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September 7, 2017

Ms. Sherry Hazel
American Institute of Certified Public Accountants (AICPA)

By email to sherry.hazel@aicpa-cima.com

Ms. Hazel,

We appreciate the opportunity to comment on the proposed Statement on Auditing Standards, *Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA* (the “proposed SAS”). We appreciate the AICPA’s efforts to create a standard with the objective to help improve the audit quality of employee benefit plan audits. We recognize that the proposed SAS was influenced by the audit quality concerns raised by the Department of Labor (DOL). While we agree that actions must be taken to improve the overall quality of employee benefit plan audits, we do not believe the proposed SAS, as written, will meet the stated objective of improving audit quality. We recommend the proposed SAS be modified substantially to address the concerns we have outlined in our responses below.

CliftonLarsonAllen LLP (CLA) has extensive experience providing professional services to employee benefit plans. We audit more than 2,500 employee benefit plans each year, including defined contribution plans (including 11-k filers), defined benefit plans, 403(b) plans, health and welfare plans, employee stock ownership plans, multiple-employer plans, and multiemployer plans. In addition to our employee benefit plan audit practice, we have extensive experience in the completion of the Form 5500 and in the administration of qualified plans. Our plan administration services group oversees administration for more than 525 employee benefit plans and completes the Form 5500 for more than 1,400 employee benefit plans.

ISSUE 1 – Required Procedures When an ERISA-Permitted Audit Scope Limitation is Imposed

Respondents are asked to provide their views on whether

- ***The procedures and guidance will achieve the objectives of enhancing execution and consistency in these engagements and if not, why; and***

In its report entitled *Assessing the Quality of Employee Benefit Plan Audits*, released in May 2015, the DOL found that there are a number of auditors who lack experience performing employee benefit plan audits and who do not perform the recommended audit procedures outlined in the Employee Benefit Plan Audit and Accounting Guide (the Guide). We believe these are the auditors who are failing to comply with current standards.

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We do not believe that the changes outlined in Paragraph 20 of the proposed SAS will achieve the objectives of enhancing execution and consistency of employee benefit plan audit engagements. The procedures in the proposed SAS are generally consistent with Paragraph 8.169 of the Guide, which is available to the public (including those auditors who are failing to comply with the current audit standards). We do not believe that requiring these procedures will change the behavior of the auditors who are not complying with current audit standards and the interpretive guidance included in the Guide.

Under the proposed SAS, quality auditors will continue to comply with all applicable audit standards while the noncompliant auditors will not necessarily be any more inclined to comply with the new procedures than they were with the procedures currently presented in the Guide. We believe this may cause a negative response in the market, with plan sponsors choosing to engage noncompliant auditors.

- ***Any procedures that should be required are missing, and if so, describe them.***

We believe there are two procedures that are not currently in the proposed SAS but that should be:

1. The procedures in paragraph 20(b) should address the auditor's responsibility to ensure that the certification is properly signed. 29 CFR 2520.103-5 requires the certification be in writing and signed by a person authorized to represent the qualified institution.
2. Paragraph 20 of the current proposed SAS does not address notes receivable from participants. The proposed SAS refers to "investment information," which would not encompass notes receivable from participants because such a receivable is not an investment, but rather is a receivable under ASC 962-310-45-2. Therefore, we recommend that the paragraph address notes receivable from participants and how the opinion should be modified if notes receivable from participants are covered by the certification. Furthermore, since this proposed SAS is being issued to enhance execution and consistency in these engagements, we recommend the proposed SAS include procedures auditors should perform related to notes receivable from participants when they are properly covered by the certification.

