August 18, 2017

Submitted electronically via Sherry.Hazel@aicpa-cima.com

Auditing Standards Board
American Institute of Certified Public Accountants
1455 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-1081

Re: Comment Request for the Exposure Draft of the Proposed Statement on Auditing Standards

To Whom It May Concern:

The American Benefits Council (the "Council") and the Committee on Investment of Employee Benefit Assets ("CIEBA") appreciate the opportunity to provide comments to the Auditing Standards Board ("ASB") of the American Institute of Certified Public Accountants ("AICPA") on its Exposure Draft on the Proposed Statement on Auditing Standards (the "Exposure Draft").

The Council is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

CIEBA members are the chief investment officers of more than 100 of the Fortune 500 companies who individually manage and administer Employee Retirement Income Security Act ("ERISA") - governed corporate retirement plan assets. CIEBA members voluntarily sponsor plans and manage as fiduciaries almost $2 trillion of retirement assets on behalf of 15 million participants, representing a very significant portion of the largest private defined benefit and defined contribution pension plans in the US.

We support AICPA's goal to improve the quality of financial statement audits for employee benefit plans. However, we have four primary concerns with respect to certain proposals in the Exposure Draft. First, we have a general concern about the overall breadth of the changes, as AICPA has made no attempt to quantify what these

changes mean to the cost of an audit. Second, we believe that requiring auditors to report operational errors, regardless of materiality, is a dangerous and ill-advised rule that would impose unnecessary burdens on plan sponsors while contributing little to the overall quality of audit reports. Third, although we welcome AICPA's efforts to improve the quality and the content of the limited scope audit, we are concerned that the changes proposed in the Exposure Draft will become part of a broader effort by the Department of Labor ("DOL") to undermine the use of the limited scope audit altogether. Fourth, we recommend that AICPA, at a minimum, extend its comment period to ensure that all interested parties have sufficient time to thoughtfully respond to AICPA's request for comments.

AICPA asked respondents to provide feedback on whether the current reporting of internal control deficiencies to those charged with governance is sufficient. The Council and CIEBA believe that the current reporting model *is* sufficient, and that no other requirements are necessary. We believe that increased training by audit firms, in lieu of increased reporting requirements, is a more effective way to improve plan operation and financial statement quality.

1. **The breadth of changes could result in significant increased costs, which AICPA and DOL should quantify and weigh against the benefits before moving forward.**

While AICPA is not a regulator, the proposed changes are almost regulatory in nature and we understand the changes have been developed at the request of and with input from the Employee Benefits Security Administration's Chief Accountant. The proposed changes are extensive, requiring many more audit procedures to be implemented, more representations from plan fiduciaries, and significantly more time commitment from the plan sponsor. The proposal's expansion of the scope of audit procedures and written representations from plan management (including, but not limited to, those related to limited scope audits) will likely increase the cost of audits both in financial terms (e.g., increased cost of audit, costs related to engaging ERISA counsel to review the auditor's descriptions of (and management responses to) any findings) and administrative terms (e.g., plan sponsor employee hours). Increased audit costs, however, would not be commensurate with improvements in audit quality.

For instance, certain requirements, such as requiring the plan's auditor to perform audit procedures with respect to specified plan provisions irrespective of the assessed risks of material misstatement, could deter the auditor's focus from material matters. This approach is inefficient and could lead to the deterioration of audit quality, rather than its improvement. Additionally, requiring an auditor to include an emphasis of matter paragraph in the auditor's report for significant plan amendments that affect the net assets and significant changes in the nature of the plan, is not necessary. The current AICPA auditing and accounting guide provides sufficient guidance around required audit procedures and disclosures on plan amendments. Lastly, requiring written management representations on maintaining sufficient records with respect to each of the plan's participants could impose an undue burden on plan administrators.

Maintaining employee records that are acquired through mergers and acquisitions, for instance, can be challenging and costly.

Furthermore, if enacted as drafted, these proposals would also be administratively costly. These additional procedures are time-consuming, and we are concerned that they could significantly lengthen the duration of plan audits. This, in turn, could make it more difficult for plan sponsors to timely file Form 5500 returns with DOL and, if required, Form 11-K with the Securities and Exchange Commission.

