



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

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

Clifton Gunderson LLP appreciates this opportunity to comment on 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).

Clifton Gunderson LLP is the 13<sup>th</sup> largest accounting firm in the country. We annually audit over 400 employee benefit plans sponsored by entities ranging from small closely-held companies to large publicly-held companies.

We support the Department of Labor's efforts to revisit and modernize its independence regulations related to audits of employee benefit plans subject to ERISA. Other organizations that issue independence rules, including the American Institute of Certified Public Accountants and the Securities and Exchange Commission, have significantly changed their independence rules since the Department of Labor issued Interpretive Bulletin 75-9 thirty-one years ago. We believe it is critical that the Department of Labor's independence rules stay in step with changes in public policy and public perceptions, with the overarching goal of protecting the financial interests of U.S. employees and retirees.

This letter comments on some, but not all, of the specific questions in the Department of Labor's September 11, 2006 Request for Information (RFI). The following paragraphs include references to specific question numbers in the RFI.

4. We believe the Department of Labor should define the term "financial records." This will eliminate the disparate interpretations of that term that have existed and evolved since the Interpretive Bulletin was issued. Promoting a clear, working definition and consistent application of the term will also serve the public interest by reducing unintentional interpretation of the term in conflict with the Department of Labor's intent. We acknowledge that time and care will be required to develop a definition of a working "financial records."

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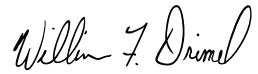
We strongly believe that preparation of financial statements should **not** be prohibited under any revised rules regarding maintenance of financial records. For nonpublic entities (including employee benefit plans and other entity-types), the process of preparing financial statements in accordance with generally accepted accounting principles is widely regarded as being separate and distinct from the process of “maintaining financial records.” It is viewed as a step that occurs after the financial records for the year have been completed. The vast majority of employee benefit plans that are required to include audited financial statements in their Form 5500 filings simply do not have the technical expertise to prepare financial statements in accordance with generally accepted accounting principles. Requiring plans to engage outside parties to prepare their financial statements--parties that are unfamiliar with their financial records and processes--would create a financial burden on the plans and would not serve the interests of plan participants or the public at large.

6. The Interpretive Bulletin defines “member” to include all partners or shareholder employees of the firm. Under that definition, independence rules are violated if a partner located thousands of miles from where the audit work is performed has any ownership interest in the plan sponsor. We do not believe this situation causes any substantive impairment of auditor independence. We believe the Department of Labor should revise and update its definition of the term “member” so that it is generally consistent with the SEC’s “covered person” definition in Rule 2-01(f)(11) in the *Final Rule: Revision of the Commission's Auditor Independence Requirements* (the Final Rule).

8. We believe the Interpretive Bulletin should be changed so that it is consistent with the SEC’s requirements in Rule 2-01(c)(1)(iii)(B) in the *Final Rule: Revision of the Commission's Auditor Independence Requirements*. That rule permits the auditor to bid for and accept engagements when an existing financial relationship exists between the accounting firm or one of its employees and the company, provided they become independent before the earlier of the two events specified in paragraphs (B)(2)(i) and (ii). Particularly for plans sponsored by companies whose stock is widely held, the Interpretive Bulletin’s current rule makes it very difficult for an auditing firm to meet the independence requirements in a year in which a plan is considering changing auditors. This restriction is not in the best interests of the Plan and its participants, and there is no substantive threat to the auditor’s independence if financial interests are disposed of before the auditor is engaged to provide audit services to the Plan.

Again, we appreciate the opportunity to provide these comments and would be happy to discuss them with you in further detail if you so desire.

Very truly yours,

A handwritten signature in cursive script that reads "William F. Drimel". The signature is written in black ink and is positioned below the closing phrase "Very truly yours,".

William F. Drimel, Assistant Director of Assurance Services  
CLIFTON GUNDERSON LLP