



September 28, 2017

Ms. Sherry Hazel

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**Re: Comment on AICPA Proposed Statement on Auditing Standards, *Forming an Opinion and Reporting on Financial Statements of Employee Benefit Plans Subject to ERISA***

Dear Madam and Sirs:

The Plan Sponsor Council of America (“PSCA”) is writing to comment on the Proposed Statement on Auditing Standards released by AICPA on April 20, 2017 (the “Proposal”). PSCA is concerned that the Proposal would have a negative impact on plan sponsors and participants and should be substantially revised as provided below. PSCA thanks the AICPA for the opportunity to provide input on these matters.

PSCA is a diverse, collaborative community of engaged retirement savings plan sponsors, working together on behalf of millions of employees to solve real problems, create positive change, and expand on the success of the employer-sponsored retirement savings system. With members representing employers of all sizes and from all industries, PSCA is improving American retirement security by creating a forum for comprehensive dialogue and serving as a resource to policymakers, the media, and other stakeholders.

While we greatly appreciate steps to enhance the audit quality of tax-favored plans and improve the overall employee benefits system, our comments are focused on how the Proposal (1) goes beyond the necessary information for a Form 5500, (2) requires auditors to opine on compliance issues that are outside their area of expertise and are typically handled and advised by other service providers, (3) unnecessarily adds regulatory costs and burdens for employers of all sizes, and (4) unnecessarily creates more litigation risk.

**I. The Proposed Standard Goes Beyond the Necessary Information for a Form 5500**

Each year, employee benefit plan administrators are required to file a Form 5500 annual report and any required schedules and attachments. The annual report discloses the plan’s financial condition, investments, operations, and compliance with certain prescribed standards of the Department of Labor (DOL), Internal Revenue Service (IRS) and Pension Benefit Guaranty Corporation (PBGC). The Form 5500 includes disclosure of basic plan information as well as detailed information such as plan funding arrangements, distributions, compliance questions and service provider information. In addition, Schedule H includes asset and liability statements, income and expense statements, accountant verification of schedules and financial statements.

The Proposal is problematic because it asks auditors to provide information beyond the scope of the Form 5500 and Schedule H instructions and requirements under ERISA section

103(a)(3)(A). According to the Schedule H instructions and ERISA section 103(a)(3)(A), the auditor is to conduct an examination of the financial statements and records of the plan and form an opinion as to whether the statements and schedules required to be included in the annual report are presented fairly in accordance with generally accepted auditing standards and attach a report which generally consists of the accountant's opinion, financial statements, notes to the financial statements, and supplemental schedules. The Proposal goes much further by requiring auditors to also obtain agreements from plan management that they understand their responsibility to maintain plan documents, administer plans in conformity with plan provisions, maintain sufficient records and determine benefits due to participants. (Pg. 25, number 12).

If policymakers would like additional information such as that required in the Proposal, the proper avenue to do so would be for Congress to pass legislation and/or the DOL and IRS to amend Form 5500 and the instructions thereunder pursuant to notice and comment rulemaking. Therefore, we strongly recommend that the AICPA remove any expanded audit requirements in the Proposal that go beyond the statutory and Form 5500 and Schedule H requirements.

## **II. The Proposal Requires Auditors to Opine on Compliance Issues Typically Handled and Advised by Other Service Providers**

The Proposal requires auditors to examine Form 5500 filings and determine whether defects and errors exist beyond those in the financial realm. The Proposal grants auditors with the power to mandate an amended Form 5500 or require a legal opinion if plan sponsors do not agree to amend their Form 5500. (Pg. 46-48). This is problematic given that auditors do not necessarily have sufficient expertise in ERISA and IRC compliance matters. In addition, plans already hire actuaries, ERISA counsel, and third-party administrators to ensure compliance issues such as plan document compliance, plan operational compliance and that other various compliance tests are met, and have a full system to address these issues and the correction of the same under the Employee Plans Compliance Resolution System (EPCRS, Rev. Proc. 2016-51).

Furthermore, under ERISA section 103(a)(3)(A) the primary role and purpose of the auditor is to determine whether the financial statements and schedules in the annual report fairly present the financial position of the plan. ERISA section 103(a)(3)(A) states the accountant shall conduct "an examination of any financial statements of the plan, and of other books and records of the plan, as the accountant may deem necessary to enable the accountant to form an opinion as to whether the financial statements and schedules required to be included in the annual reports... are presented fairly in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year." The accountant "shall also offer his opinion as to whether the separate schedules... present fairly, and in all material respects the information contained therein when considered in conjunction with the financial statements taken as a whole." Requiring auditors to perform procedures to determine whether various plan provisions are administered in accordance with the plan document goes well beyond the scope of examining a plan's financial statements and schedules. Therefore, we recommend that AICPA narrow the scope of the Proposal to drop these expanded requirements (and otherwise maintain a materiality threshold).

### **III. The Proposed Standard Adds Regulatory Cost and Burden for Employers of All Sizes**

The Proposal will add significant regulatory costs and burdens to plan sponsors (and third party recordkeepers) because they will need to ensure they pass both the expansive auditor compliance tests outlined in the Proposal and the compliance tests already conducted by other plan personnel and service providers. Potentially requiring duplicative compliance tests will greatly increase costs for plan sponsors (which in turn could increase plan participant costs). Plans will be required to provide information in one format for the new audit requirements and then in a different format for the Form 5500 filing. In addition, as explained above, the Proposal goes beyond the Form 5500 requirements, increasing costs for Plans as they now need to supply more information and comply with additional requirements from the auditor. Further, plans generally hire actuaries, administrators and outside counsel to aid in the process of conducting Form 5500 filings, and will now need to hire these entities for necessary assistance during the auditor compliance tests.

Furthermore, if the Proposal is accepted in its current form, the changes will result in plans needing to amend many of their TPA and audit agreements to cater to the changes under the new standard. For example, the plans will need to develop new processes to collect data required under the Proposal. Auditors will also need to alter their professional practices to accommodate the changes required under the Proposal. Therefore, if adopted, the effective date of the new requirements should be extended by at least two years to enable plans and auditors time to update their Form 5500 practices beyond 2018.

### **IV. The Proposal Unnecessarily Creates More Litigation Risk**

The Proposal states auditors should include a statement in the audit clarifying the purpose of the report is not to provide an opinion on compliance with plan provisions. (Pg. 82, number 12). However, this requirement is directly at odds with Proposal numbers 12, 15 and 16 which specifically require auditors to directly comment on ERISA compliance issues and publically report any compliance failures. It is also concerning that the Proposal provides no legal guarantee that plan participants and beneficiaries will be prevented from using the auditor's opinion to initiate legal action. In fact, it is likely that plaintiffs' lawyers will carefully review audit reports to gather information for possible lawsuits against plan sponsors. In order to prevent unnecessary litigation, the Proposal should be amended to limit auditors to providing an ERISA compliance opinion only from a financial standpoint in accordance with their limited scope and purpose under ERISA.

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Thank you for your time and consideration. Please call David Levine (202-861-5436), Brigen Winters (202-861-6618) or me (212-556-2162) if you have any questions.

Very truly yours,  
Kenneth Raskin  
Chairman of the Board  
Plan Sponsor Council of America