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VIA Electronic Mail
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Michael Santay
Chair Auditing Standards Board
Darrel Schubert
Chair, Employee Benefit Plan Reporting Task Force
American Institute of Certified Public Accountants ("AICPA")
1211 Avenue of the Americas
New York, NY 10036

Re: Exposure Draft AU-C Section 703

Dear Auditing Standards Board Members,

Groom Law Group, Chtd. represents a group of plans, accounting firms, and financial institutions ("We" the "Group") that will be directly and adversely affected if the changes proposed in Exposure Draft AU-C Section 703 to the Auditing Standards for Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA (the "Proposed Changes," "Exposure Draft," or "AU-C 703") are adopted in their current form. While the Group unanimously supports the goal of improving the quality of accountant audits of such plans' financial statements to demonstrate their financial soundness, We strongly believe that the Proposed Changes will not accomplish that goal and will harm the very plan participants and plan financial statement users that they are intended to protect and inform. Our concerns and suggested courses of action are set forth below.

I. Alternate Proposal to Improve Plan Financial Statement Audits

Despite our objections to the AU-C 703, We realize that it is not especially helpful to merely criticize the Exposure Draft without suggesting other measures that could address the Department of Labor's ("DOL" or the "Department") findings in its 2015 DOL Study Assessing the Quality of Employee Benefit Plan Audits (the "2015 DOL Study").[1] As you know, the 2015

[1] U.S. Department of Labor, Employee Benefits Security Administration, Office of the Chief Accountant, *Assessing the Quality of Employee Benefit Plan Audits* (May, 2015) https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/publications/assessing-the-quality-of-employee-benefit-plan-audits-report.pdf

DOL Study found significant deficiencies in accountants' audits of plan financial statements. Importantly, We note that contrary to the AICPA's characterization of DOL's active involvement and support in propagating AU-C 703, the 2015 DOL Study does *not* recommend changing the Audit Standards for employee benefit plans. Instead, the 2015 DOL Study includes several recommendations to address its findings with which We agree.

We propose that the AICPA withdraw the Exposure Draft and, instead, institute changes that would actually improve the quality of accounting audits of employee benefit plan financial statements. Additional Auditing Standards will simply not increase compliance by auditors who ignore the extensive existing Auditing Standards and AICPA guidance. Thus, We suggest the AICPA withdraw the Exposure Draft and re-propose an exposure draft that provides for the following points:

1. "improve the investigation and sanctioning process for those CPAs who perform significantly deficient audit work" (2015 DOL Study, Recommendation No. 2, pg. 23);

2. "streamline the peer review process and make it more effective at improving employee benefit plan audit quality" (2015 DOL Study, Recommendation No. 4(a), pg. 23);

3. "ensure that CPAs who are required to undergo a peer review have in fact had an acceptable peer review" (2015 DOL Study, Recommendation No. 4(b), pg. 23);

4. "identify those CPAs who have not received an acceptable peer review and refer those practitioners to the applicable state licensing boards of accountancy" (2015 DOL Study, Recommendation No. 4(c), pg. 23);

5. require that accountants who perform an audit of an employee benefit plan complete a significant amount of continuing professional education (e.g., 24 hours over 3 years) that covers the guidance for auditing such plans; and

6. require AICPA members who audit employee benefit plans to be members of the AICPA's Plan Audit Quality Control Center ("EBPAQC").

You may notice that points 1 through 4 above are direct quotes from the 2015 DOL Study. In fact, they are *all* of the study's recommendations involving the AICPA.

We recommend that the AICPA increase the amount of employee benefit plan specific continuing professional education that is required and require EPBAQC membership because We believe that it is necessary to address the 2015 DOL Study's conclusion and finding that:

A. "CPAs failed to comply with professional standards either because they

were not adequately informed about employee benefit plan audits, or failed to properly utilize the technical materials that were in their possession." (2015 DOL Study, Conclusion, pg. 2);

B. "Members of the AICPA's Employee Benefit Plan Audit Quality Center (EBPAQC) tend to have fewer audits containing multiple GAAS deficiencies. Additionally, non EBPAQC member firms tend to have a larger number of GAAS deficiencies, per audit engagement, than EBPAQC members." (2015 DOL Study, Conclusion, pg. 2);

C. "Training specifically targeted at audits of employee benefit plans (EBPs) may contribute to better audit work. As the level of EBP-specific training increased, the percentage of deficient audits decreased." (2015 DOL Study, Findings, pg. 2)

Notice that recommendation numbers 5 and 6 above specifically seek to build on and remedy these 2015 DOL Study conclusions and finding. We believe that education, not new Auditing Standards, will improve the audit quality of employee benefit plans.

