AICPA

Independence rules comparison

AICPA and DOL

January 2023

Member enrichment

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Independence rules comparison: AICPA and DOL

The AICPA Professional Ethics Division has prepared the following summary to assist plan auditors in understanding the most common independence rules that affect auditors of employee benefit plans. Information about the DOL rules is excerpted from 29 CFR 2509.2022-01, Interpretive Bulletin relating to guidelines on independent qualified public accountants (IQPA) (effective on September 6, 2022). Information about the AICPA's independence rules is based on the AICPA "Independence Rule" (ET sec. 1.200.001) and its interpretations.

ERISA Section 103(a)(3)(A) requires that the IQPA's examination be conducted in accordance with generally accepted auditing standards (GAAS) and GAAS requires an auditor to be independent of the client and incorporate the AICPA "Independence Rule" and its interpretations.

Where AICPA staff was not able to identify any specific DOL rules addressing certain topics, plan auditors should consider the following guidance and contact Marcus Aron (Department of Labor) at (202) 693-8371:

- AICPA's Conceptual Framework for Independence (ET sec. 1.210.010) and the Conceptual framework toolkit for independence
- DOL's independence principles are largely predicated on the SEC's independence principles that:
  - The auditor cannot function in the role of management
  - The auditor cannot audit his or her own work
  - The auditor cannot serve in roles or have relationships that create mutual or conflicting financial interests
  - The auditor cannot be in a position of being an advocate for the audit client

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Definition of "member"		
DOL independence guidance defines the term "member" to include all partners (or partner equivalents) 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; the firm's employee benefit plans; or any entity whose operating, financial, or accounting policies can be controlled by any of the individuals or entities described in this definition or by two or more such individuals or entities acting together.	AICPA independence rules related to *financial relationships* use an "engagement team-focused" approach whereby only covered members (i.e. managers, partner equivalents, or partners who provide more than 10 hours of nonattest services to the plan, partners or partner equivalents in the same office as the attest engagement partner, and those individuals who participate in the audit or can otherwise influence the engagement team and, as a result, the outcome of the audit) would be subject to the financial relationship restrictions set forth in the independence rules. (See the "Definitions" section (ET sec. 0.400) of the code for definitions of *covered member* and an *individual in a position to influence the attest engagement*).	In some respects, the independence rules of the AICPA incorporate a more expansive definition of "member" than that of the DOL since immediate family and close family members of the covered member are also subject to certain restrictions. On the other hand, AICPA independence rules include a less expansive definition of "member" as it relates to those individuals who are not "covered members", such as managerial level and professional staff who reside in the office but who do not participate on the audit engagement and provide no more than minimal nonaudit services to the client; and certain partners who reside in a separate office and who do not participate in the attest engagement and provide no more than minimal nonattest services to the client.
Definition of "office"		
DOL independence guidance defines the term "office" as a reasonably distinct subgroup within a firm, whether constituted by formal organization	AICPA independence rules defines the term "office" as a reasonably distinct subgroup within a firm, whether constituted by formal	No differences.

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or informal practice, in which personnel who make up the subgroup generally serve the same group of clients or work on the same categories of matters regardless of the physical location of the individuals who comprise such subgroup. Substance should govern the office classification, and the expected regular personnel interactions and assigned reporting channels of an individual may well be more important than an individual's physical location.	organization or informal practice, in which personnel who make up the subgroup generally serve the same group of clients or work on the same categories of matters. Substance should govern the office classification. For example, the expected regular personnel interactions and assigned reporting channels of an individual may well be more important than an individual's physical location. See paragraph. 36 in the "Definition" section of the code (ET sec. 0.400).	
Definition of "period of professional engagement"		
DOL independence guidance defines the term "period of professional engagement" as the period beginning when an accountant either signs an initial engagement letter or other agreement to perform the audit or begins to perform any audit, review or attest procedures (including planning the audit of the plan's financial statements), whichever is earlier, and ending with the formal notification, either by the member or client, of the termination of the professional relationship or the issuance of the audit report for which the accountant was engaged, whichever is later. In the case of an auditor that performs a plan's audit for	AICPA independence rules defines the term "period of professional engagement" as the period beginning when a member either signs an initial engagement letter or other agreement to perform attest services or begins to perform an attest engagement, whichever is earlier. The period lasts for the entire duration of the professional relationship, which could cover many periods, and ends with the formal or informal notification, either by the member or client, of the termination of the professional relationship or by the issuance of a report,	No differences.

