



State of West Virginia
Department of Administration
Purchasing Division
2019 Washington Street East
Post Office Box 50130
Charleston, WV 25305-0130

Solicitation

NUMBER
PDS201410

PAGE
1

ADDRESS CORRESPONDENCE TO ATTENTION OF
GUY NISBET
304-558-2596

RFQ COPY
TYPE NAME/ADDRESS HERE
Baleska, Herr & Scherer, LPAs, Inc.
PO Box 687
Piketon, Ohio 45661

PUBLIC DEFENDER SERVICES
ONE PLAYERS CLUB DRIVE
SUITE 301
CHARLESTON, WV
25311
304-558-3905

DATE PRINTED
06/19/2014

BID OPENING DATE: 07/22/2014

BID OPENING TIME 1:30PM

LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	LS		946-20		
AUDITING SERVICES FOR PUBLIC DEFENDER						\$58,000.00
REQUEST FOR QUOTATION (RFQ)						
THE WEST VIRGINIA PURCHASING DIVISION FOR THE AGENCY, WEST VIRGINIA PUBLIC DEFENDER SERVICES, IS SOLICITING BIDS FROM QUALIFIED VENDOR TO PROVIDE THE AGENCY WITH AUDITING SERVICES FOR THE FINANCIAL AND COMPLIANCE AUDIT OF SEVENTEEN (17) PUBLIC DEFENDER CORPORATIONS LOCATED THROUGHOUT THE STATE OF WEST VIRGINIA, PER THE ATTACHED SPECIFICATIONS, TERMS AND CONDITIONS, AND BID REQUIREMENTS.						
***** THIS IS THE END OF RFQ PDS201410 ***** TOTAL:						\$58,000.00
07/29/14 10:54:37AM West Virginia Purchasing Division						

SIGNATURE	TITLE	FEIN	TELEPHONE	DATE
<i>W. A. Baleska</i>	VP - Director	31-1413363	710-255-4131	7-28-14
ADDRESS CHANGES TO BE NOTED ABOVE				

WHEN RESPONDING TO SOLICITATION, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'

INSTRUCTIONS TO VENDORS SUBMITTING BIDS

1. **REVIEW DOCUMENTS THOROUGHLY:** The attached documents contain a solicitation for bids. Please read these instructions and all documents attached in their entirety. These instructions provide critical information about requirements that if overlooked could lead to disqualification of a Vendor's bid. All bids must be submitted in accordance with the provisions contained in these instructions and the Solicitation. Failure to do so may result in disqualification of Vendor's bid.
2. **MANDATORY TERMS:** The Solicitation may contain mandatory provisions identified by the use of the words "must," "will," and "shall." Failure to comply with a mandatory term in the Solicitation will result in bid disqualification.
3. **PREBID MEETING:** The item identified below shall apply to this Solicitation.

- ☒ A pre-bid meeting will not be held prior to bid opening.
- ☐ A NON-MANDATORY PRE-BID meeting will be held at the following place and time:

- ☐ A MANDATORY PRE-BID meeting will be held at the following place and time:

All Vendors submitting a bid must attend the mandatory pre-bid meeting. Failure to attend the mandatory pre-bid meeting shall result in disqualification of the Vendor's bid. No one person attending the pre-bid meeting may represent more than one Vendor.

An attendance sheet provided at the pre-bid meeting shall serve as the official document verifying attendance. The State will not accept any other form of proof or documentation to verify attendance. Any person attending the pre-bid meeting on behalf of a Vendor must list on the attendance sheet his or her name and the name of the Vendor he or she is representing. Additionally, the person attending the pre-bid meeting should include the Vendor's E-Mail address, phone number, and Fax number on the attendance sheet. It is the Vendor's responsibility to locate the attendance sheet and provide the required information. Failure to complete the attendance sheet as required may result in disqualification of Vendor's bid.

All Vendors should arrive prior to the starting time for the pre-bid. Vendors who arrive after the starting time but prior to the end of the pre-bid will be permitted to sign in, but are charged with knowing all matters discussed at the pre-bid.

Questions submitted at least five business days prior to a scheduled pre-bid will be discussed at the pre-bid meeting if possible. Any discussions or answers to questions at the pre-bid meeting are preliminary in nature and are non-binding. Official and binding answers to questions will be published in a written addendum to the Solicitation prior to bid opening.

4. **VENDOR QUESTION DEADLINE:** Vendors may submit questions relating to this Solicitation to the Purchasing Division. Questions must be submitted in writing. All questions must be submitted on or before the date listed below and to the address listed below in order to be considered. A written response will be published in a Solicitation addendum if a response is possible and appropriate. Non-written discussions, conversations, or questions and answers regarding this Solicitation are preliminary in nature and are non-binding.

Question Submission Deadline: July 10th, 2014 at 10:00 AM. EST.

Submit Questions to:

Guy Nisbet, Senior Buyer, File 21

2019 Washington Street, East

Charleston, WV 25305

Fax: (304) 558-4115

(Vendors should not use this fax number for bid submission)

Email: Guy.L.Nisbet@WV.Gov

5. **VERBAL COMMUNICATION:** Any verbal communication between the Vendor and any State personnel is not binding, including that made at the mandatory pre-bid conference. Only information issued in writing and added to the Solicitation by an official written addendum by the Purchasing Division is binding.
6. **BID SUBMISSION:** All bids must be signed and delivered by the Vendor to the Purchasing Division at the address listed below on or before the date and time of the bid opening. Any bid received by the Purchasing Division staff is considered to be in the possession of the Purchasing Division and will not be returned for any reason. The Purchasing Division will not accept bids, modification of bids, or addendum acknowledgment forms via e-mail. Acceptable delivery methods include hand delivery, delivery by courier, or facsimile. The bid delivery address is:

Department of Administration, Purchasing Division
2019 Washington Street East
Charleston, WV 25305-0130

The bid should contain the information listed below on the face of the envelope or the bid may not be considered:

SEALED BID: _____
 BUYER: _____
 SOLICITATION NO.: _____
 BID OPENING DATE: _____
 BID OPENING TIME: _____
 FAX NUMBER: _____

In the event that Vendor is responding to a request for proposal, the Vendor shall submit one original technical and one original cost proposal plus N/A convenience copies of each to the Purchasing Division at the address shown above. Additionally, the Vendor should identify the bid type as either a technical or cost proposal on the face of each bid envelope submitted in response to a request for proposal as follows:

BID TYPE: ☐ Technical
☐ Cost

7. **BID OPENING:** Bids submitted in response to this Solicitation will be opened at the location identified below on the date and time listed below. Delivery of a bid after the bid opening date and time will result in bid disqualification. For purposes of this Solicitation, a bid is considered delivered when time stamped by the official Purchasing Division time clock.

Bid Opening Date and Time: July 22nd, 2014 at 1:30 PM. EST.

Bid Opening Location: Department of Administration, Purchasing Division
 2019 Washington Street East
 Charleston, WV 25305-0130

8. **ADDENDUM ACKNOWLEDGEMENT:** Changes or revisions to this Solicitation will be made by an official written addendum issued by the Purchasing Division. Vendor should acknowledge receipt of all addenda issued with this Solicitation by completing an Addendum Acknowledgment Form, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.
9. **BID FORMATTING:** Vendor should type or electronically enter the information onto its bid to prevent errors in the evaluation. Failure to type or electronically enter the information may result in bid disqualification.

GENERAL TERMS AND CONDITIONS:

1. **CONTRACTUAL AGREEMENT:** Issuance of a Purchase Order signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

2. **DEFINITIONS:** As used in this Solicitation/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation/Contract.
 - 2.1 **"Agency" or "Agencies"** means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation or any other public entity seeking to procure goods or services under this Contract.
 - 2.2 **"Contract"** means the binding agreement that is entered into between the State and the Vendor to provide the goods and services requested in the Solicitation.
 - 2.3 **"Director"** means the Director of the West Virginia Department of Administration, Purchasing Division.
 - 2.4 **"Purchasing Division"** means the West Virginia Department of Administration, Purchasing Division.
 - 2.5 **"Purchase Order"** means the document signed by the Agency and the Purchasing Division, and approved as to form by the Attorney General, that identifies the Vendor as the successful bidder and Contract holder.
 - 2.6 **"Solicitation"** means the official solicitation published by the Purchasing Division and identified by number on the first page thereof.
 - 2.7 **"State"** means the State of West Virginia and/or any of its agencies, commissions, boards, etc. as context requires.
 - 2.8 **"Vendor" or "Vendors"** means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

3. **CONTRACT TERM; RENEWAL; EXTENSION:** The term of this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below:

☒ **Term Contract**

Initial Contract Term: This Contract becomes effective on _____ award
and extends for a period of one (1) year(s).

Renewal Term: This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal should be submitted to the Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Renewal of this Contract is limited to two (2) successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed _____ months in total. Automatic renewal of this Contract is prohibited. Notwithstanding the foregoing, Purchasing Division approval is not required on agency delegated or exempt purchases. Attorney General approval may be required for vendor terms and conditions.

Release Order Limitations: In the event that this contract permits release orders, a release order may only be issued during the time this Contract is in effect. Any release order issued within one year of the expiration of this Contract shall be effective for one year from the date the release order is issued. No release order may be extended beyond one year after this Contract has expired.

- ☐ **Fixed Period Contract:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within _____ days.
- ☐ **One Time Purchase:** The term of this Contract shall run from the issuance of the Purchase Order until all of the goods contracted for have been delivered, but in no event shall this Contract extend for more than one fiscal year.
- ☐ **Other:** See attached.

4. **NOTICE TO PROCEED:** Vendor shall begin performance of this Contract immediately upon receiving notice to proceed unless otherwise instructed by the Agency. Unless otherwise specified, the fully executed Purchase Order will be considered notice to proceed
5. **QUANTITIES:** The quantities required under this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below.

- ☐ **Open End Contract:** Quantities listed in this Solicitation are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

- ☒ **Service:** The scope of the service to be provided will be more clearly defined in the specifications included herewith.
- ☐ **Combined Service and Goods:** The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.
- ☐ **One Time Purchase:** This Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under this Contract without an appropriate change order approved by the Vendor, Agency, Purchasing Division, and Attorney General's office.

6. **PRICING:** The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the State. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization from the State in the Solicitation to do so, may result in bid disqualification.
7. **EMERGENCY PURCHASES:** The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not constitute a breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One Time Purchase contract.
8. **REQUIRED DOCUMENTS:** All of the items checked below must be provided to the Purchasing Division by the Vendor as specified below.
- ☐ **BID BOND:** All Vendors shall furnish a bid bond in the amount of five percent (5%) of the total amount of the bid protecting the State of West Virginia. The bid bond must be submitted with the bid.
- ☐ **PERFORMANCE BOND:** The apparent successful Vendor shall provide a performance bond in the amount of . The performance bond must be issued and received by the Purchasing Division prior to Contract award. On construction contracts, the performance bond must be 100% of the Contract value.
- ☐ **LABOR/MATERIAL PAYMENT BOND:** The apparent successful Vendor shall provide a labor/material payment bond in the amount of 100% of the Contract value. The labor/material payment bond must be issued and delivered to the Purchasing Division prior to Contract award.

In lieu of the Bid Bond, Performance Bond, and Labor/Material Payment Bond, the Vendor may provide certified checks, cashier's checks, or irrevocable letters of credit. Any certified check, cashier's check, or irrevocable letter of credit provided in lieu of a bond must be of the same amount and delivered on the same schedule as the bond it replaces. A letter of credit submitted in lieu of a

performance and labor/material payment bond will only be allowed for projects under \$100,000. Personal or business checks are not acceptable.

☐ **MAINTENANCE BOND:** The apparent successful Vendor shall provide a two (2) year maintenance bond covering the roofing system. The maintenance bond must be issued and delivered to the Purchasing Division prior to Contract award.

☒ **WORKERS' COMPENSATION INSURANCE:** The apparent successful Vendor shall have appropriate workers' compensation insurance and shall provide proof thereof upon request.

☐ **INSURANCE:** The apparent successful Vendor shall furnish proof of the following insurance prior to Contract award and shall list the state as a certificate holder:

☒ **Commercial General Liability Insurance:**
\$1,000,000.00 ☒ or more.

☐ **Builders Risk Insurance:** builders risk – all risk insurance in an amount equal to 100% of the amount of the Contract.

☐
☐
☐
☐
☐

The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether or not that insurance requirement is listed above.

☐ **LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section entitled Licensing, of the General Terms and Conditions, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits prior to Contract award, in a form acceptable to the Purchasing Division.

☐
☐
☐
☐

The apparent successful Vendor shall also furnish proof of any additional licenses or certifications contained in the specifications prior to Contract award regardless of whether or not that requirement is listed above.

9. **LITIGATION BOND:** The Director reserves the right to require any Vendor that files a protest of an award to submit a litigation bond in the amount equal to one percent of the lowest bid submitted or \$5,000, whichever is greater. The entire amount of the bond shall be forfeited if the hearing officer determines that the protest was filed for frivolous or improper purpose, including but not limited to, the purpose of harassing, causing unnecessary delay, or needless expense for the Agency. All litigation bonds shall be made payable to the Purchasing Division. In lieu of a bond, the protester may submit a cashier's check or certified check payable to the Purchasing Division. Cashier's or certified checks will be deposited with and held by the State Treasurer's office. If it is determined that the protest has not been filed for frivolous or improper purpose, the bond or deposit shall be returned in its entirety.
10. **ALTERNATES:** Any model, brand, or specification listed herein establishes the acceptable level of quality only and is not intended to reflect a preference for, or in any way favor, a particular brand or vendor. Vendors may bid alternates to a listed model or brand provided that the alternate is at least equal to the model or brand and complies with the required specifications. The equality of any alternate being bid shall be determined by the State at its sole discretion. Any Vendor bidding an alternate model or brand should clearly identify the alternate items in its bid and should include manufacturer's specifications, industry literature, and/or any other relevant documentation demonstrating the equality of the alternate items. Failure to provide information for alternate items may be grounds for rejection of a Vendor's bid.
11. **EXCEPTIONS AND CLARIFICATIONS:** The Solicitation contains the specifications that shall form the basis of a contractual agreement. Vendor shall clearly mark any exceptions, clarifications, or other proposed modifications in its bid. Exceptions to, clarifications of, or modifications of a requirement or term and condition of the Solicitation may result in bid disqualification.
12. **LIQUIDATED DAMAGES:** Vendor shall pay liquidated damages in the amount
for

This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy.
13. **ACCEPTANCE/REJECTION:** The State may accept or reject any bid in whole, or in part. Vendor's signature on its bid signifies acceptance of the terms and conditions contained in the Solicitation and Vendor agrees to be bound by the terms of the Contract, as reflected in the Purchase Order, upon receipt.
14. **REGISTRATION:** Prior to Contract award, the apparent successful Vendor must be properly registered with the West Virginia Purchasing Division and must have paid the \$125 fee if applicable.
15. **COMMUNICATION LIMITATIONS:** In accordance with West Virginia Code of State Rules §148-1-6.6, communication with the State of West Virginia or any of its employees regarding this Solicitation

during the solicitation, bid, evaluation or award periods, except through the Purchasing Division, is strictly prohibited without prior Purchasing Division approval. Purchasing Division approval for such communication is implied for all agency delegated and exempt purchases.

16. **FUNDING:** This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available.
17. **PAYMENT:** Payment in advance is prohibited under this Contract. Payment may only be made after the delivery and acceptance of goods or services. The Vendor shall submit invoices, in arrears, to the Agency at the address on the face of the purchase order labeled "Invoice To."
18. **UNIT PRICE:** Unit prices shall prevail in cases of a discrepancy in the Vendor's bid.
19. **DELIVERY:** All quotations are considered freight on board destination ("F.O.B. destination") unless alternate shipping terms are clearly identified in the bid. Vendor's listing of shipping terms that contradict the shipping terms expressly required by this Solicitation may result in bid disqualification.
20. **INTEREST:** Interest attributable to late payment will only be permitted if authorized by the West Virginia Code. Presently, there is no provision in the law for interest on late payments.
21. **PREFERENCE:** Vendor Preference may only be granted upon written request and only in accordance with the West Virginia Code § 5A-3-37 and the West Virginia Code of State Rules. A Resident Vendor Certification form has been attached hereto to allow Vendor to apply for the preference. Vendor's failure to submit the Resident Vendor Certification form with its bid will result in denial of Vendor Preference. Vendor Preference does not apply to construction projects.
22. **SMALL, WOMEN-OWNED, OR MINORITY-OWNED BUSINESSES:** For any solicitations publicly advertised for bid on or after July 1, 2012, in accordance with West Virginia Code § 5A-3-37(a)(7) and W. Va. CSR § 148-22-9, any non-resident vendor certified as a small, women-owned, or minority-owned business under W. Va. CSR § 148-22-9 shall be provided the same preference made available to any resident vendor. Any non-resident small, women-owned, or minority-owned business must identify itself as such in writing, must submit that writing to the Purchasing Division with its bid, and must be properly certified under W. Va. CSR § 148-22-9 prior to submission of its bid to receive the preferences made available to resident vendors. Preference for a non-resident small, women-owned, or minority owned business shall be applied in accordance with W. Va. CSR § 148-22-9.
23. **TAXES:** The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
24. **CANCELLATION:** The Purchasing Division Director reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract.

The Purchasing Division Director may cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-7.16.2.

25. WAIVER OF MINOR IRREGULARITIES: The Director reserves the right to waive minor irregularities in bids or specifications in accordance with West Virginia Code of State Rules § 148-1-4.6.

26. TIME: Time is of the essence with regard to all matters of time and performance in this Contract.

27. APPLICABLE LAW: This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, West Virginia Code or West Virginia Code of State Rules is void and of no effect.

28. COMPLIANCE: Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendors acknowledge that they have reviewed, understand, and will comply with all applicable law.

29. PREVAILING WAGE: On any contract for the construction of a public improvement, Vendor and any subcontractors utilized by Vendor shall pay a rate or rates of wages which shall not be less than the fair minimum rate or rates of wages (prevailing wage), as established by the West Virginia Division of Labor under West Virginia Code §§ 21-5A-1 et seq. and available at <http://www.sos.wv.gov/administrative-law/wagerates/Pages/default.aspx>. Vendor shall be responsible for ensuring compliance with prevailing wage requirements and determining when prevailing wage requirements are applicable. The required contract provisions contained in West Virginia Code of State Rules § 42-7-3 are specifically incorporated herein by reference.

30. ARBITRATION: Any references made to arbitration contained in this Contract, Vendor's bid, or in any American Institute of Architects documents pertaining to this Contract are hereby deleted, void, and of no effect.

31. MODIFICATIONS: This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary, no modification of this Contract shall be binding without mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). **No Change shall be implemented by the Vendor until such time as the Vendor receives an approved written change order from the Purchasing Division.**

32. WAIVER: The failure of either party to insist upon a strict performance of any of the terms or provision of this Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.

33. SUBSEQUENT FORMS: The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to the Agency or Purchasing Division such as price lists, order forms, invoices, sales agreements, or

maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.