All of these increased costs will fall on plans, plan sponsors, and participants. While we in general support the improvement of audit quality, we are very concerned that neither AICPA nor DOL has made an attempt to quantify these costs and weigh them against the benefits to plans and participants. We are further very concerned that these new costs are going to be imposed not because of a demonstrated benefit to plans and participants, but because the audit community must respond to the DOL's audit quality report, which found that nearly four in ten audits contained major deficiencies. Moreover, it is unclear that imposing more requirements would improve the performance of auditing firms responsible for this rate of error. Many plan sponsors engage quality audit firms to perform their audits and would be significantly penalized by the changes contemplated in the Exposure Draft.

In our view, many of the issues regarding audit quality can be addressed with increased training by audit firms, and by ensuring that plan audit teams are adequately staffed with knowledgeable personnel. In any event, before moving forward, the proposal should be reevaluated by weighing the costs against the benefits to plans and participants.

2. Auditors should not be required to report operational errors on their plan audit reports unless the errors present are material to the plan's financial statements.

The Exposure Draft would require auditors to test the plan's operation against the plan document (e.g., whether eligibility provisions are administered according to a plan document). If auditors discover operational errors as a result of testing these provisions, the Exposure Draft would require auditors to document their findings in the auditor's report. Further, it appears that the plan fiduciary would then be required to issue a response, which itself would be described in the audit. This appears to be the case even if the plan's counsel determines that these errors can be corrected under Internal Revenue Service ("IRS") or DOL correction programs and even if these provisions carry no risk of a material misstatement.

The Council and CIEBA strongly urge AICPA to remove these new requirements from its proposed auditing standards for three reasons. First, the proposal unnecessarily expands the scope of plan audit procedures. Second, if finalized as currently drafted, the proposed provisions will discourage collaboration between plan sponsors, counsel, and plan auditors. Third, the proposals would expose plan sponsors

to a heightened threat of litigation and scrutiny from the IRS and DOL without justification.

The proposal significantly increases audit costs. While auditors – particularly well trained auditors – generally test the plan's operation against the plan document, the changes required by the new procedures are much more extensive than currently required. We urge the AICPA to reconsider the breadth of the testing requirements.

The Exposure Draft would require auditors to identify more in their findings than they presently are required to do. Pursuant to this proposed change in AICPA's standards, an auditor who discovers an operational error of *any size* during the course of an audit would be required to disclose his findings. And the proposed disclosure of findings does not allow for auditors to provide context with respect to the level of testing that was performed, the magnitude of the operational error, or whether an error has been corrected. The Council and CIEBA believe this approach is misguided.

Although we appreciate the ASB's efforts to improve plan audits, we are concerned that this proposed change to AICPA's auditing standards would expand current auditing procedures without justification and to the detriment of plan participants. Unlike errors in a plan's *design*, errors in a plan's *operation* generally affect a low number of plan participants, involve a small percentage of plan assets, and are limited in scope and duration.

In addition, the vast majority of operational errors can be easily corrected, either through self-correction or through a filing under the IRS Employee Plan Compliance Resolution System ("EPCRS"). In fact, it is nearly unheard of for a plan of any size to be disqualified by the IRS in connection with a routine operational error. Accordingly, we are at a loss to understand why errors that are simply not material to the financial statements of a plan, and which the plan fiduciary has agreed to address through EPCRS, need to be reported on the audit report.

Requiring auditors to disclose operational errors of any size would impose significant additional costs. If every operational error is going to result in public disclosure, we are concerned that plan sponsors will need to develop and implement new and costly compliance procedures simply to prepare for their annual financial statement audits. We also see no benefit to participants to reporting insignificant operational errors. Such a requirement would strain the already limited resources of plan sponsors—particularly smaller plan sponsors just over the 100 participant threshold for an audit.

While very rare, an operational error is sometimes discovered that is material to financial statements or for which there is reason for the plan fiduciary to conclude that the tax qualification of the plan is jeopardized. In that case, noting this on the audit report may be appropriate. But we submit that, generally, it is inappropriate to describe

an operational error.[1] This is because the current AICPA auditing and accounting guide already requires auditors to assess the nature and materiality of operational errors to determine whether an adjustment is necessary to a plan's financial statements, as well as to assess the impact of the errors on the tax-qualified status of the plan.

