



American Institute of CPAs
1455 Pennsylvania Avenue, NW
Washington, DC 20004-1081

June 25, 2013

The Honorable Jacqueline A. Berrien
Chair
Equal Employment Opportunity Commission
131 M Street, NE
Washington, DC 20507

The Honorable Constance S. Barker
Commissioner
Equal Employment Opportunity Commission
131 M Street, NE
Washington, DC 20507

The Honorable Chai R. Feldblum
Commissioner
Equal Employment Opportunity Commission
131 M Street, NE
Washington, DC 20507

The Honorable Victoria A. Lipnic
Commissioner
Equal Employment Opportunity Commission
131 M Street, NE
Washington, DC 20507

The Honorable Jenny R. Yang
Commissioner
Equal Employment Opportunity Commission
131 M Street, NE
Washington, DC 20507

Dear Commissioners:

We understand that the EEOC is currently considering litigation against accounting firms that could expand the scope of the Age Discrimination in Employment Act (ADEA) by requiring that most partners in the accounting profession be treated as “employees” for purposes of the ADEA.¹ **As the world’s largest member association representing the accounting profession, with nearly 386,000 members and a 125-year heritage of serving the public interest, we are concerned that such a significant expansion of the ADEA would be detrimental to the accounting profession, and we respectfully request that the EEOC decline to continue forward on this path.**

The American Institute of CPAs (AICPA) represents CPAs in the more than 11,000 accounting firms in the US currently operating as partnerships. We do not dispute that hundreds of thousands of non-partner employees are appropriately covered by the ADEA. However, we believe that accounting firm partners (those who own and control a portion of each firm) are not covered by the ADEA, and we do not believe they should be under consideration, as the possible action contends.

Our position is consistent with—and relies upon—longstanding EEOC policy that presumes that *partners* are not “employees” for purposes of anti-discrimination laws. A change that treats accounting firm partners as “employees” would upend the long-established expectations and business reliance interests of the accounting profession. Our profession by its nature possesses a high degree of business expertise, and these equity owners of firms have agreed to be partners and to be treated as such, both individually

¹ See “Discriminating Against Partnerships,” Wall Street Journal, June 4, 2013, at A14.

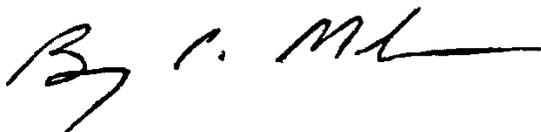
and collectively, by enforceable signed legal partnership agreements. Accounting firms have structured their partners' compensation, capital contributions, buy outs, pensions, agreed-upon retirement dates, deferred compensation, voting rights, benefits, governance, and termination policies in reliance on the specific understandings evidenced by partnership agreements. The respective firms and their partners have adopted these policies for sound business reasons and have evolved a business model that has thrived and prospered for decades while also serving the public interest. In particular, retirement policy provisions allow for the predictable progression of lesser tenured individuals into the partnership, and facilitate the orderly transition of a firm's clients from senior partners to junior partners.

Within the partnership structure, our members have adopted internal management practices that allow them to operate most efficiently, while simultaneously maintaining the long-held essential attributes and advantages of the partnership form. Current law allows partnerships to delegate managerial functions to other senior partners or partner boards that are created by the partners themselves. Yet even when our members have delegated day-to-day functions to their peers, it is *all* of the partners who own and who are ultimately responsible for the firm as a whole. These practices that allow for efficient day-to-day operation do not transform these partners into "employees", nor should they be swept into the ADEA scope.

We encourage the EEOC not to upend the settled business models of the accounting profession by treating accounting partners as "employees" in the absence of Congress weighing the competing interests. As the EEOC considers whether to expand the ADEA's scope, we hope you will maintain the flexibility that allows CPAs to organize themselves and plan their succession as they see fit within the bounds of the existing law.

We thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Barry C. Melancon". The signature is fluid and cursive, with the first name being the most prominent.

Barry C. Melancon, CPA, CGMA
President and CEO

cc: Members of the Senate Committee on Health, Education, Labor and Pensions
Members of the House Committee on Education and the Workforce