34. **ASSIGNMENT:** Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the Agency, the Purchasing Division, the Attorney General's office (as to form only), and any other government agency or office that may be required to approve such assignments. Notwithstanding the foregoing, Purchasing Division approval may or may not be required on certain agency delegated or exempt purchases.
35. **WARRANTY:** The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the Agency; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.
36. **STATE EMPLOYEES:** State employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.
37. **BANKRUPTCY:** In the event the Vendor files for bankruptcy protection, the State of West Virginia may deem this Contract null and void, and terminate this Contract without notice.
38. **[RESERVED]**
39. **CONFIDENTIALITY:** The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/default.html>.
40. **DISCLOSURE:** Vendor's response to the Solicitation and the resulting Contract are considered public documents and will be disclosed to the public in accordance with the laws, rules, and policies governing the West Virginia Purchasing Division. Those laws include, but are not limited to, the Freedom of Information Act found in West Virginia Code § 29B-1-1 et seq.

If a Vendor considers any part of its bid to be exempt from public disclosure, Vendor must so indicate by specifically identifying the exempt information, identifying the exemption that applies, providing a detailed justification for the exemption, segregating the exempt information from the general bid information, and submitting the exempt information as part of its bid but in a segregated and clearly identifiable format. Failure to comply with the foregoing requirements will result in public disclosure of the Vendor's bid without further notice. A Vendor's act of marking all or nearly all of its bid as exempt is not sufficient to avoid disclosure and WILL NOT BE HONORED. Vendor's act of marking a bid or any part thereof as "confidential" or "proprietary" is not sufficient to avoid disclosure and WILL NOT BE HONORED. In addition, a legend or other statement indicating that all or substantially all of the bid is exempt from disclosure is not sufficient to avoid disclosure and WILL NOT BE HONORED.

Vendor will be required to defend any claimed exemption for nondisclosure in the event of an administrative or judicial challenge to the State's nondisclosure. Vendor must indemnify the State for any costs incurred related to any exemptions claimed by Vendor. Any questions regarding the applicability of the various public records laws should be addressed to your own legal counsel prior to bid submission.

- 41. LICENSING:** In accordance with West Virginia Code of State Rules §148-1-6.1.7, Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Upon request, the Vendor must provide all necessary releases to obtain information to enable the Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities.
- 42. ANTITRUST:** In submitting a bid to, signing a contract with, or accepting a Purchase Order from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.
- 43. VENDOR CERTIFICATIONS:** By signing its bid or entering into this Contract, Vendor certifies (1) that its bid was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid for the same material, supplies, equipment or services; (2) that its bid is in all respects fair and without collusion or fraud; (3) that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; and (4) that it has reviewed this RFQ in its entirety, understands the requirements, terms and conditions, and other information contained herein. Vendor's signature on its bid also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency.
- The individual signing this bid on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or any documents related thereto on Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with any State agency that may require registration.
- 44. PURCHASING CARD ACCEPTANCE:** The State of West Virginia currently utilizes a Purchasing Card program, administered under contract by a banking institution, to process payment for goods and services. The Vendor must accept the State of West Virginia's Purchasing Card for payment of all orders under this Contract unless the box below is checked.
- ☐ Vendor is not required to accept the State of West Virginia's Purchasing Card as payment for all goods and services.

- 45. VENDOR RELATIONSHIP:** The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this Solicitation and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the State for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, *etc.* and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing. Vendor shall hold harmless the State, and shall provide the State and Agency with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.
- 46. INDEMNIFICATION:** The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.
- 47. PURCHASING AFFIDAVIT:** In accordance with West Virginia Code § 5A-3-10a, all Vendors are required to sign, notarize, and submit the Purchasing Affidavit stating that neither the Vendor nor a related party owe a debt to the State in excess of \$1,000. The affidavit must be submitted prior to award, but should be submitted with the Vendor's bid. A copy of the Purchasing Affidavit is included herewith.
- 48. ADDITIONAL AGENCY AND LOCAL GOVERNMENT USE:** This Contract may be utilized by and extends to other agencies, spending units, and political subdivisions of the State of West Virginia; county, municipal, and other local government bodies; and school districts ("Other Government Entities"). This Contract shall be extended to the aforementioned Other Government Entities on the same prices, terms, and conditions as those offered and agreed to in this Contract. If the Vendor does not wish to extend the prices, terms, and conditions of its bid and subsequent contract to the Other Government Entities, the Vendor must clearly indicate such refusal in its bid. A refusal to extend this Contract to the Other Government Entities shall not impact or influence the award of this Contract in any manner.
- 49. CONFLICT OF INTEREST:** Vendor, its officers or members or employees, shall not presently have or acquire any interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder.

Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the Agency.

50. REPORTS: Vendor shall provide the Agency and/or the Purchasing Division with the following reports identified by a checked box below:

- ☐ Such reports as the Agency and/or the Purchasing Division may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by agency, etc.
- ☐ Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by agency. Quarterly reports should be delivered to the Purchasing Division via email at purchasing.requisitions@wv.gov.

51. BACKGROUND CHECK: In accordance with W. Va. Code § 15-2D-3, the Director of the Division of Protective Services shall require any service provider whose employees are regularly employed on the grounds or in the buildings of the Capitol complex or who have access to sensitive or critical information to submit to a fingerprint-based state and federal background inquiry through the state repository. The service provider is responsible for any costs associated with the fingerprint-based state and federal background inquiry.

After the contract for such services has been approved, but before any such employees are permitted to be on the grounds or in the buildings of the Capitol complex or have access to sensitive or critical information, the service provider shall submit a list of all persons who will be physically present and working at the Capitol complex to the Director of the Division of Protective Services for purposes of verifying compliance with this provision.

The State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check.

Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

52. PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS: Except when authorized by the Director of the Purchasing Division pursuant to W. Va. Code § 5A-3-56, no contractor may use or supply steel products for a State Contract Project other than those steel products made in the United States. A contractor who uses steel products in violation of this section may be subject to civil penalties pursuant to W. Va. Code § 5A-3-56. As used in this section:

- a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.

- b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process.

The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:

- a. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or
- b. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

53. PREFERENCE FOR USE OF DOMESTIC ALUMINUM, GLASS, AND STEEL: In Accordance with W. Va. Code § 5-19-1 et seq., and W. Va. CSR § 148-10-1 et seq., for every contract or subcontract, subject to the limitations contained herein, for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works, only domestic aluminum, glass or steel products shall be supplied unless the spending officer determines, in writing, after the receipt of offers or bids, (1) that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest of the State of West Virginia, (2) that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements, or (3) the available domestic aluminum, glass, or steel do not meet the contract specifications. This provision only applies to public works contracts awarded in an amount more than fifty thousand dollars (\$50,000) or public works contracts that require more than ten thousand pounds of steel products.

The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a "substantial labor surplus area", as defined by the United States Department of Labor, the cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than thirty percent (30%) of the bid or offered price for foreign made aluminum, glass, or steel products.

This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This provision does not apply to equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project.

All bids and offers including domestic aluminum, glass or steel products that exceed bid or offer prices including foreign aluminum, glass or steel products after application of the preferences provided in this provision may be reduced to a price equal to or lower than the lowest bid or offer price for foreign aluminum, glass or steel products plus the applicable preference.

If the reduced bid or offer prices are made in writing and supersede the prior bid or offer prices, all bids or offers, including the reduced bid or offer prices, will be reevaluated in accordance with this rule.

SPECIFICATIONS

1. **PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of Public Defender Services to establish a contract for Professional Auditing Services.
2. **DEFINITIONS:** The terms listed below shall have the meanings assigned to them below. Additional definitions can be found in section 2 of the General Terms and Conditions.

2.1 **“Contract Services”** means to conduct a financial and compliance audit of each of the seventeen Public Defender Corporations for the fiscal year.

2.1.1 **“Fiscal Year”** means the time period from July 1, 2013 to June 30, 2014.

2.1.2 **“Public Defender Corporation” (hereinafter “PDC”)** means Corporations as described in *W.Va. Code §29-21 et seq.* PDCs are component units which will be blended as a special revenue fund for the State of West Virginia in its Comprehensive Annual Financial Report for the fiscal year. Public Defender Services serves as the over-sight agency responsible for the Public Defender Corporations.

2.1.3 According to *W.Va. Code §29-21-11*, Public Defender Corporation may apply to the executive director of the WV Public Defender Services for state financial assistance. The amount of state funding varies per fiscal year.

2.1.4 Each Public Defender Corporation is currently (For year ending as described in 2.1.1) contracted as follows:

1 st Judicial Circuit	Brook, Hancock, & Ohio	\$ 1,127,058
2 nd Judicial Circuit	Marshall, Tyler, & Wetzel	\$ 512,693
5 th Judicial Circuit	Calhoun, Jackson, Mason, & Roane	\$ 818,592
6 th & 24 th Judicial Circuit	Cabell & Wayne	\$ 1,929,261
7 th Judicial Circuit	Logan	\$ 660,644
8 th Judicial Circuit	McDowell	\$ 457,897
9 th Judicial Circuit	Mercer	\$ 962,317
10 th Judicial Circuit	Raleigh	\$ 1,064,355
11 th Judicial Circuit	Greenbrier & Pocahontas	\$ 582,980
12 th Judicial Circuit	Fayette	\$ 545,576
13 th Judicial Circuit	Kanawha	\$ 3,511,383
15 th Judicial Circuit	Harrison	\$ 1,118,836
18 th Judicial Circuit	Preston	\$ 453,855
23 rd Judicial Circuit	Berkeley, Jefferson, & Morgan	\$ 2,734,725
25 th Judicial Circuit	Boone & Lincoln	\$ 752,346
28 th Judicial Circuit	Nicholas	\$ 365,599
30 th Judicial Circuit	Mingo	\$ 531,402

2.2 "Contract Renewal" means the maximum time frame in which subsequent services can be awarded after the initial award. This is further defined in Section 5 of this document.

2.3 Pricing Page means the pages upon which Vendor should list its proposed price for the Contract Services. The Pricing Page is either included on the last page of this RFQ or attached hereto as Exhibit "A".

2.4 "RFQ" means the official request for quotation published by the Purchasing Division and identified as PDS201410.

2.5 "Agency" means Public Defender Services.

2.6 "FARS" means *the Financial Accounting & Reporting Section* of the Department of Administration of the State of West Virginia as described in *W.Va. Code §5A-2-33*.

3. QUALIFICATIONS: Vendor shall have the following minimum qualifications:

3.1. Certified Public Accountant Designation

The successful bidder must be an independent accounting firm who can demonstrate that 50 percent of their auditing staff engaged in this solicitation are duly licensed to practice as certified public accountants in the State of West Virginia. Vendor should submit the names and qualifications (i.e., WV CPA designation) of those individual engaged in solicitation with this bid with the final confirmation presented prior to award as defined in Attachment "B".

3.2. Prior Experience

The successful bidder must demonstrate that the firm has experience in auditing other component units of the State of West Virginia's Comprehensive Annual Financial Reports as well as experience with the reporting requirements of 501 (c) (3) non-profit corporations. Vendor should provide the names of those entities to which prior experience as previous defined with this bid with the final confirmation presented prior to award as defined in Attachment "C".

4. MANDATORY REQUIREMENTS:

4.1 Mandatory Contract Services Requirements and Deliverables: Contract Services must meet or exceed the mandatory requirements listed below.

4.1.1 INDEPENDENT AUDIT REPORTS: The audits must be performed in accordance with Government Auditing Standards issued by the Comptroller

General of the United States and with the Procedures Manual for Procuring Division of the State Auditor's Office.

4.1.1.1 Draft Audit Reports to be delivered to Agency and FARS not later than September 15, 2014.

4.1.1.2 Final Audit Reports to be delivered to Agency and FARS not later than October 15, 2014.

4.2 Record Retention & Confidentiality:

4.2.1 Vendor shall comply with all applicable Federal and State of West Virginia rules and regulations, and requirements governing the maintenance of documentation to verify any cost of services or commodities rendered under this contract by Vendor. The Vendor shall maintain such records minimum of five (5) years and make available all records to Agency personnel at Vendor's location during normal business hours upon written request by Agency.

4.2.2 Vendor shall have access to private and confidential data maintained by the Public Defender Corporations and the Agency to the extent required for the successful Vendor to carry out the duties and responsibilities defined in this contract. Vendor agrees to maintain confidentiality and security of the data made available and shall indemnify and hold harmless the State and Agency against any and all claims brought by any party attributed to actions of breach of confidentiality by the Vendor, subcontractors, or individuals permitted access by Vendor.

5. CONTRACT AWARD:

5.1 Contract Award: The Contract is intended to provide Agency with a purchase price for the Contract Services. The Contract shall be awarded to the Vendor that provides the Contract Services meeting the required specifications for the lowest overall total cost as shown on the Pricing Page, Exhibit "A".

5.2 Pricing Page: Vendor should complete the Pricing Page, Exhibit "A" providing a breakdown of each PDC by counties service. Vendor should complete the Pricing Page in full as failure to complete the Pricing Page in its entirety may result in Vendor's bid being disqualified.

Vendor should type or print the information into the Pricing Page to prevent errors in the evaluation.

6. **PERFORMANCE:** Vendor and Agency shall agree upon a schedule for performance of Contract Services and Contract Services Deliverables, unless such a schedule is already included herein by Agency. In the event that this Contract is designated as an open-end contract, Vendor shall perform in accordance with the release orders that may be issued against this Contract.
7. **PAYMENT:** Agency shall pay invoice (as described in 7.1 and 7.2), as shown on the Pricing Pages, for all Contract Services performed and accepted under this Contract. Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.
 - 7.1. The Vendor shall submit invoices, in arrears, to the Agency at the address of the face of the purchase order labeled "Invoice To" pursuant to the terms of the contract. Progress payments may be made at the option of the Agency on the basis of percentage of work completed if so defined in the final contract. Any provision for progress payments must also include language for a minimum 10% retainage until the final deliverable is accepted.
8. **TRAVEL:** Vendor shall be responsible for all mileage and travel costs, including travel time, associated with performance of this Contract. Any anticipated mileage or travel costs may be included in the flat fee or hourly rate listed on Vendor's bid, but such costs will not be paid by the Agency separately.
9. **FACILITIES ACCESS:** Performance of Contract Services may require access cards and/or keys to gain entrance to Agency's facilities. In the event that access cards and/or keys are required:
 - 9.1. Vendor must identify principal service personnel which will be issued access cards and/or keys to perform service.
 - 9.2. Vendor will be responsible for controlling cards and keys and will pay replacement fee, if the cards or keys become lost or stolen.
 - 9.3. Vendor shall notify Agency immediately of any lost, stolen, or missing card or key.
 - 9.4. Anyone performing under this Contract will be subject to Agency's security protocol and procedures.
 - 9.5. Vendor shall inform all staff of Agency's security protocol and procedures.

10. VENDOR DEFAULT:

10.1. The following shall be considered a vendor default under this Contract.

10.1.1. Failure to perform Contract Services in accordance with the requirements contained herein.

10.1.2. Failure to comply with other specifications and requirements contained herein.

10.1.3. Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.

10.1.4. Failure to remedy deficient performance upon request.

10.2. The following remedies shall be available to Agency upon default.

10.2.1. Immediate cancellation of the Contract.

10.2.2. Immediate cancellation of one or more release orders issued under this Contract.

10.2.3. Any other remedies available in law or equity.

11. MISCELLANEOUS:

11.1. **Contract Manager:** During its performance of this Contract, Vendor must designate and maintain a primary contract manager responsible for overseeing Vendor's responsibilities under this Contract. The Contract manager must be available during normal business hours to address any customer service or other issues related to this Contract. Vendor should list its Contract manager and his or her contact information below.

Contract Manager: Michael A. Bolstra

Telephone Number: 740-289-4131

Fax Number: 740-289-3639

Email Address: bolstra@blscpas.com

Exhibit A – Pricing Page

COST PROPOSAL:

Breakdown by Circuit:

Brooke, Hancock & Ohio
Marshall, Tyler & Wetzel
Calhoun, Jackson, Mason, & Roane
Cabell & Wayne
Logan
McDowell
Mercer
Raleigh
Greenbrier & Pocahontas
Fayette
Kanawha
Harrison
Preston
Berkley, Jefferson, & Morgan
Boone & Lincoln
Nicholas
Mingo

Dollars	
\$4,000.00	
3,000.00	
3,000.00	
6,000.00	
3,000.00	
2,000.00	
2,000.00	
4,000.00	
3,000.00	
3,000.00	
6,000.00	
4,000.00	
2,000.00	
6,000.00	
3,000.00	
2,000.00	
3,000.00	
Total all-inclusive fee for all circuits:	
\$58,000.00	

Name	WV CPA
Balestras, Harold & Susan, CPAs, Inc.	✓
Michael A. Balestras	✓
Brenden D. Balestras	✓

Exhibit C – Prior Experience

Entities defined in 3.2	Audit Year
17 PDC Judicial Circuits	2011, 2012, 2013
WV EBA & Affiliates	2008 To 2012
Workforce WV	2011, 2012, 2013
CCCSO, Inc.	2010, 2011, 2012, 2013

WV STATE GOVERNMENT

HIPAA BUSINESS ASSOCIATE ADDENDUM

This Health Insurance Portability and Accountability Act of 1996 (hereafter, HIPAA) Business Associate Addendum ("Addendum") is made a part of the Agreement ("Agreement") by and between the State of West Virginia ("Agency"), and Business Associate ("Associate"), and is effective as of the date of execution of the Addendum.

The Associate performs certain services on behalf of or for the Agency pursuant to the underlying Agreement that requires the exchange of information including protected health information protected by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5) (the "HITECH Act"), any associated regulations and the federal regulations published at 45 CFR parts 160 and 164 (sometimes collectively referred to as "HIPAA"). The Agency is a "Covered Entity" as that term is defined in HIPAA, and the parties to the underlying Agreement are entering into this Addendum to establish the responsibilities of both parties regarding HIPAA-covered information and to bring the underlying Agreement into compliance with HIPAA.

Whereas it is desirable, in order to further the continued efficient operations of Agency to disclose to its Associate certain information which may contain confidential individually identifiable health information (hereafter, Protected Health Information or PHI); and

Whereas, it is the desire of both parties that the confidentiality of the PHI disclosed hereunder be maintained and treated in accordance with all applicable laws relating to confidentiality, including the Privacy and Security Rules, the HITECH Act and its associated regulations, and the parties do agree to at all times treat the PHI and interpret this Addendum consistent with that desire.

NOW THEREFORE: the parties agree that in consideration of the mutual promises herein, in the Agreement, and of the exchange of PHI hereunder that:

1. **Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
 - a. **Agency Procurement Officer** shall mean the appropriate Agency individual listed at: <http://www.state.wv.us/admin/purchase/vrc/agencyli.html>.
 - b. **Agent** shall mean those person(s) who are agent(s) of the Business Associate, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c).
 - c. **Breach** shall mean the acquisition, access, use or disclosure of protected health information which compromises the security or privacy of such information, except as excluded in the definition of Breach in 45 CFR § 164.402.
 - d. **Business Associate** shall have the meaning given to such term in 45 CFR § 160.103.
 - e. **HITECH Act** shall mean the Health Information Technology for Economic and Clinical Health Act. Public Law No. 111-05. 111th Congress (2009).

