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American Institute of Certified Public Accountants
Auditing Standards Board
Via Email: Sherry.Hazel@aicpa-cima.com

Re: Comment Letter on Proposed Statement of Auditing Standards: Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA

To Whom It May Concern:

Thank you for the opportunity to review and comment on this proposed auditing standard. The work that the Auditing Standards Board (ASB) does is a critical component of the continuing efforts of our profession to improve the quality of audits nationwide, and from having read the Department of Labor's (DOL's) study on audit quality, it is clear that employee benefit plans (EBPs) require and deserve more attention.

As a past member of the AICPA's EBP Expert Panel and EBP Audit Quality Center Executive Committee, I am sensitive to the critical needs of our profession to continue improving upon the quality of audits of EBPs, so long as the efforts are appropriately focused and respectful of the tenants of financial reporting, along with assurance that they also meet the requirements of the law as set forth in ERISA.

That said, I do respectfully submit that in this circumstance, I believe the proposed auditing standard goes beyond the parameters of meeting these requirements. I am deeply concerned that should this proposed standard be approved, information will be released into the public domain that will be damaging to plan administrators, plan sponsors, and plan auditors and may also subject auditors to significant risks of litigation despite them doing the right thing. Further, this will add additional costs into the auditing and reporting process. Much of this could be more effectively handled if the limited scope alternative, as provided by ERISA, were eliminated. I would implore upon the ASB to consider whether, as a profession, we should consider self-elimination of this option if legislation cannot be passed to remove this option from ERISA. My more specific concerns are set forth below.

RISKS FROM REPORT OF FINDINGS ON SPECIFIC PLAN PROVISIONS

Several years ago, the DOL made the Form 5500 public information using their EFAST system to enhance transparency in EBP, and I am supportive of continuing those efforts to the benefit of the plan

participants; however, I have concerns that the data available online may be used not only to the benefit of the plan participants, but rather to the benefit of plan vendors who mine the for business development purposes. When information provides opportunities for plans to run more cost effectively, this can be a good thing, but, it has been proven that the lowest cost isn't necessarily the best decision. The level of service provided by vendors may be completely inconsistent with the existing service parameters, and there may truly be significant value to a plan by using services that best suit their needs. In fact, I would submit the challenge that rarely do participants access this information themselves.

The newly proposed report presents several significant risks to the EBP industries. First, by making this report a part of the annual plan audit, the information would be published in the public domain. Disclosing this information publicly may have several unintended detrimental impacts:

1. I've heard some compare these new reports to what is already required for certain non-profits that have an A-133 requirement. While those reports are filed with the Federal Clearinghouse, they are not available to the public. This is different than this proposed report, which when filed with the DOL, would be available to the public. Furthermore, the A-133 reporting is performed pursuant to provisions in the law, whereas these proposed reports are not subject to any law or regulation, but rather due to the ASB providing a concession to the DOL's desire to have more information. If the DOL wants more information on the application of specific procedures, they should take the necessary legislative channels to obtain statutory authority for obtaining this information.
2. Highlighting specific plan provisions, procedures applied to audit those provisions, and findings from those procedures can negatively impact plan participants. I can envision circumstances where vendors review the reports online and contact plan sponsors to convince them to change plan provisions to save money for the sponsors, but not necessarily to the benefit of the participants. I can even see unscrupulous marketers for audit firms seeking new clients for themselves using the information to criticize the incumbent auditors and the procedures they applied. This could create big issues for auditors around the topic of opinion shopping, which can also lead to reductions in quality of audits.
3. Auditors who are experienced in EBP audits are likely already performing most of the procedures addressing specific plan provisions. These auditors do have available to them the use of their own risk assessments and auditor judgment that might allow, in certain circumstances, reductions in scope of testing if they have deemed the risk in a specific area to be particularly low. This new report of findings would essentially eliminate the auditor's ability to make such judgments and would require procedures in all areas despite assessed risks, which in turn, would increase the costs of audits even for those firms that are already doing high quality work.

I would not feel as strongly opposed to this new reporting if the intent were to assist the DOL in a compliance perspective and was without publicly available information. If the DOL were to agree and their systems were to allow such privacy, that would be an improvement over what is currently being proposed.