Because the 2015 DOL Study concludes that the deficient audits are caused by a lack of knowledge or ignorance of the existing AICPA guidance, We believe that the propagation of more standards and guidance will not reach the goal of improved audits of employee benefit plans. The AICPA currently publishes its 830-page Audit & Accounting Guide for Employee Benefit Plans providing extensive interpretations of the existing Audit Standards. Thus, based on the DOL Study's conclusions and findings, AU-C 703 will not meet its goal of improving audit quality while simultaneously producing severe, detrimental disadvantages to plan participants and beneficiaries.

II. The AU-C 703 Requirements Potentially Undermine the Limited Scope Audit Permitted by ERISA Section 103(a)(3)(C) and Regulations 2520.103-5 & 8

Congress established an exception to ERISA's general requirement that plans must obtain an independent accountant's opinion stating its financial statements and accompanying required schedules "are presented fairly in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year." ERISA Section 103(a)(3)(A). Attachment A sets forth statutory and regulatory excerpts providing for the Limited Scope Exception. (the "Limited Scope Exception") As noted in ERISA's legislative history, the purpose of the statutory exception was to prevent duplicative audits of financial institutions that are regulated by other government agencies. *See* Senate Report 93-127 (April 18, 1973), p. 28 published in Committee Print, Legislative History of the Employee Retirement Income Security Act of 1974, Public Law 93-406, p. 614 (noting "the exemption for the books of institutes

providing investment, insurance and related functions and subject to periodic examination by a government agency will prevent duplicative audit examinations by these institutions.") This exception has been in place for decades and has worked to lower plan administrative costs, thereby increasing the money available to provide benefits to participants. While the 2010 ERISA Advisory Council examining the Limited Scope Exception concluded that it should be retained and caused no harm to participants, the Department of Labor and the AICPA historically advocated for the removal of the Limited Scope Exception.[2]

Understanding why DOL wants Congress to repeal the Limited Scope Exception helps one to understand why AU-C 703 will potentially undermine that statutory exception. Simply put, DOL believes that the Limited Scope Exception does not adequately protect plan participants because it believes that the "fair market value" or "fair value" of some hard to value plan assets are not accurately reflected in the certifications provided by financial institutions and ultimately reported in the plan's financial statements and accompanying schedules included in the Form 5500. Despite the findings of the 2010 ERISA Advisory Council to the contrary, DOL believes that the Limited Scope Exception harms participants. As a result, DOL would like to eliminate the Limited Scope Exception and subject all of the plan's assets held by financial institutions to the plan's accountant's audit of the plan's financial statements. However, ERISA's statutory provisions and regulations permit the plan to instruct the accountant to exclude such hard to value assets from its audit with a qualifying financial institution's certification, and the regulations expressly provide that the information set forth in the financial institution's certification should be accepted as "true" by the auditor. ERISA Regulation 2520.103-5(d). Since Congress has refused to eliminate the Limited Scope Exception and DOL has not proposed changes to its regulations detailing the exception, it appears that the AICPA and DOL are trying to indirectly lessen the scope of the exception through the Proposed Changes and the proposed Form 5500 regulations, respectively. *See* 81 Fed. Reg. 47534 (July 21, 2016) (the "Proposed Form 5500").

The required procedures contained in Paragraph 20(b)-(d) of the Exposure Draft may restrict the Limited Scope Exception by potentially allowing CPA's to interpret the legal requirements that must be met under ERISA in order to allow a plan to utilize the exception. Whether the Limited Scope Exception should be repealed or constricted based on policy arguments is inconsequential to the analysis of whether the Proposed Changes regarding the exception should be adopted by the AICPA. The law provides that the Limited Scope Exception is permissible. Until the law is changed by the government, it is inappropriate for the AICPA to construct a mechanism which could nullify or restrict the exception by adjusting the Audit

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[2] ERISA Advisory Council, U.S. Dep't of Labor, *Employee Benefit Plan Auditing and Financial Reporting Models* (2010) ("ERISA Advisory Council Report"), http://www.dol.gov/ebsa/publications/2010ACreport2.html (noting that the "AICPA has supported the repeal of limited scope audits since 1978."); *See also*, the 2015 DOL Study (recommending that Congress adopt legislation amending ERISA to eliminate the Limited Scope Exception).

