



September 28, 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
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Transmitted via email to sherry.hazel@aicpa-cima.com

Dear Gentlemen:

The purpose of this letter is to provide our thoughts and comments on the proposed Statement on Auditing Standards, *Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA*. We agree with the Department of Labor that steps must be taken to improve the overall quality of employee benefit plan audits. In this response, we offer our comments to the proposed changes to the auditing standards along with our ideas on how to improve the audits of employee benefit plans.

Calibre CPA Group PLLC has extensive experience working with employee benefit plans. Our firm was founded with our initial clients being from the employee benefit plan arena some 80+ years ago. Today Calibre CPA Group audits over 250 employee benefit plans of all sizes ranging from \$500 million in assets and 100 participants to those with over \$15 billion in assets and over 200,000 participants. Furthermore, Calibre CPA Group performs thousands of payroll compliance audits each year for employee benefit plans. With a vested interest and as experts in the employee benefit plan field we offer our comments on the proposal on behalf of the firm and our clients.

The following are our comments regarding the specific issues identified by the Board:

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**

As you are aware, according to the DOL, the failure rate of limited scope audit engagements is extremely high. Many auditors of these types of engagements do not have expertise in employee benefit plan auditing, tend not to follow the AICPA Employee Benefit Plan Audit Guide, and will most likely not perform the recommended audit procedures in paragraph 20 of the proposed SAS.



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

We believe that paragraph 20A should also include a procedure that requires the auditor to evaluate whether the certification itself is in compliance with the statutory regulation that allows the scope limitation. Key certification requirements are described in A7; however, we believe that the auditor should include ensuring that the certification is signed by an authorized person of the certifying financial institution.

For paragraph 20B we suggest including that the auditor should evaluate management's assertion that (and not an assessment of whether) the entity issuing the certification is a qualified financial institution.

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 form of opinion

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

The proposed opinion would be an unmodified opinion on the portion of the financial statements we are able to audit. With such an opinion, the auditor is only attesting to the fairness of a portion of the financial statements. The reader of the financial statements will be misled which will result in less clarity and transparency.

The limited scope opinion, as drafted is very long and confusing to the reader of the financial statement. This may in turn lead to a misunderstanding as to the level of assurance that is being provided by the auditor.

- **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 procedures described in paragraph 20 will achieve this objective.

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

We believe that the proposed content better describes management's responsibilities for the limitation on the scope of the audit.

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

We believe that the proposed content provides decreased clarity to users with respect to the auditor’s responsibilities, in the following ways:

- The heading *Auditor’s Responsibility (Including Responsibility for the Certified Investment Information)* is misleading. The auditor is not responsible for any part of the financial statements, including the certified investment information.
- Although the auditor may perform limited procedures with respect to the certified investment information, procedures (a) and (b) relate mainly to the certification itself and not the underlying investment information. Procedure (c) was already included in existing content and procedure (d) would be better conveyed in a paragraph regarding the form and content of the financial statements in compliance with the applicable reporting framework.
- The proposed content makes clear that the auditor “did not assess the risks of material misstatement” nor “considered internal control” but omits information that the auditor performed no procedures to obtain reasonable assurance about whether the investment information is free of material misstatement.

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 the proposed SAS 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 previously, and (b) achieves the objective of providing transparent reporting to the users, and if not, suggested revisions.**
- **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.**

Our opinion, as stated earlier, is that the limited scope opinion should be a disclaimer of opinion and not an unmodified opinion. Continued use of a disclaimer of opinion renders the guidance in paragraph 34 unnecessary. Also, as stated earlier, we are concerned about the length of the auditor’s report as shown in the example reports. Lengthy audit reports are not transparent and are not easily understood.

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 wording in paragraph 116 of the proposed SAS is that “the auditor’s report on ERISA plan financial statements should include an emphasis-of-matter paragraph...”. The wording eliminates auditor’s judgement in these situations. Any of these items could be considered immaterial to the financial statements, as a whole, and an emphasis of matter paragraph may actually be misleading. These situations identified should be suggested topics for an emphasis-of-matter paragraph.

Other possible emphasis-of-matter paragraphs that should be considered might include:

- The plan is significantly underfunded and requires increased contributions and/or has implemented limitations on benefit increases and accruals. In the case of multiemployer plans, the funded status of the plan is critical, or critical and declining within the meaning of the Pension Protection Act of 2006.
- The plan has entered into significant nonroutine prohibited transactions that require correction.
- In the case of multiemployer plans, a mass withdrawal, withdrawal of a significant number of employers or withdrawal of a major contributing employer.
- Plan assets include a significant percentage of alternative or hard-to-value investments whose fair values have been estimated in the absence of readily determinable fair values.

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

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 the audit work performed relating to matters that could have a direct effect on the financial statements, including related disclosures, and if not, why?**

Overall, we believe the new required procedures will have little effect on overall audit quality. Qualified firms already perform all procedures necessary to render an opinion on the financial statements. Firms that currently fail to comply with existing audit requirements are not likely to perform additional procedures and the procedures will add complexity that may not be understood. In addition, many of the required procedures are outside the scope of a financial statement audit and is crossing the line to areas of legal compliance that is beyond the scope of an external audit of the financial statements. The added procedures will be an additional cost to the plan without a corresponding benefit in improved audit quality.

- 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?

The proposed standard requires the auditor to “... perform substantive procedures irrespective of the risk of material misstatement.” The concept of risk-based auditing is embedded in all audit procedures and a critical part of the overall audit. We believe an evaluation of the benefits due to elimination of the risk-based auditing model should be addressed outside this exposure draft.

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, timing and extent of procedures to be performed is based on auditor judgment as a result of the overall risk assessment. This requirement eliminates the risk-based audit approach.

