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September 18, 2017

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

Re: *Proposed Statement on Auditing Standards (SAS), Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA*

Dear Gentlemen:

The purpose of this letter is to provide feedback on the proposed Statement on Auditing Standards (SAS), *Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA*. We support the Board's objective to improve audit quality and understand that the proposed SAS was developed in response to requests made by the Department of Labor to revisit the auditor reporting model for ERISA plan audits.

As stakeholders in the ERISA plan industry, we are writing to provide feedback on particular aspects of the proposed SAS, and to offer certain suggestions.

Following are our comments on the issues on which the Board requested feedback:

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.

The situations identified are appropriate for requiring the inclusion of emphasis-of-matter paragraphs in the auditor's report.

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**

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

We believe that the current requirements to communicate with those charged with governance the internal control deficiencies identified during the audit are sufficient.

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

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

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

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?**

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?**

We do not believe these requirements enhance the consistency and quality of the audit work performed relating to matters that could have a direct effect on the financial statements, including related disclosures. These procedures are already familiar to practitioners who perform quality audits and have been included in the industry's Audit Guide for many years. For practitioners who do not perform quality audits, the desired effect may only be realized on a limited scale, which is unlikely to improve the quality of audits. The DOL's concern was to improve the quality of audits. To reshuffle the scope of opinion without assurance of improved audit quality could increase costs to a plan without a corresponding benefit.

Specific feedback related to Paragraphs 15 and 16 is as follows:

- Paragraph 15 requires the auditor to perform substantive procedures regarding various plan provisions, irrespective of the risk of material misstatement.

  The auditor's objective is to obtain sufficient appropriate evidential matter to provide a reasonable basis for forming an opinion on the financial statements as a whole. The nature of most evidence derives, in part, from the concept of selective testing of the data being audited, which involves judgment regarding both the areas to be tested and the nature, timing, and extent of the tests to be performed. The requirement to perform procedures irrespective of the risk of material misstatement eliminates this essential auditor judgment.

  We suggest that the requirements of paragraph 15 direct the auditor to consider the areas to be tested, with examples provided in Paragraphs 15a-i, and to determine the nature, timing, and extent of such tests, in order to establish whether there were instances of noncompliance with key provisions set forth in the plan document and/or with applicable laws and regulations, that would have a direct and material effect on the financial statements.

- Paragraph 15a-d —These procedures relate to the auditor performing procedures as to whether various provisions are administered in accordance with the plan instrument.

  The determination of whether a plan is being operated in compliance with applicable laws and regulations (which include a requirement to comply with the provisions of the plan instrument) is primarily a legal determination made in conjunction with plan management and legal counsel. Because we understand that the auditor will not be forming a conclusion based on the procedures performed in Paragraphs 15a-d, we believe that such procedures should only be required as part of the auditor's overall objective of forming an opinion on the financial statements as a whole.

- Paragraph 15d — We suggest that the procedures additionally describe contributions that are calculated actuarially or that arise from collective bargaining agreements, as is the case with multiemployer plans.

- Paragraph 15e — We suggest that the auditor also determine whether the prohibited transaction is properly disclosed in the notes to the financial statement and whether it has been or will be corrected by management.

- Paragraph 15f — We suggest that the auditor consider the reasonableness of the allocation and permissibility of plan expenses as well as their allocation. Payment of improper expenses from a qualified plan is a breach of fiduciary duties and may be considered a nonexempt transaction. Plan management considers whether plan assets are being expended to defray reasonable expenses of administering the plan, solely in the interest of participants and beneficiaries. Multiemployer plans experience unique challenges in structuring and monitoring compensation and service arrangements in order to meet the conditions allowing exemption from prohibition.

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).**

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?**

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.]**

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 believe that the Report on Findings resulting from procedures performed to determine the plan's compliance with its provisions is problematic, for reasons outlined in our feedback in #1 as well as the following:

- The auditor is performing the procedures in Paragraphs 15 and 16 not to form a conclusion or opinion, and not pursuant to an assessment of risk or materiality, but merely to report that they were performed and to report on any findings that resulted. This is unprecedented in auditing standards and clearly will not provide users with a clear picture of the status of the plan.

- Users will have difficulty determining the potential effect of the findings on the plan's operations, qualification or financial position.
- The reporting model does not allow the auditor to present findings in a way that characterizes their severity or magnitude, either individually or in the aggregate, so that the user can differentiate between those findings the auditor may consider to be insignificant and those considered to be more serious.