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

Respondents are asked to provide feedback on whether the form and content of the proposed auditor's report, including the form and proposed content of the new opinion

- ***Provide improved transparency with respect to reporting on an audit of ERISA plan financial statements when an ERISA-permitted scope limitation exists, if not how could it be revised;***

In the auditor's opinion section, we believe it is inaccurate and misleading to state the financial statements are presented fairly, in all material respects, when a scope limitation exists. Under an ERISA-permitted scope limitation, auditors perform very limited procedures on investments and related investment activity which is a significant portion of a plan's net assets available for benefits and changes in net assets available for benefits. We believe issuing an unmodified opinion on financial statements when auditors perform limited audit procedures over a significant portion of the statement of net assets available for benefits and statement of changes in net assets available for benefits is contradictory to generally accepted auditing standards, under which a material and

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pervasive scope limitation generally leads to a disclaimer of opinion. Users of the financial statement may place inappropriate reliance on financial statement believing the entire financial statement was audited.

We believe the proposed reporting format, with the expanded *Management's Responsibility for the Financial Statements* sections in a limited and full scope audit, does provide more transparency and clarity with respect to management responsibilities.

We believe the last sentence in the *Auditor's Responsibility (Including Responsibility for the Certified Investment Information)* section of the report is inaccurate and misleading. This language seems to imply the certification is audit evidence of the investment balances and related investment activity.

The term "form and content" is used throughout the report, but the term is not defined. We believe "form and content" should be defined to accomplish the goal of transparency, consistency, and quality.

- ***Will improve the auditor's understanding of his or her responsibilities in a limited scope audit resulting in potential improvements in audit quality and if not, why***

We believe the proposed auditor's report will not improve the auditor's understanding of his or her responsibilities in a limited scope audit, nor result in improvements in audit quality. We recognize the DOL inspection results demonstrate that many auditors do not perform proper audit procedures in a limited scope audit; but we do not believe having additional language in an auditor's opinion will improve the work performed in support of the auditor's report.

- ***Better describes management's responsibilities for the financial statements, and if not why;***

We believe that the proposed report better describes management's responsibilities for the financial statements.

- ***Provide sufficient clarity to users with respect to the auditor's responsibilities and matters reported, and if not, why.***

Please refer to our above response regarding the *Auditor's Responsibility (Including Responsibility for the Certified Investment Information)*. As to the matters reported, we believe the proposed report language in the opinion paragraph may cause the user to misinterpret the assurance provided by the auditor.

ISSUE 3 - Modifications to the Opinion in the Independent Auditor's Report

Respondents are asked for their views about the proposed interaction of AU-C section 705 and AU-C section 703 when the ERISA-permitted audit scope limitation is imposed by management including

- ***Whether the guidance in paragraphs .31 and .34 of the proposed SAS (a) is clear with respect to the auditor's responsibilities for addressing the circumstances described above, and (b) achieves the objective of providing transparent reporting to the users, and if not, suggested revisions.***

We believe this guidance is clear.

- ***The form and content of the example reports (nos. 5-7) illustrating qualified and disclaimers of opinion regarding the application of the guidance in paragraphs .31 and .34.***

We have no suggested changes.

ISSUE 4 – Required Emphasis-of-Matter Paragraphs

Respondents are asked to consider whether the situations identified are appropriate for requiring the inclusion of emphasis-of-matters paragraphs in the auditor’s report. Respondents are also asked to consider whether there are additional situations that should result in a required emphasis-of-matter paragraph.

We do not believe the proposed SAS should mandate the inclusion of emphasis-of-matters paragraphs in the auditor’s report for the situations identified. We believe this is best left to professional judgment based on the facts and circumstances of the particular engagement. While the situations identified are important in some circumstances, mandating the inclusion of emphasis-of-matters paragraphs may result in inappropriate emphasis being placed on a situation where other matters in the financial statements are more critical to the users’ understanding of the financial statements. AU-C section 706.01 addresses additional communications in the auditor’s report when the auditor considers it necessary to draw users’ attention to a matter or matters presented or disclosed in the financial statements that are of such importance that they are fundamental to users’ understanding of the financial statements. The presumption is that all disclosures required are important. Thus, choosing one matter to discuss in an emphasis-of-matter paragraph could place undue emphasis on that matter and detract from other important disclosures. We believe AU-C section 706 is sufficient to address users’ needs.

