



November 22, 2016

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Attn: RIN 1210-AB63  
Annual Reporting and Disclosure, Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210

Re: Proposed Revision to DOL Reporting Regulations to Implement Notice of Proposed Forms Revisions (RIN 1210-AB63)

The American Institute of Certified Public Accountants (AICPA) appreciates the opportunity to comment on the proposed revision to the DOL's reporting regulations needed to implement the forms revisions proposed in the three-agency (DOL, IRS, and the PBGC) Notice of Proposed Forms Revisions (NPFR), *Proposed Revision of Annual Information Return/Reports* (RIN 1210-AB63) which was published in the July 21, 2016 *Federal Register*. The DOL proposed revisions would amend Subchapter C, parts 2520, *Rules and Regulations for Reporting and Disclosure*, and 2590, *Rules and Regulations for Group Health Plans*, of Title 29 of the Code of Federal Regulations. These comments were prepared by a joint task force of the AICPA Employee Benefit Plan Audit Quality Center Executive Committee, the AICPA Employee Benefit Plan Expert Panel, and the AICPA Employee Benefit Plan Tax Technical Resource Panel (AICPA Joint Task Force). The AICPA Joint Task Force also commented separately on the NPFR.

**Part 2520, Rules and Regulations for Reporting and Disclosure**

**§ 2520.103-8 Limitation on scope of accountant's examination.**

*Form 5500 Submission of Certifications for Limited Scope Audits.* We support the DOL's objectives to make the certifications for limited scope audits more detailed and informative and believe that requiring certifications be included as part of the Form 5500 submission may provide greater transparency. Because Congress concluded in 1974 when considering ERISA that the limited scope certification is significant enough to permit plan administrators to direct the independent qualified public accountant (IQPA) not to perform any additional procedures with respect to the investment information prepared and certified by a qualified institution, we believe the requirements for an acceptable certification should be specific and clear. We support the changes in the Proposal, but have the following additional suggestions for improving the rules related to certifications that we believe will result in better certifications and less confusion:

- We recommend the guidance in the Information Letter dated May 17, 2002, from John J. Canary, Chief, Division of Coverage, Reporting and Disclosure, Office of Regulations and Interpretations to Mr. Richard M. Steinberg, Chair, AICPA Employee Benefit Plans Expert Panel, be incorporated into the DOL regulation. The Information Letter provides guidance regarding the plan administrator's responsibility to take steps to make sure they understand the nature and scope of the certification the institution has provided before concluding that the certified information may be used to satisfy the administrator's obligation to report the current value of the assets on the plan's Form 5500. Currently, plan administrators may not be aware of the guidance in the Information Letter and, as such, may not understand their responsibilities for determining the acceptability of the limited scope certification.

- We recommend the DOL provide guidance in the regulations on what constitutes an acceptable certification, including defining the meaning of “complete and accurate,” for a proper certification that meets the requirements of ERISA section 103(a)(3)(c) and 29 C.F.R. § 2520.103-8. We also believe the DOL regulations should specify the acceptable form and content of a limited scope certification. DOL regulations in 29 CFR 2520.103-5 currently include an example certification, but do not state explicitly the required form of such certification. Because there is little guidance regarding what constitutes an acceptable certification, the content and format of certifications can vary widely among service providers. This causes confusion about whether a certification meets the criteria to allow the plan administrator to direct the auditor to perform a limited scope audit (for example, some certifications include qualifying language that may call into question whether they comply with the requirements of the regulations). In addition to the existing requirements that the certification be in writing and signed by an individual authorized to represent the qualified institution, and that the qualified institution certify both the accuracy and completeness of the investment information submitted, we believe the certification should:
  - Include the plan name whose assets are the subject of the certification. Plan auditors have seen certifications that do not identify the name of the plan whose assets are being certified, which may cause confusion and inefficiencies among plan administrators, auditors, and others.
  - Identify the name or titles of the attachments that itemize the investment information to which the certification(s) apply. Certifications may become separated from attachments, which may cause unnecessary confusion and inefficiencies to both plan administrators and auditors. Identifying the attachments would alleviate any confusion.
  
- To eliminate the uncertainties about who is eligible to certify investment information, we believe the DOL regulations should more clearly define a “bank or similar institution or insurance carrier” qualified to certify plan assets. It is not uncommon for affiliates of qualified institutions to issue such investment certifications. However, in today’s environment, with the numerous types of financial institutions, affiliate arrangements, and corporate arrangements, it often may be difficult for plan administrators to identify which institutions are qualified to certify the investment information.
  
- We are aware that the DOL has previously issued interpretative guidance to help clarify which institutions are allowed to certify, and we recommend that such guidance be incorporated into the regulation. In August 1993, the DOL issued Advisory Opinion 93-21a stating that a brokerage firm did not qualify as a similar institution. As a result, many brokerage firms now establish trust companies for the purpose of meeting the ERISA requirements to be considered a qualified institution. As such, there are now situations where the entity certifying the investment is not the same entity that holds the investments. In the 2002 Information Letter mentioned above, the DOL noted that in cases where a plan recordkeeper or affiliate of the trustee has certified to the completeness and accuracy of the investment report, the certification is valid as long as the person or entity certifying is authorized to represent the qualified institution. Currently, plan administrators may not be aware of the guidance in those documents and, as such, may have difficulty determining which entities are considered qualified institutions. Incorporating the guidance in Advisory Opinion 93-21a and the Information Letter in the regulations would help alleviate the need for plan administrators to consult multiple sources when evaluating whether an entity is a qualified institution.
  
- We believe the DOL regulations should clarify what it means for a bank or insurance company to hold assets. This would help plan administrators comply with DOL’s proposed requirements that the certification describe the manner in which the bank or insurance company is holding the assets. Many traditional investments are no longer

physically held by trustees or custodians because sub-custodians hold the plan's investments in separate or omnibus accounts and/or they are held electronically. Further, plans increasingly have shifted assets from traditional investments into non-traditional investments such as hedge funds, private equity funds, real estate funds, venture capital funds, commodity funds, and nonmarketable derivatives. These investments are not held by the trustees or custodians; rather, evidence of their existence and ownership is maintained by electronic recordkeeping. These changes have caused confusion among plan administrators and auditors about whether certifying institutions actually hold the plan assets in accordance with ERISA. Defining what it mean to hold assets would alleviate such confusion.

**Part 2590, Rules and Regulations for Group Health Plans**

**§ 2590.715-2715A Provision of additional information.**

In our separate comment letter on the *Proposed Revision of Annual Information Return/Reports*, we have expressed significant concerns regarding the implementation of proposed Form 5500 Schedule J, Group Health Plan Information. These concerns included the number of new plans that will be required to file and the amount of information they will be required to gather, together with increased public scrutiny of these plans, the costs of the new filing requirement, how the new requirement will be communicated to plan sponsors, and related implementation issues.

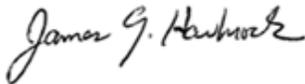
We would welcome the opportunity to meet with the Agencies to better understand how this new requirement serves to protect plan participants and beneficiaries, and to consider alternatives that meet the needs of the Agencies and enhance participant protection.

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We appreciate your consideration of our recommendations. Please contact Ian MacKay at 202-434-9253 or [imackay@aicpa.org](mailto:imackay@aicpa.org) if you have any questions or would like to discuss these comments.

Sincerely,



James Haubrock, CPA, CGMA  
Chair, AICPA Employee Benefit Plan Audit  
Quality Center Executive Committee



Annette Nellen, CPA, CGMA, Esq.  
Chair, AICPA Tax Executive Committee