- f. **Privacy Rule** means the Standards for Privacy of Individually Identifiable Health Information found at 45 CFR Parts 160 and 164.
- g. **Protected Health Information or PHI** shall have the meaning given to such term in 45 CFR § 160.103, limited to the information created or received by Associate from or on behalf of Agency.
- h. **Security Incident** means any known successful or unsuccessful attempt by an authorized or unauthorized individual to inappropriately use, disclose, modify, access, or destroy any information or interference with system operations in an information system.
- i. **Security Rule** means the Security Standards for the Protection of Electronic Protected Health Information found at 45 CFR Parts 160 and 164.
- j. **Subcontractor** means a person to whom a business associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such business associate.

2. Permitted Uses and Disclosures.

- a. **PHI Described.** This means PHI created, received, maintained or transmitted on behalf of the Agency by the Associate. This PHI is governed by this Addendum and is limited to the minimum necessary, to complete the tasks or to provide the services associated with the terms of the original Agreement, and is described in Appendix A.
- b. **Purposes.** Except as otherwise limited in this Addendum, Associate may use or disclose the PHI on behalf of, or to provide services to, Agency for the purposes necessary to complete the tasks, or provide the services, associated with, and required by the terms of the original Agreement, or as required by law, if such use or disclosure of the PHI would not violate the Privacy or Security Rules or applicable state law if done by Agency or Associate, or violate the minimum necessary and related Privacy and Security policies and procedures of the Agency. The Associate is directly liable under HIPAA for impermissible uses and disclosures of the PHI it handles on behalf of Agency.
- c. **Further Uses and Disclosures.** Except as otherwise limited in this Addendum, the Associate may disclose PHI to third parties for the purpose of its own proper management and administration, or as required by law, provided that (i) the disclosure is required by law, or (ii) the Associate has obtained from the third party reasonable assurances that the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party by the Associate; and, (iii) an agreement to notify the Associate and Agency of any instances of which it (the third party) is aware in which the confidentiality of the information has been breached. To the extent practical, the information should be in a limited data set or the minimum necessary information pursuant to 45 CFR § 164.502, or take other measures as necessary to satisfy the Agency's obligations under 45 CFR § 164.502.

3. Obligations of Associate.

- a. **Stated Purposes Only.** The PHI may not be used by the Associate for any purpose other than as stated in this Addendum or as required or permitted by law.
- b. **Limited Disclosure.** The PHI is confidential and will not be disclosed by the Associate other than as stated in this Addendum or as required or permitted by law. Associate is prohibited from directly or indirectly receiving any remuneration in exchange for an individual's PHI unless Agency gives written approval and the individual provides a valid authorization. Associate will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. Associate will report to Agency any use or disclosure of the PHI, including any Security Incident not provided for by this Agreement of which it becomes aware.
- c. **Safeguards.** The Associate will use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of the PHI, except as provided for in this Addendum. This shall include, but not be limited to:
 - i. Limitation of the groups of its workforce and agents, to whom the PHI is disclosed to those reasonably required to accomplish the purposes stated in this Addendum, and the use and disclosure of the minimum PHI necessary or a Limited Data Set;
 - ii. Appropriate notification and training of its workforce and agents in order to protect the PHI from unauthorized use and disclosure;
 - iii. Maintenance of a comprehensive, reasonable and appropriate written PHI privacy and security program that includes administrative, technical and physical safeguards appropriate to the size, nature, scope and complexity of the Associate's operations, in compliance with the Security Rule;
 - iv. In accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information.
- d. **Compliance With Law.** The Associate will not use or disclose the PHI in a manner in violation of existing law and specifically not in violation of laws relating to confidentiality of PHI, including but not limited to, the Privacy and Security Rules.
- e. **Mitigation.** Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Associate of a use or disclosure of the PHI by Associate in violation of the requirements of this Addendum, and report its mitigation activity back to the Agency.

f. **Support of Individual Rights.**

- i. **Access to PHI.** Associate shall make the PHI maintained by Associate or its agents or subcontractors in Designated Record Sets available to Agency for inspection and copying, and in electronic format, if requested, within ten (10) days of a request by Agency to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.524 and consistent with Section 13405 of the HITECH Act.
- ii. **Amendment of PHI.** Within ten (10) days of receipt of a request from Agency for an amendment of the PHI or a record about an individual contained in a Designated Record Set, Associate or its agents or subcontractors shall make such PHI available to Agency for amendment and incorporate any such amendment to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.526.
- iii. **Accounting Rights.** Within ten (10) days of notice of a request for an accounting of disclosures of the PHI, Associate and its agents or subcontractors shall make available to Agency the documentation required to provide an accounting of disclosures to enable Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.528 and consistent with Section 13405 of the HITECH Act. Associate agrees to document disclosures of the PHI and information related to such disclosures as would be required for Agency to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. This should include a process that allows for an accounting to be collected and maintained by Associate and its agents or subcontractors for at least six (6) years from the date of disclosure, or longer if required by state law. At a minimum, such documentation shall include:
 - the date of disclosure;
 - the name of the entity or person who received the PHI, and if known, the address of the entity or person;
 - a brief description of the PHI disclosed; and
 - a brief statement of purposes of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure.
- iv. **Request for Restriction.** Under the direction of the Agency, abide by any individual's request to restrict the disclosure of PHI, consistent with the requirements of Section 13405 of the HITECH Act and 45 CFR § 164.522, when the Agency determines to do so (except as required by law) and if the disclosure is to a health plan for payment or health care operations and it pertains to a health care item or service for which the health care provider was paid in full "out-of-pocket."
- v. **Immediate Discontinuance of Use or Disclosure.** The Associate will immediately discontinue use or disclosure of Agency PHI pertaining to any individual when so requested by Agency. This includes, but is not limited to, cases in which an individual has withdrawn or modified an authorization to use or disclose PHI.

- g. **Retention of PHI.** Notwithstanding section 4.a. of this Addendum, Associate and its subcontractors or agents shall retain all PHI pursuant to state and federal law and shall continue to maintain the PHI required under Section 3.f. of this Addendum for a period of six (6) years after termination of the Agreement, or longer if required under state law.
- h. **Agent's, Subcontractor's Compliance.** The Associate shall notify the Agency of all subcontracts and agreements relating to the Agreement, where the subcontractor or agent receives PHI as described in section 2.a. of this Addendum. Such notification shall occur within 30 (thirty) calendar days of the execution of the subcontract and shall be delivered to the Agency Procurement Officer. The Associate will ensure that any of its subcontractors, to whom it provides any of the PHI it receives hereunder, or to whom it provides any PHI which the Associate creates or receives on behalf of the Agency, agree to the restrictions and conditions which apply to the Associate hereunder. The Agency may request copies of downstream subcontracts and agreements to determine whether all restrictions, terms and conditions have been flowed down. Failure to ensure that downstream contracts, subcontracts and agreements contain the required restrictions, terms and conditions may result in termination of the Agreement.
- j. **Federal and Agency Access.** The Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI, as well as the PHI, received from, or created or received by the Associate on behalf of the Agency available to the U.S. Secretary of Health and Human Services consistent with 45 CFR § 164.504. The Associate shall also make these records available to Agency, or Agency's contractor, for periodic audit of Associate's compliance with the Privacy and Security Rules. Upon Agency's request, the Associate shall provide proof of compliance with HIPAA and HITECH data privacy/protection guidelines, certification of a secure network and other assurance relative to compliance with the Privacy and Security Rules. This section shall also apply to Associate's subcontractors, if any.
- k. **Security.** The Associate shall take all steps necessary to ensure the continuous security of all PHI and data systems containing PHI. In addition, compliance with 74 FR 19006 Guidance Specifying the Technologies and Methodologies That Render PHI Unusable, Unreadable, or Indecipherable to Unauthorized Individuals for Purposes of the Breach Notification Requirements under Section 13402 of Title XIII is required, to the extent practicable. If Associate chooses not to adopt such methodologies as defined in 74 FR 19006 to secure the PHI governed by this Addendum, it must submit such written rationale, including its Security Risk Analysis, to the Agency Procurement Officer for review prior to the execution of the Addendum. This review may take up to ten (10) days.
- l. **Notification of Breach.** During the term of this Addendum, the Associate shall notify the Agency and, unless otherwise directed by the Agency in writing, the WV Office of Technology immediately by e-mail or web form upon the discovery of any Breach of unsecured PHI; or within 24 hours by e-mail or web form of any suspected Security Incident, intrusion or unauthorized use or disclosure of PHI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. Notification shall be provided to the Agency Procurement Officer at www.state.wv.us/admin/purchase/vrc/agencycli.htm and,

unless otherwise directed by the Agency in writing, the Office of Technology at Incident@wv.gov or <https://apps.wv.gov/ot/ir/Default.aspx>.

The Associate shall immediately investigate such Security Incident, Breach, or unauthorized use or disclosure of PHI or confidential data. Within 72 hours of the discovery, the Associate shall notify the Agency Procurement Officer, and, unless otherwise directed by the Agency in writing, the Office of Technology of: (a) Date of discovery; (b) What data elements were involved and the extent of the data involved in the Breach; (c) A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data; (d) A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized; (e) A description of the probable causes of the improper use or disclosure; and (f) Whether any federal or state laws requiring individual notifications of Breaches are triggered.

Agency will coordinate with Associate to determine additional specific actions that will be required of the Associate for mitigation of the Breach, which may include notification to the individual or other authorities.

All associated costs shall be borne by the Associate. This may include, but not be limited to costs associated with notifying affected individuals.

If the Associate enters into a subcontract relating to the Agreement where the subcontractor or agent receives PHI as described in section 2.a. of this Addendum, all such subcontracts or downstream agreements shall contain the same incident notification requirements as contained herein, with reporting directly to the Agency Procurement Officer. Failure to include such requirement in any subcontract or agreement may result in the Agency's termination of the Agreement.

- m. **Assistance in Litigation or Administrative Proceedings.** The Associate shall make itself and any subcontractors, workforce or agents assisting Associate in the performance of its obligations under this Agreement, available to the Agency at no cost to the Agency to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the Agency, its officers or employees based upon claimed violations of HIPAA, the HIPAA regulations or other laws relating to security and privacy, which involves inaction or actions by the Associate, except where Associate or its subcontractor, workforce or agent is a named as an adverse party.

4. Addendum Administration.

- a. **Term.** This Addendum shall terminate on termination of the underlying Agreement or on the date the Agency terminates for cause as authorized in paragraph (c) of this Section, whichever is sooner.
- b. **Duties at Termination.** Upon any termination of the underlying Agreement, the Associate shall return or destroy, at the Agency's option, all PHI received from, or created or received by the Associate on behalf of the Agency that the Associate still maintains in any form and retain no copies of such PHI or, if such return or destruction is not feasible, the Associate shall extend the protections of this Addendum to the PHI and limit further uses and disclosures to the purposes that make the return or destruction of the PHI infeasible. This shall also apply to all agents and subcontractors of Associate. The duty of the Associate and its agents

and subcontractors to assist the Agency with any HIPAA required accounting of disclosures survives the termination of the underlying Agreement.

- c. **Termination for Cause.** Associate authorizes termination of this Agreement by Agency, if Agency determines Associate has violated a material term of the Agreement. Agency may, at its sole discretion, allow Associate a reasonable period of time to cure the material breach before termination.
- d. **Judicial or Administrative Proceedings.** The Agency may terminate this Agreement if the Associate is found guilty of a criminal violation of HIPAA. The Agency may terminate this Agreement if a finding or stipulation that the Associate has violated any standard or requirement of HIPAA/HITECH, or other security or privacy laws is made in any administrative or civil proceeding in which the Associate is a party or has been joined. Associate shall be subject to prosecution by the Department of Justice for violations of HIPAA/HITECH and shall be responsible for any and all costs associated with prosecution.
- e. **Survival.** The respective rights and obligations of Associate under this Addendum shall survive the termination of the underlying Agreement.

5. General Provisions/Ownership of PHI.

- a. **Retention of Ownership.** Ownership of the PHI resides with the Agency and is to be returned on demand or destroyed at the Agency's option, at any time, and subject to the restrictions found within section 4.b. above.
- b. **Secondary PHI.** Any data or PHI generated from the PHI disclosed hereunder which would permit identification of an individual must be held confidential and is also the property of Agency.
- c. **Electronic Transmission.** Except as permitted by law or this Addendum, the PHI or any data generated from the PHI which would permit identification of an individual must not be transmitted to another party by electronic or other means for additional uses or disclosures not authorized by this Addendum or to another contractor, or allied agency, or affiliate without prior written approval of Agency.
- d. **No Sales.** Reports or data containing the PHI may not be sold without Agency's or the affected individual's written consent.
- e. **No Third-Party Beneficiaries.** Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than Agency, Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- f. **Interpretation.** The provisions of this Addendum shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provisions in this Addendum. The interpretation of this Addendum shall be made under the laws of the state of West Virginia.
- g. **Amendment.** The parties agree that to the extent necessary to comply with applicable law they will agree to further amend this Addendum.
- h. **Additional Terms and Conditions.** Additional discretionary terms may be included in the release order or change order process.

AGREED:

Name of Agency: PUBLIC Defender Service Name of Associate: _____
 Signature: [Signature] Signature: [Signature]
 Title: Director Title: VP-DIRECTOR
 Date: 06/19/2014 Date: 7-28-14

Form - WVBAA-012004
 Amended 06.26.2013

APPROVED AS TO FORM THIS 26/12
 DAY OF Jan 20 15
 BY [Signature]
 Patrick Morrissey
 Attorney General

Appendix A
Typical Documents in Law Office (Criminal Defender)
That May Contain Private Information

Name of Associate: Balaska, Horv & Schen, PAs, Inc.

Name of Agency: Public Defender Services

The typical law office regularly receives information containing personally identifiable confidential information within the meaning of HIPAA. Such information, related to clients and potential witnesses, is usually obtained through case discovery and/or investigation and includes, but is not limited to, medical and health care records, psychiatric / psychological / counseling / therapy records, financial information such as bank accounts, credit card information, financial affidavits attesting the need for appointed counsel, and the like. This information should be kept under lock and key and be available only to counsel involved in that case or other litigation-related personnel. Visitors, non-litigation-related staff persons (which includes administrative personnel), and others should not be allowed access to such information and, indeed, best practices involve active exclusion of such persons from access.

Employee confidential information would include financial and health-related information and would be kept in the administrative offices pursuant to the office's procedures for such information, and would be available typically only to management.

State of West Virginia

VENDOR PREFERENCE CERTIFICATE

Certification and application* is hereby made for Preference in accordance with **West Virginia Code**, §5A-3-37. (Does not apply to construction contracts). **West Virginia Code**, §5A-3-37, provides an opportunity for qualifying vendors to request (at the time of bid) preference for their residency status. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the **West Virginia Code**. This certificate for application is to be used to request such preference. The Purchasing Division will make the determination of the Vendor Preference, if applicable.

1. **Application is made for 2.5% vendor preference for the reason checked:**

____ Bidder is an individual resident vendor and has resided continuously in West Virginia for four (4) years immediately preceding the date of this certification; or,

____ Bidder is a partnership, association or corporation resident vendor and has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; or 80% of the ownership interest of Bidder is held by another individual, partnership, association or corporation resident vendor who has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; or,

____ Bidder is a nonresident vendor which has an affiliate or subsidiary which employs a minimum of one hundred state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for the four (4) years immediately preceding the date of this certification; or,

2. **Application is made for 2.5% vendor preference for the reason checked:**

____ Bidder is a resident vendor who certifies that, during the life of the contract, on average at least 75% of the employees working on the project being bid are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; or,

3. **Application is made for 2.5% vendor preference for the reason checked:**

____ Bidder is a nonresident vendor employing a minimum of one hundred state residents or is a nonresident vendor with an affiliate or subsidiary which maintains its headquarters or principal place of business within West Virginia employing a minimum of one hundred state residents who certifies that, during the life of the contract, on average at least 75% of the employees or Bidder's affiliate's or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; or,

4. **Application is made for 5% vendor preference for the reason checked:**

____ Bidder meets either the requirement of both subdivisions (1) and (2) or subdivision (1) and (3) as stated above; or,

5. **Application is made for 3.5% vendor preference who is a veteran for the reason checked:**

____ Bidder is an individual resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted; or,

6. **Application is made for 3.5% vendor preference who is a veteran for the reason checked:**

____ Bidder is a resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years.

7. **Application is made for preference as a non-resident small, women- and minority-owned business, in accordance with West Virginia Code §5A-3-59 and West Virginia Code of State Rules.**

____ Bidder has been or expects to be approved prior to contract award by the Purchasing Division as a certified small, women- and minority-owned business.

Bidder understands if the Secretary of Revenue determines that a Bidder receiving preference has failed to continue to meet the requirements for such preference, the Secretary may order the Director of Purchasing to: (a) reject the bid; or (b) assess a penalty against such Bidder in an amount not to exceed 5% of the bid amount and that such penalty will be paid to the contracting agency or deducted from any unpaid balance on the contract or purchase order.

By submission of this certificate, Bidder agrees to disclose any reasonably requested information to the Purchasing Division and authorizes the Department of Revenue to disclose to the Director of Purchasing appropriate information verifying that Bidder has paid the required business taxes, provided that such information does not contain the amounts of taxes paid nor any other information deemed by the Tax Commissioner to be confidential.

Under penalty of law for false swearing (West Virginia Code, §61-5-3), Bidder hereby certifies that this certificate is true and accurate in all respects; and that if a contract is issued to Bidder and if anything contained within this certificate changes during the term of the contract, Bidder will notify the Purchasing Division in writing immediately.

Bidder: Balboa, Horv, & Schenck, LLC, Inc. Signed: Marshall Deaton
 Date: 7-28-14 Title: VP - DIRECTOR

ADDENDUM ACKNOWLEDGEMENT FORM
SOLICITATION NO.: PDS201410

Instructions: Please acknowledge receipt of all addenda issued with this solicitation by completing this addendum acknowledgment form. Check the box next to each addendum received and sign below. Failure to acknowledge addenda may result in bid disqualification.

Acknowledgment: I hereby acknowledge receipt of the following addenda and have made the necessary revisions to my proposal, plans and/or specification, etc.

Addendum Numbers Received:

(Check the box next to each addendum received)

- | | |
|--|--|
| <input checked="" type="checkbox"/> Addendum No. 1 | <input type="checkbox"/> Addendum No. 6 |
| <input type="checkbox"/> Addendum No. 2 | <input type="checkbox"/> Addendum No. 7 |
| <input type="checkbox"/> Addendum No. 3 | <input type="checkbox"/> Addendum No. 8 |
| <input type="checkbox"/> Addendum No. 4 | <input type="checkbox"/> Addendum No. 9 |
| <input type="checkbox"/> Addendum No. 5 | <input type="checkbox"/> Addendum No. 10 |

I understand that failure to confirm the receipt of addenda may cause for rejection of this bid. I further understand that any verbal representation made or assumed to be made during any oral discussion held between Vendor's representatives and any state personnel is not binding. Only the information issued in writing and added to the specifications by an official addendum is binding.

Balotra, Horvath & Schum, CPAs, Inc.

Company

Michael White

Authorized Signature

7-28-14

Date

NOTE: This addendum acknowledgment should be submitted with the bid to expedite document processing.