Standards, regardless of whether the law should provide otherwise. There are at least four ways by which Paragraph 20 arguably could do just that.

The first potential way AU-C 703, Paragraph 20(b) could undermine the Limited Scope Exception is by allowing the auditing accountant to make a legal judgment about "whether the entity issuing the certification is qualified under DOL rules." The Department of Labor's Office of Inspector General conducted its own study to determine whether the Employee Benefits Security Administration of DOL (the office responsible for administering ERISA) was doing enough to eliminate the Limited Scope Exception that the DOL perceives as a threat to plan participants.[3] It concluded that the DOL should issue regulations describing which financial institutions could qualify to provide the statutory certification. The 2014 OIG Report observed that ERISA Section 103(c)(3)(c) requires the certifying financial institution to be "regulated and supervised and subject to periodic examination by a State or Federal agency." The report asserts that federal and state banking and insurance regulatory agencies do not sufficiently examine financial institution's valuations of employee benefit plan assets to meet ERISA's statutory requirement permitting the Limited Scope Exception. As a consequence, the 2014 OIG Report suggests that the DOL should begin a regulatory process that would define the necessary level of periodic examination which would permit the exception. The implication being that the DOL OIG does not believe that banks and insurance companies currently providing certifications should meet that criteria. However, to date, DOL has not proposed such a regulatory change. In light of the 2014 OIG Report, one must ask whether Paragraph 20(b) would permit the auditing accountant to decide that a bank or insurance company's certification is not effective because the financial institution did not sufficiently meet the statutory requirement that it be "subject to periodic examination by a State or Federal agency"? As the OIG's Report highlights, the procedure required by Paragraph 20(b) inherently involves a legal analysis subject to regulations that the DOL is considering changing. Hence, it is inappropriate for the Audit Standards to require a CPA to make that legal conclusion, especially considering the shifting legal analysis and regulatory changes proposed in the 2014 OIG's Report.

The second potential way the Exposure Draft could undermine the Limited Scope Exception also involves Paragraph 20(b)'s requirement that the CPA determine whether the entity issuing the certification is qualified under the DOL ERISA regulations. Rather than making a determination about the degree to which the financial institution is subject to the necessary regulatory examinations, this issue turns on whether the certifying financial institution "holds plan assets" as required by ERISA Reg. 2520.103-5(a) & (b)(2). This issue is also addressed in the Proposed Form 5500. There, the Department proposes that the custodian bank identify the "manner" in which the asset is held. In this situation, the accountant could determine that different types of investments are not "held" by the custodial bank (e.g., assets held by sub custodians, hedge funds, or limited partnerships) even though the bank maintains evidence of ownership of the asset, handles investment activity involving the asset, and such assets are

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[3] U.S. Dep't of Labor, Office of Inspector General, *Report to the Employee Benefits Security Administration – Limited-Scope Audits To Retirement Plan Participants*, September 30, 2014, Report Number 05-14-005-12-121, https://www.oig.dol.gov/public/reports/oa/2012/09-12-002-12-121.pdf ("2014 OIG Report")

commonly certified by custodial banks consistent with standard industry practice. Such a decision by the CPA would, contrary to the broad coverage afforded by the statute, restrict the types of assets which a qualifying financial institution could certify. The Department is mid-stream in its Form 5500 rulemaking on this topic, and the legal analysis is unclear and in-flux. Thus, We urge the ASB to withdraw this requirement because it requires a complex legal analysis that is currently the subject of rulemaking by the Department.

The third potential way the Proposed Changes could restrict the Limited Scope Exception is found in Paragraph 20(c). That provision requires that the CPA auditing a plan's financial statement "compare the certified investment information with the related information in the ERISA plan financial statements and related disclosures." While a review of the reported values of the assets as set forth in the certification against the values reported in the plan's financial statements seems an obvious point of comparison, it is unclear to Us whether the referenced "related information" includes other types of data or information. If so, is the review of the other "related information" meant to test or verify the veracity of the values reported in the financial institutions certification? If so, that audit function would contradict the ERISA regulatory requirement that the information reported in the certification should be accepted as "true" and the provision should be removed.

