

New Jersey Society of Certified Public Accountants

425 Eagle Rock Avenue Suite 100 Roseland, NJ 07068-1723
phone 973-226-4494 fax 973-226-7425 web www.njscpa.org

December 4, 2006

Office of Regulations and Interpretations
Employee Benefits Security Administration (EBSA)
Room N-5669
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Attn: Independence of Accountant RFI (RIN 1210-AB09)

To Whom It May Concern:

The Accounting and Auditing Standards Interest Group (Group) of the New Jersey Society of Certified Public Accountants (NJSCPA) is pleased to comment on the Employee Benefits Security Administration of the Department of Labor's request for information concerning the advisability of amending Interpretive Bulletin 75-9 (29 CFR 2509.75-9) relating to guidelines on independence of accountants retained by employee benefit plans under section 103(a)(3)(A) of the Employee Retirement Income Security Act of 1974 (ERISA).

The Accounting and Auditing Standards Interest Group is a community of members interested in traditional accounting and auditing procedures and policies. The Group reviews accounting and auditing pronouncements, promotes improvements and technical excellences in the development and application of auditing procedures, accounting principles and financial reporting. Our comments represent the collective views of the Group and are not necessarily indicative of the individual views of the full membership of the NJSCPA.

1. Should the Department adopt, in whole or in part, current rules or guidelines on accountant independence of the SEC, AICPA, GAO or other governmental or nongovernmental entity? If the Department were to adopt a specific organization's rules or guidelines, what adjustments would be needed to reflect the audit requirements for or circumstances of employee benefit plans under ERISA?

We believe the Department should adopt the AICPA standards and the SEC standards as it applies to 11-K's. With each different set of independence rules, compliance with those rules become more challenging and the risk of inadvertently violating those rules increases. There is already too much complexity in the independence standards arena.

2. Should the Department modify, or otherwise provide guidance on, the prohibition in Interpretive Bulletin 75-9 on an independent accountant, his or her firm, or a member of the firm having a “direct financial interest” or a “material indirect financial interest” in a plan or plan sponsor? For example, should the department issue guidance that clarifies whether, and under what circumstances, financial interests held by an accountants’ family member are deemed to be held by the accountant or his or her firm for independence purposes? If so, what familial relationships should trigger the imposition of ownership attribution rules? Should the ownership attribution rules apply to all members of the accounting firm retained to perform the audit of the plan or should it be restricted to individuals who work directly on the audit or who may be able to influence the audit?

Currently, the guidelines only define members as employees of the accounting firm and are silent on family members. Current guidelines also define members as all partners of the firm, all employees working on the audit and all employees in the office that does the audit. This is too restrictive and should be replaced with the covered member rules in the AICPA standards.

We believe the ownership attribution rules should be restricted to individuals who work directly on the Plan audit(s), all partners located in the office performing the audit(s) and quality control employees. We also believe it can be extended to those in a position to influence the audit engagement such as the managing partner but the people deemed by the Department of Labor to influence the audit engagement must be clearly defined.

3. Should the Department issue guidance on whether, and under what circumstances, employment of an accountant’s family members by a plan or plan sponsor that is a client of the accountant’s firm impairs the independence of the accountant or accounting firm?

Yes, the guidance should specifically define which family members are required to be independent as well as the circumstances when the employment of those family members by a plan or plan sponsor would impair the independence of the accountant or accounting firm. Guidance should be provided on whether a firm’s employees’ family members are included in the independence requirements and if so how their ownership of stock, employment at the plan sponsor or being a plan participant in a plan that the firm is auditing impacts the firm’s independence.

4. Interpretive Bulletin 75-9 states that an accountant will not be considered independent with respect to a plan if the accountant or member of his or her accounting firm maintains the financial records for the employee benefit plan. Should the department define the term “financial records” and provide guidance on what activities would constitute “maintaining” financial records? If so, what definitions should apply?

Yes, we believe the term financial records requires clarification and guidance should specifically address participant recordkeeping, investment management, preparing financial statements from annual investment statements provided by custodians and preparing a Plan’s trial balance from such documents. We believe the guidance in

AICPA Interpretation 101-3 should be used for nonattest services performed for attest clients.

5. Should the department define the terms “promoter”, “underwriter”, “investment advisor”, “voting trustee”, “director”, “officer” and “employee of the plan or plan sponsor” as used in Interpretive Bulletin 75-9? Should the Department include and define additional disqualifying status positions in its independence guidelines? If so, what positions and how should they be defined?

Yes, these terms should be defined.

6. Interpretive Bulletin 75-9 defines the term “member of an accounting firm” as all partners or shareholder employees in the firm and all professional employees participating in the audit or located in an office of the firm participating in a significant portion of the audit. Should the Department revise and update the definition of “member”? If so, how should the definition be revised and updated?

We believe the current guidelines are too restrictive and should be replaced with the covered member rules in the AICPA standards.