RFQ No. PDS201410STATE OF WEST VIRGINIA
Purchasing Division**PURCHASING AFFIDAVIT**

MANDATE: Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

EXCEPTION: The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Employer default" means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

AFFIRMATION: By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (W. Va. Code §61-5-3) that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

WITNESS THE FOLLOWING SIGNATURE:

Vendor's Name: Bakstra, Hov & Schenck, CPAs, Inc.
Authorized Signature: [Signature] Date: 7-28-14

State of MD

County of Pike, to-wit:

Taken, subscribed, and sworn to before me this 28 day of July, 2014.

My Commission expires 12-24, 2014.

AFFIX SEAL HERE

NOTARY PUBLIC

[Signature]

Purchasing Affidavit (Revised 07/01/2012)

CERTIFICATION AND SIGNATURE PAGE

By signing below, I certify that I have reviewed this Solicitation in its entirety, understand the requirements, terms and conditions, and other information contained herein; that I am submitting this bid or proposal for review and consideration; that I am authorized by the bidder to execute this bid or any documents related thereto on bidder's behalf; that I am authorized to bind the bidder in a contractual relationship; and that to the best of my knowledge, the bidder has properly registered with any State agency that may require registration.

Balottra, Hair, & Schenck (PAs, Inc.)
(Company)

Michael A. Balottra
(Authorized Signature)

Michael A. Balottra, VP-Director
(Representative Name, Title)

740-289-4131 740-289-3639
(Phone Number) (Fax Number)

7-28-14
(Date)



State of West Virginia
Department of Administration
Purchasing Division
2019 Washington Street East
Post Office Box 50130
Charleston, WV 25305-0130

Solicitation

NUMBER

PDS201410

PAGE

1

ADDRESS CORRESPONDENCE TO ATTENTION OF

GUY NISBET
304-558-2596

RFQ COPY

TYPE NAME/ADDRESS HERE

V
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Balotra, Hov & Scheun, CPbs, Inc.
PO Box 687
Piketon, Ohio 45661

S
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PUBLIC DEFENDER SERVICES

ONE PLAYERS CLUB DRIVE
SUITE 301
CHARLESTON, WV
25311

304-558-3905

DATE PRINTED

07/11/2014

BID OPENING DATE:

07/29/2014

BID OPENING TIME 1:30PM

LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
ADDENDUM NO.01						
ADDENDUM ISSUED TO PUBLISH AND DISTRIBUTE THE ATTACHED INFORMATION TO THE VENDOR COMMUNITY.						
BID OPENING WAS: 07/22/2014 AT 1:30 PM. EST.						
CHANGED TO: 07/29/2014 AT 1:30 PM. EST.						
0001	1	LS		946-20		<i>\$58,000.00/x</i>
AUDITING SERVICES FOR PUBLIC DEFENDER						
***** THIS IS THE END OF RFQ PDS201410 ***** TOTAL:						<i>\$58,000.00/x</i>

SIGNATURE

Michael B. Salata

TELEPHONE

740-285-4131

DATE

7-28-14

TITLE

VP-Director

FEIN

31-1413363

ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO SOLICITATION, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'

SOLICITATION NUMBER: PDS201410
Addendum Number: No.01

The purpose of this addendum is to modify the solicitation identified as ("Solicitation") to reflect the change(s) identified and described below.

Applicable Addendum Category:

- ☒ Modify bid opening date and time
- ☐ Modify specifications of product or service being sought
- ☒ Attachment of vendor questions and responses
- ☐ Attachment of pre-bid sign-in sheet
- ☐ Correction of error
- ☐ Other

Description of Modification to Solicitation:

Addendum issued to publish and distribute the following information as attached.

1. Bid Opening moved from: 07/22/2014 at 1:30 PM. EST.
to: 07/29/2014 at 1:30 PM. EST.
2. Attachment of vendor submitted questions and agency responses.
3. No other changes.

Additional Documentation: Documentation related to this Addendum (if any) has been included herewith as Attachment A and is specifically incorporated herein by reference.

Terms and Conditions:

1. All provisions of the Solicitation and other addenda not modified herein shall remain in full force and effect.
2. Vendor should acknowledge receipt of all addenda issued for this Solicitation by completing an Addendum Acknowledgment, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.

000003

ATTACHMENT A

PDS2014
Public Defenders Auditing Services
7/10/14 10: AM.

1. Could you please provide a copy of the prior year's audited financial statements for the WV Public Defender Services in reference to RFQ PDS201410

Answer.1: FY 2013; FY 2012; FY 2011; and FY 2010 Audits are publically available on the Public Defender Services website. These can be found following the link below

<http://www.pds.wv.gov/Public-Defender-Corporations/pdaudit/Pages/default.aspx>

2. Can you provide copies of all final deliverables (specifically management letters and auditor communications) for the year ended June 30, 2013 for each of the 17 entities to be audited as listed in RFQ PDS201410?

A.2. What is available is listed in the audit reports (see A.1). Additional communications between the auditor and each Corporation would be available from that specific corporation and not centrally located within Public Defender Services.

3. Can you provide a list of all misstatements identified during the audit (corrected and uncorrected) for the year ended June 30, 2013 for each of the 17 entities to be audited?

A.3. Audit finding were included with the audits and are available online (see A.1). As for any audit working papers, those rest with the previous auditor and should be available to the successful bidder from the previous auditor.

4. Will the implementation of WV OASIS effective July 1, 2014 have any impact on the presentation or availability of information to be audited for the years ended June 30, 2015 and 2016?

A.4. Yes. The grant issuance information is anticipated to be more available. However, Public Defender Corporations utilize their own accounting functions and maintain their own accounting records.

5. Is there a central accounting function, accounting procedures or financial reporting manual, specified software utilized for financial reporting, or other commonalities whereby the 17 reporting entities must comply or share?

A.5. There is not a centralized accounting function at this time. There are financial guidelines located on the website:

<http://www.pds.wv.gov/Public-Defender-Corporations/Accountinginfo/Pages/default.aspx>

These are subject to change based on best practices and management directives. The preferred software package is QuickBooks, but some offices do not use this.

6. Does each of the reporting entities maintain an accounting function or is that service contracted out to a vendor?

A.6. That is at the discretion of each office.

7. Is there a consolidating financial statement and accompanying audit report for such a deliverable required under RFQ PDS201410?

A.7. These will be 17 separate reports without a need for a master consolidation or comprehensive financial statements beyond that which is required for the Comprehensive Annual Financial Report as prepared by the Financial Accounting and Reporting Section.

8. Is there a requirement under RFQ PDS201410 to provide CAFR preparation services in any manner to the entities in this RFQ?

A.8. Yes. The bid specification addresses this, see 2.1.2 with emphasis in bold.

*"2.1.2 "Public Defender Corporation" (hereinafter "PDC") means Corporations as described in W.Va. Code §29-21 et seq. PDCs are component units which will be blended as a special revenue fund for the State of West Virginia in its **Comprehensive Annual Financial Report** for the fiscal year. Public Defender Services serves as the over-sight agency responsible for the Public Defender Corporations."*

9. Do the individual entities listed in this RFQ prepare their own full disclosure governmental GAAP financial statements, or is it an expectation of the WV Public Defenders that the successful auditor prepare the financial statements for each entity?

A.9. Pursuant to the provisions as noted below, the successful vendor is expected to exercise discretion in preparing audit reports.

*"4.1.1 **INDEPENDENT AUDIT REPORTS:** The audits must be performed in accordance with Government Auditing Standards issued by the Comptroller General of the United States and with the Procedures Manual for Procuring Division of the State Auditor's Office."*

Moreover, it is acceptable for the vendor to present, in this audit report, the financial report as prepared by the public defender corporation. This has historically been done by prior auditors. With respect to bookkeeping and consulting services as noted in the vendor question "...is it an expectation of the WV Public Defenders that the successful auditor prepare the financial statements for each entity?", the answer is no based on the H.R. 3763 of the 107th U.S. Congress titled "Sarbanes-Oxley Act of 2002". (see attached).

10. Are the reporting entities considered Not for Profit (following the FASB codification) or are they considered Governmental (following GASB) for financial reporting purposes, if they follow GASB do the individual entities prepare their own Management Discussion and Analysis (MD&A) in accordance with GASB statement 34?

A.10. Refer to 4.1.1 of the bid [with emphasis in bold]

*"4.1.1 **INDEPENDENT AUDIT REPORTS:** The audits must be performed in accordance with **Government Auditing Standards** issued by the Comptroller General of the United States and with the Procedures Manual for Procuring Division of the State Auditor's Office."*

With respect to the MD&A, each office must comply with GASB 34 consistent with the provisions as noted above.

11. Is there any supplementary information or required supplementary information that is required to be reported in addition to the financial statements?

A.11. PDS is not requesting that additional reports be prepared that are outside the scope of the auditing process.

12. Are employees of the 17 reporting entities considered state of WV employees participating in pension and OPEB benefits of the State or are they merely not for profit employees who may have benefits provided from other sources?

A.12. This is addressed in 2.1.2 of the bid with emphasis in bold.

"2.1.2 "Public Defender Corporation" (hereinafter "PDC") means Corporations as described in W.Va. Code §29-21 et seq. PDCs are component units which will be blended as a special revenue fund for the State of West Virginia in its Comprehensive Annual Financial Report for the fiscal year. Public Defender Services serves as the over-sight agency responsible for the Public Defender Corporations."

Moreover, each corporation functions as a public entity under the Internal Revenue Code section 501(c)3. As a result, the employees are considered Non-State Employees. Consequently, corporations may elect and have elected to participate in the Public Employees Retirement System and the Public Employees Insurance Agency. However, each corporation may withdraw and chose not to participate in those systems.

13. Are there any special Group audit procedures that will be required of the successful bidder as it relates to RFQ PDS201410 that are not mentioned in the specifications of RFQ PDS201410?

A.13 No.

14. What were the prior fees under this contract?

A.14. This contract has not been awarded, thus no fees have been issued. For the services rendered by the previous auditor for FY 2013, the vendor was compensated at \$74,000.00.

15. Are there any changes to the audit process, reporting, etc. included in this RFQ as compared to previous RFQ's for this work?

A.15. Only those changes that are required to be included in the audit which were issued outside PDS such as GASB.

16. Are there any changes you would like to see in the audit process (Communication, Timing, Order of Audits, etc.)?

A.16. Not at this time.

17. Are there separate presentations required with the Boards of each individual corporation, the State, the Department of Administration, etc.

A.17. There are no required presentations to other entities as noted above.

18. It appears that the HIPAA Business Associate Addendum and Appendix A are not required to be included in the proposal but only completed if awarded. Can you confirm if that understanding is correct?

A.18. It should be noted that each office represents clients in many criminal proceeding and eligible proceedings as designated by *W.Va. Code §29-21 et seq.* As such, the vendor may be exposed to case files, information, and other data whilst performing services as specified by this bid. As such, some of this information may include but not be limited to those items noted in Appendix A. It is the intention of PDS to provide clients with the maximum protect to which they are entitled to under the *Supreme Court Rules of Professional Conduct*.

H. R. 3763

One Hundred Seventh Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Wednesday,
the twenty-third day of January, two thousand and two*

An Act

To protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Sarbanes-Oxley Act of 2002”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Commission rules and enforcement.

TITLE I—PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

- Sec. 101. Establishment; administrative provisions.
- Sec. 102. Registration with the Board.
- Sec. 103. Auditing, quality control, and independence standards and rules.
- Sec. 104. Inspections of registered public accounting firms.
- Sec. 105. Investigations and disciplinary proceedings.
- Sec. 106. Foreign public accounting firms.
- Sec. 107. Commission oversight of the Board.
- Sec. 108. Accounting standards.
- Sec. 109. Funding.

TITLE II—AUDITOR INDEPENDENCE

- Sec. 201. Services outside the scope of practice of auditors.
- Sec. 202. Preapproval requirements.
- Sec. 203. Audit partner rotation.
- Sec. 204. Auditor reports to audit committees.
- Sec. 205. Conforming amendments.
- Sec. 206. Conflicts of interest.
- Sec. 207. Study of mandatory rotation of registered public accounting firms.
- Sec. 208. Commission authority.
- Sec. 209. Considerations by appropriate State regulatory authorities.

TITLE III—CORPORATE RESPONSIBILITY

- Sec. 301. Public company audit committees.
- Sec. 302. Corporate responsibility for financial reports.
- Sec. 303. Improper influence on conduct of audits.
- Sec. 304. Forfeiture of certain bonuses and profits.
- Sec. 305. Officer and director bars and penalties.
- Sec. 306. Insider trades during pension fund blackout periods.
- Sec. 307. Rules of professional responsibility for attorneys.
- Sec. 308. Fair funds for investors.

TITLE IV—ENHANCED FINANCIAL DISCLOSURES

- Sec. 401. Disclosures in periodic reports.
- Sec. 402. Enhanced conflict of interest provisions.
- Sec. 403. Disclosures of transactions involving management and principal stockholders.

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- Sec. 404. Management assessment of internal controls.
- Sec. 405. Exemption.
- Sec. 406. Code of ethics for senior financial officers.
- Sec. 407. Disclosure of audit committee financial expert.
- Sec. 408. Enhanced review of periodic disclosures by issuers.
- Sec. 409. Real time issuer disclosures.

TITLE V—ANALYST CONFLICTS OF INTEREST

- Sec. 501. Treatment of securities analysts by registered securities associations and national securities exchanges.

TITLE VI—COMMISSION RESOURCES AND AUTHORITY

- Sec. 601. Authorization of appropriations.
- Sec. 602. Appearance and practice before the Commission.
- Sec. 603. Federal court authority to impose penny stock bars.
- Sec. 604. Qualifications of associated persons of brokers and dealers.

TITLE VII—STUDIES AND REPORTS

- Sec. 701. GAO study and report regarding consolidation of public accounting firms.
- Sec. 702. Commission study and report regarding credit rating agencies.
- Sec. 703. Study and report on violators and violations
- Sec. 704. Study of enforcement actions.
- Sec. 705. Study of investment banks.

TITLE VIII—CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY

- Sec. 801. Short title.
- Sec. 802. Criminal penalties for altering documents.
- Sec. 803. Debts nondischageable if incurred in violation of securities fraud laws.
- Sec. 804. Statute of limitations for securities fraud.
- Sec. 805. Review of Federal Sentencing Guidelines for obstruction of justice and extensive criminal fraud.
- Sec. 806. Protection for employees of publicly traded companies who provide evidence of fraud.
- Sec. 807. Criminal penalties for defrauding shareholders of publicly traded companies.

TITLE IX—WHITE-COLLAR CRIME PENALTY ENHANCEMENTS

- Sec. 901. Short title.
- Sec. 902. Attempts and conspiracies to commit criminal fraud offenses.
- Sec. 903. Criminal penalties for mail and wire fraud.
- Sec. 904. Criminal penalties for violations of the Employee Retirement Income Security Act of 1974.
- Sec. 905. Amendment to sentencing guidelines relating to certain white-collar offenses.
- Sec. 906. Corporate responsibility for financial reports.

TITLE X—CORPORATE TAX RETURNS

- Sec. 1001. Sense of the Senate regarding the signing of corporate tax returns by chief executive officers.

TITLE XI—CORPORATE FRAUD AND ACCOUNTABILITY

- Sec. 1101. Short title.
- Sec. 1102. Tampering with a record or otherwise impeding an official proceeding.
- Sec. 1103. Temporary freeze authority for the Securities and Exchange Commission.
- Sec. 1104. Amendment to the Federal Sentencing Guidelines.
- Sec. 1105. Authority of the Commission to prohibit persons from serving as officers or directors.
- Sec. 1106. Increased criminal penalties under Securities Exchange Act of 1934.
- Sec. 1107. Retaliation against informants.

SEC. 2. DEFINITIONS.

(a) IN GENERAL.—In this Act, the following definitions shall apply:

(1) APPROPRIATE STATE REGULATORY AUTHORITY.—The term “appropriate State regulatory authority” means the State agency or other authority responsible for the licensure or other regulation of the practice of accounting in the State or States

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having jurisdiction over a registered public accounting firm or associated person thereof, with respect to the matter in question.

(2) **AUDIT.**—The term “audit” means an examination of the financial statements of any issuer by an independent public accounting firm in accordance with the rules of the Board or the Commission (or, for the period preceding the adoption of applicable rules of the Board under section 103, in accordance with then-applicable generally accepted auditing and related standards for such purposes), for the purpose of expressing an opinion on such statements.

(3) **AUDIT COMMITTEE.**—The term “audit committee” means—

(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; and

(B) if no such committee exists with respect to an issuer, the entire board of directors of the issuer.

(4) **AUDIT REPORT.**—The term “audit report” means a document or other record—

(A) prepared following an audit performed for purposes of compliance by an issuer with the requirements of the securities laws; and

(B) in which a public accounting firm either—

(i) sets forth the opinion of that firm regarding a financial statement, report, or other document; or

(ii) asserts that no such opinion can be expressed.

(5) **BOARD.**—The term “Board” means the Public Company Accounting Oversight Board established under section 101.

(6) **COMMISSION.**—The term “Commission” means the Securities and Exchange Commission.

(7) **ISSUER.**—The term “issuer” means an issuer (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)), the securities of which are registered under section 12 of that Act (15 U.S.C. 78l), or that is required to file reports under section 15(d) (15 U.S.C. 78o(d)), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a et seq.), and that it has not withdrawn.

(8) **NON-AUDIT SERVICES.**—The term “non-audit services” means any professional services provided to an issuer by a registered public accounting firm, other than those provided to an issuer in connection with an audit or a review of the financial statements of an issuer.

(9) **PERSON ASSOCIATED WITH A PUBLIC ACCOUNTING FIRM.**—

(A) **IN GENERAL.**—The terms “person associated with a public accounting firm” (or with a “registered public accounting firm”) and “associated person of a public accounting firm” (or of a “registered public accounting firm”) mean any individual proprietor, partner, shareholder, principal, accountant, or other professional employee of a public accounting firm, or any other independent contractor or entity that, in connection with the preparation or issuance of any audit report—

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(i) shares in the profits of, or receives compensation in any other form from, that firm; or

(ii) participates as agent or otherwise on behalf of such accounting firm in any activity of that firm.

(B) EXEMPTION AUTHORITY.—The Board may, by rule, exempt persons engaged only in ministerial tasks from the definition in subparagraph (A), to the extent that the Board determines that any such exemption is consistent with the purposes of this Act, the public interest, or the protection of investors.

(10) PROFESSIONAL STANDARDS.—The term “professional standards” means—

(A) accounting principles that are—

(i) established by the standard setting body described in section 19(b) of the Securities Act of 1933, as amended by this Act, or prescribed by the Commission under section 19(a) of that Act (15 U.S.C. 17a(s)) or section 13(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78a(m)); and

(ii) relevant to audit reports for particular issuers, or dealt with in the quality control system of a particular registered public accounting firm; and

(B) auditing standards, standards for attestation engagements, quality control policies and procedures, ethical and competency standards, and independence standards (including rules implementing title II) that the Board or the Commission determines—

(i) relate to the preparation or issuance of audit reports for issuers; and

(ii) are established or adopted by the Board under section 103(a), or are promulgated as rules of the Commission.

(11) PUBLIC ACCOUNTING FIRM.—The term “public accounting firm” means—

(A) a proprietorship, partnership, incorporated association, corporation, limited liability company, limited liability partnership, or other legal entity that is engaged in the practice of public accounting or preparing or issuing audit reports; and

(B) to the extent so designated by the rules of the Board, any associated person of any entity described in subparagraph (A).