Finally, the fourth potential way the Proposed Changes could restrict the Limited Scope Exception is found in Paragraph 20(d). That provision requires the CPA to "[e]valuate whether the form and content of the ERISA plan financial statement disclosures related to the information prepared and certified are in accordance with the applicable financial reporting framework." If the "applicable financial reporting framework" is intended to require that the asset values certified by the financial institution are "current value", then the procedure immediately calls into question the "truth" of the entire financial certification, which would be contrary to ERISA Regulation 2520-103(d). This is because financial institutions do not generally, and in some cases cannot, determine that the asset values to which they certify are "current value", i.e., "fair market value where available and otherwise the fair value as determined in good faith . . . assuming an orderly liquidation at the time of such determination." ERISA Section 3(26). Such a determination would obviate the entire Limited Scope Exception because it would cause the plan's auditor to require additional procedures reviewing the investments held and certified to by a financial institution. And, that is exactly what the Limited Scope Exception is intended to avoid in the first place. While it may be appropriate to say that these determinations should be made by the plan's fiduciaries, it is not the role Congress intended for the CPA auditing the plan's financial statements which exclude the investments to which the financial institution certified are complete and accurate.

III. DOL Proposed Form 5500 Regulations & AU-C 703

We are concerned that the Department of Labor's direct participation in the creation of AU-C 703 may impair the AICPA's impressive history as the independent, professional body setting standards for accountants. This is especially true since, at the same time the Department

participated as an "observer" on the AICPA Task Force that created AU-C 703, it was engaged in a rule-making under the Administrative Procedures Act seeking increased disclosure for plans on the Proposed Form 5500. As you know, an electronic version of a plan's audited financial statements is also published on the internet as part of the Form 5500.

In a number of instances, AU-C 703's provisions are similar to or effectively accomplish changes sought by DOL in its Proposed Form 5500. As part of the DOL's laudable efforts to improve plan audit quality (a goal which We support), the Exposure Draft makes clear that the DOL Chief Accountant and other DOL personnel advocated adopting a compliance audit model consistent with "Generally Accepted Government Auditing Standards." (AU-C 703 pg. 5) In contrast, the 2015 DOL Study, "Background" section states that "[u]nder ERISA, the Department plays no role in setting GAAP and GAAS standards. Such standards are set by institutions closely related to the accounting industry – the Financial Accounting Standards Board (FASB) and the American Institute of Certified Public Accountants (AICPA)." Nonetheless, DOL personnel not only "requested that the ASB take a fresh look at the auditor reporting model for ERISA plan audits . . ." (AU-C 703 pg. 4) but also "participated in the task force and ASB deliberations and provided the task force with insights and recommendations as to areas where the DOL believes the auditor's report can be strengthened. The task force considered this information as this proposed SAS was developed." (AU-C 703 pg. 4)

If the Exposure Draft is adopted by the ASB but the Trump Administration withdraws the Proposed Form 5500, many of the same requirements DOL tried to impose through the Proposed Form 5500 will be accomplished despite a decision by the current DOL that those requirements are ill-advised. This puts the AICPA in a difficult position and strongly suggests (and we urge the Board to decide) that AU-C 703 should be withdrawn and re-proposed after the Department finalizes the Proposed Form 5500. Otherwise, the AICPA will be making changes that will effectively expand Form 5500 reporting without the benefit of the current Administration's decisions regarding those and similar changes. Even if all stakeholders agreed with the current Exposure Draft, it is inadvisable to adopt changes to the Auditing Standards that will significantly affect Form 5500 reporting when the scope of that reporting is uncertain and in-flux.