ISSUE 5 – Reporting Internal Control Deficiencies

Respondents are asked to provide feedback on whether

- ***The current reporting of internal control deficiencies to those charged with governance is sufficient; and/or***

We believe the current reporting of internal control deficiencies is sufficient. We do not believe internal control deficiencies should be reported in the auditor’s report.

- ***There are other reporting considerations the ASB should evaluate.***

We do not believe we should report any findings in the auditor’s report, including findings from procedures performed over specific plan provisions as outlined in the proposed SAS.

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

Respondents are asked to provide feedback about the required procedures discussed in paragraphs 15-16, and the reporting of findings discussed in paragraphs 119-124 of the proposed SAS, including views regarding the following:

1. With respect to the required procedures in paragraphs 15-16

- a. Will these requirements enhance the consistency and quality of audit work performed relating to matters that could have a direct effect on the financial statements, including related disclosures, and if not, why?***

We do not believe the requirements discussed in paragraphs 15-16, as written, will enhance the consistency and quality of audit procedures relating to matters that could have a direct effect on the financial statements. Paragraphs 15-16, in conjunction with the reporting of findings, appear to be directed more toward evaluating plan compliance than toward obtaining reasonable assurance that the financial statements are free of material misstatements. The objective of the procedures described in paragraphs 15-16 is to test the accuracy and completeness of participant balances, not to conclude on compliance. If the objective is to opine on compliance with the plan provisions, the DOL should incorporate this into their regulations. We believe there are significant changes needed for the proposed SAS to enhance consistency and quality of the audit procedures as identified below.

- b. Does the proposed SAS provide appropriate guidance on achieving these requirements including***
- i. Which provisions of the plan instrument should be tested; and***
 - ii. To what extent testing should be performed?***

We have identified the following areas in which we believe the proposed SAS should be modified to add clarification and better guidance.

- Paragraph 15 states that the auditor should perform the listed substantive procedures irrespective of the risks of material misstatement (RMM). We feel that the auditor should be allowed to use the RMM in determining the substantive procedures to perform. If plan activity relating to certain areas defined in this section is clearly immaterial to the financial statements, the auditor should not be required to perform substantive procedures.

For example, if an immaterial amount of forfeiture activity occurs during the plan year, auditors should not be required to verify the forfeitures were used in accordance with the plan instrument.

The proposed SAS requires that the auditor must disclose in the auditor's report any discrepancies noted in the auditor's testing that are not clearly inconsequential. This requirement indicates we are to use materiality or other undefined benchmarks to evaluate results from substantive testing in areas the auditor may have determined the overall RMM was low. We believe this will create inconsistency in how auditors evaluate discrepancies and how discrepancies may impact the overall financial statements.

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- Paragraph 15a requires substantive testing be performed on eligibility provisions. However, eligibility provisions are not an account balance and, therefore, have no direct impact on the overall financial statements. As noted in paragraph A18, eligibility provisions are often tested as part of contributions and benefit payments. We believe paragraph 15a should be stricken and made part of the application guidance in the paragraphs related to contributions (paragraph A23) and benefit payments (paragraphs A19 and A20).
- Paragraph 15a references “plan instrument,” which is further defined in paragraph 14. We believe that application guidance should be enhanced to note that plan instruments can also include other documents, such as collective bargaining agreements or federal and state regulations (e.g., Davis Bacon Act), that along with the plan document make up the plan provisions.
- Paragraph 15c requires substantive testing be performed on vesting provisions. However, vesting provisions are not an account balance and, therefore, have no direct impact on the overall financial statements. As noted in paragraph A22, vesting provisions are often tested as part of benefit payments. We believe paragraph 15c should be stricken and the reference to vesting provisions be made part of the application guidance in the paragraphs related to benefit payments (paragraphs A19 and A20).
- Paragraphs 15d and A23 highlight compensation as a significant factor in determining contributions. However, depending on the provisions of a plan, there may be other significant factors to consider. Hours, employment status, collective bargaining rates, participant benefit elections, and demographic data are examples of other significant factors in calculating contributions. We believe the application guidance should be enhanced to include other examples, and these examples should be expanded to health and welfare plans, defined benefit plans, ESOPs, multiemployer plans, and multiple-employer plans.
- Paragraph 15f requires substantive procedures regarding whether the allocation of expenses between plans is in accordance with an allocation formula consistent with applicable DOL class or individual exemptions. This appears to be a compliance matter regulated by the DOL. As such, we believe this section should be stricken.
- Paragraph 15g requires substantive testing to determine whether assets are fully allocated to participant accounts in accordance with Internal Revenue Service (IRS) Revenue Ruling 80-155. The fact participant accounts are fully allocated in accordance with this IRS ruling is a compliance matter and should not be in this audit standard. We believe this paragraph should instead address whether the participant accounts reconcile to the statement of net assets available for benefits. As such, we believe this section should be changed to read, “whether participant accounts reconcile to the statement of net assets available for benefits.” Consistent with this suggested change, we recommend that the first sentences of paragraphs A27 and A28 be stricken.