The proposal discourages collaboration during the audit process. In our experience, the audit process currently in place fosters an environment in which plan sponsors collaborate with their counsel and auditors to promptly address operational errors. Generally, this incentivizes the plan sponsor to work with counsel to get the error addressed through EPCRS, and often results in further investigation to ensure the error is not widespread. Typically, because of this collaborative process, the plan's management, counsel, and auditor can review the facts and circumstances of the error, and the audit team can gain comfort that the plan's controls include a process to identify and correct errors that inevitably occur, mitigating any risk to the plan's qualification or of a material misstatement.

The proposal to require all operational errors to be disclosed in the audit report (and thus publicly disclosed on the DOL's website), could completely upend the working relationship between plan sponsors and auditors, putting them in an adversarial posture. Current procedures encourage plan sponsors to be forthright with their counsel and auditors, even if operational errors have occurred, because auditors do not currently need to disclose these insignificant deficiencies on their reports. If the proposed procedures are finalized, plan sponsors might hesitate to be as forthcoming with a plan's financial information during the audit process. The Council and CIEBA believe that plan sponsors could become more reluctant to collaborate with their counsel and auditors to identify operational errors and to correct them in a timely fashion. Such a change would negatively impact the very plan participants that AICPA is aiming to protect with this proposal.

The proposal exposes plan sponsors to a higher risk of meritless litigation and increased regulatory scrutiny. Last, if findings of operational errors were to become publicly available on the auditor's report, the Council and CIEBA fear that plan sponsors will be exposed to frivolous litigation and increased IRS and DOL scrutiny. Even if the operational errors are minor or are in the process of being corrected using EPCRS, the plaintiffs' bar will be undeterred from bringing frivolous lawsuits. Even groundless

[1] Alternatively, if the requirement that auditors must disclose all operational errors is retained, the Council and CIEBA feel that more guidance from AICPA is necessary. For instance, the Exposure Draft gives auditors the option to not include any findings identified in the audit that are "clearly inconsequential," but this term is ill-defined. If the proposal is enacted as drafted, auditors would have no meaningful guidance on how to distinguish findings that are clearly inconsequential from findings that are *not* clearly inconsequential. This would result in auditors using their own subjective judgment to interpret the term, which would create inconsistency in practice. An unintended result could be that experienced, reputable audit firms would feel pressured to disclose every single matter in their audit reports, while less experienced firms might misunderstand the requirements and not disclose anything. Consequently, if this part of the proposal is retained, we urge AICPA to consult with the benefits community for additional clarity and guidance.

litigation is costly and can take several years to resolve. For similar reasons, we are concerned that plans could face additional audits or enforcement actions from IRS and DOL regulators, even if these errors are insignificant or already being resolved.

3. This proposal should not be used to undermine limited scope audits.

The Council and CIEBA are concerned that the expanded audit procedures contained in the Exposure Draft, if adopted, could support DOL efforts to eliminate or limit the availability of limited scope audits, which streamline the audit process and lower costs.

The current Exposure Draft would require the auditor to obtain new written representations from plan fiduciaries acknowledging responsibility for determining if the limited scope audit is available and whether the certification has been prepared by a qualified institution. Generally, we are comfortable with auditors seeking this representation. We are also comfortable with the Exposure Draft's requirement for specified procedures when a scope limitation is involved. Our overall concern, however, is that the cumulative thrust of all of these changes appears to be to undermine, to a significant extent, the limited scope audit itself.

ERISA authorizes the use of the limited scope audit as a narrow exception to its full plan audit procedures.[2] The limited scope audit only applies to a plan's investment information, but not with respect to other plan information, such as participant data, contributions, or benefit payments. Full audit procedures still apply with respect to that other information.