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two or more years, in evaluating independence, the DOL would not view the period of professional engagement as ending with the issuance of each year's audit report and recommencing with the beginning of the following year's audit engagement.	whichever is later. Accordingly, the period does not end with the issuance of a report and recommence with the beginning of the following year's attest engagement. See paragraph .39 in the "Definition" section of the code (ET sec. 0.400).	
Immediate family and close relatives		
The only specific mention of immediate family members is in §2509.2022-01(b)(1)(ii)(B) regarding disposition of publicly traded securities. See the *Financial interests* section below. AICPA staff could not identify any specific DOL rules addressing the application of the independence rules to close relatives.	For AICPA guidance, see the interpretations related to immediate family members and close relatives in the "Family Relationships with Attest Clients" subtopic (ET sec. 1.270) under the AICPA "*Independence Rule.*" See paragraphs .08 and .19 in the "Definitions" section of the code for definitions of *close relatives* and *immediate family*.	Plan auditors should contact the DOL to determine its position as AICPA staff cannot identify specific rules addressing this topic.
Affiliates of a plan		
DOL independence guidance extends its independence rules to sponsors of a plan. Per the Act, the sponsor is the entity (or entities in case there is more than one) who established or maintains the plan, such as the employer or employee organization. In the case of a plan	The AICPA independence rules would consider the plan sponsor of a single employer employee benefit plan or union or participating employer that has significant influence over a multiple or multiemployer employee benefit plan to be an affiliate of the plan. The term *significant influence*	While both the DOL and AICPA extend certain provisions to the sponsor of a single employer plan, the DOL is more restrictive with respect to multiple and multiemployer plans since the DOL does not limit its guidance to only those entities that have significant influence over such plans.

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established or maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan are considered plan affiliates.	is as used in Financial Accounting Standards Board Accounting Standards Codification 323-10-15. Once an entity is deemed to be an affiliate, the independence rules applicable to the plan would also be applicable to the plan's affiliates, except as provided for in the "Client Affiliate" interpretation (ET sec. 1.224.010) under the AICPA "Independence Rule." One such exception is that prohibited nonattest services may be provided to an affiliate of a plan provided that it is reasonable to conclude that the services do not create a self-review threat with respect to the plan because the results of the nonattest services will not be subject to financial statement attest procedures. For any other threats that are created by the provision of the nonattest services that are not at an acceptable level, such threats should be eliminated or reduced to an acceptable level by the application of safeguards. For AICPA guidance addressing other relationships with an affiliate of a client, see the "Client Affiliate" interpretation under the AICPA "Independence Rule." For more information about how the AICPA	In addition, the DOL rule is more restrictive because the DOL would prohibit maintaining financial records for these entities even if the results of these nonattest services will not be subject to financial statement attest procedures.

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	independence rules apply to affiliates of employee benefit plans, including pooled plan providers of pooled employer plans not specifically addressed in the "Client Affiliate" interpretation under the AICPA "Independence Rule," see Q&A section 120 and definition of *affiliate* in paragraph .02 of the "Definition" section of the code.	
Financial interests		
The DOL rules would consider independence to be impaired with respect to a plan if during the period covered by the financial statements, during the period of professional engagement, or at the date of the opinion the accountant, the accountant's firm, or a member thereof, had a direct or material indirect financial interest in: • The plan or • The plan sponsor For publicly traded securities, independence will not be impaired if the accountant, the accounting firm, a partner, shareholder employee, or professional employee of the accounting firm, and their immediate family dispose of their holdings in the plan or plan sponsor prior to the period of professional	The AICPA independence rules would consider independence to be impaired with respect to a plan if during the period of the professional engagement a: • Covered member had or was committed to acquire any direct or material indirect financial interest in the plan or affiliate of the plan or • Partner or professional employee of the firm or any group of such individuals acting together owned more than 5% of – the plan's ownership interests or – an affiliate's outstanding equity securities or other ownership interests. See the "Overview of Financial Interests"	The updated interpretive bulletin now makes a distinction between private and closely held investments and publicly traded securities whereas the AICPA does not. For financial interests in private and closely held organizations, the DOL does not provide a divestiture option prior to the period of professional engagement. If any member holds a direct or material indirect financial interest in a plan or plan sponsor during the period covered by the financial statements, during the period of professional engagement, or at the date of the opinion, then independence would be impaired. For publicly traded securities, independence will not be impaired if all professional employees of the firm and their immediate family dispose of their