- c. *What procedures related to other plan provisions or specific areas of the financial statements should be included in the required testing to enhance the usefulness of the proposed reporting of the findings?***

Overall, the application guidance for paragraphs 15 and 16 generally refers to situations applicable to defined contribution plans. We believe the application guidance should be enhanced to include other examples, and that these examples should be expanded to health and welfare plans, defined benefit plans, ESOPs, multiemployer plans, and multiple-employer plans.

Paragraphs 15 and 16 do not include procedures regarding rollover contributions and notes receivable from participants. Both of these areas are common in defined contribution plans, and testing of the plan provisions related to these areas is recommended in the Guide. We believe these two areas should be added to paragraph 15.

- 2. *With respect to reporting on the findings resulting from performing procedures related to the areas in paragraphs 119-124, whether there are opportunities to enhance the proposed requirements and guidance including whether:***

- a. *Including the list of individual areas tested is appropriate and if so whether there are other items that should also be included (if not, why not).***

We do not believe a list of the individual areas tested is necessary. We believe the more detail included in an auditor's report, the higher the likelihood of having an inaccurate audit report. For example, as circumstances change, specific areas may be relevant in one year and not another. This would require careful consideration of the list of individual areas tested annually and, if an item was inadvertently included or excluded, this would result in an inaccurate auditor's report.

However, if individual areas are going to be listed, we recommend changes to the list based on our recommendations regarding paragraphs 15-16 noted above.

- b. *The requirement to exclude findings that are "clearly inconsequential" is appropriate, and if so is there guidance the ASB can consider to drive consistency in application in practice?***

The term "clearly inconsequential" in the proposed SAS raises some concerns. The proposed SAS indicates that auditors are to use materiality to determine which discrepancies from their substantive testing are "clearly inconsequential" but are not allowed to use the RMM to determine the areas tested. It seems that if auditors are to evaluate audit results using materiality, auditors should be able to determine which procedures to perform based on materiality and the associated RMM.

In addition, Paragraph A136 provides that the auditor may reach an agreement with those charged with governance on the nature of the findings that would be considered "clearly inconsequential." This seems to indicate that those charged with governance now have influence over the materiality and content that goes into the auditor's report. We do not believe it is appropriate for those charged with governance to influence how an auditor evaluates the necessity of a communication. Under this scenario, an auditor could have identical findings in two separate plans but, because of the influence by those charged with governance, the communications could be completely different. This results in less consistency in financial reporting.

- c. *The findings should also include any matters identified by management or the plan administrator? [Note: As currently drafted, the proposed SAS requires the auditor to include findings that were noted as part of the auditor's work performed in relation to paragraphs 15–16.]***

We do not believe the auditor's report should include any findings identified by management or the plan administrator, as currently required in the proposed SAS. We believe that mandating the inclusion of such findings will directly impact the auditor's ability to perform a sufficient risk assessment, because management or the plan administrator will have an incentive to not communicate plan operational issues to the auditor. Please see our responses to "e" and "f" below for further discussion.