IV. Audits to Determine Financial Soundness vs. Costly Audits to Determine and Report Technical Compliance with ERISA

Because the Exposure Draft removes the accountant's professional judgement regarding audit procedures and the concept of materiality from the report on audit findings, the Proposed Changes result in a "compliance audit" approach rather than the appropriate role of offering assurance on the plan's financial soundness. The changes proposed in paragraphs 15 and 16 require that certain procedures be performed during every plan audit, regardless of the accountant's professional judgment of risk. These required procedures, without regard to the

appropriateness for any given plan, result in a general "compliance audit", not testing of issues that bear on the financial soundness of the plan. The new provisions require reporting of findings for such unnecessary procedures *without regard to materiality*. Those non-material findings for unnecessary procedures will be included with the Form 5500 (¶¶ 119-124) unless the findings are "clearly inconsequential." However, it is difficult to think of any findings that would be "clearly inconsequential", and there is no definition in the Exposure Draft that would offer any comfort to the contrary. This will put the auditors in the role of governmental enforcers which will impair the accountant's current collaborative relationship with plan management and other plan service providers. That role greatly exceeds and goes beyond role of auditors intended by ERISA. Thus, the provisions requiring those procedures and the reporting of immaterial but not "clearly inconsequential" findings should not be included in the AICPA's Accounting Standards.

The Proposed Changes also require plan management to make compliance oriented representations and disclosures that are not material to the financial statements. That, too, goes beyond ERISA's intended role for an independent audit of a plan's financial statements to assure the financial soundness of the plan. As a result, paragraph 12.b requiring a management representation regarding "administering the plan and determining that the plans transaction that are presented and disclosed in the ERISA plan financial statements are in conformity with the plan's provisions" should be deleted or revised to say, "materially in conformity with." In the same vein, Paragraphs 12c, 22.b, and A50 should be deleted. Those paragraphs address the maintenance of "sufficient records with respect to each of the participants in accordance with ERISA section 107 and 209 to determine the benefits due or which may become due to such participants" should be deleted. This representation goes to a legal compliance issue, not to the financial soundness of the plan. It requires a legal interpretation not generally within the expertise of an accountant. And, in some instances, all the possible information necessary to make that determination may not be in the possession of the plan.

A plan auditor's function, as prescribed by ERISA, is to determine that the plan's financial statements are presented fairly in accordance with generally accepted accounting principles. ERISA section 103(a)(3) specifically states that the independent audit extends to "any financial statements of the plan, and of other books and records of the plan, as the accountant may deem necessary to form an opinion as to whether the financial statements and schedules... are presented fairly in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding year . . .." Neither the statute nor the legislative history provide that a plan auditor's duty extends to a review of issues beyond the financial statements or to determine whether the plan complies with ERISA.

ERISA's Legislative History also clearly indicates that the purpose of an accountant's audit of a plan's financial statements is to determine the plan's financial soundness, not to function as the entity that ensures the plan's compliance with ERISA. *See* Senate Report 93-127 (April 18, 1973), p. 28 published in Committee Print, Legislative History of the Employee Retirement Income Security Act of 1974, Public Law 93-406", p. 614 (noting "[T]he annual

report must include an opinion of an independent auditor based on the results of a required annual audit. Such information will allow better assessment of the plan's financial soundness by administrators and participants alike . . .." Given the clarity of the statute and the Legislative History, the Audit Standards should adopt an approach that focuses on the financial soundness of the plan, not whether the administration of the plan complies with the law. That would require omitting (at least) Paragraphs 15, 16, and 20 from the Exposure Draft.

V. <u>AU-C 703 Creates Unnecessary Administrative Costs for Form 5500 Reporting without Any Commensurate Benefit to Participants</u>

The Proposed Changes (¶¶ 36–37) require an auditor to review the current Form 5500 for material inconsistencies with the audited financial statements before releasing the auditor's opinion. This requirement creates unworkable timing issues. As you know, Form 5500s are prepared by plan management at the same time as the financial statements. This requirement will create unnecessary and costly delays because of coordination among plan professionals and plan management which will unnecessarily increasing the chance of late filings and accompanying fines. As a result, many plans will need to revise their procedures and budget for increased administrative costs without any justifiable benefit to the plan participants associated with those costs. We note that under recent changes to the civil penalty provisions of ERISA, a plan administrator can be held personally liable for civil penalties of up to $2,063 *per day* for a late Form 5500. *See* ERISA section 502(c)(2). Plan management, consequently, will seek to make the plan's auditing CPA responsible for those additional costs and fines. That contractual interplay will cause accountants to seek additional fees for their services and risk while increasing the costs of negotiations between plan management and their accountants. Thus, We believe that the requirement for an auditor to review the current, to-be-filed Form 5500 before issuing his report will substantially increase an accountant's potential liability and increase plan administrative costs.

