



August 17, 2017

RSM US LLP

Ms. Sherry Hazel
Senior Technical Manager
Auditing Standards Board
American Institute of Certified Public Accountants
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Re: Proposed Statement on Auditing Standards (SAS), *Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA*

Dear Ms. Hazel,

RSM US LLP appreciates the opportunity to offer our comments on the proposed SAS, *Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA*. RSM US LLP is a leading provider of audit, tax and consulting services focused on the middle market. We have more than 9,000 professionals and associates in 90 cities nationwide. Annually, we audit more than 2,000 employee benefit plans, including single-employer and multi-employer plans with a variety of funding arrangements, such as defined benefit pension plans, 401(k) plans, employee stock ownership plans, and health and welfare plans.

Overall, we agree that it is important to provide better insight to the public regarding the scope of the responsibilities of management and the auditor in connection with audits of financial statements of employee benefit plans subject to ERISA. However, as explained more fully in Issue 6 of the following "Issues for Consideration," we do not agree with the requirement to report findings from procedures performed on specific plan provisions relating to the financial statements.

For our comments on the proposed SAS, please refer to our responses to the specific issues for consideration posed therein. We also provide additional comments for your consideration related to other matters.

Issues for Consideration

Issue 1: Required Procedures When an ERISA-Permitted Audit Scope Limitation is Imposed

It is our understanding that some audit firms may not subscribe to the AICPA Employee Benefit Plan Audit & Accounting Guide (the Guide) and currently are not performing any procedures related to the certified investment information described in the Guide. Therefore, we believe the audit procedures required by paragraph 20 of the proposed SAS will help to achieve the objectives of enhancing the execution of, and consistency in, audit procedures related to certified information when an ERISA-permitted scope limitation is imposed. We do not believe the proposed SAS is missing any required procedures. Also, we believe auditors should continue to be allowed to exercise professional judgment with respect to the implementation of the audit procedures related to certified information, and therefore we do not believe any additional application guidance is necessary within the standard itself. However, if requested by other constituents, it may be beneficial for correlating example audit procedures to be provided in the Guide to illustrate how professional judgment may be applied to design further audit procedures in example situations.

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Issue 2: The Form and Content of the Auditor's Report on ERISA Plan Financial Statements with the ERISA-permitted Audit Scope Limitation

U.S. Department of Labor (DOL) audit quality studies indicate that some practitioners may be confused as to their responsibilities when there is an ERISA-permitted scope limitation that currently results in a disclaimer of opinion. Some practitioners may perform insufficient procedures, or no procedures, in areas that are not permitted to be scoped out by a certification when issuing a disclaimer of opinion. We support the changes to the form and content of the proposed limited-scope auditor's report as we believe they would:

- Provide improved transparency into the audit procedures required with respect to reporting on an audit of ERISA plan financial statements when an ERISA-permitted audit scope limitation exists.
- Improve the auditor's understanding of his or her responsibilities in a limited scope audit and may result in potential improvements in audit quality.
- Better describe management's responsibilities for the financial statements, including any certified information. This is an important disclosure because we believe quite often management misunderstands its responsibilities due to the quantity of outsourced (i.e., certified) information.
- Provide sufficient clarity to users with respect to the auditor's responsibilities and matters reported.

We suggest consideration be given to decreasing the length of the proposed limited-scope auditor's report by deleting from the report the details of the four procedures performed with respect to the certified investment information, and instead, inserting more general verbiage, such as:

Our procedures performed on the certified investment information were limited to specific procedures required by generally accepted auditing standards for audits of employee benefit plans subject to the Employee Retirement Income Security Act of 1974.

Issue 3: Modifications to the Opinion in the Independent Auditor's Report

We believe the guidance in paragraphs 31 and 34 of the proposed SAS is clear with respect to the auditor's responsibilities for addressing the interaction of the new proposed reporting model for audits of ERISA plans when the ERISA-permitted audit scope limitation is imposed, with existing requirements in AU-C section 705, *Modifications to the Opinion in the Independent Auditor's Report*. We also believe this guidance achieves the objective of providing transparent reporting to the users. The guidance will provide a clearer distinction between reports modified for an ERISA-permitted audit scope limitation and reports modified for other reasons.

