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To Whom It May Concern:

It is my understanding that the DOL is going to issue further guidance regarding when a qualified public accountant is considered to be independent for purposes of auditing an employee benefit plan including expanding the information contained in DOL Regulation 2509.75-9. I provide the following information and opinion to assist the DOL in its effort. My comments are based on my experience in auditing defined contribution plans that are qualified under section 401(k).

401(k) plans are relatively easy to set up and administrate through the use of prototype plans and standardized recordkeeping services available through many sources, including a significant number of brokerage companies (for example Fidelity Investments). The employer administration of these plans is often under the Human Resources department. Frequently the plan administrator will request the assistance of the independent CPA in proposing adjustments to the financial information generated by the standardized recordkeeping system. These adjustments are needed so that the resulting financial statements are in compliance with generally accepted accounting principles, mainly adjustments to convert from the cash method to the accrual method of accounting. In order to remain in compliance with professional standards a CPA, among other things, must obtain the approval of the plan administrator prior to reflecting these adjustments in the financial statements. Often the financial statements will be prepared by the independent CPA and approved by the plan administrator.

In order to reflect the approved adjustments in the financial statements prepared by the independent CPA at the request of the plan administrator the independent CPA will usually prepare a working trial balance that includes the cash basis financial information generated by the third party record keeper. Adjustments to the cash basis information will be posted to the working trial balance to reflect the accrual method of accounting. Since the recordkeeping system is usually strictly on a cash basis the adjustments approved by the plan administrator will not be reflected by the record keeper in the plan's financial records maintained by them. Therefore, the adjustments proposed by the independent CPA and approved by the plan administrator will necessarily include the effects of the prior period's cash to accrual adjustments on the current period as well as adjustments related to the current period.

A question arises from this fact pattern as to whether the above work performed by the independent CPA constitutes maintaining financial records for the plan being audited by virtue of the fact that the adjustments are recorded only in the working trial balance and not in the general financial records of the plan as maintained by the third party record keeper.

In my opinion the above situation does not impair the independence of the qualified public accountant and should be specifically addressed in the expanded guidance being considered by the DOL. I do not believe the above assistance rendered by an independent CPA to a plan administrator should be considered as maintaining financial records for the employee benefit plan within the scope of the DOL Regulation 2509.75-9. More specific guidance in this area would be helpful to independent CPAs asked to provide this service and to plan administrators who seek this assistance.

Kevin Collis, CPA