10 hours of nonattest services to the plan, partners or partner equivalents in the same office as the attest engagement partner, and those individuals who participate in the audit or can otherwise influence the engagement team and, as a result, the outcome of the audit) would be subject to the financial relationship restrictions set forth in the independence rules.</p> <p>[See ET section 0.400.12 and 0.400.23 for definitions of <i>covered member</i> and an <i>individual in a position to influence the attest engagement</i>, respectively].</p>	<p>Definition of a Firm "Member" In some respects, the independence rules of the AICPA incorporate a more expansive definition of "member" than that of the DOL since immediate family and close family members of the covered member are also subject to certain financial relationship restrictions.</p> <p>On the other hand, AICPA independence rules include a less expansive definition of "member" as it relates to those individuals who are not "covered members", such as managerial level and professional staff who reside in the office but who do not participate on the audit engagement and provide no more than minimal nonaudit services to the client; and certain partners who reside in a separate office and who do not participate in the attest engagement and provide no more than minimal nonattest services to the client.</p>

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<p>Immediate Family and Close Relatives AICPA staff could not identify any specific DOL rules addressing application of the independence rules to immediate family members or close relatives.</p>	<p>Immediate Family and Close Relatives For AICPA guidance, see the interpretations in the "<i>Family Relationships with Attest Clients</i>" subtopic [ET section 1.270] under the AICPA "<i>Independence Rule</i>" related to Immediate Family Members and Close Relatives.</p> <p>[See ET section 0.400.08 and 0.400.19 for definitions of <i>close relatives</i> and <i>immediate family</i>, respectively].</p>	<p>Immediate Family and Close Relatives Since AICPA staff was not able to identify any specific DOL rules addressing immediate family members or close relatives, members should contact the DOL to determine its position.</p>
<p>Affiliates of a Plan DOL independence guidance extends its independence rules to sponsors of a plan. Per the Act, the sponsor is the entity (or entities in case there is more than one) who established or maintains the plan, such as the employer or employee organization. In the case of a plan established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.</p>	<p>Affiliates of a Plan The AICPA independence rules would consider the plan sponsor of a single employer employee benefit plan or union or participating employer that has significant influence over a multiple or multiemployer employee benefit plan to be an affiliate of the plan. The term <i>significant influence</i> is as used in Financial Accounting Standards Board Accounting Standards Codification 323-10-15.</p> <p>Once an entity is deemed to be an affiliate, the independence rules applicable to the plan would also be applicable to the plan's affiliates, except as provided for in the "Client Affiliate" interpretation [ET section 1.224.010]</p>	<p>Affiliates of a Plan While both the DOL and AICPA extend certain provisions to the sponsor of a single employer plan, the DOL is more restrictive with respect to multiple and multiemployer plans since the DOL does not limit its guidance to only those entities that have significant influence over such plans.</p> <p>In addition, the DOL rule is more restrictive because the DOL would prohibit maintaining financial records for these entities even if the results of these nonattest services will not be subject to financial statement attest procedures.</p>

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	<p>under the AICPA "Independence Rule". One such exception is that prohibited nonattest services may be provided to an affiliate of a plan provided that it is reasonable to conclude that the services do not create a self-review threat with respect to the plan because the results of the nonattest services will not be subject to financial statement attest procedures. For any other threats that are created by the provision of the nonattest services that are not at an acceptable level, such threats should be eliminated or reduced to an acceptable level by the application of safeguards.</p> <p>For AICPA guidance addressing other relationships with an affiliate of a client, see the "<i>Client Affiliate</i>" interpretation under the AICPA "Independence Rule".</p> <p>For more information about how the AICPA independence rules apply to affiliates of employee benefit plans, see <i>Frequently Asked Questions: Application of the Independence Rules to Affiliates of Employee Benefit Plans</i>.</p>	
<p>Financial Interests DOL rules would consider independence to be impaired with respect to a plan if during the period of the professional</p>	<p>Financial Interests The AICPA independence rules would consider independence to be impaired with respect to a plan if during the period</p>	<p>Financial Interests The DOL's financial interest restrictions are more restrictive in that they apply to more individuals and for a more</p>

