

September 28, 2017

Ms. Sherry Hazel
Audit and Attest Team
American Institute of Certified Public Accountants

Via Email: Sherry.Hazel@aicpa-cima.com

RE: Exposure Draft – Proposed SAS, *Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA*

Dear Ms. Hazel:

This letter reflects the comments of our firm regarding the Exposure Draft (“ED”) – Proposed Statement on Auditing Standards, *Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA*, issued by the Accounting Standards Board (“ASB”) on April 20, 2017. We are pleased to be able to provide our feedback.

In several respects, as detailed throughout this letter, we believe the ED requires improvement. It is our hope that the ASB, after considering this comment letter, modifies the ED to address the areas of concern we are commenting on.

After reading the ED, it is clear that the AICPA has acquiesced to the demands of the Department of Labor (“DOL”) to provide more specifics in terms of what and how auditors report on employee benefit plan (“EBP” or “plan”) audits. Safeguarding of plan assets, making sure financial statements are fairly presented, and protecting participant interests are three goals which any reasonable group should support. However, we believe significant revisions to this ED should be made.

OVERVIEW

For years, the DOL has expressed their concerns surrounding the lack of communicative value and relevance of an auditor’s limited scope audit report. The DOL appears to be in favor of eliminating the limited-scope exemption all together. It appears that the DOL believes that in limited scope audit situations, the auditors are ignoring their responsibility to perform sufficient audit procedures, and instead, are hiding behind the disclaimer of opinion and the misunderstanding that no audit procedures are required. We believe that the DOL’s concerns relate to the fact that they do not have authority to require compliance reporting from auditors. In other words, the DOL currently does not have access to findings resulting from auditors’ compliance testing of plan’s provisions as this communication is only provided to those charged with governance over such plans.

In response to these concerns, the ASB was charged with among other things, taking a fresh look at the auditor's limited scope reporting model in an effort to provide better insight to the public regarding the scope of both management's and auditors' responsibilities in situations when management adopts the ERISA-permitted audit scope limitation. As part of their review, the ASB considered whether audit quality could be enhanced by a redesigned auditor reporting model for EBP audits. The proposed ED reflects a new reporting model for EBP audits that, among other things, changes the form of the current limited scope opinion. Specifically, the proposed report would now state that management is responsible for determining whether the ERISA-permitted scope limitation is permissible based on its evaluation of whether the certified investment information is complete and accurate. In addition, the ED would require auditors to test certain plan provisions in audits of EBPs and report their findings in the auditor's report. Finally, additional management representations would be required as a result of the ED.

Is the purpose of reporting on the plan's financial statements to report that the plan's net assets and the related changes in these net assets are "fairly presented in accordance with generally accepted accounting principles (GAAP)"? Or, is the role of an auditor now expanding to become a "policing" arm of the DOL by mandating that the auditor's report include findings related to a plan's administration?

We do not believe that the adoption of this ED will improve audit quality and the relevance of the auditor's report.

AUDITOR'S REPORT

1) We do not believe revising the auditor's report will improve audit quality.

The key to audit quality is to have those Independent Public Accountants ("IPAs") committed to EBP auditing perform the audits, versus trying to improve audit quality through a dramatic revision to the auditor's report. We believe that the DOL could stimulate an improvement in audit quality through a potential modification to the Form 5500, by requiring an indication of whether or not the IPA is a member of the AICPA's Employee Benefit Plan Audit Quality Center ("EBPAQC"). Such indication could be included on Schedule H of the Form 5500. The identification of the IPA as a member of the EBPAQC would indicate to the DOL, plan participants, and the public that the plan sponsor has selected an IPA that 1) is committed to the practice of EBP auditing, 2) has obtained the required EBP specific continuing education, and 3) has complied with other AICPA EBPAQC membership requirements including both annual internal inspection and peer review performed by qualified EBP professionals.

Adding an indication that the IPA is a member of the AICPA EBPAQC on the Form 5500 will also provide additional awareness to the plan sponsors of the purpose and mission of the AICPA EBPAQC. We believe that this simple change to the Form 5500 can provide significant benefits which will be a step toward accomplishing the many objectives the ASB and DOL are trying to achieve.

2) We believe that the required additional procedures and the reporting of findings could result in additional plan costs which will outweigh the potential benefits of enhanced audit quality.

We believe that IPAs will incur additional time in the development of the auditor's report, and depending on the volume of findings, the additional time could be significant. The proposed requirements to report findings will also lead to subjectivity in what is considered "inconsequential". The proposed changes to the auditor's report may also lend itself to an adversarial relationship with the client in defining "inconsequential". Further, there is no reporting guidance in the ED in the event that the plan sponsor self corrects errors and concurrently or subsequently discusses these corrections with the IPA. Will self-corrected errors be required to be disclosed in the proposed new audit report? We do believe this type of reporting will lead to a chilling effect on the communications between plan sponsors and IPAs who sometimes provide information to assist their clients with applicable DOL and IRS compliance requirements.

Reporting findings in the publically available auditor's report may also expose the plan sponsors to litigation. Such potential for litigation would be detrimental to participants and the plan sponsor alike. From the IPA's perspective, such a reporting requirement may lead to over auditing and additional costs, which could conceivably be passed on to participants. In both cases, it will be detrimental to plan participants which, in our opinion, would outweigh any potential benefits of enhanced audit quality.