Our concerns with Paragraphs 36-48 are increased because they arguably increase the auditor's responsibility to include a review of the entire Form 5500. Currently, an auditor is responsible for a review of the financial statements and related financial schedules on the prior Year's Form 5500 as "other information". In contrast, the Proposed Changes arguably require the accountant to review the plan's entire and current year's Form 5500, including questions on the Form 5500 that go to compliance issues beyond the scope of determining the financial soundness of the plan's condition based upon an audit of the plan's financial statement. Extending the auditor's responsibility to the entire current year's Form 5500 in addition to the plan's financial statements arguably extends the plan auditor's responsibility beyond the scope of ERISA's intended role for plan auditors. See ERISA § 103(a)(3).

In particular, paragraph 42 of the Exposure Draft expressly grants an auditor the authority to withhold her opinion or withdraw if the auditor determines that a "material inconsistency"

exists between the Form 5500 and the plan's current financial statements which is not resolved by plan management. Nonetheless, AU-C 703 provides no guidance on how to identify such a "material inconsistency." The current Form 5500 includes many compliance questions that go beyond the reasonable role of an auditor's review of the Form 5500's financial reporting section in Schedule H. The proposed Form 5500 regulations includes many additional compliance questions as well. *See* 81 Fed. Reg. at 47572 – 47599. For example, the proposed Form 5500 regulation asks whether the plan has any uncashed checks and the amount. If the Form 5500 indicates that uncashed checks exist, but the financial statements do not show an immaterial amount payable, would the auditor be required to withdraw or withhold its opinion? Similarly, the current Form 5500 asks whether the plan failed to pay any benefits when due. If the auditor identifies a participant received a benefit that was miscalculated by a small amount, but the Form 5500 box indicating that a benefit was not paid when due, would the auditor be required to withhold her opinion on the plan's financial statements? Simply put and as illustrated by the foregoing examples the Proposed Changes will result in increased costs for plans, increased and unnecessary tension between auditors and plan management, and inappropriate authority (and resulting potential liability) to auditors for a Form 5500 which they do not prepare.

VI. The Proposed Changes Will Give Rise to Opportunistic and Unwarranted Litigation and Will Increase the Cost of Administering Plans Without Commensurate Benefits to Plan Participants

We believe the required additional procedures and reporting of findings will result in increased plan administration costs and unwarranted litigation costs without a commensurate benefit to plan participants. Under AU-C 703 paragraphs 17 and 20, plans will pay for the enlarged auditor compliance procedures and similar compliance work already performed by plan staff, consultants, and counsel. (¶¶ 17, 20). As a result, plan sponsors will seek to pass that cost to participants or terminate their employee benefit plans all together. Administrative costs will also increase because plan management will be required to gather more information to give the auditor. Thus, a plan auditor will be forced to perform procedures, even though such procedures are unnecessary in her professional judgment, which will undoubtedly increase administrative costs.

The Proposed Changes may also result in qualified low-cost auditors exiting the market, thereby decreasing the level of diversity of auditors performing employee benefit plan audits, increasing the cost of audits by relieving the downward market pressure on accounting fees, and increasing the amount of work and cost of the audits on top of the removal of limiting market forces. In addition, we believe the consideration of what to report as a finding of noncompliance with plan provisions is a matter of legal determination, causing plans to increasingly hire legal counsel when compiling these findings and driving up plan administrative costs even more.

The Proposed Changes will also increase the chance of litigation that increases costs but does not provide a commensurate benefit to the plan. The indefinite "clearly inconsequential" standard for reporting findings will result in varied application by different auditors, most of whom will likely attempt to avoid liability by simply reporting "all" findings. This will confuse and unnecessarily alarm participants. While We realize that additional meritorious litigation is an inappropriate reason to delete the new reporting requirement, additional unwarranted and costly litigation because of immaterial technical issues present in all plans should be a disadvantage that will cause the ASB to delete the Exposure Draft's provisions requiring the unnecessary procedures and the reporting of immaterial findings from those procedures.