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<p>engagement, at the date of the opinion, or <i>during the period covered by the financial statements</i> the auditor or other "member" of the firm had a direct or material indirect financial interest in:</p> <ul style="list-style-type: none"> • The plan; or • The plan sponsor 	<p>of the professional engagement a:</p> <ul style="list-style-type: none"> • Covered member had or was committed to acquire any direct or material indirect financial interest in the plan or affiliate of the plan or • Partner or professional employee of the firm or any group of such individuals acting together owned more than 5% of: <ul style="list-style-type: none"> ○ the plan's ownership interests, or ○ an affiliate's outstanding equity securities or other ownership interests. <p>See the "Overview of Financial Interests" interpretation [ET section 1.240.010] under the AICPA "Independence Rule" for details.</p>	<p>expansive period of time.</p> <p>That is, under the DOL's restrictions the auditor and all other members of the firm are prohibited from having certain financial interests whereas the AICPA's restrictions mainly apply to covered members. The exception to this under the AICPA is when a partner or professional employee or any group of such individuals acting together owns more than 5% of a plan's ownership interests or of an affiliate's outstanding equity securities or other ownership interests. In these situations the AICPA would also prohibit such financial interests.</p> <p>Also, the AICPA's financial interest restrictions apply for a less expansive period of time in that they only exist during the period of the professional engagement. Accordingly, the audit firm could perform the audit provided the member disposed of such financial interest prior to signing the initial audit engagement letter or commencing audit procedures, whichever is earlier.</p>
<p>Joint Closely Held Investments AICPA staff could not identify any specific DOL rules addressing joint closely held</p>	<p>Joint Closely Held Investments For AICPA guidance, see the "Joint Closely Held Investments" [ET section 1.265.020]</p>	<p>Joint Closely Held Investments Since AICPA staff was not able to identify any specific DOL rules</p>

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investments.	and the " <u><i>Client Affiliate</i></u> " [ET section 1.224.010] interpretations under the AICPA "Independence Rule".	addressing joint closely held investments, members should contact the DOL to determine its position.
Loans AICPA staff could not identify any specific DOL rules addressing loans.	Loans For AICPA guidance, see the interpretations in the " <u><i>Loans, Leases and Guarantees</i></u> " subtopic [ET section 1.260] and the " <u><i>Client Affiliate</i></u> " interpretation [ET section 1.224.010] under the AICPA "Independence Rule"	Loans Since AICPA staff was not able to identify any specific DOL rules addressing loans, members should contact the DOL to determine its position.
Simultaneous Employment/Association: DOL rules would consider independence to be impaired with respect to a plan if during the period of professional engagement, at the date of the opinion, or during the period covered by the financial statements the auditor, his or her firm or a member thereof was connected as a promoter, underwriter, investment advisor, voting trustee, director, officer, or employee of the plan or of the plan's sponsor.	Simultaneous Employment/Association: The AICPA independence rules would consider independence to be impaired with respect to a plan if, during the period covered by the financial statements or during the period of the professional engagement, <i>any</i> partner or professional employee of the firm was simultaneously associated with the plan or an affiliate of the plan as a(n): <ul style="list-style-type: none"> a. Director, officer, or employee, or in any capacity equivalent to that of a member of management; b. Promoter, underwriter, or voting trustee; or c. Trustee for any pension or profit-sharing trust of the sponsor (or union or participating employer). See the " <u><i>Simultaneous Employment or</i></u> "	Simultaneous Employment/Association: The rules appear consistent.