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engagement. Note that this exception is valid only if the firm did not audit the plan's financial statements for the immediately preceding fiscal year.	interpretation (ET sec. 1.240.010) under the AICPA "Independence Rule" for details.	holdings in the plan or plan sponsor before the period of professional engagement. The AICPA is more restrictive when considering material indirect financial interests. If a partner or professional employee or any group of such individuals acting together owns more than 5% of a plan's ownership interests or of an affiliate's outstanding equity securities or other ownership interests, then independence would be impaired.
Joint closely held investments		
AICPA staff could not identify any specific DOL rules addressing joint closely held investments.	For AICPA guidance, see the "Joint Closely Held Investments" (ET sec. 1.265.020) and the "Client Affiliate" interpretations under the AICPA "Independence Rule."	Plan auditors should contact the DOL to determine its position as AICPA staff cannot identify specific rules addressing this topic.
Loans		
AICPA staff could not identify any specific DOL rules addressing loans.	For AICPA guidance, see the interpretations in the "Loans, Leases and Guarantees" subtopic (ET sec. 1.260) and the "Client Affiliate" interpretation under the AICPA "Independence Rule."	Plan auditors should contact the DOL to determine its position as AICPA staff cannot identify specific rules addressing loans.
Simultaneous employment/association		

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DOL rules would consider independence to be impaired with respect to a plan if during the period of professional engagement, at the date of the opinion, or during the period covered by the financial statements the accountant, the accountant's firm, or a member thereof was connected as a promoter, underwriter, investment advisor, voting trustee, director, officer, or employee of the plan or of the plan sponsor. DOL rules do provide an exception to this position. The exception to this position is when a former officer or employee of the plan or plan sponsor is employed by the firm and such individual has completely disassociated himself from the plan or plan sponsor and does not participate in auditing financial statements of the plan covering any period of his or her employment by the plan or plan sponsor.	The AICPA independence rules would consider independence to be impaired with respect to a plan if, during the period covered by the financial statements or during the period of the professional engagement, *any* partner or professional employee of the firm was simultaneously associated with the plan or an affiliate of the plan as a • Director, officer, or employee, or in any capacity equivalent to that of a member of management; • Promotor, underwriter, or voting trustee; or • Trustee for any pension or profit-sharing trust of the sponsor (or union or participating employer). See the "Simultaneous Employment or Association With an Attest Client" (ET sec. 1.275.005) and the "Client Affiliate" interpretations under the AICPA "Independence Rule" for exceptions and more details.	The DOL rules are less restrictive than the AICPA. The AICPA includes all firm professional employees; whereas the DOL's definition of member only pertains to those professional employees participating in the audit or located in an office of the firm participating in a significant portion of the audit.
Former member now associated with plan or plan sponsor		
AICPA staff could not identify any specific DOL	For AICPA guidance, see the "Subsequent	Plan auditors should contact the DOL to determine

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rules addressing such association with a plan or a plan sponsor.	Employment or Association With an Attest Client" (ET sec. 1.279.020) and the "Client Affiliate" interpretations under the AICPA "Independence Rule."	its position as AICPA staff cannot identify specific rules addressing such association with a plan or a plan sponsor.
General guidance on nonattest services		
DOL staff is permitted to give "appropriate consideration to all relevant circumstances, including evidence bearing on all relationships between the accountant or accounting firm and that of the plan sponsor or any affiliate thereof, and will not confine itself to the relationships existing in connection with the filing of annual reports with the Department of Labor." DOL rules also state that independence would not be considered to be impaired if at or during the period of the professional engagement, the accountant or his or her firm is retained or engaged on a professional basis by the plan sponsor.	The interpretations in the "Nonattest Services" subtopic (ET sec. 1.295) under the AICPA "Independence Rule" provides guidance and specific examples of nonattest services that would and would not impair independence. The AICPA requires that certain general requirements (i.e., safeguards) be implemented by the firm when the firm performs nonattest services for an attest client. For example, the firm must establish and document its understanding with the client and be satisfied that client management can make an informed judgment on the results of the nonattest service. In addition, the client must designate an individual who can oversee the service and make all necessary judgments and management decisions. Also, the "Client Affiliate" interpretation under the AICPA "Independence Rule" provides guidance on the performance of nonattest	AICPA staff was not able to identify any specific DOL rules that provide further insight into what circumstances the DOL staff believes are relevant and as such, plan auditors should contact the DOL to determine its position.

