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

We are pleased to submit the attached response to the Department of Labor Request for Information related to 29 CFR 2509.75-9.

In responding to these questions, our firm has drawn upon its extensive experience auditing employee benefit plans. We currently audit approximately 140 employee benefit plans and so, have had considerable experience with the independence related questions contained within the aforementioned RFI.

Please contact Carol McNerney or Ken Levine, Directors in our firm, if you have any questions regarding our response.

Very truly yours,



SS&G Financial Services, Inc.

*Providing the  
services that  
bring solutions.*

member of:  
OSCPA, PCAOB, the AICPA's  
Center for Public Company  
Audit Firms, and The Leading  
Edge Alliance.

## SS&G Financial Services

### Response to Department of Labor Request for Information Related to 29 CFR 2509.75-9

SS&G Financial Services, Inc. is one of Ohio's largest independent certified public accounting firms and the 61<sup>st</sup> largest firm in the United States in a field of more than 50,000 firms. Currently, SS&G performs audits of approximately 140 employee benefit plans for publicly-held and privately-owned companies, including plans that require SEC filings on Form 11-K. The firm is a registered member of the PCAOB and is also a member of the AICPA Employee Benefit Plan Audit Quality Center.

In preparing this response, we would like to point out that in recent years, the firm has been retained to audit the benefit plans of a number of publicly traded companies, which we believe is a result of a number of factors, including the limited resources of the sponsoring company's primary auditor, which is a "Big 4" firm.

We respectfully submit the following responses to the questions posed in the Department of Labor's Request for Information related to 29 CFR 2509.75-9.

1. We believe that the Department of Labor should adopt independence guidelines that are consistent with those of the AICPA to eliminate the current confusion over the differences between the standards. Plans that file with the SEC are also subject to PCAOB and SEC independence requirements. Specifically, we believe that the DOL definition of a "member" is too restrictive, especially when auditing plans that are SEC filers where there is a higher likelihood that a shareholder in the firm may own shares of stock in the plan sponsor in the period covered by the audit, but prior to the potential engagement of the Firm to audit the benefit plans by the plan sponsor. For example, under the current SEC/PCAOB rules, a firm could be engaged to audit a publicly traded company (by complying with the SEC/PCAOB independence rules upon engagement) but would not be eligible to audit a benefit plan of the same company. Accordingly, we believe that the current DOL requirement that no direct or material indirect financial interest in the plan sponsor may exist during the period covered by the financial statements is too restrictive. We believe that the AICPA and SEC/PCAOB guidelines that extends only during the period of professional engagement is sufficient.
2. We believe that the Department of Labor should clearly define "direct financial interest" and "material indirect financial interest" so that they are consistent with current AICPA guidelines for ease of implementation by public accounting firms. It is currently very unclear as to whether firms would be considered independent in various situations that arise. Further, DOL personnel are also often not able to advise on implementation of 29 CFR 2509.75-9, as it relates to areas where it is unclear whether a direct financial interest exists, as this term has not been defined by the DOL. Given the increasing numbers of firms auditing plans that are SEC filers, and therefore, increasing likelihood of owning stock in potential plan sponsors, it has become even more necessary for these terms to be clearly defined. The DOL currently does not define a "member" to include familial

relationships. We believe that this definition should likely be consistent with that of the AICPA, again so that firms may be assured when accepting new engagements that they are in compliance with independence requirements. We believe that the ownership attribution guidelines should apply not to all members of the accounting firm, but only those directly involved in the audit or in a position to influence the audit, as defined by AICPA guidelines.

3. We believe that the guidelines for employment of an accountant's family members should be established to conform to those guidelines established by the AICPA.
4. We believe that the term "financial records" should be defined in a manner consistent with the definition utilized by the AICPA.
5. We believe that the terms "promoter" and "underwriter" should be more clearly defined by the DOL. We also believe that the guidelines related to employees of the plan or plan sponsor should be revised to be less restrictive and consistent with the AICPA guidelines in this area, such that only those in a "key position" would cause a lack of independence.
6. We believe that the DOL definition of "member" should be revised to be consistent with the AICPA definition.
7. Non-audit services that accounting firms are currently engaged to provide to plans or plan sponsors (where the plan is not an SEC filer) typically include the following:
  - Preparation of Forms 5500
  - Assistance with Voluntary Correction of benefit plan errors
  - Tax preparation and consulting for the plan sponsor
  - Assistance with the internal audit function of the plan sponsor
  - Assistance in the preparation of financial statements of the plan
  - Accounting services for the plan sponsor
  - Completion of year-end IRS compliance testings (i.e., ACP, ADP, etc)
  - Reviews and compilations for the plan sponsor

We believe that there is no reason to prohibit Plan auditors from performing certain non-audit services, including those listed above, as long as the performance of those services is consistent with the independence requirements of the profession. We also believe that no further guidance from the DOL on this subject is necessary and that firms should follow the AICPA and SEC guidance, as applicable.

8. As discussed in the response to item #1, we believe the DOL should revise the Interpretive Bulletin to remove "the period covered by the financial statements" and change this Bulletin to follow the AICPA's less restrictive interpretation to cover only the period of professional engagement.
9. We do not believe there should be special provisions in the DOL'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. These plans are already subject to SEC requirements and we believe that in general, a revision of DOL requirements to be consistent with those of the AICPA will eliminate many of the current problems. Since there are many different rules to currently follow which involve different interpretations (i.e., DOL, AICPA, SEC, GAO), we do not believe a separate set of rules or provisions should apply to audit committees described in Sarbanes-Oxley. We believe the DOL's standards should be as uniform as possible to lessen the potential for confusion.

10. Typically, a plan audit is quoted at a fixed fee which results from an initial proposal process during the first year audit. Each year this fee may be adjusted for inflation and specific circumstances that relate to each client. If unexpected issues are encountered or auditor assistance is required and is outside the "normal" audit procedures (for non-SEC filers), an additional fee may be negotiated with the client for these additional services. There are a few circumstances in which a plan audit will be billed on a per hour basis and the per hour rate billed is based on the number of hours incurred and the experience level of the employees involved in the audit. Non-audit services provided to the plan may also be billed following a fixed fee quote or billed at a per hour fee depending on the specific circumstances.

In addition, we do believe that the DOL should issue **specific** 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 in order to better clarify the DOL's independence requirements.

11. We believe the DOL should specifically define the term "firm" in the Interpretive Bulletin 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. This guidance should incorporate the AICPA's definition of firm "member." In regards to subsidiaries and affiliates in the evaluation of the independence of an accountant or accounting firm, we believe that if the DOL guidance is revised to be consistent with the AICPA regulations to include subsidiaries as "covered members," the revision should be clearly expounded upon to define whether shareholders or employees of the subsidiary are also considered to be "covered members."
12. The DOL should not apply an "appearance of independence" requirement in addition to the requirement that applies by reason of the ERISA requirement. We believe this will further confuse the accounting industry and lead to different interpretations of the independence rules.
13. The DOL should not require accountants and accounting firms to have written policies and procedures on independence which apply when performing audits of employee benefit plans, as public accounting firms are required to follow the AICPA independence rules and the majority of public firms have implemented internal independence rules which follow the AICPA guidance.

14. Once the DOL has clarified its independence guidelines, it should adopt formal procedures under which the DOL will refer accountants to state licensing boards for discipline when the DOL concludes an accountant has conducted an employee benefit plan audit without being independent. Formal procedures will clarify the ramifications of impaired independence.
15. It is not necessary for the DOL to implement a regulation requiring firms to make disclosures to clients about independence, as independence is already required and such a communication would likely not add value.