We agree with the form and content of the example reports illustrating qualified opinions and disclaimers of opinion regarding the application of the guidance in paragraphs 31 and 34. In such situations, we believe the last sentence in the "Other Matter Relating to the supplemental Schedules Required by ERISA" paragraph should include the statement "it is inappropriate to" with respect to the auditor expressing an opinion on the supplemental schedules, consistent with paragraph 11 of AU-C 725. Therefore, the other matter paragraph in illustrations 6 and 7 of the proposed SAS should be revised as follows (proposed addition are in bold font):

...Because of the significance of the matters described in the Basis for Disclaimer of Opinion paragraph, **it is inappropriate to** and we do not express an opinion on the supplemental schedules.

We believe it is helpful for practitioners if the SAS retains some illustrations, similar to illustrations found in AU-C sections 700 through 706, particularly since some practitioners may not subscribe to the Guide.

We recommend including a specific example report related to 403(b) plans, which most commonly are modified with respect to an ERISA-permitted scope limitation as well as scope limitations over the opening balance and departure for exclusion of certain contracts under DOL Field Assistance Bulletin No. 2009-02, *Annual Reporting Requirements for 403(b) Plans*.

Issue 4: Required Emphasis-of-Matter Paragraphs

We believe the situations identified in paragraph 116 of the proposed SAS are appropriate for requiring the auditor to include an emphasis-of-matter paragraph in the auditor's report. We do not believe there are additional situations unique to ERISA plan financial statements that should result in a required emphasis-of-matter paragraph. However, we believe it would be helpful to remind practitioners of their responsibility related to emphasis-of-matter paragraphs arising from other auditing standards so they do not misinterpret the listing in paragraph 116 as being comprehensive of all emphasis-of-matter paragraph considerations. We therefore suggest adding an application paragraph related to paragraph 116, such as the following:

The situations listed in paragraph 116 represent situations unique to ERISA plan financial statements. The auditor should also consider the situations discussed in Exhibit B, "List of Sections Containing Requirements for Emphasis-of-Matter Paragraphs," of AU-C 706, *Emphasis-of-Matter Paragraphs and Other-Matter Paragraphs in the Independent Auditor's Report*.

Paragraph 116.a. requires the auditor's report on ERISA plan financial statements to include an emphasis-of-matter paragraph when there are significant plan amendments that affect net assets. We believe it would be helpful if further guidance could be provided regarding what is considered to be "significant."

Issue 5: Reporting Internal Control Deficiencies

We agree that the proposed SAS should not include a requirement to disclose, in a separate section of the auditor's report, a description of significant deficiencies or material weaknesses in internal control identified as part of the audit engagement. We believe it is more appropriate for the auditor to communicate such matters to management and/or those charged with governance as required by AU-C section 265, *Communicating Internal Control Related Matters Identified in an Audit*. Also, as required by AU-C section 265, the auditor should communicate such matters as appropriate to those in management who have the responsibility and authority to evaluate the deficiencies in internal control and to take the necessary remedial action.

We do not believe there are other reporting considerations related to internal control deficiencies that the Auditing Standards Board should evaluate.

Issue 6: Certain Requirements for Audits of ERISA Plan Financial Statements and Related Required Report on Specific Plan Provisions Relating to the Financial Statements

Section Title

Because the procedures in paragraphs 14 through 19 are not the only procedures in an audit of ERISA plan financial statements, we suggest providing a more descriptive title for paragraphs 14 through 19, such as "Certain Requirements for Reporting on Specific Plan Provisions."

Required Procedures

We believe the proposed SAS provides appropriate guidance as to which specific and limited provisions of the plan instrument are required to be tested, and we believe many auditors who currently subscribe to the Guide already are performing procedures specified in paragraphs 15 and 16. The consistency and quality of the audit work performed relating to such provisions, however, will be enhanced if those auditors who currently do not subscribe to the Guide or do not perform procedures on such matters start performing them with the appropriate level of professional judgment. We suggest the guidance in application paragraphs A15 and A16, which discuss the use of auditor judgment, be moved into the standard preceding paragraph 15.

Further, we agree that auditor judgment should be used in determining the nature and extent of testing of the matters in paragraphs 15-16 as stated in application paragraph A16; therefore, we believe it would not be appropriate for the SAS to dictate required minimum sample sizes for required audit procedures as minimum sample sizes are contrary to a risk-based audit approach.