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	services for an employee benefit plan sponsored by a client as well as performance of nonattest services for an affiliate of an employee benefit plan financial statement attest client. In addition, this interpretation provides that a member or his or her firm may provide prohibited nonattest services to an affiliate of the plan provided that it is reasonable to conclude that the services do not create a self-review threat with respect to the plan because the results of the nonattest services will not be subject to financial statement attest procedures. For any other threats that are created by the provision of the nonattest services that are not at an acceptable level, such threats should be eliminated or reduced to an acceptable level by the application of safeguards.	
Bookkeeping		
DOL rules would consider independence to be impaired if the audit firm or any of its employees maintain the financial records for an employee benefit plan or for the plan sponsor.	The "Bookkeeping, Payroll, and Other Disbursements" interpretation (ET sec. 1.295.120) under the AICPA "Independence Rule" provides the following examples of bookkeeping services the firm could perform that *would not* impair his or her independence provided the member applies the "General	Since the DOL rules do not provide further clarification as to what constitutes maintaining financial records for an employee benefit plan, plan auditors should contact the DOL to determine its position.

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	Requirements for Performing Nonattest Services" interpretation (ET sec. 1.295.040) under the "Independence Rule": • Record transactions to an attest client's general ledger when management has determined or approved the account classifications for the transaction. • Post client-coded transactions to an attest client's general ledger. • Prepare financial statements based on information in the attest client's trial balance. • Post client-approved journal and other entries to the attest client's trial balance. • Propose standard, adjusting, or correcting journal entries or other changes affecting the financial statements to the attest client. Prior to the member posting these journal entries or changes, the member should be satisfied that management has reviewed the entries and understands the nature of the proposed entries and the effect the entries have on the attest client's financial statements. Following are examples of bookkeeping	

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	services that *would* impair the firm's independence: • Determines or changes journal entries, any account coding or classification of transactions, or any other accounting records without first obtaining the attest client's approval. • Authorizes or approves transactions. • Prepares source documents. • Makes changes to source documents without the attest client's approval.	
Actuarial services		
DOL rules state that the rendering of services by an actuary associated with an accountant or accounting firm would not impair independence. However, the DOL notes that the rendering of services to a plan by an actuary and accountant employed by the same firm may constitute a "prohibited transaction."	The "Appraisal, Valuation, and Actuarial Services" interpretation (ET sec. 1.295.110) under the AICPA "Independence Rule" would consider independence to be impaired if a member performs an appraisal, valuation, or actuarial service for an attest client where the results of the service, individually or in the aggregate, would be material to the financial statements and the appraisal, valuation, or actuarial service involves a significant degree of subjectivity. However, an actuarial valuation of a client's	The independence rules appear consistent. However, the DOL has indicated that providing actuarial services may result in a prohibited transaction. Contact the DOL with any questions to determine its position.

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	pension or post-employment benefit liabilities generally produces reasonably consistent results because the valuation does not require a significant degree of subjectivity. Therefore, such services would not impair independence provided all significant assumptions and matters of judgment are determined or approved by the client and the client is in a position to have an informed judgment on, and accepts responsibility for, the results of the service.	
Benefit plan administration		
DOL rules would consider independence to be impaired if the audit firm or any of its employees maintain the financial records for an employee benefit plan or for the sponsor of the plan.	The "Benefit Plan Administration" interpretation (ET sec. 1.295.115) under the AICPA "Independence Rule" provides the following examples of benefit plan administration services that *would not* impair the firm's independence: • Communicate summary plan data to plan trustee. • Advise management regarding the application and impact of provisions in a plan document. • Process certain transactions that have been	It would appear that the DOL considers participant records to be financial records of the plan. The DOL has indicated in its comments at AICPA conferences that it does not believe an accountant who maintains any of the participants' records is independent.

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	initiated by plan participants or approved by the plan administrators using the member's electronic media, such as an interactive voice response system or internet connection or other media. Such transactions may include processing investment or benefit elections, changes in contributions to the plan, data entry, participant confirmations, and distributions and loans. • Prepare account valuations for plan participants using data collected through the member's electronic or other media. • Prepare and transmit participant statements to plan participants based on data collected through the member's electronic or other media. Following are examples of benefit plan administration services that *would* impair the firm's independence: • Make policy decisions on behalf of management. • Interpret the provisions in a plan document for a plan participant on behalf of management without first obtaining	

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	management's concurrence. • Make disbursements on behalf of the plan. • Have custody of the plan's assets. • Serve a fiduciary capacity, as defined by ERISA.	
Other nonattest services		
AICPA staff could not identify DOL rules specifically addressing any other nonattest services.	For AICPA guidance regarding the provision of other nonattest services, refer to the interpretations in the "Nonattest Services" subtopic under the AICPA "Independence Rule."	Plan auditors should contact the DOL to determine its position as AICPA staff cannot identify specific rules addressing other nonattest services.

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