- d. *The reporting illustrations included in the Exhibits to the proposed SAS specific to reporting the findings are clear and result in sufficient information to the user of the report?***

We do not believe the auditor's report should include any findings as currently required in the proposed SAS. Please see our responses to "e" and "f" below for further discussion.

- e. *There may be unintended consequences from including the findings in the auditor's report, and if so, what those unintended consequences may be and how might they be mitigated?***

We believe there will be numerous unintended consequences from including the findings in the auditor's report. A few examples are:

- A key component to an audit is open communication between the auditor and plan management and governance. AU-C 260 provides that communication regarding the planned scope and timing of the audit may assist those charged with governance to discuss issues of risk and materiality with the auditor and the auditor to better understand the entity and environment. We believe these communications are a key part of audit engagement planning. We expect our clients to communicate to us any administrative matters and/or concerns throughout the audit process. In fact, we highly encourage our clients to contact us throughout the year with questions. We believe this increases audit quality.

With the prospect of having specific plan matters included in an auditor's report, we believe plan management and governance will be less likely to share their questions and concerns with the auditor, as those matters may lead to a finding in the auditor's report.

This is very concerning because it adds risk to the auditor, the plan, plan participants, and plan management and governance. As professionals, the auditors are in a unique position to identify and communicate matters found in an employee benefit plan audit. With an appropriate level of discretion, the auditor can assist plan management and governance to address and mitigate their risks. However, we believe, if plan management and governance believes an honest and open communication on their end will lead to a comment in the auditor's report, they will be incentivized to not have those open and honest conversations.

- The administration of employee benefit plans is complex and errors can and do occur. As a firm that audits over 2,500 plans annually, we have seen a fair number of plan administration errors. Many times, the nature of the errors are small, innocuous matters; however, that would not keep them from being subject to the reporting on findings requirement in this proposed SAS. In addition, a single error or even multiple errors, do not necessarily indicate a pervasive issue.

Mandating the reporting of potentially innocuous matters in the findings will make it difficult for users of the financial statements to put the findings into context. More concerning, users may project such findings onto the plan as a whole and conclude the findings are broader than what they really are.

- The DOL and IRS both have correction programs available to plan sponsors for errors in the administration of employee benefit plans. A key component of these correction programs is the concept of “self-correction.” We believe matters that are subject to the reporting requirements in the proposed SAS fall into the self-correction part of the DOL and IRS correction programs. When engaging in self-correction of errors, a plan sponsor is not required to disclose the errors outside of the plan’s internal environment.

Under the reporting requirements in the proposed SAS, matters that fall under the DOL and IRS correction programs that permit self-correction would now be available for public consumption. This seems to conflict with the intent of the correction programs put in place by the regulators.

- As with all audit standards, there is some level of auditor judgement in the proposed SAS. The proposed SAS requires that findings in specific areas be included unless “clearly inconsequential.” Furthermore, the proposed SAS permits the auditor to reach agreement with those charged with governance on the nature of findings that would be considered “clearly inconsequential.” Combining auditor judgement on defining “clearly inconsequential” with the judgement of those charged with governance on what is “clearly inconsequential” will lead to a wide variance in application among audits. We believe this will lead to greater variation in auditor opinions and audit approaches.
- The proposed SAS requires including matters related to specific plan provisions in the auditor’s report. However, there may be other findings during the course of the audit that are of greater consequence and importance than the findings related to specific plan provisions. These “other findings” would need to be considered for communication under AU-C 265. If warranted, these “other findings” would be communicated through a written communication. The written communications under AU-C 265 has restricted use. As such, these communications stay within the internal environment of the Plan.

We believe that reporting specific plan provisions in the auditor’s report unduly elevates these findings on a scale of importance. We believe plan sponsors may unreasonably commit resources to address the “smaller” matters in the auditor’s report and may not commit the appropriate resources on the “other findings” that may be of greater significance to the plan and the participants.

f. There are alternatives to reporting the findings in the auditor's report that would achieve the objectives related to enhancing audit quality?