We do not believe there are other procedures related to other plan provisions or specific areas of the financial statements that should be included in the required testing. However, so as to leave no ambiguity as to the scope of the auditor's procedures, we believe paragraph 14 could be further clarified by making the last sentence of the paragraph a separate paragraph. We also believe clarification would be provided by inserting after the second sentence of the paragraph the following additional sentence:

The requirements in these paragraphs only provide the basis for reporting on specific plan provisions and may be performed in conjunction with procedures related to other relevant financial statement areas, such as cash, investments, contributions, distributions, obligations, etc. in an audit of ERISA plan financial statements.

We agree that it is important for the SAS to reference the AICPA Audit and Accounting Guide, *Employee Benefit Plans*, as a source of interpretive guidance when applying the SAS, including example audit procedures for performing an audit of ERISA plan financial statements. We believe the Guide could be more detailed than the SAS as to the procedures to be performed. It would be important for the updated Guide to be issued at least one year prior to the effective date for the SAS so plan sponsors and auditors can have more information as they prepare to implement the SAS. We realize this would require having two effective guides in circulation for some overlapping period of time.

Reporting on the Findings

We do not believe the auditor should be required to provide the report of findings discussed in paragraphs 119 through 124 with the report(s) and financial statements attached to the Form 5500 as we believe it would be more appropriate for such findings to only be reported by the auditor to those charged with governance of the employee benefit plan. Our reasons for this conclusion are as follows:

- We believe the reporting of such findings is analogous to the auditor's communication to those charged with governance as required by AU-C sections 250, 260 and 265. In fact, many of the findings may be a result of internal control deficiencies, so it would be more informative for those charged with governance if the auditor could expand on the reporting of the findings by linking them to any internal control related matters. In addition, all findings, whether or not inconsequential, should be communicated to those charged with governance. However, any

conclusions regarding the consequences of the findings, such as those related to the plan's tax exempt status, and actions to be taken should be made by those charged with governance.

- We do not believe the auditor should be the original source of information regarding operational defects about a plan. The employee benefit plan sponsor, at its discretion, could provide such information to the plan participants or regulators. Because the report of findings would be issued by the auditor, it would be included in the Form 5500, which could have the unintended consequence of the plan disclosing to participants information that it otherwise may not be required to disclose under U.S. Department of Labor or Internal Revenue Service regulations. Further, the auditor's report of findings will not include any responses from management as to how the findings were resolved, which would result in providing incomplete information to the plan participants.
- This communication should be made to those charged with governance because participants are not privy to any other information related to the finding, and as such it will be difficult for them to discern the severity of the finding. Participants who read the reported findings could become overly concerned, believing the plan is mismanaged or in poor financial condition, when, in fact, the operational defects are quite common and there may be regulations that provide a means of correction. It therefore would be more meaningful to communicate such matters only to those charged with governance.

If the auditor's report of findings continues to be included as a requirement of the SAS, we believe:

- Paragraph 121 requires the auditor to include findings in the *Report on Specific Plan Provisions Relating to the Financial Statements*, other than when those findings are clearly inconsequential. This threshold may be interpreted differently among auditors as "inconsequential" is not defined. Therefore, we believe the auditor should be required to report all findings (a) that have not been corrected within the two-year correction period under the IRS Employee Plans Compliance Resolution System; (b) for which a Voluntary Correction Program application has not been filed; or (c) that management has represented it does not intend to correct. We believe this threshold for the reporting of findings is appropriate because it would:
 - Eliminate the need to determine which findings are "clearly inconsequential," which is too subjective and will be interpreted differently by each auditor.
 - Mandate the communication of findings that may be clearly inconsequential from a materiality perspective, but may have operational implications, such as the potential loss of tax-exempt status, if not corrected. For example, consider a plan with \$2 billion in assets in which there was a total of \$200 in errors resulting from a miscalculation of compensation for purposes of determining the employer's contribution. Such an amount would clearly not be material, but would be indicative of an operational defect that needs to be corrected in order to retain the plan's tax exempt status and therefore may not be deemed to be qualitatively inconsequential.
 - Allow the plan time to self correct findings within the timeframe and method allowed by regulations before needing to disclose them publicly.
 - Facilitate consistent reporting of findings.
- The last sentence of paragraph 110 is not clear and seems to contradict the first sentence of paragraph 110 when the auditor's report on the ERISA plan financial statements is modified. We

believe it would be more clear if the last sentence was modified as follows (proposed additions are in bold font and deletions are struck through):

When the auditor's opinion on the ERISA plan financial statements is modified, and such modification relates to the findings, the auditor is required to ~~omit such~~ **include** a statement **that the auditor's opinion on the financial statements was modified with respect to the findings** ~~from the report on specific plan provision.~~

- The illustrations included in the exhibits of the proposed SAS specific to reporting the findings are clear and will provide sufficient information to the user of the report. The auditor is not precluded from providing more detailed descriptions of findings to provide more context.