(12) REGISTERED PUBLIC ACCOUNTING FIRM.—The term “registered public accounting firm” means a public accounting firm registered with the Board in accordance with this Act.

(13) RULES OF THE BOARD.—The term “rules of the Board” means the bylaws and rules of the Board (as submitted to, and approved, modified, or amended by the Commission, in accordance with section 107), and those stated policies, practices, and interpretations of the Board that the Commission, by rule, may deem to be rules of the Board, as necessary or appropriate in the public interest or for the protection of investors.

(14) SECURITY.—The term “security” has the same meaning as in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

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(15) SECURITIES LAWS.—The term “securities laws” means the provisions of law referred to in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), as amended by this Act, and includes the rules, regulations, and orders issued by the Commission thereunder.

(16) STATE.—The term “State” means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States.

(b) CONFORMING AMENDMENT.—Section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)) is amended by inserting “the Sarbanes-Oxley Act of 2002,” before “the Public”.

SEC. 3. COMMISSION RULES AND ENFORCEMENT.

(a) REGULATORY ACTION.—The Commission shall promulgate such rules and regulations, as may be necessary or appropriate in the public interest or for the protection of investors, and in furtherance of this Act.

(b) ENFORCEMENT.—

(1) IN GENERAL.—A violation by any person of this Act, any rule or regulation of the Commission issued under this Act, or any rule of the Board shall be treated for all purposes in the same manner as a violation of the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or the rules and regulations issued thereunder, consistent with the provisions of this Act, and any such person shall be subject to the same penalties, and to the same extent, as for a violation of that Act or such rules or regulations.

(2) INVESTIGATIONS, INJUNCTIONS, AND PROSECUTION OF OFFENSES.—Section 21 of the Securities Exchange Act of 1934 (15 U.S.C. 78u) is amended—

(A) in subsection (a)(1), by inserting “the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm,” after “is a participant,”;

(B) in subsection (d)(1), by inserting “the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm,” after “is a participant,”;

(C) in subsection (e), by inserting “the rules of the Public Company Accounting Oversight Board, of which such person is a registered public accounting firm or a person associated with such a firm,” after “is a participant,”; and

(D) in subsection (f), by inserting “or the Public Company Accounting Oversight Board” after “self-regulatory organization” each place that term appears.

(3) CEASE-AND-DESIST PROCEEDINGS.—Section 21C(c)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u-3(c)(2)) is amended by inserting “registered public accounting firm (as defined in section 2 of the Sarbanes-Oxley Act of 2002),” after “government securities dealer,”.

(4) ENFORCEMENT BY FEDERAL BANKING AGENCIES.—Section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(i)) is amended by—

(A) striking “sections 12,” each place it appears and inserting “sections 10A(m), 12,”; and

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(B) striking "and 16," each place it appears and inserting "and 16 of this Act, and sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002,".

(c) EFFECT ON COMMISSION AUTHORITY.—Nothing in this Act or the rules of the Board shall be construed to impair or limit—

(1) the authority of the Commission to regulate the accounting profession, accounting firms, or persons associated with such firms for purposes of enforcement of the securities laws;

(2) the authority of the Commission to set standards for accounting or auditing practices or auditor independence, derived from other provisions of the securities laws or the rules or regulations thereunder, for purposes of the preparation and issuance of any audit report, or otherwise under applicable law; or

(3) the ability of the Commission to take, on the initiative of the Commission, legal, administrative, or disciplinary action against any registered public accounting firm or any associated person thereof.

TITLE I—PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

SEC. 101. ESTABLISHMENT; ADMINISTRATIVE PROVISIONS.

(a) ESTABLISHMENT OF BOARD.—There is established the Public Company Accounting Oversight Board, to oversee the audit of public companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports for companies the securities of which are sold to, and held by and for, public investors. The Board shall be a body corporate, operate as a nonprofit corporation, and have succession until dissolved by an Act of Congress.

(b) STATUS.—The Board shall not be an agency or establishment of the United States Government, and, except as otherwise provided in this Act, shall be subject to, and have all the powers conferred upon a nonprofit corporation by, the District of Columbia Nonprofit Corporation Act. No member or person employed by, or agent for, the Board shall be deemed to be an officer or employee of or agent for the Federal Government by reason of such service.

(c) DUTIES OF THE BOARD.—The Board shall, subject to action by the Commission under section 107, and once a determination is made by the Commission under subsection (d) of this section—

(1) register public accounting firms that prepare audit reports for issuers, in accordance with section 102;

(2) establish or adopt, or both, by rule, auditing, quality control, ethics, independence, and other standards relating to the preparation of audit reports for issuers, in accordance with section 103;

(3) conduct inspections of registered public accounting firms, in accordance with section 104 and the rules of the Board;

(4) conduct investigations and disciplinary proceedings concerning, and impose appropriate sanctions where justified upon,

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registered public accounting firms and associated persons of such firms, in accordance with section 105;

(5) perform such other duties or functions as the Board (or the Commission, by rule or order) determines are necessary or appropriate to promote high professional standards among, and improve the quality of audit services offered by, registered public accounting firms and associated persons thereof, or otherwise to carry out this Act, in order to protect investors, or to further the public interest;

(6) enforce compliance with this Act, the rules of the Board, professional standards, and the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, by registered public accounting firms and associated persons thereof; and

(7) set the budget and manage the operations of the Board and the staff of the Board.

(d) COMMISSION DETERMINATION.—The members of the Board shall take such action (including hiring of staff, proposal of rules, and adoption of initial and transitional auditing and other professional standards) as may be necessary or appropriate to enable the Commission to determine, not later than 270 days after the date of enactment of this Act, that the Board is so organized and has the capacity to carry out the requirements of this title, and to enforce compliance with this title by registered public accounting firms and associated persons thereof. The Commission shall be responsible, prior to the appointment of the Board, for the planning for the establishment and administrative transition to the Board's operation.

(e) BOARD MEMBERSHIP.—

(1) COMPOSITION.—The Board shall have 5 members, appointed from among prominent individuals of integrity and reputation who have a demonstrated commitment to the interests of investors and the public, and an understanding of the responsibilities for and nature of the financial disclosures required of issuers under the securities laws and the obligations of accountants with respect to the preparation and issuance of audit reports with respect to such disclosures.

(2) LIMITATION.—Two members, and only 2 members, of the Board shall be or have been certified public accountants pursuant to the laws of 1 or more States, provided that, if 1 of those 2 members is the chairperson, he or she may not have been a practicing certified public accountant for at least 5 years prior to his or her appointment to the Board.

(3) FULL-TIME INDEPENDENT SERVICE.—Each member of the Board shall serve on a full-time basis, and may not, concurrent with service on the Board, be employed by any other person or engage in any other professional or business activity. No member of the Board may share in any of the profits of, or receive payments from, a public accounting firm (or any other person, as determined by rule of the Commission), other than fixed continuing payments, subject to such conditions as the Commission may impose, under standard arrangements for the retirement of members of public accounting firms.

(4) APPOINTMENT OF BOARD MEMBERS.—

(A) INITIAL BOARD.—Not later than 90 days after the date of enactment of this Act, the Commission, after consultation with the Chairman of the Board of Governors

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of the Federal Reserve System and the Secretary of the Treasury, shall appoint the chairperson and other initial members of the Board, and shall designate a term of service for each.

(B) VACANCIES.—A vacancy on the Board shall not affect the powers of the Board, but shall be filled in the same manner as provided for appointments under this section.

(5) TERM OF SERVICE.—

(A) IN GENERAL.—The term of service of each Board member shall be 5 years, and until a successor is appointed, except that—

(i) the terms of office of the initial Board members (other than the chairperson) shall expire in annual increments, 1 on each of the first 4 anniversaries of the initial date of appointment; and

(ii) any Board member appointed to fill a vacancy occurring before the expiration of the term for which the predecessor was appointed shall be appointed only for the remainder of that term.

(B) TERM LIMITATION.—No person may serve as a member of the Board, or as chairperson of the Board, for more than 2 terms, whether or not such terms of service are consecutive.

(6) REMOVAL FROM OFFICE.—A member of the Board may be removed by the Commission from office, in accordance with section 107(d)(3), for good cause shown before the expiration of the term of that member.

(f) POWERS OF THE BOARD.—In addition to any authority granted to the Board otherwise in this Act, the Board shall have the power, subject to section 107—

(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel, with the approval of the Commission, in any Federal, State, or other court;

(2) to conduct its operations and maintain offices, and to exercise all other rights and powers authorized by this Act, in any State, without regard to any qualification, licensing, or other provision of law in effect in such State (or a political subdivision thereof);

(3) to lease, purchase, accept gifts or donations of or otherwise acquire, improve, use, sell, exchange, or convey, all of or an interest in any property, wherever situated;

(4) to appoint such employees, accountants, attorneys, and other agents as may be necessary or appropriate, and to determine their qualifications, define their duties, and fix their salaries or other compensation (at a level that is comparable to private sector self-regulatory, accounting, technical, supervisory, or other staff or management positions);

(5) to allocate, assess, and collect accounting support fees established pursuant to section 109, for the Board, and other fees and charges imposed under this title; and

(6) to enter into contracts, execute instruments, incur liabilities, and do any and all other acts and things necessary, appropriate, or incidental to the conduct of its operations and the exercise of its obligations, rights, and powers imposed or granted by this title.

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(g) RULES OF THE BOARD.—The rules of the Board shall, subject to the approval of the Commission—

(1) provide for the operation and administration of the Board, the exercise of its authority, and the performance of its responsibilities under this Act;

(2) permit, as the Board determines necessary or appropriate, delegation by the Board of any of its functions to an individual member or employee of the Board, or to a division of the Board, including functions with respect to hearing, determining, ordering, certifying, reporting, or otherwise acting as to any matter, except that—

(A) the Board shall retain a discretionary right to review any action pursuant to any such delegated function, upon its own motion;

(B) a person shall be entitled to a review by the Board with respect to any matter so delegated, and the decision of the Board upon such review shall be deemed to be the action of the Board for all purposes (including appeal or review thereof); and

(C) if the right to exercise a review described in subparagraph (A) is declined, or if no such review is sought within the time stated in the rules of the Board, then the action taken by the holder of such delegation shall for all purposes, including appeal or review thereof, be deemed to be the action of the Board;

(3) establish ethics rules and standards of conduct for Board members and staff, including a bar on practice before the Board (and the Commission, with respect to Board-related matters) of 1 year for former members of the Board, and appropriate periods (not to exceed 1 year) for former staff of the Board; and

(4) provide as otherwise required by this Act.

(h) ANNUAL REPORT TO THE COMMISSION.—The Board shall submit an annual report (including its audited financial statements) to the Commission, and the Commission shall transmit a copy of that report to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, not later than 30 days after the date of receipt of that report by the Commission.

SEC. 102. REGISTRATION WITH THE BOARD.

(a) MANDATORY REGISTRATION.—Beginning 180 days after the date of the determination of the Commission under section 101(d), it shall be unlawful for any person that is not a registered public accounting firm to prepare or issue, or to participate in the preparation or issuance of, any audit report with respect to any issuer.

(b) APPLICATIONS FOR REGISTRATION.—

(1) FORM OF APPLICATION.—A public accounting firm shall use such form as the Board may prescribe, by rule, to apply for registration under this section.

(2) CONTENTS OF APPLICATIONS.—Each public accounting firm shall submit, as part of its application for registration, in such detail as the Board shall specify—

(A) the names of all issuers for which the firm prepared or issued audit reports during the immediately preceding calendar year, and for which the firm expects to prepare or issue audit reports during the current calendar year;

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(B) the annual fees received by the firm from each such issuer for audit services, other accounting services, and non-audit services, respectively;

(C) such other current financial information for the most recently completed fiscal year of the firm as the Board may reasonably request;

(D) a statement of the quality control policies of the firm for its accounting and auditing practices;

(E) a list of all accountants associated with the firm who participate in or contribute to the preparation of audit reports, stating the license or certification number of each such person, as well as the State license numbers of the firm itself;

(F) information relating to criminal, civil, or administrative actions or disciplinary proceedings pending against the firm or any associated person of the firm in connection with any audit report;

(G) copies of any periodic or annual disclosure filed by an issuer with the Commission during the immediately preceding calendar year which discloses accounting disagreements between such issuer and the firm in connection with an audit report furnished or prepared by the firm for such issuer; and

(H) such other information as the rules of the Board or the Commission shall specify as necessary or appropriate in the public interest or for the protection of investors.

(3) CONSENTS.—Each application for registration under this subsection shall include—

(A) a consent executed by the public accounting firm to cooperation in and compliance with any request for testimony or the production of documents made by the Board in the furtherance of its authority and responsibilities under this title (and an agreement to secure and enforce similar consents from each of the associated persons of the public accounting firm as a condition of their continued employment by or other association with such firm); and

(B) a statement that such firm understands and agrees that cooperation and compliance, as described in the consent required by subparagraph (A), and the securing and enforcement of such consents from its associated persons, in accordance with the rules of the Board, shall be a condition to the continuing effectiveness of the registration of the firm with the Board.

(c) ACTION ON APPLICATIONS.—

(1) TIMING.—The Board shall approve a completed application for registration not later than 45 days after the date of receipt of the application, in accordance with the rules of the Board, unless the Board, prior to such date, issues a written notice of disapproval to, or requests more information from, the prospective registrant.

(2) TREATMENT.—A written notice of disapproval of a completed application under paragraph (1) for registration shall be treated as a disciplinary sanction for purposes of sections 105(d) and 107(c).

(d) PERIODIC REPORTS.—Each registered public accounting firm shall submit an annual report to the Board, and may be required

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to report more frequently, as necessary to update the information contained in its application for registration under this section, and to provide to the Board such additional information as the Board or the Commission may specify, in accordance with subsection (b)(2).

(e) PUBLIC AVAILABILITY.—Registration applications and annual reports required by this subsection, or such portions of such applications or reports as may be designated under rules of the Board, shall be made available for public inspection, subject to rules of the Board or the Commission, and to applicable laws relating to the confidentiality of proprietary, personal, or other information contained in such applications or reports, provided that, in all events, the Board shall protect from public disclosure information reasonably identified by the subject accounting firm as proprietary information.

(f) REGISTRATION AND ANNUAL FEES.—The Board shall assess and collect a registration fee and an annual fee from each registered public accounting firm, in amounts that are sufficient to recover the costs of processing and reviewing applications and annual reports.

SEC. 103. AUDITING, QUALITY CONTROL, AND INDEPENDENCE STANDARDS AND RULES.

(a) AUDITING, QUALITY CONTROL, AND ETHICS STANDARDS.—

(1) IN GENERAL.—The Board shall, by rule, establish, including, to the extent it determines appropriate, through adoption of standards proposed by 1 or more professional groups of accountants designated pursuant to paragraph (3)(A) or advisory groups convened pursuant to paragraph (4), and amend or otherwise modify or alter, such auditing and related attestation standards, such quality control standards, and such ethics standards to be used by registered public accounting firms in the preparation and issuance of audit reports, as required by this Act or the rules of the Commission, or as may be necessary or appropriate in the public interest or for the protection of investors.

(2) RULE REQUIREMENTS.—In carrying out paragraph (1), the Board—

(A) shall include in the auditing standards that it adopts, requirements that each registered public accounting firm shall—

(i) prepare, and maintain for a period of not less than 7 years, audit work papers, and other information related to any audit report, in sufficient detail to support the conclusions reached in such report;

(ii) provide a concurring or second partner review and approval of such audit report (and other related information), and concurring approval in its issuance, by a qualified person (as prescribed by the Board) associated with the public accounting firm, other than the person in charge of the audit, or by an independent reviewer (as prescribed by the Board); and

(iii) describe in each audit report the scope of the auditor's testing of the internal control structure and procedures of the issuer, required by section 404(b), and present (in such report or in a separate report)—

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(I) the findings of the auditor from such testing;

(II) an evaluation of whether such internal control structure and procedures—

(aa) include maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the issuer;

(bb) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the issuer are being made only in accordance with authorizations of management and directors of the issuer; and

(III) a description, at a minimum, of material weaknesses in such internal controls, and of any material noncompliance found on the basis of such testing.

(B) shall include, in the quality control standards that it adopts with respect to the issuance of audit reports, requirements for every registered public accounting firm relating to—

(i) monitoring of professional ethics and independence from issuers on behalf of which the firm issues audit reports;

(ii) consultation within such firm on accounting and auditing questions;

(iii) supervision of audit work;

(iv) hiring, professional development, and advancement of personnel;

(v) the acceptance and continuation of engagements;

(vi) internal inspection; and

(vii) such other requirements as the Board may prescribe, subject to subsection (a)(1).

(3) AUTHORITY TO ADOPT OTHER STANDARDS.—

(A) IN GENERAL.—In carrying out this subsection, the Board—

(i) may adopt as its rules, subject to the terms of section 107, any portion of any statement of auditing standards or other professional standards that the Board determines satisfy the requirements of paragraph (1), and that were proposed by 1 or more professional groups of accountants that shall be designated or recognized by the Board, by rule, for such purpose, pursuant to this paragraph or 1 or more advisory groups convened pursuant to paragraph (4); and

(ii) notwithstanding clause (i), shall retain full authority to modify, supplement, revise, or subsequently amend, modify, or repeal, in whole or in part, any portion of any statement described in clause (i).

(B) INITIAL AND TRANSITIONAL STANDARDS.—The Board shall adopt standards described in subparagraph (A)(i) as initial or transitional standards, to the extent the Board determines necessary, prior to a determination of the

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Commission under section 101(d), and such standards shall be separately approved by the Commission at the time of that determination, without regard to the procedures required by section 107 that otherwise would apply to the approval of rules of the Board.

(4) **ADVISORY GROUPS.**—The Board shall convene, or authorize its staff to convene, such expert advisory groups as may be appropriate, which may include practicing accountants and other experts, as well as representatives of other interested groups, subject to such rules as the Board may prescribe to prevent conflicts of interest, to make recommendations concerning the content (including proposed drafts) of auditing, quality control, ethics, independence, or other standards required to be established under this section.

(b) **INDEPENDENCE STANDARDS AND RULES.**—The Board shall establish such rules as may be necessary or appropriate in the public interest or for the protection of investors, to implement, or as authorized under, title II of this Act.

(c) **COOPERATION WITH DESIGNATED PROFESSIONAL GROUPS OF ACCOUNTANTS AND ADVISORY GROUPS.**—

(1) **IN GENERAL.**—The Board shall cooperate on an ongoing basis with professional groups of accountants designated under subsection (a)(3)(A) and advisory groups convened under subsection (a)(4) in the examination of the need for changes in any standards subject to its authority under subsection (a), recommend issues for inclusion on the agendas of such designated professional groups of accountants or advisory groups, and take such other steps as it deems appropriate to increase the effectiveness of the standard setting process.

(2) **BOARD RESPONSES.**—The Board shall respond in a timely fashion to requests from designated professional groups of accountants and advisory groups referred to in paragraph (1) for any changes in standards over which the Board has authority.

(d) **EVALUATION OF STANDARD SETTING PROCESS.**—The Board shall include in the annual report required by section 101(h) the results of its standard setting responsibilities during the period to which the report relates, including a discussion of the work of the Board with any designated professional groups of accountants and advisory groups described in paragraphs (3)(A) and (4) of subsection (a), and its pending issues agenda for future standard setting projects.