- Paragraph 15 a-d relate to the auditor performing testing to determine 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 the plan’s service provider professionals. Therefore, the proposed standard is requiring auditors to make legal determinations and issue findings on matters that other plan service provider professionals have the responsibility in fulfilling (i.e. discrimination testing).

Furthermore, the testing is done to determine if it is in accordance with the plan instrument which ignores whether the plan instrument is in compliance with legal and regulatory environment in which the plan operates.

- Paragraph 15d procedures should be expanded to include contributions that are actuarially determined or that arise from a collective bargaining agreement as is the case with multiemployer plans.
- Paragraph 15e should be expanded to include determination of whether the prohibited transaction is disclosed in the financial statements and whether it has been corrected by management.
- Paragraph 15f should be expanded to include the reasonableness 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. Multiemployer plans experience unique challenges in structuring and monitoring compensation and service arrangements in order to meet the conditions allowing exemption from prohibition.
- Paragraph 16a provides a “must audit” list with a limited list of Internal Revenue Service Code compliance tests outlined in Exhibit B. This list does not take into account the numerous other compliance requirements of other oversight agencies. It is unclear how far the auditor must extend the procedures to test compliance with laws and regulations, and how to “pick and choose” which compliance requirements to include.
- Paragraph 16b seems to be a duplicate of the procedures in 15i.

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, we believe that the objective of improving consistency and audit quality in a robust way will not be met by codifying required procedures into the final SAS. These procedures are already familiar to practitioners who perform quality audits and have been included in the industry’s Audit Guide for many years.

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 do not believe a Report on Findings should be included as part of the financial statements.

The Auditing Standards Board has already concluded that it was not necessary to disclose in a separate section of the auditor's report the identified significant deficiencies or material weaknesses in internal control identified by the auditor under section AU 265. We feel it is not necessary and provides for duplication to have a Report of Findings included as part of the financial statements.

Other comments on this matter include:

- The auditor is performing the procedures in Paragraph 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. Therefore, in practice the report may not disclose inconsistencies in audit quality, and foster an overreliance on the auditor's ability to detect and report noncompliance findings.

 - The users of the financial statements will have difficulty determining the potential effect of the findings on the plan's operations, qualification or financial position. For example, under the proposed reporting model, the auditor is not required to quantify the findings or provide more than general information. Furthermore, the user has no way of assessing whether the finding was a result of numerous errors, one error that was not significant (but not clearly inconsequential), or the size of the sample being tested.

 - The user will have difficulty determining whether the findings of noncompliance have been remediated. The auditor is not required to repeat findings from prior years if not remediated.

 - 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.
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- 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 of the financial statements may include not only the plan participants but the general public as well. A few unintended consequences may ensue, such as:

- Plan sponsors of multiemployer plans, who are an equal representation of labor union and management individuals, may be especially sensitive to findings being publicly available and their magnitude potentially inflated.
- The statement of findings would likely have severe legal consequences for multiemployer plans. The findings of noncompliance could lead to actual or potential litigation.
- 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. The plan participants may in turn reduce or withdraw their participation in the plan, which could harm the participant’s 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.

***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 265.

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 increase the cost of performing an audit, with the first year of implementation being significant but also on an ongoing basis. Furthermore, as previously stated we do not believe the cost of implementation will support increased audit quality.

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?

In proposed paragraphs 36-48 the auditor is charged with responsibility for the Form 5500. Extending the auditor's responsibility to documents in addition to the financial statements is extending the auditor's legal liability to a compliance tax form that the auditor may or may not prepare. The requirements in paragraphs 36 to 48 extend the auditor's responsibility too far.

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;**

A longer audit report is likely to lead to increased complexity and to lessen transparency without a corresponding benefit to improved audit quality. The current reporting model is very difficult to understand in many instances and by expanding it to more pages will not be useful and may lead users to ignore it due to the complexity.

The new reporting model which better describes management's responsibilities related to ERISA-permitted scope limitations, is likely to result in a longer audit report and more costs to the plan without a corresponding benefit. Provisions that shift responsibility do not necessarily improve audit quality.

We suggest the following revisions to other descriptions of management's responsibilities included in the new reporting model:

Management is also responsible for maintaining a current plan instrument including all plan amendments; for administering the plan in accordance with plan provisions, in compliance with applicable laws and regulations, and consistent with the applicable ERISA prudence requirements for maintaining sufficient records with respect to each of the participants; in accordance with applicable sections of ERISA; and for determining the benefits due or which may become due to plan participants.

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

The proposed amendments to other AU-C sections appear appropriate.

- b. 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 regulations 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 sufficient time to implement the changes in practice, educate clients, coordinate with other service providers and have proper education to allow for a smooth transition.

Conclusion

Calibre CPA Group is committed to the highest audit quality for all of our employee benefit plan clients. We are in support of strengthening audits of ERISA employee benefit plans but we feel that the cost of implementing the proposed SAS will not outweigh the benefit achieved in improved audit quality. However, in an effort to further increase the quality of employee benefit plan auditing we offer the following recommendations:

1. All auditors of employee benefit plans should be required to join the AICPA EBP Audit Quality Center.
2. The strengthening of continuing education requirements for all CPAs and their professional staff who audit employee benefit plans including an increase in the requirement of Continuing Professional Education (CPE) related specifically to the intricacies of employee benefit plans.
3. Peer review requirements for employee benefit plan practices should be strengthened.

We appreciate the efforts of the Auditing Standards Board in this matter and hope that our comments and recommendations are worthy of consideration. If you need further information or clarification of our comments, please contact Glenn Eyrich at geyrich@calibrecpa.com or 202-721-1715.

Very truly yours,



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