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Office of Regulations and Interpretations
Attn: Independence of Accountant RFI (RIN 1210-AB09)
Employee Benefits Security Administration
Room N-5669
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

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OFFICE OF REGULATIONS AND INTERPRETATIONS
EMPLOYEE BENEFITS SECURITY ADMINISTRATION
U.S. DEPARTMENT OF LABOR

Dear Sir/Madam:

This letter is in regard to the Department of Labor's ("Department") invitation to respond to its request for information on issues concerning the advisability of amending the Department's Interpretive Bulletin 75-9 relevant to the independence of accountants that audit employee benefit plans. We do encourage the Department to modernize its independence guidance, and to do so by incorporation of existing well established standards and principles. The following response is organized in order of the questions presented in the September 11, 2006 Federal Register, which questions are repeated below in italics.

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?*

The Department should adopt, as its fundamental rules and guidance the American Institute of Certified Public Accountant's Code of Professional Conduct ("AICPA Code"). The AICPA Code provides a recognized comprehensive basis for determining independence. We believe adoption of the AICPA Code would provide the Department, auditors of financial statements of employee benefit plans, and the users of such financial statements with a clear understanding of the ethical and independence principles to be applied. This will further the Department's goals for ensuring that accountants hired to audit employee benefit plan financial statements are independent.

Auditors of plans that are registrants with the Securities and Exchange Commission ("SEC") are also subject to extensive independence regulations promulgated by the SEC and the independence standards of the Public Company Accounting Oversight Board ("PCAOB"). We believe that no action is required by the Department to extend those regulations and standards to other plans. Similarly, auditors of plans that are required to comply with the Government Accountability Office ("GAO") are subject to the GAO's independence requirements, and no action is required by the Department to extend those requirements to other plans.

We recognize that there may be circumstances that require the Department to adopt rules or guidance that is more extensive than the AICPA Code, but those should be limited to as few matters as possible.

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 accountant's family members are deemed to be held by the accountant or his or her accounting 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 may be able to influence the audit?*

The Department should adopt the AICPA Code, which includes the concept of covered members and interpretive guidance on financial interests.

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?*

The Department should adopt the AICPA Code, which includes guidance in this area. Additional guidance would be helpful to recognize that, although related, an employee benefit plan and its plan sponsor are separate entities. For example, the spouse of an auditor of an employee benefit plan may be employed by the plan sponsor in a low level audit sensitive position (i.e., audit sensitive as it relates to the financial statements of the plan sponsor, but not as it relates to the employee benefit plan that is being audited). The fact that the spouse holds an audit sensitive position with respect to the financial statements of the plan sponsor should not cause an auditor independence impairment with respect to the employee benefit plan.

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 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?*

The Department should adopt the AICPA Code, which includes guidance in this area. Additional interpretive guidance would be helpful to define "financial records" for ERISA employee benefit plan purposes, and with respect to activities that constitute "maintaining" financial records. "Financial records" could be defined as source records regarding plan assets and plan financial transactions, such as trust statements. The term "financial records" should not include records that do not result in direct entries to a plan's financial statements, such as documents for compliance testing, eligibility, vesting, or participant contribution allocations or earnings allocations based on plan provisions. "Maintaining" financial records should include creation, updating, or storing source financial records.

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?*

We do not believe it necessary for the Department to define the terms "promoter", "underwriter", "investment advisor", "voting trustee", "director", "officer", or "employee of the plan or plan sponsor" or other positions. These terms are defined in other guidance.

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?*

The Department should adopt the AICPA Code, which includes guidance in this area.

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? Are there benefits for the plan or plan sponsor from entering into agreements to have the accountant or accounting firm provide nonaudit services and also perform the employee benefit plan 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 the guidance provide?*

The Department should adopt the AICPA Code, which includes specific guidance regarding the provision of non audit services to audit clients. It is beneficial to the plan sponsors, plans, investors of the plan sponsor, and participants in the plans to allow a single accounting firm to provide services to both entities, including most non audit services.

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?*

A financial interest in a plan sponsor should not result in impairment of independence if the interest is disposed of prior to engagement of the audit firm. In addition, applying the financial interest requirement to the period covered by the financial statements may significantly limit the number of audit firms that might be independent with respect to a particular plan because of investments held prior to their appointment as the plan auditor, if such prior investments were held during the period being audited. Limiting the number of audit firms available to perform the audit of a plan is not in the public's best interest, and is undesirable for the end users of the financial statements.

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?*

No. The Department should not, by regulation or guidance, extend provisions currently applicable to SEC registrants to private entities. Imposition of additional provisions would result in additional cost to the participants of employee benefit plans, without necessarily adding commensurate value. Current differentiation in independence requirements between public companies and private entities reflect different financial statement user needs and expectations.

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 issue 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?*

Adoption of the AICPA Code by the Department would appropriately address this issue.

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? If so, what should the guidance provide regarding subsidiaries and affiliates in the evaluation of the independence of an accountant or accounting firm?*

Adoption of the AICPA Code by the Department would appropriately address this issue.

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?*

Adoption of the AICPA Code by the Department would appropriately address this issue.

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?*

No such additional requirements are needed as existing quality control standards applicable to accountants adequately provide for independence matters. Any additional regulation would add cost borne by plan participants without commensurate value.

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?*

The Department should have a process under which it could refer accountants to an appropriate disciplinary body, such as an auditor membership organization or state licensing board, when the Department has a well documented conclusion that an accountant has conducted an employee benefit plan audit without being independent. However, such a referral should only be made after the accountant has completed an appropriate appeals process established within the Department.

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?*

No additional disclosures are needed to plan clients regarding an accounting firm's independence. Disclosure of independence matters are routinely made to plans in engagement letters, auditor reports, and where applicable, communications to audit committees.

Thank you for considering our comments.

Cordially yours,



Crowe Chizek and Company LLC