SEC. 104. INSPECTIONS OF REGISTERED PUBLIC ACCOUNTING FIRMS.

(a) **IN GENERAL.**—The Board shall conduct a continuing program of inspections to assess the degree of compliance of each registered public accounting firm and associated persons of that firm with this Act, the rules of the Board, the rules of the Commission, or professional standards, in connection with its performance of audits, issuance of audit reports, and related matters involving issuers.

(b) **INSPECTION FREQUENCY.**—

(1) **IN GENERAL.**—Subject to paragraph (2), inspections required by this section shall be conducted—

(A) annually with respect to each registered public accounting firm that regularly provides audit reports for more than 100 issuers; and

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(B) not less frequently than once every 3 years with respect to each registered public accounting firm that regularly provides audit reports for 100 or fewer issuers.

(2) ADJUSTMENTS TO SCHEDULES.—The Board may, by rule, adjust the inspection schedules set under paragraph (1) if the Board finds that different inspection schedules are consistent with the purposes of this Act, the public interest, and the protection of investors. The Board may conduct special inspections at the request of the Commission or upon its own motion.

(c) PROCEDURES.—The Board shall, in each inspection under this section, and in accordance with its rules for such inspections—

(1) identify any act or practice or omission to act by the registered public accounting firm, or by any associated person thereof, revealed by such inspection that may be in violation of this Act, the rules of the Board, the rules of the Commission, the firm's own quality control policies, or professional standards;

(2) report any such act, practice, or omission, if appropriate, to the Commission and each appropriate State regulatory authority; and

(3) begin a formal investigation or take disciplinary action, if appropriate, with respect to any such violation, in accordance with this Act and the rules of the Board.

(d) CONDUCT OF INSPECTIONS.—In conducting an inspection of a registered public accounting firm under this section, the Board shall—

(1) inspect and review selected audit and review engagements of the firm (which may include audit engagements that are the subject of ongoing litigation or other controversy between the firm and 1 or more third parties), performed at various offices and by various associated persons of the firm, as selected by the Board;

(2) evaluate the sufficiency of the quality control system of the firm, and the manner of the documentation and communication of that system by the firm; and

(3) perform such other testing of the audit, supervisory, and quality control procedures of the firm as are necessary or appropriate in light of the purpose of the inspection and the responsibilities of the Board.

(e) RECORD RETENTION.—The rules of the Board may require the retention by registered public accounting firms for inspection purposes of records whose retention is not otherwise required by section 103 or the rules issued thereunder.

(f) PROCEDURES FOR REVIEW.—The rules of the Board shall provide a procedure for the review of and response to a draft inspection report by the registered public accounting firm under inspection. The Board shall take such action with respect to such response as it considers appropriate (including revising the draft report or continuing or supplementing its inspection activities before issuing a final report), but the text of any such response, appropriately redacted to protect information reasonably identified by the accounting firm as confidential, shall be attached to and made part of the inspection report.

(g) REPORT.—A written report of the findings of the Board for each inspection under this section, subject to subsection (h), shall be—

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(1) transmitted, in appropriate detail, to the Commission and each appropriate State regulatory authority, accompanied by any letter or comments by the Board or the inspector, and any letter of response from the registered public accounting firm; and

(2) made available in appropriate detail to the public (subject to section 105(b)(5)(A), and to the protection of such confidential and proprietary information as the Board may determine to be appropriate, or as may be required by law), except that no portions of the inspection report that deal with criticisms of or potential defects in the quality control systems of the firm under inspection shall be made public if those criticisms or defects are addressed by the firm, to the satisfaction of the Board, not later than 12 months after the date of the inspection report.

(h) INTERIM COMMISSION REVIEW.—

(1) REVIEWABLE MATTERS.—A registered public accounting firm may seek review by the Commission, pursuant to such rules as the Commission shall promulgate, if the firm—

(A) has provided the Board with a response, pursuant to rules issued by the Board under subsection (f), to the substance of particular items in a draft inspection report, and disagrees with the assessments contained in any final report prepared by the Board following such response; or

(B) disagrees with the determination of the Board that criticisms or defects identified in an inspection report have not been addressed to the satisfaction of the Board within 12 months of the date of the inspection report, for purposes of subsection (g)(2).

(2) TREATMENT OF REVIEW.—Any decision of the Commission with respect to a review under paragraph (1) shall not be reviewable under section 25 of the Securities Exchange Act of 1934 (15 U.S.C. 78y), or deemed to be “final agency action” for purposes of section 704 of title 5, United States Code.

(3) TIMING.—Review under paragraph (1) may be sought during the 30-day period following the date of the event giving rise to the review under subparagraph (A) or (B) of paragraph (1).

SEC. 105. INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS.

(a) IN GENERAL.—The Board shall establish, by rule, subject to the requirements of this section, fair procedures for the investigation and disciplining of registered public accounting firms and associated persons of such firms.

(b) INVESTIGATIONS.—

(1) AUTHORITY.—In accordance with the rules of the Board, the Board may conduct an investigation of any act or practice, or omission to act, by a registered public accounting firm, any associated person of such firm, or both, that may violate any provision of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under this Act, or professional standards, regardless of how the act, practice, or omission is brought to the attention of the Board.

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(2) TESTIMONY AND DOCUMENT PRODUCTION.—In addition to such other actions as the Board determines to be necessary or appropriate, the rules of the Board may—

(A) require the testimony of the firm or of any person associated with a registered public accounting firm, with respect to any matter that the Board considers relevant or material to an investigation;

(B) require the production of audit work papers and any other document or information in the possession of a registered public accounting firm or any associated person thereof, wherever domiciled, that the Board considers relevant or material to the investigation, and may inspect the books and records of such firm or associated person to verify the accuracy of any documents or information supplied;

(C) request the testimony of, and production of any document in the possession of, any other person, including any client of a registered public accounting firm that the Board considers relevant or material to an investigation under this section, with appropriate notice, subject to the needs of the investigation, as permitted under the rules of the Board; and

(D) provide for procedures to seek issuance by the Commission, in a manner established by the Commission, of a subpoena to require the testimony of, and production of any document in the possession of, any person, including any client of a registered public accounting firm, that the Board considers relevant or material to an investigation under this section.

(3) NONCOOPERATION WITH INVESTIGATIONS.—

(A) IN GENERAL.—If a registered public accounting firm or any associated person thereof refuses to testify, produce documents, or otherwise cooperate with the Board in connection with an investigation under this section, the Board may—

(i) suspend or bar such person from being associated with a registered public accounting firm, or require the registered public accounting firm to end such association;

(ii) suspend or revoke the registration of the public accounting firm; and

(iii) invoke such other lesser sanctions as the Board considers appropriate, and as specified by rule of the Board.

(B) PROCEDURE.—Any action taken by the Board under this paragraph shall be subject to the terms of section 107(c).

(4) COORDINATION AND REFERRAL OF INVESTIGATIONS.—

(A) COORDINATION.—The Board shall notify the Commission of any pending Board investigation involving a potential violation of the securities laws, and thereafter coordinate its work with the work of the Commission's Division of Enforcement, as necessary to protect an ongoing Commission investigation.

(B) REFERRAL.—The Board may refer an investigation under this section—

(i) to the Commission;

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(ii) to any other Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)), in the case of an investigation that concerns an audit report for an institution that is subject to the jurisdiction of such regulator; and

(iii) at the direction of the Commission, to—

(I) the Attorney General of the United States;

(II) the attorney general of 1 or more States;

and

(III) the appropriate State regulatory authority.

(5) USE OF DOCUMENTS.—

(A) CONFIDENTIALITY.—Except as provided in subparagraph (B), all documents and information prepared or received by or specifically for the Board, and deliberations of the Board and its employees and agents, in connection with an inspection under section 104 or with an investigation under this section, shall be confidential and privileged as an evidentiary matter (and shall not be subject to civil discovery or other legal process) in any proceeding in any Federal or State court or administrative agency, and shall be exempt from disclosure, in the hands of an agency or establishment of the Federal Government, under the Freedom of Information Act (5 U.S.C. 552a), or otherwise, unless and until presented in connection with a public proceeding or released in accordance with subsection (c).

(B) AVAILABILITY TO GOVERNMENT AGENCIES.—Without the loss of its status as confidential and privileged in the hands of the Board, all information referred to in subparagraph (A) may—

(i) be made available to the Commission; and

(ii) in the discretion of the Board, when determined by the Board to be necessary to accomplish the purposes of this Act or to protect investors, be made available to—

(I) the Attorney General of the United States;

(II) the appropriate Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)), other than the Commission, with respect to an audit report for an institution subject to the jurisdiction of such regulator;

(III) State attorneys general in connection with any criminal investigation; and

(IV) any appropriate State regulatory authority,

each of which shall maintain such information as confidential and privileged.

(6) IMMUNITY.—Any employee of the Board engaged in carrying out an investigation under this Act shall be immune from any civil liability arising out of such investigation in the same manner and to the same extent as an employee of the Federal Government in similar circumstances.

(c) DISCIPLINARY PROCEDURES.—

(1) NOTIFICATION; RECORDKEEPING.—The rules of the Board shall provide that in any proceeding by the Board to determine

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whether a registered public accounting firm, or an associated person thereof, should be disciplined, the Board shall—

(A) bring specific charges with respect to the firm or associated person;

(B) notify such firm or associated person of, and provide to the firm or associated person an opportunity to defend against, such charges; and

(C) keep a record of the proceedings.

(2) PUBLIC HEARINGS.—Hearings under this section shall not be public, unless otherwise ordered by the Board for good cause shown, with the consent of the parties to such hearing.

(3) SUPPORTING STATEMENT.—A determination by the Board to impose a sanction under this subsection shall be supported by a statement setting forth—

(A) each act or practice in which the registered public accounting firm, or associated person, has engaged (or omitted to engage), or that forms a basis for all or a part of such sanction;

(B) the specific provision of this Act, the securities laws, the rules of the Board, or professional standards which the Board determines has been violated; and

(C) the sanction imposed, including a justification for that sanction.

(4) SANCTIONS.—If the Board finds, based on all of the facts and circumstances, that a registered public accounting firm or associated person thereof has engaged in any act or practice, or omitted to act, in violation of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission issued under this Act, or professional standards, the Board may impose such disciplinary or remedial sanctions as it determines appropriate, subject to applicable limitations under paragraph (5), including—

(A) temporary suspension or permanent revocation of registration under this title;

(B) temporary or permanent suspension or bar of a person from further association with any registered public accounting firm;

(C) temporary or permanent limitation on the activities, functions, or operations of such firm or person (other than in connection with required additional professional education or training);

(D) a civil money penalty for each such violation, in an amount equal to—

(i) not more than \$100,000 for a natural person or \$2,000,000 for any other person; and

(ii) in any case to which paragraph (5) applies, not more than \$750,000 for a natural person or \$15,000,000 for any other person;

(E) censure;

(F) required additional professional education or training; or

(G) any other appropriate sanction provided for in the rules of the Board.

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(5) INTENTIONAL OR OTHER KNOWING CONDUCT.—The sanctions and penalties described in subparagraphs (A) through (C) and (D)(ii) of paragraph (4) shall only apply to—

(A) intentional or knowing conduct, including reckless conduct, that results in violation of the applicable statutory, regulatory, or professional standard; or

(B) repeated instances of negligent conduct, each resulting in a violation of the applicable statutory, regulatory, or professional standard.

(6) FAILURE TO SUPERVISE.—

(A) IN GENERAL.—The Board may impose sanctions under this section on a registered accounting firm or upon the supervisory personnel of such firm, if the Board finds that—

(i) the firm has failed reasonably to supervise an associated person, either as required by the rules of the Board relating to auditing or quality control standards, or otherwise, with a view to preventing violations of this Act, the rules of the Board, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including the rules of the Commission under this Act, or professional standards; and

(ii) such associated person commits a violation of this Act, or any of such rules, laws, or standards.

(B) RULE OF CONSTRUCTION.—No associated person of a registered public accounting firm shall be deemed to have failed reasonably to supervise any other person for purposes of subparagraph (A), if—

(i) there have been established in and for that firm procedures, and a system for applying such procedures, that comply with applicable rules of the Board and that would reasonably be expected to prevent and detect any such violation by such associated person; and

(ii) such person has reasonably discharged the duties and obligations incumbent upon that person by reason of such procedures and system, and had no reasonable cause to believe that such procedures and system were not being complied with.

(7) EFFECT OF SUSPENSION.—

(A) ASSOCIATION WITH A PUBLIC ACCOUNTING FIRM.—It shall be unlawful for any person that is suspended or barred from being associated with a registered public accounting firm under this subsection willfully to become or remain associated with any registered public accounting firm, or for any registered public accounting firm that knew, or, in the exercise of reasonable care should have known, of the suspension or bar, to permit such an association, without the consent of the Board or the Commission.

(B) ASSOCIATION WITH AN ISSUER.—It shall be unlawful for any person that is suspended or barred from being associated with an issuer under this subsection willfully to become or remain associated with any issuer in an accountancy or a financial management capacity, and for any issuer that knew, or in the exercise of reasonable

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care should have known, of such suspension or bar, to permit such an association, without the consent of the Board or the Commission.

(d) REPORTING OF SANCTIONS.—

(1) RECIPIENTS.—If the Board imposes a disciplinary sanction, in accordance with this section, the Board shall report the sanction to—

- (A) the Commission;
- (B) any appropriate State regulatory authority or any foreign accountancy licensing board with which such firm or person is licensed or certified; and
- (C) the public (once any stay on the imposition of such sanction has been lifted).

(2) CONTENTS.—The information reported under paragraph (1) shall include—

- (A) the name of the sanctioned person;
- (B) a description of the sanction and the basis for its imposition; and
- (C) such other information as the Board deems appropriate.

(e) STAY OF SANCTIONS.—

(1) IN GENERAL.—Application to the Commission for review, or the institution by the Commission of review, of any disciplinary action of the Board shall operate as a stay of any such disciplinary action, unless and until the Commission orders (summarily or after notice and opportunity for hearing on the question of a stay, which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that no such stay shall continue to operate.

(2) EXPEDITED PROCEDURES.—The Commission shall establish for appropriate cases an expedited procedure for consideration and determination of the question of the duration of a stay pending review of any disciplinary action of the Board under this subsection.

SEC. 106. FOREIGN PUBLIC ACCOUNTING FIRMS.

(a) APPLICABILITY TO CERTAIN FOREIGN FIRMS.—

(1) IN GENERAL.—Any foreign public accounting firm that prepares or furnishes an audit report with respect to any issuer, shall be subject to this Act and the rules of the Board and the Commission issued under this Act, in the same manner and to the same extent as a public accounting firm that is organized and operates under the laws of the United States or any State, except that registration pursuant to section 102 shall not by itself provide a basis for subjecting such a foreign public accounting firm to the jurisdiction of the Federal or State courts, other than with respect to controversies between such firms and the Board.

(2) BOARD AUTHORITY.—The Board may, by rule, determine that a foreign public accounting firm (or a class of such firms) that does not issue audit reports nonetheless plays such a substantial role in the preparation and furnishing of such reports for particular issuers, that it is necessary or appropriate, in light of the purposes of this Act and in the public interest or for the protection of investors, that such firm (or class of firms) should be treated as a public accounting firm

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(or firms) for purposes of registration under, and oversight by the Board in accordance with, this title.

(b) PRODUCTION OF AUDIT WORKPAPERS.—

(1) CONSENT BY FOREIGN FIRMS.—If a foreign public accounting firm issues an opinion or otherwise performs material services upon which a registered public accounting firm relies in issuing all or part of any audit report or any opinion contained in an audit report, that foreign public accounting firm shall be deemed to have consented—

(A) to produce its audit workpapers for the Board or the Commission in connection with any investigation by either body with respect to that audit report; and

(B) to be subject to the jurisdiction of the courts of the United States for purposes of enforcement of any request for production of such workpapers.

(2) CONSENT BY DOMESTIC FIRMS.—A registered public accounting firm that relies upon the opinion of a foreign public accounting firm, as described in paragraph (1), shall be deemed—

(A) to have consented to supplying the audit workpapers of that foreign public accounting firm in response to a request for production by the Board or the Commission; and

(B) to have secured the agreement of that foreign public accounting firm to such production, as a condition of its reliance on the opinion of that foreign public accounting firm.

(c) EXEMPTION AUTHORITY.—The Commission, and the Board, subject to the approval of the Commission, may, by rule, regulation, or order, and as the Commission (or Board) determines necessary or appropriate in the public interest or for the protection of investors, either unconditionally or upon specified terms and conditions exempt any foreign public accounting firm, or any class of such firms, from any provision of this Act or the rules of the Board or the Commission issued under this Act.

(d) DEFINITION.—In this section, the term “foreign public accounting firm” means a public accounting firm that is organized and operates under the laws of a foreign government or political subdivision thereof.

SEC. 107. COMMISSION OVERSIGHT OF THE BOARD.

(a) GENERAL OVERSIGHT RESPONSIBILITY.—The Commission shall have oversight and enforcement authority over the Board, as provided in this Act. The provisions of section 17(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(a)(1)), and of section 17(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(b)(1)) shall apply to the Board as fully as if the Board were a “registered securities association” for purposes of those sections 17(a)(1) and 17(b)(1).

(b) RULES OF THE BOARD.—

(1) DEFINITION.—In this section, the term “proposed rule” means any proposed rule of the Board, and any modification of any such rule.

(2) PRIOR APPROVAL REQUIRED.—No rule of the Board shall become effective without prior approval of the Commission in accordance with this section, other than as provided in section 103(a)(3)(B) with respect to initial or transitional standards.

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(3) APPROVAL CRITERIA.—The Commission shall approve a proposed rule, if it finds that the rule is consistent with the requirements of this Act and the securities laws, or is necessary or appropriate in the public interest or for the protection of investors.

(4) PROPOSED RULE PROCEDURES.—The provisions of paragraphs (1) through (3) of section 19(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)) shall govern the proposed rules of the Board, as fully as if the Board were a “registered securities association” for purposes of that section 19(b), except that, for purposes of this paragraph—

(A) the phrase “consistent with the requirements of this title and the rules and regulations thereunder applicable to such organization” in section 19(b)(2) of that Act shall be deemed to read “consistent with the requirements of title I of the Sarbanes-Oxley Act of 2002, and the rules and regulations issued thereunder applicable to such organization, or as necessary or appropriate in the public interest or for the protection of investors”; and

(B) the phrase “otherwise in furtherance of the purposes of this title” in section 19(b)(3)(C) of that Act shall be deemed to read “otherwise in furtherance of the purposes of title I of the Sarbanes-Oxley Act of 2002”.

(5) COMMISSION AUTHORITY TO AMEND RULES OF THE BOARD.—The provisions of section 19(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(c)) shall govern the abrogation, deletion, or addition to portions of the rules of the Board by the Commission as fully as if the Board were a “registered securities association” for purposes of that section 19(c), except that the phrase “to conform its rules to the requirements of this title and the rules and regulations thereunder applicable to such organization, or otherwise in furtherance of the purposes of this title” in section 19(c) of that Act shall, for purposes of this paragraph, be deemed to read “to assure the fair administration of the Public Company Accounting Oversight Board, conform the rules promulgated by that Board to the requirements of title I of the Sarbanes-Oxley Act of 2002, or otherwise further the purposes of that Act, the securities laws, and the rules and regulations thereunder applicable to that Board”.