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	<i>Association With an Attest Client</i> " [ET section 1.275.005] and the " <i>Client Affiliate</i> " [ET section 1.224.010] interpretations under the AICPA "Independence Rule".	
<p>Former Firm Member Now Associated with Plan or Plan Sponsor AICPA staff could not identify any specific DOL rules addressing such association with a plan or a plan sponsor.</p>	<p>Former Firm Member Now Associated with Plan or Plan Sponsor For AICPA guidance, see the "<i>Subsequent Employment or Association With an Attest Client</i>" [ET section 1.279.020] and the "<i>Client Affiliate</i>" [ET section 1.224.010] interpretations under the AICPA "Independence Rule"</p>	<p>Former Firm Member Now Associated with Plan or Plan Sponsor Since AICPA staff was not able to identify any specific DOL rules addressing such association with a plan or a plan sponsor, members should contact the DOL to determine its position.</p>
<p>General Guidance On Non-Attest Services DOL staff is permitted to give "appropriate consideration to all relevant circumstances, including evidence bearing on all relationships between the accountant or accounting firm and that of the plan sponsor or any affiliate thereof, and will not confine itself to the relationships existing in connection with the filing of annual reports with the Department of Labor." DOL rules also state that independence would not be considered to be impaired if at or</p>	<p>General Guidance On Non-Attest Services The interpretations in the "<i>Nonattest Services</i>" subtopic [ET section 1.295] under the AICPA "Independence Rule" provides guidance and specific examples of nonattest services that would and would not impair independence. The AICPA requires that certain general requirements (i.e., safeguards) be implemented by the firm when the firm performs nonattest services for an attest client. For example, the firm must establish and document its understanding with the client and be satisfied that client</p>	<p>General Guidance On Non-Attest Services AICPA staff was not able to identify any specific DOL rules that provide further insight into what circumstances the DOL staff believes are relevant and as such, members should contact the DOL to determine its position.</p>

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<p>during the period of the professional engagement, the accountant or his or her firm is retained or engaged on a professional basis by the plan sponsor.</p>	<p>management can make an informed judgment on the results of the non-attest service. In addition, the client must designate an individual who can oversee the service and make all necessary judgments and management decisions.</p> <p>Also, the "<u>Client Affiliate</u>" interpretation [ET section 1.224.010] under the AICPA "Independence Rule" provides guidance on the performance of nonattest services for an employee benefit plan sponsored by a client as well as performance of nonattest services for an affiliate of an employee benefit plan financial statement attest client). In addition, this interpretation provides that a member or his or her firm may provide prohibited nonattest services to an affiliate of the plan provided that it is reasonable to conclude that the services do not create a self-review threat with respect to the plan because the results of the nonattest services will not be subject financial statement attest procedures. For any other threats that are created by the provision of the nonattest services that are not at an acceptable level, such threats should be eliminated or reduced to an acceptable level by the application of safeguards.</p>	

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<p>Bookkeeping DOL rules would consider independence to be impaired if the audit firm or any of its employees maintain the financial records for an employee benefit plan or for the sponsor of the plan.</p>	<p>Bookkeeping The "<i>Bookkeeping, Payroll, and Other Disbursements</i>" interpretation [ET section 1.295.120] under the AICPA "Independence Rule" provides the following examples of bookkeeping services the firm could perform that <i>would not</i> impair his or her independence provided the member applies the "<i>General Requirements for Performing Nonattest Services</i>" interpretation [1.295.040] under the "Independence Rule":</p> <ul style="list-style-type: none"> ▪ Record transactions to an attest client's general ledger when management has determined or approved the account classifications for the transaction. ▪ Post client-coded transactions to an attest client's general ledger. ▪ Prepare financial statements based on information in the attest client's trial balance. ▪ Post client-approved journal and other entries to the attest client's trial balance. ▪ Propose standard, adjusting, or correcting journal entries or other changes affecting the financial statements to the attest client. Prior to the member posting these 	<p>Bookkeeping Since the DOL rules do not provide further clarification as to what constitutes maintaining financial records for an employee benefit plan, members should contact the DOL to determine its position.</p>