The Proposed Changes also ignore the structure of the Internal Revenue Service's voluntary correction programs. In many instances, those programs allow self-correction by the Plan since such occurrences are insignificant. At the very least, findings which can be self-corrected under the various IRS and DOL corrections programs or which have been submitted to the IRS or DOL corrections programs should not be required to be reported unless they are material to the plan's financial statements.

VII. Multiemployer Apprenticeship and Training Plans Should Not Be Subject to the Proposed Changes

Multiemployer apprenticeship plans should not be covered by the ED. While apprenticeship plans are covered under ERISA §3(1), they are generally not required to file a Form 5500 if they make a one-time filing with the Department of Labor under ERISA Regulation 2520.104-22. Thus, the provisions regarding Form 5500 reporting are inapplicable. In addition, the procedures required by ¶¶ 15,16, and 20 are likely inapplicable to a multiemployer apprenticeship plan. For example, it is a difficult legal decision to determine exactly who is a participant of an apprenticeship plan. Such a person may not currently even be an employee. Also, the specific provisions of eligibility and vesting are not applicable since eligibility for apprenticeship is determined by a selection process and there is no vesting for training benefits. And, too, employer contributions to a multiemployer apprenticeship plan are normally determined by a collective bargaining agreement outside of the plan terms. Moreover, apprenticeship plans exempted from the Form 5500 do not have limited scope audits permitted by ERISA and are not required to prepare supplementary schedules. Since the required testing is inapplicable to multiemployer apprenticeship plans, there is also no reason to obtain representations from the plan with respect to those areas. Thus, while existing guidelines continue to apply, we respectfully request that multiemployer apprenticeship plans be excluded from coverage by the ED.

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We appreciate and commend AICPA staff, the Task Force, and the ASB for your hard work and appreciate your thoughtful consideration of our concerns and alternate proposal. We also hope to work together with the AICPA in the future. In that regard, we ask for a meeting with staff and an opportunity to address the ASB as the AICPA considers comments to AU-C 703. If you have any questions or would like to further discuss the issues, please do not hesitate to contact me.

Sincerely,

James V. Cole

cc: Charles E. Landes, AICPA Vice President, Professional Standards and Services
Linda Delahanty, AICPA, Senior Manager, Audit and Attest Standards - Public

ATTACHMENT A

Excerpts of Statutory and Regulatory Basis for the Limited Scope Audit Exception

ERISA Section 103(a)(3)(C) provides the statutory basis for the Limited Scope Exception stating:

> The [accountant's] opinion required by subparagraph (A) need not be expressed as to any statements required by subsection (b)(3)(G) prepared by a bank or similar institution or insurance carrier regulated and supervised and subject to periodic examination by a State or Federal agency if such statements are certified by the bank, similar institution, or insurance carrier as accurate and are made a part of the annual report.

The regulations propagated by DOL more specifically define the Limited Scope Exception for a:

> Under the authority of section 103(a)(3)(C) of the Act, the examination and report of an independent qualified public accountant need not extend to any statement or information prepared and certified by a bank or similar institution or insurance carrier. *A plan, trust or other entity which meets the requirements of paragraph (b) of this section is not required to have covered by the accountant's examination or report any of the information described in paragraph (c) of this section.*

ERISA Regulation 2520.103-5(a) (emphasis added).

ERISA Regulation 2520.103-5(b)(2) goes on to identify the information which a "bank, trust company, or similar institution which *holds assets* of a plan in a common or collective trust, separate trust, or custodial account" must supply to the plan with respect to the plan's assets it holds in a custodian account. Specifically, ERISA Regulation 2520.103-5(c)(2)(iv) requires a bank to:

> provide such information as is contained within the ordinary business records of the bank, trust company, or similar institution and is needed by the plan administrator to comply with the requirements of section 104(a)(1) of the Act and § 2520.104a-5 or § 2520.104a-6 [addressing information that must be reported on a Form 5500].

With respect to that information, the bank

> shall certify to the accuracy and completeness of the information described in paragraph (c) of this section by a written declaration which is signed by a person authorized to represent the insurance carrier, bank, or plan sponsor. *Such certification will serve as a written assurance of the truth of the facts stated therein.*

ERISA Regulation 2520.103-5(d) (emphasis added)

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