(c) COMMISSION REVIEW OF DISCIPLINARY ACTION TAKEN BY THE BOARD.—

(1) NOTICE OF SANCTION.—The Board shall promptly file notice with the Commission of any final sanction on any registered public accounting firm or on any associated person thereof, in such form and containing such information as the Commission, by rule, may prescribe.

(2) REVIEW OF SANCTIONS.—The provisions of sections 19(d)(2) and 19(e)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78s (d)(2) and (e)(1)) shall govern the review by the Commission of final disciplinary sanctions imposed by the Board (including sanctions imposed under section 105(b)(3) of this Act for noncooperation in an investigation of the Board), as fully as if the Board were a self-regulatory organization and the Commission were the appropriate regulatory agency for such organization for purposes of those sections 19(d)(2) and 19(e)(1), except that, for purposes of this paragraph—

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(A) section 105(e) of this Act (rather than that section 19(d)(2)) shall govern the extent to which application for, or institution by the Commission on its own motion of, review of any disciplinary action of the Board operates as a stay of such action;

(B) references in that section 19(e)(1) to "members" of such an organization shall be deemed to be references to registered public accounting firms;

(C) the phrase "consistent with the purposes of this title" in that section 19(e)(1) shall be deemed to read "consistent with the purposes of this title and title I of the Sarbanes-Oxley Act of 2002";

(D) references to rules of the Municipal Securities Rule-making Board in that section 19(e)(1) shall not apply; and

(E) the reference to section 19(e)(2) of the Securities Exchange Act of 1934 shall refer instead to section 107(c)(3) of this Act.

(3) COMMISSION MODIFICATION AUTHORITY.—The Commission may enhance, modify, cancel, reduce, or require the remission of a sanction imposed by the Board upon a registered public accounting firm or associated person thereof, if the Commission, having due regard for the public interest and the protection of investors, finds, after a proceeding in accordance with this subsection, that the sanction—

(A) is not necessary or appropriate in furtherance of this Act or the securities laws; or

(B) is excessive, oppressive, inadequate, or otherwise not appropriate to the finding or the basis on which the sanction was imposed.

(d) CENSURE OF THE BOARD; OTHER SANCTIONS.—

(1) RESCISSION OF BOARD AUTHORITY.—The Commission, by rule, consistent with the public interest, the protection of investors, and the other purposes of this Act and the securities laws, may relieve the Board of any responsibility to enforce compliance with any provision of this Act, the securities laws, the rules of the Board, or professional standards.

(2) CENSURE OF THE BOARD; LIMITATIONS.—The Commission may, by order, as it determines necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act or the securities laws, censure or impose limitations upon the activities, functions, and operations of the Board, if the Commission finds, on the record, after notice and opportunity for a hearing, that the Board—

(A) has violated or is unable to comply with any provision of this Act, the rules of the Board, or the securities laws; or

(B) without reasonable justification or excuse, has failed to enforce compliance with any such provision or rule, or any professional standard by a registered public accounting firm or an associated person thereof.

(3) CENSURE OF BOARD MEMBERS; REMOVAL FROM OFFICE.—The Commission may, as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act or the securities laws, remove

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from office or censure any member of the Board, if the Commission finds, on the record, after notice and opportunity for a hearing, that such member—

(A) has willfully violated any provision of this Act, the rules of the Board, or the securities laws;

(B) has willfully abused the authority of that member; or

(C) without reasonable justification or excuse, has failed to enforce compliance with any such provision or rule, or any professional standard by any registered public accounting firm or any associated person thereof.

SEC. 108. ACCOUNTING STANDARDS.

(a) AMENDMENT TO SECURITIES ACT OF 1933.—Section 19 of the Securities Act of 1933 (15 U.S.C. 77s) is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting after subsection (a) the following:

“(b) RECOGNITION OF ACCOUNTING STANDARDS.—

“(1) IN GENERAL.—In carrying out its authority under subsection (a) and under section 13(b) of the Securities Exchange Act of 1934, the Commission may recognize, as ‘generally accepted’ for purposes of the securities laws, any accounting principles established by a standard setting body—

“(A) that—

“(i) is organized as a private entity;

“(ii) has, for administrative and operational purposes, a board of trustees (or equivalent body) serving in the public interest, the majority of whom are not, concurrent with their service on such board, and have not been during the 2-year period preceding such service, associated persons of any registered public accounting firm;

“(iii) is funded as provided in section 109 of the Sarbanes-Oxley Act of 2002;

“(iv) has adopted procedures to ensure prompt consideration, by majority vote of its members, of changes to accounting principles necessary to reflect emerging accounting issues and changing business practices; and

“(v) considers, in adopting accounting principles, the need to keep standards current in order to reflect changes in the business environment, the extent to which international convergence on high quality accounting standards is necessary or appropriate in the public interest and for the protection of investors; and

“(B) that the Commission determines has the capacity to assist the Commission in fulfilling the requirements of subsection (a) and section 13(b) of the Securities Exchange Act of 1934, because, at a minimum, the standard setting body is capable of improving the accuracy and effectiveness of financial reporting and the protection of investors under the securities laws.

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"(2) ANNUAL REPORT.—A standard setting body described in paragraph (1) shall submit an annual report to the Commission and the public, containing audited financial statements of that standard setting body."

(b) COMMISSION AUTHORITY.—The Commission shall promulgate such rules and regulations to carry out section 19(b) of the Securities Act of 1933, as added by this section, as it deems necessary or appropriate in the public interest or for the protection of investors.

(c) NO EFFECT ON COMMISSION POWERS.—Nothing in this Act, including this section and the amendment made by this section, shall be construed to impair or limit the authority of the Commission to establish accounting principles or standards for purposes of enforcement of the securities laws.

(d) STUDY AND REPORT ON ADOPTING PRINCIPLES-BASED ACCOUNTING.—

(1) STUDY.—

(A) IN GENERAL.—The Commission shall conduct a study on the adoption by the United States financial reporting system of a principles-based accounting system.

(B) STUDY TOPICS.—The study required by subparagraph (A) shall include an examination of—

(i) the extent to which principles-based accounting and financial reporting exists in the United States;

(ii) the length of time required for change from a rules-based to a principles-based financial reporting system;

(iii) the feasibility of and proposed methods by which a principles-based system may be implemented; and

(iv) a thorough economic analysis of the implementation of a principles-based system.

(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report on the results of the study required by paragraph (1) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

SEC. 109. FUNDING.

(a) IN GENERAL.—The Board, and the standard setting body designated pursuant to section 19(b) of the Securities Act of 1933, as amended by section 108, shall be funded as provided in this section.

(b) ANNUAL BUDGETS.—The Board and the standard setting body referred to in subsection (a) shall each establish a budget for each fiscal year, which shall be reviewed and approved according to their respective internal procedures not less than 1 month prior to the commencement of the fiscal year to which the budget pertains (or at the beginning of the Board's first fiscal year, which may be a short fiscal year). The budget of the Board shall be subject to approval by the Commission. The budget for the first fiscal year of the Board shall be prepared and approved promptly following the appointment of the initial five Board members, to permit action by the Board of the organizational tasks contemplated by section 101(d).

(c) SOURCES AND USES OF FUNDS.—

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(1) **RECOVERABLE BUDGET EXPENSES.**—The budget of the Board (reduced by any registration or annual fees received under section 102(e) for the year preceding the year for which the budget is being computed), and all of the budget of the standard setting body referred to in subsection (a), for each fiscal year of each of those 2 entities, shall be payable from annual accounting support fees, in accordance with subsections (d) and (e). Accounting support fees and other receipts of the Board and of such standard-setting body shall not be considered public monies of the United States.

(2) **FUNDS GENERATED FROM THE COLLECTION OF MONETARY PENALTIES.**—Subject to the availability in advance in an appropriations Act, and notwithstanding subsection (i), all funds collected by the Board as a result of the assessment of monetary penalties shall be used to fund a merit scholarship program for undergraduate and graduate students enrolled in accredited accounting degree programs, which program is to be administered by the Board or by an entity or agent identified by the Board.

(d) **ANNUAL ACCOUNTING SUPPORT FEE FOR THE BOARD.**—

(1) **ESTABLISHMENT OF FEE.**—The Board shall establish, with the approval of the Commission, a reasonable annual accounting support fee (or a formula for the computation thereof), as may be necessary or appropriate to establish and maintain the Board. Such fee may also cover costs incurred in the Board's first fiscal year (which may be a short fiscal year), or may be levied separately with respect to such short fiscal year.

(2) **ASSESSMENTS.**—The rules of the Board under paragraph (1) shall provide for the equitable allocation, assessment, and collection by the Board (or an agent appointed by the Board) of the fee established under paragraph (1), among issuers, in accordance with subsection (g), allowing for differentiation among classes of issuers, as appropriate.

(e) **ANNUAL ACCOUNTING SUPPORT FEE FOR STANDARD SETTING BODY.**—The annual accounting support fee for the standard setting body referred to in subsection (a)—

(1) shall be allocated in accordance with subsection (g), and assessed and collected against each issuer, on behalf of the standard setting body, by 1 or more appropriate designated collection agents, as may be necessary or appropriate to pay for the budget and provide for the expenses of that standard setting body, and to provide for an independent, stable source of funding for such body, subject to review by the Commission; and

(2) may differentiate among different classes of issuers.

(f) **LIMITATION ON FEE.**—The amount of fees collected under this section for a fiscal year on behalf of the Board or the standards setting body, as the case may be, shall not exceed the recoverable budget expenses of the Board or body, respectively (which may include operating, capital, and accrued items), referred to in subsection (c)(1).

(g) **ALLOCATION OF ACCOUNTING SUPPORT FEES AMONG ISSUERS.**—Any amount due from issuers (or a particular class of issuers) under this section to fund the budget of the Board or the standard setting body referred to in subsection (a) shall be allocated among and payable by each issuer (or each issuer in

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a particular class, as applicable) in an amount equal to the total of such amount, multiplied by a fraction—

(1) the numerator of which is the average monthly equity market capitalization of the issuer for the 12-month period immediately preceding the beginning of the fiscal year to which such budget relates; and

(2) the denominator of which is the average monthly equity market capitalization of all such issuers for such 12-month period.

(h) CONFORMING AMENDMENTS.—Section 13(b)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(b)(2)) is amended—

(1) in subparagraph (A), by striking “and” at the end; and

(2) in subparagraph (B), by striking the period at the end and inserting the following: “; and

“(C) notwithstanding any other provision of law, pay the allocable share of such issuer of a reasonable annual accounting support fee or fees, determined in accordance with section 109 of the Sarbanes-Oxley Act of 2002.”

(i) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to render either the Board, the standard setting body referred to in subsection (a), or both, subject to procedures in Congress to authorize or appropriate public funds, or to prevent such organization from utilizing additional sources of revenue for its activities, such as earnings from publication sales, provided that each additional source of revenue shall not jeopardize, in the judgment of the Commission, the actual and perceived independence of such organization.

(j) START-UP EXPENSES OF THE BOARD.—From the unexpended balances of the appropriations to the Commission for fiscal year 2003, the Secretary of the Treasury is authorized to advance to the Board not to exceed the amount necessary to cover the expenses of the Board during its first fiscal year (which may be a short fiscal year).

TITLE II—AUDITOR INDEPENDENCE

SEC. 201. SERVICES OUTSIDE THE SCOPE OF PRACTICE OF AUDITORS.

(a) PROHIBITED ACTIVITIES.—Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j-1) is amended by adding at the end the following:

“(g) PROHIBITED ACTIVITIES.—Except as provided in subsection (h), it shall be unlawful for a registered public accounting firm (and any associated person of that firm, to the extent determined appropriate by the Commission) that performs for any issuer any audit required by this title or the rules of the Commission under this title or, beginning 180 days after the date of commencement of the operations of the Public Company Accounting Oversight Board established under section 101 of the Sarbanes-Oxley Act of 2002 (in this section referred to as the ‘Board’), the rules of the Board, to provide to that issuer, contemporaneously with the audit, any non-audit service, including—

“(1) bookkeeping or other services related to the accounting records or financial statements of the audit client;

“(2) financial information systems design and implementation;

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"(3) appraisal or valuation services, fairness opinions, or contribution-in-kind reports;

"(4) actuarial services;

"(5) internal audit outsourcing services;

"(6) management functions or human resources;

"(7) broker or dealer, investment adviser, or investment banking services;

"(8) legal services and expert services unrelated to the audit; and

"(9) any other service that the Board determines, by regulation, is impermissible.

"(h) PREAPPROVAL REQUIRED FOR NON-AUDIT SERVICES.—A registered public accounting firm may engage in any non-audit service, including tax services, that is not described in any of paragraphs (1) through (9) of subsection (g) for an audit client, only if the activity is approved in advance by the audit committee of the issuer, in accordance with subsection (i)."

(b) EXEMPTION AUTHORITY.—The Board may, on a case by case basis, exempt any person, issuer, public accounting firm, or transaction from the prohibition on the provision of services under section 10A(g) of the Securities Exchange Act of 1934 (as added by this section), to the extent that such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors, and subject to review by the Commission in the same manner as for rules of the Board under section 107.

SEC. 202. PREAPPROVAL REQUIREMENTS.

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j-1), as amended by this Act, is amended by adding at the end the following:

"(i) PREAPPROVAL REQUIREMENTS.—

"(1) IN GENERAL.—

"(A) AUDIT COMMITTEE ACTION.—All auditing services (which may entail providing comfort letters in connection with securities underwritings or statutory audits required for insurance companies for purposes of State law) and non-audit services, other than as provided in subparagraph (B), provided to an issuer by the auditor of the issuer shall be preapproved by the audit committee of the issuer.

"(B) DE MINIMUS EXCEPTION.—The preapproval requirement under subparagraph (A) is waived with respect to the provision of non-audit services for an issuer, if—

"(i) the aggregate amount of all such non-audit services provided to the issuer constitutes not more than 5 percent of the total amount of revenues paid by the issuer to its auditor during the fiscal year in which the nonaudit services are provided;

"(ii) such services were not recognized by the issuer at the time of the engagement to be non-audit services; and

"(iii) such services are promptly brought to the attention of the audit committee of the issuer and approved prior to the completion of the audit by the audit committee or by 1 or more members of the audit committee who are members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.

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"(2) DISCLOSURE TO INVESTORS.—Approval by an audit committee of an issuer under this subsection of a non-audit service to be performed by the auditor of the issuer shall be disclosed to investors in periodic reports required by section 13(a).

"(3) DELEGATION AUTHORITY.—The audit committee of an issuer may delegate to 1 or more designated members of the audit committee who are independent directors of the board of directors, the authority to grant preapprovals required by this subsection. The decisions of any member to whom authority is delegated under this paragraph to preapprove an activity under this subsection shall be presented to the full audit committee at each of its scheduled meetings.

"(4) APPROVAL OF AUDIT SERVICES FOR OTHER PURPOSES.—In carrying out its duties under subsection (m)(2), if the audit committee of an issuer approves an audit service within the scope of the engagement of the auditor, such audit service shall be deemed to have been preapproved for purposes of this subsection."

SEC. 203. AUDIT PARTNER ROTATION.

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j-1), as amended by this Act, is amended by adding at the end the following:

"(j) AUDIT PARTNER ROTATION.—It shall be unlawful for a registered public accounting firm to provide audit services to an issuer if the lead (or coordinating) audit partner (having primary responsibility for the audit), or the audit partner responsible for reviewing the audit, has performed audit services for that issuer in each of the 5 previous fiscal years of that issuer."

SEC. 204. AUDITOR REPORTS TO AUDIT COMMITTEES.

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j-1), as amended by this Act, is amended by adding at the end the following:

"(k) REPORTS TO AUDIT COMMITTEES.—Each registered public accounting firm that performs for any issuer any audit required by this title shall timely report to the audit committee of the issuer—

"(1) all critical accounting policies and practices to be used;

"(2) all alternative treatments of financial information within generally accepted accounting principles that have been discussed with management officials of the issuer, ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the registered public accounting firm; and

"(3) other material written communications between the registered public accounting firm and the management of the issuer, such as any management letter or schedule of unadjusted differences."

SEC. 205. CONFORMING AMENDMENTS.

(a) DEFINITIONS.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end the following:

"(58) AUDIT COMMITTEE.—The term 'audit committee' means—

"(A) a committee (or equivalent body) established by and amongst the board of directors of an issuer for the

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purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; and

“(B) if no such committee exists with respect to an issuer, the entire board of directors of the issuer.

“(59) REGISTERED PUBLIC ACCOUNTING FIRM.—The term ‘registered public accounting firm’ has the same meaning as in section 2 of the Sarbanes-Oxley Act of 2002.”

(b) AUDITOR REQUIREMENTS.—Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j-1) is amended—

(1) by striking “an independent public accountant” each place that term appears and inserting “a registered public accounting firm”;

(2) by striking “the independent public accountant” each place that term appears and inserting “the registered public accounting firm”;

(3) in subsection (c), by striking “No independent public accountant” and inserting “No registered public accounting firm”; and

(4) in subsection (b)—

(A) by striking “the accountant” each place that term appears and inserting “the firm”;

(B) by striking “such accountant” each place that term appears and inserting “such firm”; and

(C) in paragraph (4), by striking “the accountant’s report” and inserting “the report of the firm”.

(c) OTHER REFERENCES.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(1) in section 12(b)(1) (15 U.S.C. 78l(b)(1)), by striking “independent public accountants” each place that term appears and inserting “a registered public accounting firm”; and

(2) in subsections (e) and (i) of section 17 (15 U.S.C. 78q), by striking “an independent public accountant” each place that term appears and inserting “a registered public accounting firm”.

(d) CONFORMING AMENDMENT.—Section 10A(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78k(f)) is amended—

(1) by striking “DEFINITION” and inserting “DEFINITIONS”; and

(2) by adding at the end the following: “As used in this section, the term ‘issuer’ means an issuer (as defined in section 3), the securities of which are registered under section 12, or that is required to file reports pursuant to section 15(d), or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a et seq.), and that it has not withdrawn.”

SEC. 206. CONFLICTS OF INTEREST.

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78j-1), as amended by this Act, is amended by adding at the end the following:

“(1) CONFLICTS OF INTEREST.—It shall be unlawful for a registered public accounting firm to perform for an issuer any audit service required by this title, if a chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for the issuer, was employed by that registered independent public accounting firm and participated in

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any capacity in the audit of that issuer during the 1-year period preceding the date of the initiation of the audit.”.

SEC. 207. STUDY OF MANDATORY ROTATION OF REGISTERED PUBLIC ACCOUNTING FIRMS.

(a) **STUDY AND REVIEW REQUIRED.**—The Comptroller General of the United States shall conduct a study and review of the potential effects of requiring the mandatory rotation of registered public accounting firms.

(b) **REPORT REQUIRED.**—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the results of the study and review required by this section.

(c) **DEFINITION.**—For purposes of this section, the term “mandatory rotation” refers to the imposition of a limit on the period of years in which a particular registered public accounting firm may be the auditor of record for a particular issuer.

SEC. 208. COMMISSION AUTHORITY.