Additional Costs

We believe the additional procedures required by paragraphs 15 and 16 of the proposed SAS will result in additional costs for some employee benefit plans audited by practitioners who currently are not following the Guide. For employee benefit plans audited by firms that already had been performing similar procedures suggested by the Guide, the incremental cost will be less. However, the related reporting of findings will result in additional costs due to incremental reviews, discussions with plan management as to the verbiage used to describe the findings and potential discussions as to the necessity of including a finding in the report. In our opinion, the incremental costs of such reporting does not outweigh the potential benefits of disclosing the findings to those charged with governance.

Issue 7: Required Procedures Relating to the Form 5500

Because many of the proposed procedures relating to the Form 5500 in paragraphs 36 through 48 of the proposed SAS mirror AU-C section 720, we believe they would achieve the objective of increased consistency with respect to identifying information in the Form 5500 that may be relevant to the audit of ERISA plan financial statements. However, it is not clear from paragraph A68, and specifically from the last sentence in paragraph A68, when a difference should be treated as an inconsistency rather than a normal reconciling item. We believe paragraph A68 could be misinterpreted to mean that a difference is not considered an inconsistency as long as it is included as a reconciling item in the footnotes to the financial statements, even if the difference relates to items that are reported in error either on the financial statements or in the Form 5500. Paragraph A68 should be clarified to distinguish reconciling items caused by differences due to errors from differences that are due to cash-versus-accrual or book-versus-tax adjustments. Also, it would be clearer if the last sentence in paragraph A68 was moved to be the third sentence of the paragraph.

Issue 8: Proposed New Reporting Standard and Amendments to Other AU-C Sections

We believe the proposed approach of creating a new reporting model for reporting on ERISA plan audits in AU-C section 703 will better describe management's and the auditor's responsibilities when an ERISA-permitted audit scope limitation is imposed by management. We believe the proposed amendments to various other AU-C sections in AICPA *Professional Standards* articulated in Appendices A and B of the proposed SAS are appropriate and that there are no other sections of AICPA *Professional Standards* that need to reflect the provisions of the proposed SAS.

Although it is beyond the scope of conforming changes needed to reflect the provisions of the proposed SAS, our consideration of the proposed SAS has identified that changes may be needed to AU-C 210, *Terms of Engagement*. Currently, per AU-C 210.07, if management or those charged with

governance of an entity that is required by law or regulation to have an audit imposes a limitation on the scope of the auditor's work in the terms of a proposed audit engagement such that the auditor believes the limitation will result in the auditor disclaiming an opinion on the financial statements as a whole, and a disclaimer of opinion is acceptable under the applicable law or to the regulator, the auditor is permitted, but not required, to accept the engagement. As described in application guidance of the proposed SAS, ERISA and its regulations currently provide for only two types of scope limitations. The most common is found in ERISA Section 103(a)(3)(c) which allows the plan administrator to restrict the auditing procedures with respect to information prepared and certified by a bank or similar institution or by an insurance carrier that is regulated, supervised, and subject to periodic examination by a state or federal agency. If a disclaimer or adverse opinion arises from scope limitations other than those currently acceptable under ERISA or its regulations, the auditor may be precluded from accepting the engagement. In reality, there are situations that may result in a disclaimer or adverse opinion that is not provided for under the law or regulations or that may be subject to rejection by the regulators, but where the plan is nonetheless required to attach an auditor's report to the Form 5500 filing. Therefore, we suggest amending AU-C 210 so that the auditor would not be precluded from accepting an engagement to audit the financial statements of an employee benefit plan required by law or regulation to have an audit, regardless of the ultimate form of opinion.