The limited scope audit offers significant and justified cost-saving advantages. If a regulated bank or insurance carrier provides a plan's auditor with investment information that is appropriately prepared and certified, then the plan administrator can instruct the auditor not to audit the financial statements and schedules relating to those plan investments. Because auditors do not need to review information that has already been prepared and certified, the limited scope audit conserves the auditor's time as well as the plan's financial and administrative resources. Consequently, using the limited scope audit prevents unnecessary costs from being imposed or passed on to plan participants.

Despite the limited scope audit's statutory basis, narrow application, and proven cost-saving benefits, DOL has consistently attempted to curtail its use. In 2010, for instance, DOL asked the ERISA Advisory Council to consider whether the limited scope audit should be repealed.[3] (The ERISA Advisory Council, which includes representatives from all interested parties, not just the audit community, subsequently

[2] ERISA § 103(a)(3)(C). *See also* 29 CFR § 2520.103-8.

[3] 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.

recommended that the limited scope audit should *not* be repealed.[4]) Recently, in 2015, DOL issued a report that heavily criticized the use of the limited scope audit and described DOL's past support for failed legislative initiatives that would have eliminated the limited scope audit.[5] In other words, DOL has made its opposition to the limited scope audit, irrespective of the procedure's usefulness, abundantly clear. Representatives of AICPA have also taken the position that the limited scope audit should be repealed, including in connection with the ERISA Advisory Council's review of the topic.[6]

The Council and CIEBA recognize the importance of seeking to improve the limited scope audit procedures to enhance the limited scope audit's content and quality, and does not disagree that improvements to the current procedures could be warranted.[7] In our experience, however, the chief issue is the lack of training and experience of the individuals who are tasked with the plan audit, not the limited scope audit provision itself.

The limited scope audit is the creation of a statutory rule, set by Congress, and it is not appropriate for either DOL or the AICPA to use improvements in audit "quality" to undermine this important tool for plans. Any increased audit cost as a result of undermining the limited scope audit, one way or another, will be charged to plans and participants. And auditing of investment statements certified by regulated banks and insurance provides no additional benefit plans for those additional fees to the audit firm.

By expanding the scope of audit procedures and the written representations that management must make as part of the limited scope audit, the proposals in the Exposure Draft would increase the financial and administrative costs of the limited scope audit. These increased costs would negate the limited scope audit's inherent value. Because the Council and CIEBA are concerned that these changes could be used by DOL in future efforts to undermine the limited scope audit, we strongly urge AICPA to approach efforts to revise these procedures with these considerations in mind.

4. At a minimum, AICPA should extend its comment period by 60 days.

As stated previously, the Council and CIEBA believe that increased training by audit firms, in lieu of increased reporting requirements, is a more effective way to improve plan operation and financial statement quality. That said, if AICPA intends to move forward with the significant proposed changes contemplated in the Exposure Draft, we, at a minimum, recommend that AICPA extend its comment period by 60 days to allow all interested parties more time to respond to the proposals in the Exposure Draft.

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[4] *Id.*

[5] U.S. DEP'T OF LABOR, ASSESSMENT OF THE QUALITY OF EMPLOYEE BENEFIT PLAN AUDITS (2015), http://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/publications/assessment-of-the-quality-of-employee-benefit-plan-audits.

[6] ERISA Advisory Council Report ("AICPA has supported the repeal of limited scope audits since 1978.").

[7] In making these improvements to existing procedures, we ask AICPA to ensure that any changes to the limited scope audit will be cost-effective, as well as beneficial to the plan audit process.

Unlike the IRS or DOL, AICPA is not a government entity that routinely promulgates and issues guidance through the notice-and-comment process. It has taken some time for the industry to appreciate the significance of the changes AICPA is proposing. Although we believe this letter captures the concerns and comments from our members, we understand other interested parties are continuing to evaluate the proposal and may wish to provide feedback after August 21. In order to allow interested parties more time to fully study the issues raised in the Exposure Draft and to provide thoughtful, meaningful comments to AICPA, we respectfully ask that AICPA extend its comment period at least 60 days.

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Again, we thank AICPA for the opportunity to comment on the proposed changes to AICPA's auditing standards. We believe that the Council and CIEBA offer important and unique perspectives of both employer sponsors and investment fiduciaries of retirement plans, and we look forward to working with you on these important changes.

Sincerely,

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