A strong concern is that these reports, even if not made public information, will create significant additional stress between auditors and plan sponsors. These reports would turn the auditor into the DOL's "watchdog" and plan sponsors will be concerned about increasing risks of DOL (or IRS) investigation from what the DOL might perceive to be red flags. If there are significant findings on an audit, auditors already have a responsibility to report such findings to governance of the plan sponsor pursuant to SAS 115, assuming that those significant findings would most likely be either significant deficiencies or material weaknesses in internal controls. And, having to report on insignificant findings could lead to problems for auditors, including the risk of litigation if issues are later found in a plan that were not detected in audit testing. This is truly an inherent risk in any audit due to the concept of sampling, but the larger the population grows, the more unlikely sampling will find the proverbial "needle in a haystack."

Under existing correction programs with the DOL and IRS, there are appropriate provisions already in place for plan sponsors to identify necessary corrections to get those addressed in a manner which is private between the plan, the plan sponsor, and the agency. I see an adverse impact by making these findings public information in that it could detrimentally impact the plan's ability to obtain appropriate corrections.

IMPACT TO AUDITORS' REPORTS

I have several comments regarding the auditor reports.

1. I would like to note that I consider the use of expanded emphasis of matter (EOM) paragraphs in the audit report to be duplicative and unnecessary. If such issues exist within the plan, the footnotes to the plan's financial statements should disclose those matters. I would be supportive of EOM paragraphs if there are significant issues within the plan that the auditor determines should be disclosed but the plan refuses to disclose. My presumption, however, is that plans would add disclosures to keep those EOMs out of auditor reports. Furthermore, I don't believe that the profession should dictate what does or does not belong in an EOM paragraph, as that detracts from the auditor using professional judgment.
2. I strongly object to the wording in the new proposed limited scope report (illustration 3) – with this scope limitation, despite it being permitted under ERISA, it should still be a disclaimer of opinion and it is being presented as expressing an opinion. Conceptually, we cannot express an opinion on the financial statements as a whole when we are not auditing the vast majority of assets of a plan. I prefer some of the other language that better explains what an auditor is excluding from the audit.
3. I recommend that the effective date of this standard be established at least two years after the issuance of the standard so there is ample time for communication to, and training of, auditors as to how this will impact their audits in the future.

FIND A WAY TO ELIMINATE THE LIMITED SCOPE AUDIT

I believe many of the DOL's concerns, which I certainly do not discount, stem from a flaw in the auditing process created not by the ASB, but by Congress in passing ERISA. There is a significant misunderstanding amongst CPAs as to what is required in a limited scope audit. CPAs that have been well-trained in this field understand, or are at least in a position to understand, what is required. There are many firms that do a small number of EBP audits and when the audit guide suggests the audit report can be a disclaimer, the rules could be misinterpreted and the auditor many not fully understand what is required. Yes, I agree that the proposed report would effectively be targeted toward those types of firms and would provide them a clearer understanding, but this could become unnecessary should the limited scope disclaimer be eliminated by the ASB.

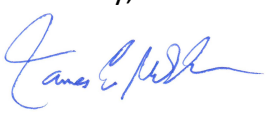
Just because ERISA says that a customer can impose those limitations on the audit, doesn't mean that the CPA profession must be willing to accept those limitations.

There have been other circumstances when the ASB has dictated the types of audit reports that are acceptable and when CPAs should decline to accept these engagements. I would encourage you to find some way to adopt and enforce a rule providing that CPAs shall no longer be permitted to apply the limited scope disclaimer of opinion, regardless of ERISA saying that use of such disclaimer is acceptable, in order to better serve the public interest. I understand that in 1974 it was felt to be costly and burdensome to banks, insurance companies and regulated trust companies that were already heavily regulated, to have to deal with auditors on EBP audits. Now in 2017, I would suggest that the vast majority of these organizations provide their customers, and their customers' auditors, with a Type II SOC 1 report and that proper use of these reports significantly mitigates additional costs that would be incurred in an EBP audit. Clearly the full scope audit report would be more expensive, but in most cases the incremental cost would not be significant to the plans. And, without the excuse of misunderstanding the disclaimer of opinion, I believe the auditors doing just a few EBP audits would be forced into providing higher quality audit or not doing the work at all.

If for any reason the ASB concludes that they cannot make these changes, I would implore on the ASB, on behalf of our profession, to significantly intensify pressure on legislators, including representatives of the DOL, to lobby for elimination of the limited scope disclaimer option. The confusion this causes has, and will have, a severe detrimental impact on our profession.

Again, thank you for the opportunity to comment on this proposed standard.

Sincerely,



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