Issue 9: Proposed Effective Date

We believe the proposed effective date for the proposed SAS (i.e., for periods ending on or after December 15, 2018) does not provide sufficient time for preparers, auditors and others to adopt the new standard and related conforming amendments. We believe an additional two years would be helpful for updating and creating the tools and guidance necessary to implement the standard appropriately. We therefore suggest that the effective date for the proposed SAS be for periods beginning on or after December 15, 2019. Also, as stated above, we believe it would be important for the Guide to be issued one year prior to the effective date for the SAS so plan sponsors and auditors can have more information as they prepare to implement the SAS. Further, we do not believe the effective date of the proposed SAS needs to correlate with the effective date for the impending Form 5500 changes.

Other Recommendations

In addition to our comments on the issues for which responses were solicited in the proposed SAS, we have the following comments related to certain aspects of the exposure draft that we believe should be clarified or modified.

Potential Bifurcation of the Proposed Standard

As noted above, we believe the requirements of the proposed SAS related to the auditor's report provide better insight to the public regarding the scope of the responsibilities of management and the auditor in connection with audits of financial statements of employee benefit plans subject to ERISA. However, the requirements of the proposed SAS related to the auditor's report on findings present a myriad of implementation issues and consequences that we believe may take additional time to address. Given these issues, we believe it could be beneficial to bifurcate the proposed SAS into two portions:

- One related to the auditor's report on findings (paragraphs 15 – 19 and 119 – 124), which could be further studied by the Auditing Standards Board and the employee benefit plan community to

address the many complicated implementation issues and potential unintended consequences associated with its requirements.

- One related to the auditor's opinion on financial statements of employee benefit plans subject to ERISA (all other paragraphs within the proposed SAS), which could be issued with an effective date of years beginning on or after December 15, 2019 for the reasons stated previously.

Implementation of the Proposed Standard

ERISA requires a comparative statement of net assets available for benefits. When an ERISA-permitted audit scope limitation exists in an audit of ERISA plan financial statements for periods

- Ending before December 15, 2018, the auditor's opinion would be required to be issued in accordance with AU-C section 705 (typically as a disclaimer)
- Beginning on or after December 15, 2018, the auditor's opinion would be required to be issued in accordance with the proposed SAS

Therefore, in the initial year of implementation of the proposed SAS, it appears the plan would need to submit "comparative" statements of net assets in two separate financial statement documents due to the auditor's need to issue two separate audit opinions. It would be helpful if the Auditing Standards Board would provide guidance regarding the auditor's reporting on comparative financial statements in the initial year of adoption of the proposed SAS.

Definitions

We suggest the following terms be included in the definitions in paragraph 11:

- "Plan instrument"
- "Investment information" (as defined in paragraph 6)
- "Personal identifiable information" (or this could be cross referenced to the master glossary)

Miscellaneous

- Paragraph A1 may be more prominent if placed after paragraph 1 or after paragraph 3; and paragraph 2 may be better placed in the application guidance before paragraph A2.
- The first sentence of paragraph 8 would be better placed at the end of the paragraph so as not to lose the main point of the paragraph, which is in the second sentence.
- Although management may only elect to limit the scope of the audit over the certified assets held for investment purposes, the certifying entity certifies all of the information and activity in the trust statements. Management often prepares the plan's financial statements using those certified trust statements. Therefore, in paragraphs 22d.d. and 96c, management should be responsible for determining that "all" of the certified information (including contributions, distributions, etc.) used for financial reporting, not just the certified "investment" information, is appropriately measured, presented and disclosed in accordance with the applicable financial reporting framework.
- Consider whether there should be application guidance for paragraph 73 or a cross reference to the Guide informing auditors that the DOL expects audits to be conducted in accordance with U.S. generally accepted auditing standards.
- In the second paragraph under "Management's Responsibility for the Financial Statements of an Employee Benefit Plan Subject to ERISA" in the auditor's report, consider deleting all of the

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verbiage after "...maintaining sufficient records." The ERISA section numbers and remainder of the sentence can be mentioned in the SAS requirements or application guidance but does not need to be stated in the auditor's report.

We appreciate this opportunity to provide feedback on the proposed guidance and would be pleased to respond to any questions the Auditing Standards Board or the AICPA staff may have about our comments. Please direct any questions to Josie Hammond, National Director of Employee Benefit Plan Services, at 608.829.5410 or Sara Lord, National Director of Auditing, at 612.376.9572.

Sincerely,

RSM US LLP

RSM US LLP