



CPAs & BUSINESS ADVISORS

December 11, 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):

**Eide Bailly LLP Response to Employee Benefits Security Administration,
Department of Labor (DOL, Department) Request for Information on
Independence of Employee Benefit Plan Accountants**

We are submitting this response to the Department of Labor (DOL, Department) 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 Department seeks comments on specific questions to obtain information to assist the Department in evaluating the guidelines in Interpretive Bulletin 75-9. Our comments on the specific questions follow:

Question 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?

Comment: As a profession, we believe it is agreed that what gives the certified public accountant's opinion its value is the fact that he or she is independent of the entity. By having no financial interest in the result(s) of the audit, the auditor is free to offer an unbiased opinion that can be relied on by others. However, with the current number of coexisting rules on independence, compliance with the independence standards has become a complicated process and we support steps (e.g. adoption in whole or in part of AICPA, SEC &/or GAO rules) that would streamline the rules without impacting the spirit of the concept of independence.

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Questions 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?

Comment: We would recommend that the Department consider modifying the restrictions on "financial interest" to follow more closely the AICPA's rules wherein the auditor or member of the firm would need to be able to exercise significant influence over the plan sponsor to be considered not independent. Given the nature of the employee benefit plans, there appears to be limited motivation for an auditor that does not have significant influence over the plan sponsor to allow his or her opinion to be biased. A modification to this guidance therefore would not jeopardize the spirit of the concept of independence, and it would help streamline the rules.

Question 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 or his or her accounting firm impairs the independence of the accountant or accounting firm?

Comment: Using similar reasoning as in item 2 above, we would recommend modifying this restriction to follow more closely the AICPA's rules related to a family member of an accountant in a "key position" with the plan sponsor. Again, there appears to be little to gain in an EBP engagement for an auditor who was not responsible for the creation of the financial records to allow his or her opinion to be biased.

Question 4: 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?

Comment: We would welcome clarification of these terms, as that would lower the risk of sanctions imposed against accountants due to another's different interpretation of these terms after an audit has been completed. We would recommend adopting the examples of bookkeeping services that would not impair independence as provided within the AICPA's rules.

Question 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?

Comment: No specific comment or recommendation.

Question 6: Should the Department revise and update the definition of "member?" If so, how should the definition be revised and updated?

Comment: The Department and the AICPA formerly used a consistent definition of "member" in the application of independence regulations and rules. Revisions to AICPA independence rules have included updates to the definition of "member" which place emphasis on the engagement team and the ability to influence the engagement team. Maintaining an established consistency between the Department and the AICPA is important and appropriate. Accordingly, we would strongly support an update to the definition of "member" to follow the current definition of "member" and "covered member" used by the AICPA.

Question 7: What kinds of nonaudit services are accountants and accounting firms engaged to provide to the plans they audit or to the sponsor of plans they audit?

Comment: Nonaudit services include preparation or review of the Form 5500, Form 990 and business and individual income tax returns (including income tax planning).

Question 8: Should the Department change the Interpretive Bulletin to remove or otherwise provide exceptions for "the period covered by the financial statements" requirement?

Comment: We strongly encourage adoption of the AICPA and SEC rules that allow the opportunity to sell off stock ownership in the sponsor before accepting the client and commencing the audit engagement, thereby allowing the audit of the current year.

Question 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 the audit committees described in the Sarbanes-Oxley Act applicable to public companies?

Comment: The majority of the plans that we audit (plan sponsor is a small business) do not have audit committees for the plan; additionally, many do not have audit committees for the sponsor.

Question 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?

Comment: No specific comment or recommendation.

Question 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 accounting firm and members of the firm?

Comment: No specific comment or recommendation.

Question 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?

Comment: We believe that reference to GAAS is sufficient, as this requirement is contained within the standards.

Question 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?

Comment: Accountants and accounting firms address independence considerations in their audit and accounting quality control documents, which should incorporate employee benefit plans or reference separate documentation.

Question 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 has conducted an employee benefit plan audit without being independent?

Comment: No specific comment or recommendation.

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

Comments: Accountants are required to be independent with respect to all audit clients and include that indication in the title of the independent auditor's report. A standard disclosure stating independence should not be necessary.

We appreciate the invitation to provide this response and the opportunity to submit our comments for consideration by the Department in evaluating the guidelines of Interpretive Bulletin 75-9.

Sincerely,

Eide Bailly LLP



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Partner