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?

Because the auditor's report is attached to the plan's Form 5500 filing, which is posted online and publicly available, the readers include not only the plan participants but anyone in the general public. A few unintended consequences may ensue, such as:

- Plan participants may become unduly alarmed regarding findings included in the report, even though the findings could be only routine operating errors, perhaps even already corrected. They may reduce or withdraw their participation in the plan, which could harm their ability to save for retirement —the very reason the plan was established.
- Plan sponsors may need to provide additional communications to participants to explain the findings, and seek assistance from professionals to do so, taking away from their ability to carry out other responsibilities and/or increasing costs without a corresponding benefit.
- Plan sponsors may avoid the reputational risk involved in having findings reported publicly and seek lower quality auditors who agree not to report findings, thwarting the very objective that this proposed SAS set to achieve. Quality auditors are likely to continue to perform quality work and would report findings in accordance with the requirements of the proposed SAS.
- Findings of noncompliance may lead to actual or potential litigation, providing an incentive for the plan sponsor to discontinue the operation of the plan or change the nature of the plan so that an audit is not required, and in effect, to eliminate the protections that ERISA provides to participants.
- Plan sponsors of multiemployer plans, who are an equal representation of labor union and management individuals, may be especially sensitive to findings which are susceptible to unintended interpretations being publicly available, for concern that their magnitude will be potentially inflated or misrepresented. Relations between labor and management, and between labor union officers and their rank-and-file members, are at times contentious, and the findings could be used for political agendas.

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 that findings of noncompliance should be communicated with plan management and, if appropriate, plan governance. The auditor should evaluate the effect of such noncompliance on the financial statements, in accordance with the provisions of AU-C 250, Consideration of Laws and Regulations in an Audit of Financial Statements.

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 that the additional procedures and reporting of findings will obviously increase the cost of performing an audit, undoubtedly in the first year of implementation and ongoing.

The consideration of what will be reported as a finding of noncompliance with plan provisions will ultimately be a matter of legal determination, causing plan management to increasingly seek legal counsel as a part of developing the report on findings and any management responses, driving up costs even more.

The cost that is harder to quantify is the "human cost" that may arise out of the unintended consequences described above. If participants are ultimately harmed by an overreliance on the auditor's ability to detect noncompliance, an overreaction to findings reported, or the failure of this proposed SAS to improve audit quality, their ability to obtain needed benefits could be jeopardized.

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 agree that the proposed guidance in paragraphs 36-48 is needed to increase consistency and execution of procedures performed with respect the plan's Form 5500 filing; provided that in situations where a matter involves other professional disciplines, the auditor's responsibility is to coordinate a response.

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

Respondents are asked whether

- **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;**

  The new reporting model is likely to result in a longer audit report and more costs to the plan without a corresponding benefit.

- **the proposed amendments to the other AU-C sections are appropriate; and**

The proposed amendments to other AU-C sections appear appropriate if this proposal is adopted.

- **whether there are other sections of AICPA Professional Standards that might need to reflect the provisions of this proposed SAS.**

  There may need to be revisions to AU-C 250, Consideration of Laws and Regulations in an Audit of Financial Statements, if in the final SAS, the auditor is required to include findings of noncompliance with laws and regulation in the audit report.

Issue 9—Proposed Effective Date

The proposed effective date for the proposed SAS is for ERISA plan audits of financial statements for periods ending on or after December 15, 2018. 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 that the proposed effective date does not allow enough time to implement the changes in practice that the proposed SAS would bring about, as well the necessary outreach to clients, service providers, legal counsel and users who would all be affected by the revisions in practice and reporting.

We take seriously the responsibility we have to the public interest, especially in the arena of employee benefit plans. We are constantly engaged in the task of assessing our fiduciary responsibilities.

We welcome proposals that improve the quality of employee benefit plan audits, but do not believe that this objective can be materially achieved through revisions to the audit reporting model. Initiatives to strengthen continuing professional education through a mandated number of minimum required hours each year, and to enhance oversight through peer review, are more likely, in our opinion, to strengthen and improve quality.

We appreciate the Board's consideration of these comments and recommendations. Please feel free to contact us if you have any questions.

Sincerely,

Raymond M. Pocino

Mr. Raymond M. Pocino
Vice President Laborers International Union Of North America
Eastern Regional Manager