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	<p>journal entries or changes, the member should be satisfied that management has reviewed the entries and understands the nature of the proposed entries and the effect the entries have on the attest client’s financial statements.</p> <p>Following are examples of bookkeeping services that <i>would</i> impair the firm’s independence:</p> <ul style="list-style-type: none"> ▪ Determines or changes journal entries, any account coding or classification of transactions, or any other accounting records without first obtaining the attest client’s approval. ▪ Authorizes or approves transactions. ▪ Prepares source documents. ▪ Makes changes to source documents without the attest client’s approval. 	
<p>Actuarial Services DOL rules state that the rendering of services by an actuary associated with an accountant or accounting firm would not impair independence. However, the DOL notes that the rendering of services to a plan by an actuary and accountant employed by the same firm may constitute a</p>	<p>Actuarial Services The "Appraisal, Valuation, and Actuarial Services" interpretation [ET section 1.295.110] under the AICPA "Independence Rule" would consider independence to be impaired if a member performs an appraisal, valuation, or actuarial service for an attest client where the results of the service, individually or</p>	<p>Actuarial Services The independence rules appear consistent. However, the DOL has indicated that providing actuarial services may result in a prohibited transaction. Contact the DOL with any questions to determine its position.</p>

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<p>"prohibited transaction."</p>	<p>in the aggregate, would be material to the financial statements and the appraisal, valuation, or actuarial service involves a significant degree of subjectivity.</p> <p>However, an actuarial valuation of a client's pension or post-employment benefit liabilities generally produces reasonably consistent results because the valuation does not require a significant degree of subjectivity. Therefore, such services would not impair independence provided all significant assumptions and matters of judgment are determined or approved by the client and the client is in a position to have an informed judgment on, and accepts responsibility for, the results of the service.</p>	
<p>Benefit Plan Administration DOL rules would consider independence to be impaired if the audit firm or any of its employees maintain the financial records for an employee benefit plan or for the sponsor of the plan.</p>	<p>Benefit Plan Administration The "Benefit Plan Administration" interpretation [ET section 1.295.115] under the AICPA "Independence Rule" provides the following examples of benefit plan administration services that <i>would not</i> impair the firm's independence:</p> <ul style="list-style-type: none"> • Communicate summary plan data to plan trustee. • Advise management regarding the application and impact of provisions in a plan document. • Process certain transactions that have 	<p>Benefit Plan Administration It would appear that the DOL considers participant records to be financial records of the plan. The DOL has indicated in its comments at AICPA conferences that it does not believe an accountant who maintains any of the participants' records is independent.</p>

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	<p>been initiated by plan participants or approved by the plan administrators using the member’s electronic media, such as an interactive voice response system or Internet connection or other media. Such transactions may include processing investment or benefit elections, changes in contributions to the plan, data entry, participant confirmations, and distributions and loans.</p> <ul style="list-style-type: none"> • Prepare account valuations for plan participants using data collected through the member’s electronic or other media. • Prepare and transmit participant statements to plan participants based on data collected through the member’s electronic or other media. <p>Following are examples of benefit plan administration services that <i>would</i> impair the firm’s independence:</p> <ul style="list-style-type: none"> • Make policy decisions on behalf of management. • Interprets the provisions in a plan document for a plan participant on behalf of management without first obtaining management’s concurrence. • Make disbursements on behalf of the 	

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	<ul style="list-style-type: none"> plan. • Have custody of the plan's assets. • Serve a fiduciary capacity, as defined by ERISA. 	
<p>Other Nonattest Services AICPA staff could not identify DOL rules specifically addressing any other nonattest services.</p>	<p>Other Nonattest Services For AICPA guidance regarding the provision of other nonattest services, the interpretations in the "Nonattest Services" subtopic [ET section 1.295] under the AICPA "Independence Rule".</p>	<p>Other Nonattest Services Since AICPA staff was not able to identify any specific DOL rules addressing other nonattest services, members should contact the DOL to determine its position.</p>