REPORTING ON PLAN PROVISIONS/FINDINGS (#15 THROUGH #19 / A14 THROUGH A41)

EBP audits require addressing not only the fair presentation of financial statements but also whether or not certain provisions of the plan as well as certain regulatory requirements (IRS and DOL) are complied with. The ED formalizes the requirement of testing plan provisions, regulatory requirements, as well as reporting findings. Section 15 (Requirements) of the ED sets forth substantive procedures auditors should perform, irrespective of the risks of material misstatement. The areas set forth in the ED to be addressed are as follows:

- Eligibility provisions
- Benefit and claim payments
- Vesting
- Compensation
- Employer and employee contributions
- Prohibited transactions
- Plan expenses
- Allocations of assets, income, and plan expenses to participant accounts
- Use of forfeitures
- Recording of plan activity
- Plan compliance with required regulatory tests

Addressing plan provisions and regulatory requirements is in substance similar to conducting an audit under *Government Auditing Standards* (“GAS”), and the provisions of the Uniform Guidance. The ED sites similarities with GAS, and we agree. A properly conducted EBP audit will address the above areas as a matter of course. As stated above, adoption of the ED will not insure improved audit quality. The new standard would likely serve as another regulatory enforcement device.

A few areas remain unclear in the audit of plan provisions and the related reporting of findings. First, utilizing the auditor’s report as the reporting mechanism for both provisions and findings detract from the primary purpose of an auditor’s report on the financial statements. Findings are findings, and financial reporting is financial reporting. It is rare that noncompliance with a plan provision finding will be so significant as to impact an audit report. If the ASB ultimately concludes to report on both financial statements and plan provision testing findings, then the provisions and findings should be reported in a separate communication letter, similar to GAS/Uniform Guidance reporting. This would provide the user of the reporting a clear and individual document stating both the plan provisions examined and the related findings. Similar to Uniform Guidance reporting, a statement that the auditor is not rendering a legal opinion as to compliance with plan provisions should also be included. This separate communication should be at the end of the financial statement reporting package, similar to what would be found in GAS/Uniform Guidance reporting.

Second, the example in the ED of reporting a finding (vesting can result in an incorrect payment) is reported too simplistically with no context. While no one doubts that an error in dealing with a plan provision can be a finding, not having the details surrounding it serves to prompt more questions including how many participants were looked at, what level of vesting is being referenced, how much was the incorrect payment, etc. If noncompliance findings are to be reported, such reporting should be similar to the format used under GAS as follows:

- Criteria (what does the plan document require)
- Condition (what did the auditor find)
- Cause (why did the finding occur)
- Effect or Potential Effect (the impact on the plan of what was found)

We would also add “Recommendation”, “Plan Management Response” and “Corrective Action Plan”, to the above list. Recommendation would provide the plan sponsor with guidance as to the best way, in the opinion of the auditor, to remedy the finding now and for the future, absent any personnel or policy changes to the particular area. Plan Management Response would present the plan’s reaction to the finding (agree or disagree). Finally, the Corrective Action Plan would set out the plan’s methodology it will use to remedy what was reported.

Third, a reported compliance finding more often than not relates to some level of deficiency in internal control. The ED has chosen to exclude reporting on internal control deficiencies. Only reporting the noncompliance portion of a finding presents an incomplete picture. In most cases,

the cause of the finding is as important as the finding itself. We believe regulators and other users would want to see what the auditor believes is critical to obtaining a comprehensive view of a finding. Internal control findings should also be reported using the same suggested reporting elements as above. On occasion, plans may have only internal control findings and not related noncompliance findings.

Fourth, the ED does not specify whether *every* instance or level of noncompliance requires reporting, or whether the auditor has the ability to judge what might be considered *inconsequential*. What constitutes inconsequential should be defined in the ED.

Fifth, if the plan discovers and corrects a noncompliance issue, is that required to be reported by the auditor? The ED should address this matter. Many times clerical or other errors occur and are detected and corrected by plan administration.

As discussed above, we believe the reporting of plan provisions and related findings clutters not only the auditor's report, but is too simplistic to provide a meaningful description of the provisions not complied with and the causal reasons. Plan provision testing and any related findings, along with internal control deficiencies should be separately reported in the reporting package to provide the proper context and focus on both provisions and findings. Cluttering the auditor's opinion the way the ED proposes does not accomplish improving reporting on EBPs.

AUDITOR RESPONSIBILITIES CONCERNING THE FORM 5500 (#36 -#37 / A69)

Currently, prior to issuance of an audit report, the auditor is required to read the Form 5500 for the purpose of identifying any material inconsistencies between the Form 5500 and the financial statements. Material inconsistencies could influence the reader's opinion regarding the financial statements and auditor's conclusions. Reconciliations between the Form 5500 and financial statements are required to present the resolution of inconsistencies. The ED states "If it is not possible to obtain the Form 5500 prior to the report release date, the auditor should read the Form 5500 as soon as practicable", meaning after the issuance of the audit report.

We believe that the audit report should not be issued before the Form 5500 is made available to the auditor for their review. Allowing audit report release prior to Form 5500 availability will increase the likelihood of audit report reissuances.

SUMMARY

The AICPA's desire to assist the DOL results in cluttering the auditor's report as well as presenting findings without the proper context. Allowing the audit to be completed prior to reviewing the Form 5500 will increase the likelihood of plan reissuances, increasing costs, and causing friction between the auditor, plan management, and the Form 5500 preparer. The ED does not provide for clear and meaningful reporting.

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The AICPA should reconsider these problematic aspects of this ED. While we support the DOL and its desire that all plans have their audits properly performed, we do not believe that this ED will accomplish that goal.

Thank you for the opportunity to provide our commentary on this ED.

Yours truly,

A handwritten signature in black ink that reads "Marcum LLP". The signature is written in a cursive, slightly slanted style.

Marcum LLP