
June 8, 2017

Michael J. Santay, Chair, Auditing Standards Board
Darrel Schubert, Chair, Employee Benefit Plan Reporting Task Force
American Institute of Certified Public Accountants
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Re: Proposed Statement on Auditing Standards (SAS), AU-C Section 703, *Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA*.

Dear Sirs:

Torrillo & Associates, LLC ("Torrillo") appreciates 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*. Torrillo is a local accounting firm located in Glen Mills, Pennsylvania. Torrillo specializes in audits of employee benefit plan financial statements. Our team is comprised of professionals with extensive experience in auditing, accounting and financial reporting of employee benefit plans. Our team has been monitoring the progress of the special task force of the Auditing Standards Board (ASB) closely and has devoted significant time to reading and reviewing the Exposure Draft issued.

General Comments

We understand and appreciate the dedication of the ASB to improving the quality of employee benefit plans audits. However, we have several concerns regarding the proposed reporting model for audits of ERISA plans. The most significant concern is that the proposed change in reporting model attempts to solve an issue related to audit quality by focusing on the auditors' report instead of addressing the expectation gap between what the public and the regulators believe is the purpose and procedures of an audit and what a financial statement audit actually entails.

While outside the scope of this proposed standard, we believe that the proposed guidance highlights an ongoing issue which has become less clear over time: what is an audit? Is an audit only to determine if financial statements are materially misstated or should it also include compliance matters outside the realm of their impact to the financial statements from a materiality perspective? If the industry believes that an audit is for only financial statements,

then agreed-upon procedures could be developed for compliance matters. While much time and effort would likely be required to develop agreed-upon procedures satisfactory to interested parties, once developed it would likely remove much inconsistency in practice as to what procedures are required. This is similar to what is performed in other industries.

If we as an industry are now going to issue auditor reports on compliance matters which would be available to the public, we believe much more attention must be given to clarifying and clearly delineating to the auditors and to the public, what specific steps must be performed to give assurance on these compliance matters. The specified procedures cannot be general as they currently are in the proposed standards. We have included specific examples of this in our response below.

We believe that, historically, the auditor's report has been simple for a reason. The current auditor's report very clearly states if the auditor concludes that the financial statements are presented fairly, in all material respects, in accordance with the applicable financial reporting framework or not, and if not, what were the reasons for the modification. In some cases, the report may state that the auditor cannot give an opinion. The more variations from these reports, the much more subjective it becomes. Subjectivity lends itself to disputes which often leads to potential legal liability. While the PCAOB has now mandated the inclusion of critical matters in auditors' reports for public entities, management's understanding of PCAOB audits is very different than management's understanding of audits of private entities. Also, the SEC regulates both the public entities and the auditors (SEC oversees PCAOB). Since both must answer to the SEC, this may likely minimize the potential for legal matters regarding critical matters for public entities.

As a result, we see an increased potential for litigation as a result of the proposed auditor's report. Although the current regulatory environment is very active and audits of employee benefit plan financial statements continue to receive a high degree of scrutiny from regulators, we cannot ignore the fact that we as auditors also operate in a litigious environment. Our concern is that the Exposure Draft may give the public, regulators and attorneys the impression that every employee benefit plan financial statement audit will be performed very similarly as the opinion references that the auditor is "required to perform certain procedures." This may give the impression that the industry has a list of procedures or at the very least that we as an industry are all in agreement as to what these certain procedures are. However, there is no list of procedures and the specific guidance to reference and consider is the Audit Guide for Employee Benefit Plans which is now over 850 pages. The DOL studies and peer review results on audit deficiencies appear to support that the industry is not in agreement as to what procedures need to be performed. In practice, we see large variances as to what auditors believe is required related to compliance matters. Under the new proposed standard, we are concerned that auditors may not be able to adequately support the assertion that they have performed certain

procedures if there is not adequate specificity as to what those procedures are in the industry as well as the guidance in the proposed standard. We ask if attorneys have been consulted or asked to review the Exposure Draft. The auditor's potential for liability should be minimized as much as possible. The following general concerns and recommendations have also been noted:

- The proposed auditor's report is being used to drive audit quality while the auditor's report is only one component of an entire audit.
- There is no precedent for such an auditor's report.
- The proposed SAS creates confusion regarding who is the client. An auditor performs acceptance and continuance procedures regarding the plan, however, the proposed report is intended to be available and viewed by the general public who has not engaged the auditor.
- Additional required procedures can drive up costs and fees which could lead to unintended consequences, such as:
 - Plan management seeking lower cost firms who may not have the experience and expertise to perform employee benefit plan audits.
 - Discouraging plan sponsors from sponsoring benefit plans for their employees.
- Requiring reporting on findings relating to whether the plan and plan transactions are in accordance with specific plan provision could lead to unintended consequences:
 - The auditor's report on employee benefit plan financial statements is filed with Form 5500 and as such is a public document available on the DOL website. This could become a disincentive for firms to report such findings.
 - Plan management may seek out firms that do not report findings whether due to experience or judgement which would degrade audit quality
 - The proposed standard does not include a clear definition of "finding" and "materiality" for reporting purposes. Thereby, creating diversity in practice.
- We do not believe that the procedures and guidance of the proposed SAS achieve the objective of enhancing execution and consistency in an employee benefit plan audit. The current proposed audit report includes compliance related requirements stating, "We are required to perform certain procedures to test whether the plan and plan transactions are in accordance with specific plan provisions". However, we found that the details of the "certain procedures" in the proposed guidance are lacking and vague. Often, the requirements are presented in the form of reminders that relevant assertions include completeness, accuracy, occurrence, rights and obligations and assertions relating to presentation and disclosure. As a result, we feel that the proposed auditor's report would lead a reader to believe that the auditor is performing very specific procedures.

Accordingly, the procedures do not contain the level of detail that is necessary to promote consistency in practice and, therefore, could further expand the audit quality issue.

- For instance, paragraph A46 states,

“To the extent that the investment information in the ERISA plan financial statements and related disclosures cannot be agreed to or derived from the certified information, **appropriate audit procedures** would need to be performed on such information.”

The “appropriate audit procedures” are not included, nor does the paragraph address the different types of investment information that would be subject to these procedures.

- For instance, paragraphs A 17 and A18 state,:

A17: “The plan instrument often specifies the eligibility provisions (in accordance with ERISA section 2012 and 202) that must be met for the employer(s) and employees to make contributions, benefit payments, vesting provisions, the formula to determine upper and lower contribution limits (salary deferral percentages), or the rates for determining the contributions.”

- A18: “Eligibility provisions are often tested as part of the auditor’s testing of contributions, benefit payments, and participant data. Relevant assertions relating to eligibility may include completeness, accuracy, occurrence, rights and obligations, and assertions relating to presentation and disclosure.”

- While the proposed SAS contains guidance for testing eligibility, it is not specific. It states that “eligibility provisions are often tested” and relevant assertions include completeness, accuracy, occurrence rights and obligations, presentation and disclosure. Auditors generally make very different interpretations as to what this guidance requires, which causes concern as to what the public may interpret. Practitioners may incorrectly use the proposed SAS as the sole source for an audit program for an employee benefit plan audit. Procedures that address difference scenarios, issues or exceptions are missing. We do not see how consistency in execution can occur when the procedures outlined in the proposed SAS are high level and subject to interpretation and auditor judgement.

- The proposed auditor’s report for an ERISA limited-scope engagement contains the following wording:


“In our opinion, based on our audit and based on our use of the certification of the investment information that we were instructed not to audit, the financial statements referred to above present fairly, in all material respects, the net assets available for benefits of ABC 401(k) plan as of December 31, 20X2 and 20X1, and the changes in net assets available for benefits for the year ended December 31, 20X2, in accordance with accounting principles generally accepted in the United States of America.”

The audit scope has been limited with respect to investments and investment activity. Using the phrase “the financial statements referred to above present fairly, in all material respects” suggests that an unqualified opinion is being issued versus a disclaimer of opinion. This could be misleading for plan sponsors, the DOL and other user of plan financial statements.

- Given the magnitude of proposed changes to the auditor’s report and the need to communicate and educate practitioners, regulators and plan management, the proposed effective date (for periods ending on or after December 15, 2018) does not appear to be sufficient.

We appreciate your consideration of our comments. We are available to discuss any of these comments with you at your convenience.

Sincerely,


Torrillo & Associates, LLC