7. What kinds of nonaudit services are accountants and accounting firms engaged to provide to plans they audit or to the sponsor of the plans they audit. Are there benefits for the plan or plan sponsor from entering into agreements to have accountant or accounting firm provide nonaudit services and also perform the employee benefit audit? If so, what are the benefits? Should the Department issue guidance on the circumstances under which the performance of nonaudit services by accountants and accounting firms for the plan or plan sponsor would be treated as impairing an accountant’s independence for purposes of auditing and rendering an opinion on the financial information required to be included in the plan’s annual report? If so, what should be the guidance provided?

We believe the guidance in AICPA Interpretation 101-3 should be used with additional clarification for nonaudit services that may be specific to employee benefit plans. Guidance should also clarify the time frame under which such services may impair independence (Ex: ceasing to perform a prohibited service within a reasonable (defined) period of being engaged to perform a plan audit) and clarifying the timing as to “during the period covered by the financial statements.”

8. Interpretive Bulletin 75-9 requires an auditor to be independent during the period of professional engagement to examine the financial statements being reported, at the date of the opinion, and during the period covered by the financial statements. Should the Department change the Interpretive Bulletin to remove or otherwise provide exceptions for “the period covered by the financial statements” requirement? For example, should the requirement be changed so that an accountant’s independence would be impaired by a material direct financial interest in the plan or plan sponsor during the period covered by the financial statements rather than any direct financial interest?

We believe it is unreasonable to expect that every partner in a firm must be independent prior to being engaged by the client and does not make sense since the firm is in no position to influence the engagement prior to being engaged and the Department should remove “the period covered by the financial statements” from the requirement. We believe the current guidelines inhibit larger public companies from changing plan auditors specifically due to the requirement that the firm be independent during the period covered by the financial statements. In effect, they must engage a firm prior to the start of their plan year so that all partners in that firm may dispose of any financial interests.

9. Should there be special provisions in the department’s independence guidelines for plans that have audit committees that hire and monitor an auditor’s independence, such as audit committees described in the Sarbanes-Oxley Act applicable to public companies?

No, we do not believe there needs to be special provisions in the guidelines for plans with audit committees not subject to the Sarbanes-Oxley Act.

10. What types and level of fees, payments, and compensation are accountants and accounting firms receiving from plans they audit and sponsors of plans they audit for audit and nonaudit services provided to the plan. Should the department issuance guidance regarding whether receipt of particular types of fees, such as contingent fees and other fees and compensation received from parties other than the plan or plan sponsor, would be treated as impairing an accountant’s independence for purposes of auditing and rendering an opinion on the financial information required to be included in the plan’s annual report?

We believe the guidelines should focus on the type of services provided and not the fees received. The AICPA guidance on these types of fees would be sufficient.

11. Should the department define the term “firm” in Interpretive Bulletin 75-9 or otherwise issue guidance on the treatment of subsidiaries and affiliates of an accounting firm in evaluating the independence of an accountant or accounting firm?

Yes, guidance should define if subsidiaries and affiliates of an accounting firm also need to be evaluated related to independence.

12. Should the Department’s independence guidance include an “appearance of independence” requirement in addition to the requirement that applies by reason of the ERISA requirement that the accountant perform the plan’s audit in accordance with GAAS?

The “appearance of independence” requirement already exists in GAAS and we do not believe additional guidance is required.

13. Should the department require accountants and accounting firms to have written policies and procedures on independence which apply when performing audits of employee benefit plans? If so, should the Department require those policies and procedures be disclosed to plan clients as part of the audit engagement?

All firms should have written policies and procedures on independence in their quality control documentation. By issuing an audit in accordance with GAAS, it is implied that the firm is independent. We do not feel it is necessary to disclose the firm independence policies and procedures to the plan client.

14. Should the Department adopt formal procedures under which the Department will refer accountants to state licensing boards for discipline when the Department concludes an accountant conducted an employee benefit audit without being independent?

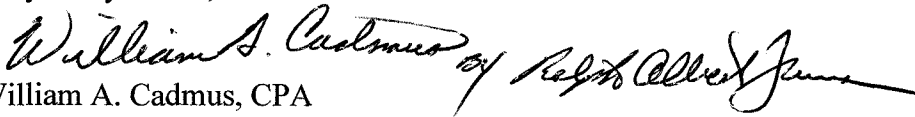
Independence is the cornerstone of the public accountancy profession. Failing to comply with independence standards should be referred to state licensing boards.

15. Should accountants and accounting firms be required to make any standard disclosures to plan clients about the accountants' and firm's independence as part of the audit engagement? If so, what standard disclosures should be required?

By issuing an audit in accordance with GAAS, it is implied that the firm is independent. We do not feel it is necessary to make any standard disclosures to the plan clients as part of the audit engagement, except for 11-K engagements.

We appreciate your consideration of our comments and suggestions relating to the guidelines on independence of accountants retained by employee benefit plans.

Very Truly Yours,


William A. Cadmus, CPA
Chair, Accounting and Auditing Standards Interest Group
New Jersey Society of Certified Public Accountants