We believe the frameworks in AU-C 260 and AU-C 265 already achieve the objective of communication in a financial statement audit under GAAS.

3. Whether the required additional procedures and reporting of findings will result in additional costs, and if so, views as to the extent of those costs and whether they outweigh the potential benefits of enhanced audit quality?

We believe the additional procedures and reporting of findings will result in significant additional cost and these costs will significantly outweigh the potential benefits.

Overall, we do not believe the proposed SAS will enhance audit quality. As such, any additional cost would outweigh any potential benefits of enhanced audit quality.

The following are potential additional costs relating to additional time spent during the audit engagement that would be incurred under the proposed SAS:

- Time spent during the planning phase of the audit negotiating with those charged with governance as to what findings would be considered "clearly inconsequential."
- Time spent performing substantive procedures in audit areas that would otherwise not be tested.
- Time spent during the audit evaluating findings resulting from the additional required audit areas to be substantively tested under the proposed SAS. This would involve assessing what "benchmark" to use to determine if the findings are "clearly inconsequential" when not tested in the context of statistically valid sample sizes. It would also include additional conversations with plan management and governance to ensure all parties fully and accurately understand the "finding."
- Time spent drafting custom language in the report for each finding in each unique situation.
- Time and expense incurred by plan management and other plan professionals (particularly legal counsel) relating to working with the auditor in developing the auditor's report and other internal formal documentation on how such findings were evaluated.

ISSUE 7 – Required Procedures Relating to the Form 5500

Respondents are asked for their views about whether the proposed procedures in paragraphs 36–48 of the proposed SAS 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, and if not, why?

We do agree that the auditor should read the Form 5500 in order to identify material inconsistencies, if any, with the audited ERISA plan financial statements. However, we do not believe the procedures in paragraphs 36-48 of the proposed SAS will provide consistency with respect to identifying information in the Form 5500 that may be

relevant to the audit of ERISA plan financial statements. This is because, in practice, the Form 5500 many times is not accurate. It is the Form 5500 that generally requires modification, not the financial statements.

Also, many Form 5500 preparers use the audited financial statements to complete the financial information in the Form 5500. As such, the audited financial statements are the source document for the Form 5500 information.

As currently written, the language in the proposed SAS seems to imply that the Form 5500 is significant audit evidence, without considering the relevance and reliability of the audit evidence.

We believe the auditor's responsibility related to the Form 5500 is limited to comparing the financial information reported on the Form 5500 (generally the Schedule H) to the audited financial statements. If inconsistencies are identified, either the Form 5500 should be modified or the notes to the audited financial statements should include a reconciliation of the audited financial statements to the Form 5500.

In addition, the concept of "Misstatements of Fact" is introduced in the proposed SAS. These are matters reported in the Form 5500 that are unrelated to the audited financial statements that are incorrectly stated or presented. We do not believe that the auditor's responsibility for the Form 5500 extends to these matters. While it is a best practice to notify plan management if such matters are identified by the auditor, we do not believe this falls into the scope of an audit of the financial statements.

ISSUE 8 – Proposed New Reporting Standard and Amendments to Other AU-C Sections

Respondents are asked whether

- a. The proposed approach of creating a new reporting model for reporting on ERISA plan audits (AU-C section 703) will better describe management's and the auditor's responsibilities in these engagements;*
- b. The proposed amendments to the other AU-C sections are appropriate; and*
- c. Whether there are other sections of AICPA Professional Standards that might need to reflect the provisions of this proposed SAS.*

We do not believe the proposed SAS, as written, will meet the stated objective of improving audit quality. We recommend the proposal be modified substantially to address the concerns we have outlined in our responses.

ISSUE 9 - Proposed Effective Date

Respondents are asked whether the proposed effective date provides sufficient time for preparers, auditors, and others to adopt the new standard and related conforming amendments.

We believe the proposed effective date is not reasonable, based on how the proposed SAS is currently written and the numerous modifications that we believe should be made before the proposed SAS becomes effective.

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We appreciate the opportunity to express our views and would be pleased to discuss our comments or answer any questions you may have.

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