(a) **COMMISSION REGULATIONS.**—Not later than 180 days after the date of enactment of this Act, the Commission shall issue final regulations to carry out each of subsections (g) through (l) of section 10A of the Securities Exchange Act of 1934, as added by this title.

(b) **AUDITOR INDEPENDENCE.**—It shall be unlawful for any registered public accounting firm (or an associated person thereof, as applicable) to prepare or issue any audit report with respect to any issuer, if the firm or associated person engages in any activity with respect to that issuer prohibited by any of subsections (g) through (l) of section 10A of the Securities Exchange Act of 1934, as added by this title, or any rule or regulation of the Commission or of the Board issued thereunder.

SEC. 209. CONSIDERATIONS BY APPROPRIATE STATE REGULATORY AUTHORITIES.

In supervising nonregistered public accounting firms and their associated persons, appropriate State regulatory authorities should make an independent determination of the proper standards applicable, particularly taking into consideration the size and nature of the business of the accounting firms they supervise and the size and nature of the business of the clients of those firms. The standards applied by the Board under this Act should not be presumed to be applicable for purposes of this section for small and medium sized nonregistered public accounting firms.

TITLE III—CORPORATE RESPONSIBILITY

SEC. 301. PUBLIC COMPANY AUDIT COMMITTEES.

Section 10A of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

“(m) **STANDARDS RELATING TO AUDIT COMMITTEES.**—

“(1) **COMMISSION RULES.**—

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"(A) IN GENERAL.—Effective not later than 270 days after the date of enactment of this subsection, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the requirements of any portion of paragraphs (2) through (6).

"(B) OPPORTUNITY TO CURE DEFECTS.—The rules of the Commission under subparagraph (A) shall provide for appropriate procedures for an issuer to have an opportunity to cure any defects that would be the basis for a prohibition under subparagraph (A), before the imposition of such prohibition.

"(2) RESPONSIBILITIES RELATING TO REGISTERED PUBLIC ACCOUNTING FIRMS.—The audit committee of each issuer, in its capacity as a committee of the board of directors, shall be directly responsible for the appointment, compensation, and oversight of the work of any registered public accounting firm employed by that issuer (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or related work, and each such registered public accounting firm shall report directly to the audit committee.

"(3) INDEPENDENCE.—

"(A) IN GENERAL.—Each member of the audit committee of the issuer shall be a member of the board of directors of the issuer, and shall otherwise be independent.

"(B) CRITERIA.—In order to be considered to be independent for purposes of this paragraph, a member of an audit committee of an issuer may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee—

"(i) accept any consulting, advisory, or other compensatory fee from the issuer; or

"(ii) be an affiliated person of the issuer or any subsidiary thereof.

"(C) EXEMPTION AUTHORITY.—The Commission may exempt from the requirements of subparagraph (B) a particular relationship with respect to audit committee members, as the Commission determines appropriate in light of the circumstances.

"(4) COMPLAINTS.—Each audit committee shall establish procedures for—

"(A) the receipt, retention, and treatment of complaints received by the issuer regarding accounting, internal accounting controls, or auditing matters; and

"(B) the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters.

"(5) AUTHORITY TO ENGAGE ADVISERS.—Each audit committee shall have the authority to engage independent counsel and other advisers, as it determines necessary to carry out its duties.

"(6) FUNDING.—Each issuer shall provide for appropriate funding, as determined by the audit committee, in its capacity as a committee of the board of directors, for payment of compensation—

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“(A) to the registered public accounting firm employed by the issuer for the purpose of rendering or issuing an audit report; and

“(B) to any advisers employed by the audit committee under paragraph (5).”.

SEC. 302. CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS.

(a) REGULATIONS REQUIRED.—The Commission shall, by rule, require, for each company filing periodic reports under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)), that the principal executive officer or officers and the principal financial officer or officers, or persons performing similar functions, certify in each annual or quarterly report filed or submitted under either such section of such Act that—

(1) the signing officer has reviewed the report;

(2) based on the officer's knowledge, the report does not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading;

(3) based on such officer's knowledge, the financial statements, and other financial information included in the report, fairly present in all material respects the financial condition and results of operations of the issuer as of, and for, the periods presented in the report;

(4) the signing officers—

(A) are responsible for establishing and maintaining internal controls;

(B) have designed such internal controls to ensure that material information relating to the issuer and its consolidated subsidiaries is made known to such officers by others within those entities, particularly during the period in which the periodic reports are being prepared;

(C) have evaluated the effectiveness of the issuer's internal controls as of a date within 90 days prior to the report; and

(D) have presented in the report their conclusions about the effectiveness of their internal controls based on their evaluation as of that date;

(5) the signing officers have disclosed to the issuer's auditors and the audit committee of the board of directors (or persons fulfilling the equivalent function)—

(A) all significant deficiencies in the design or operation of internal controls which could adversely affect the issuer's ability to record, process, summarize, and report financial data and have identified for the issuer's auditors any material weaknesses in internal controls; and

(B) any fraud, whether or not material, that involves management or other employees who have a significant role in the issuer's internal controls; and

(6) the signing officers have indicated in the report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

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(b) **FOREIGN REINCORPORATIONS HAVE NO EFFECT.**—Nothing in this section 302 shall be interpreted or applied in any way to allow any issuer to lessen the legal force of the statement required under this section 302, by an issuer having reincorporated or having engaged in any other transaction that resulted in the transfer of the corporate domicile or offices of the issuer from inside the United States to outside of the United States.

(c) **DEADLINE.**—The rules required by subsection (a) shall be effective not later than 30 days after the date of enactment of this Act.

SEC. 303. IMPROPER INFLUENCE ON CONDUCT OF AUDITS.

(a) **RULES TO PROHIBIT.**—It shall be unlawful, in contravention of such rules or regulations as the Commission shall prescribe as necessary and appropriate in the public interest or for the protection of investors, for any officer or director of an issuer, or any other person acting under the direction thereof, to take any action to fraudulently influence, coerce, manipulate, or mislead any independent public or certified accountant engaged in the performance of an audit of the financial statements of that issuer for the purpose of rendering such financial statements materially misleading.

(b) **ENFORCEMENT.**—In any civil proceeding, the Commission shall have exclusive authority to enforce this section and any rule or regulation issued under this section.

(c) **NO PREEMPTION OF OTHER LAW.**—The provisions of subsection (a) shall be in addition to, and shall not supersede or preempt, any other provision of law or any rule or regulation issued thereunder.

(d) **DEADLINE FOR RULEMAKING.**—The Commission shall—

(1) propose the rules or regulations required by this section, not later than 90 days after the date of enactment of this Act; and

(2) issue final rules or regulations required by this section, not later than 270 days after that date of enactment.

SEC. 304. FORFEITURE OF CERTAIN BONUSES AND PROFITS.

(a) **ADDITIONAL COMPENSATION PRIOR TO NONCOMPLIANCE WITH COMMISSION FINANCIAL REPORTING REQUIREMENTS.**—If an issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer, as a result of misconduct, with any financial reporting requirement under the securities laws, the chief executive officer and chief financial officer of the issuer shall reimburse the issuer for—

(1) any bonus or other incentive-based or equity-based compensation received by that person from the issuer during the 12-month period following the first public issuance or filing with the Commission (whichever first occurs) of the financial document embodying such financial reporting requirement; and

(2) any profits realized from the sale of securities of the issuer during that 12-month period.

(b) **COMMISSION EXEMPTION AUTHORITY.**—The Commission may exempt any person from the application of subsection (a), as it deems necessary and appropriate.

SEC. 305. OFFICER AND DIRECTOR BARS AND PENALTIES.

(a) **UNFITNESS STANDARD.**—

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(1) SECURITIES EXCHANGE ACT OF 1934.—Section 21(d)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(2)) is amended by striking “substantial unfitness” and inserting “unfitness”.

(2) SECURITIES ACT OF 1933.—Section 20(e) of the Securities Act of 1933 (15 U.S.C. 77t(e)) is amended by striking “substantial unfitness” and inserting “unfitness”.

(b) EQUITABLE RELIEF.—Section 21(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)) is amended by adding at the end the following:

“(5) EQUITABLE RELIEF.—In any action or proceeding brought or instituted by the Commission under any provision of the securities laws, the Commission may seek, and any Federal court may grant, any equitable relief that may be appropriate or necessary for the benefit of investors.”.

SEC. 306. INSIDER TRADES DURING PENSION FUND BLACKOUT PERIODS.

(a) PROHIBITION OF INSIDER TRADING DURING PENSION FUND BLACKOUT PERIODS.—

(1) IN GENERAL.—Except to the extent otherwise provided by rule of the Commission pursuant to paragraph (3), it shall be unlawful for any director or executive officer of an issuer of any equity security (other than an exempted security), directly or indirectly, to purchase, sell, or otherwise acquire or transfer any equity security of the issuer (other than an exempted security) during any blackout period with respect to such equity security if such director or officer acquires such equity security in connection with his or her service or employment as a director or executive officer.

(2) REMEDY.—

(A) IN GENERAL.—Any profit realized by a director or executive officer referred to in paragraph (1) from any purchase, sale, or other acquisition or transfer in violation of this subsection shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such director or executive officer in entering into the transaction.

(B) ACTIONS TO RECOVER PROFITS.—An action to recover profits in accordance with this subsection may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer fails or refuses to bring such action within 60 days after the date of request, or fails diligently to prosecute the action thereafter, except that no such suit shall be brought more than 2 years after the date on which such profit was realized.

(3) RULEMAKING AUTHORIZED.—The Commission shall, in consultation with the Secretary of Labor, issue rules to clarify the application of this subsection and to prevent evasion thereof. Such rules shall provide for the application of the requirements of paragraph (1) with respect to entities treated as a single employer with respect to an issuer under section 414(b), (c), (m), or (o) of the Internal Revenue Code of 1986 to the extent necessary to clarify the application of such requirements and to prevent evasion thereof. Such rules may also provide for

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appropriate exceptions from the requirements of this subsection, including exceptions for purchases pursuant to an automatic dividend reinvestment program or purchases or sales made pursuant to an advance election.

(4) **BLACKOUT PERIOD.**—For purposes of this subsection, the term “blackout period”, with respect to the equity securities of any issuer—

(A) means any period of more than 3 consecutive business days during which the ability of not fewer than 50 percent of the participants or beneficiaries under all individual account plans maintained by the issuer to purchase, sell, or otherwise acquire or transfer an interest in any equity of such issuer held in such an individual account plan is temporarily suspended by the issuer or by a fiduciary of the plan; and

(B) does not include, under regulations which shall be prescribed by the Commission—

(i) a regularly scheduled period in which the participants and beneficiaries may not purchase, sell, or otherwise acquire or transfer an interest in any equity of such issuer, if such period is—

(I) incorporated into the individual account plan; and

(II) timely disclosed to employees before becoming participants under the individual account plan or as a subsequent amendment to the plan; or

(ii) any suspension described in subparagraph (A) that is imposed solely in connection with persons becoming participants or beneficiaries, or ceasing to be participants or beneficiaries, in an individual account plan by reason of a corporate merger, acquisition, divestiture, or similar transaction involving the plan or plan sponsor.

(5) **INDIVIDUAL ACCOUNT PLAN.**—For purposes of this subsection, the term “individual account plan” has the meaning provided in section 3(34) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(34)), except that such term shall not include a one-participant retirement plan (within the meaning of section 101(i)(8)(B) of such Act (29 U.S.C. 1021(i)(8)(B))).

(6) **NOTICE TO DIRECTORS, EXECUTIVE OFFICERS, AND THE COMMISSION.**—In any case in which a director or executive officer is subject to the requirements of this subsection in connection with a blackout period (as defined in paragraph (4)) with respect to any equity securities, the issuer of such equity securities shall timely notify such director or officer and the Securities and Exchange Commission of such blackout period.

(b) **NOTICE REQUIREMENTS TO PARTICIPANTS AND BENEFICIARIES UNDER ERISA.**—

(1) **IN GENERAL.**—Section 101 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021) is amended by redesignating the second subsection (h) as subsection (j), and by inserting after the first subsection (h) the following new subsection:

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“(i) NOTICE OF BLACKOUT PERIODS TO PARTICIPANT OR BENEFICIARY UNDER INDIVIDUAL ACCOUNT PLAN.—

“(1) DUTIES OF PLAN ADMINISTRATOR.—In advance of the commencement of any blackout period with respect to an individual account plan, the plan administrator shall notify the plan participants and beneficiaries who are affected by such action in accordance with this subsection.

“(2) NOTICE REQUIREMENTS.—

“(A) IN GENERAL.—The notices described in paragraph (1) shall be written in a manner calculated to be understood by the average plan participant and shall include—

“(i) the reasons for the blackout period,

“(ii) an identification of the investments and other rights affected,

“(iii) the expected beginning date and length of the blackout period,

“(iv) in the case of investments affected, a statement that the participant or beneficiary should evaluate the appropriateness of their current investment decisions in light of their inability to direct or diversify assets credited to their accounts during the blackout period, and

“(v) such other matters as the Secretary may require by regulation.

“(B) NOTICE TO PARTICIPANTS AND BENEFICIARIES.—

Except as otherwise provided in this subsection, notices described in paragraph (1) shall be furnished to all participants and beneficiaries under the plan to whom the blackout period applies at least 30 days in advance of the blackout period.

“(C) EXCEPTION TO 30-DAY NOTICE REQUIREMENT.—In any case in which—

“(i) a deferral of the blackout period would violate the requirements of subparagraph (A) or (B) of section 404(a)(1), and a fiduciary of the plan reasonably so determines in writing, or

“(ii) the inability to provide the 30-day advance notice is due to events that were unforeseeable or circumstances beyond the reasonable control of the plan administrator, and a fiduciary of the plan reasonably so determines in writing,

subparagraph (B) shall not apply, and the notice shall be furnished to all participants and beneficiaries under the plan to whom the blackout period applies as soon as reasonably possible under the circumstances unless such a notice in advance of the termination of the blackout period is impracticable.

“(D) WRITTEN NOTICE.—The notice required to be provided under this subsection shall be in writing, except that such notice may be in electronic or other form to the extent that such form is reasonably accessible to the recipient.

“(E) NOTICE TO ISSUERS OF EMPLOYER SECURITIES SUBJECT TO BLACKOUT PERIOD.—In the case of any blackout period in connection with an individual account plan, the plan administrator shall provide timely notice of such

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blackout period to the issuer of any employer securities subject to such blackout period.

"(3) EXCEPTION FOR BLACKOUT PERIODS WITH LIMITED APPLICABILITY.—In any case in which the blackout period applies only to 1 or more participants or beneficiaries in connection with a merger, acquisition, divestiture, or similar transaction involving the plan or plan sponsor and occurs solely in connection with becoming or ceasing to be a participant or beneficiary under the plan by reason of such merger, acquisition, divestiture, or transaction, the requirement of this subsection that the notice be provided to all participants and beneficiaries shall be treated as met if the notice required under paragraph (1) is provided to such participants or beneficiaries to whom the blackout period applies as soon as reasonably practicable.

"(4) CHANGES IN LENGTH OF BLACKOUT PERIOD.—If, following the furnishing of the notice pursuant to this subsection, there is a change in the beginning date or length of the blackout period (specified in such notice pursuant to paragraph (2)(A)(iii)), the administrator shall provide affected participants and beneficiaries notice of the change as soon as reasonably practicable. In relation to the extended blackout period, such notice shall meet the requirements of paragraph (2)(D) and shall specify any material change in the matters referred to in clauses (i) through (v) of paragraph (2)(A).

"(5) REGULATORY EXCEPTIONS.—The Secretary may provide by regulation for additional exceptions to the requirements of this subsection which the Secretary determines are in the interests of participants and beneficiaries.

"(6) GUIDANCE AND MODEL NOTICES.—The Secretary shall issue guidance and model notices which meet the requirements of this subsection.

"(7) BLACKOUT PERIOD.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'blackout period' means, in connection with an individual account plan, any period for which any ability of participants or beneficiaries under the plan, which is otherwise available under the terms of such plan, to direct or diversify assets credited to their accounts, to obtain loans from the plan, or to obtain distributions from the plan is temporarily suspended, limited, or restricted, if such suspension, limitation, or restriction is for any period of more than 3 consecutive business days.

"(B) EXCLUSIONS.—The term 'blackout period' does not include a suspension, limitation, or restriction—

"(i) which occurs by reason of the application of the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934),

"(ii) which is a change to the plan which provides for a regularly scheduled suspension, limitation, or restriction which is disclosed to participants or beneficiaries through any summary of material modifications, any materials describing specific investment alternatives under the plan, or any changes thereto, or

"(iii) which applies only to 1 or more individuals, each of whom is the participant, an alternate payee

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(as defined in section 206(d)(3)(K)), or any other beneficiary pursuant to a qualified domestic relations order (as defined in section 206(d)(3)(B)(i)).

“(8) INDIVIDUAL ACCOUNT PLAN.—

“(A) IN GENERAL.—For purposes of this subsection, the term ‘individual account plan’ shall have the meaning provided such term in section 3(34), except that such term shall not include a one-participant retirement plan.

“(B) ONE-PARTICIPANT RETIREMENT PLAN.—For purposes of subparagraph (A), the term ‘one-participant retirement plan’ means a retirement plan that—

“(i) on the first day of the plan year—

“(I) covered only the employer (and the employer’s spouse) and the employer owned the entire business (whether or not incorporated), or

“(II) covered only one or more partners (and their spouses) in a business partnership (including partners in an S or C corporation (as defined in section 1361(a) of the Internal Revenue Code of 1986)),

“(ii) meets the minimum coverage requirements of section 410(b) of the Internal Revenue Code of 1986 (as in effect on the date of the enactment of this paragraph) without being combined with any other plan of the business that covers the employees of the business,

“(iii) does not provide benefits to anyone except the employer (and the employer’s spouse) or the partners (and their spouses),

“(iv) does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control, and

“(v) does not cover a business that leases employees.”.

(2) ISSUANCE OF INITIAL GUIDANCE AND MODEL NOTICE.—

The Secretary of Labor shall issue initial guidance and a model notice pursuant to section 101(i)(6) of the Employee Retirement Income Security Act of 1974 (as added by this subsection) not later than January 1, 2003. Not later than 75 days after the date of the enactment of this Act, the Secretary shall promulgate interim final rules necessary to carry out the amendments made by this subsection.

(3) CIVIL PENALTIES FOR FAILURE TO PROVIDE NOTICE.—Section 502 of such Act (29 U.S.C. 1132) is amended—

(A) in subsection (a)(6), by striking “(5), or (6)” and inserting “(5), (6), or (7)”;

(B) by redesignating paragraph (7) of subsection (c) as paragraph (8); and

(C) by inserting after paragraph (6) of subsection (c) the following new paragraph:

“(7) The Secretary may assess a civil penalty against a plan administrator of up to \$100 a day from the date of the plan administrator’s failure or refusal to provide notice to participants and beneficiaries in accordance with section 101(i). For purposes of this paragraph, each violation with respect to any single participant or beneficiary shall be treated as a separate violation.”.

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(3) **PLAN AMENDMENTS.**—If any amendment made by this subsection requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after the effective date of this section, if—

(A) during the period after such amendment made by this subsection takes effect and before such first plan year, the plan is operated in good faith compliance with the requirements of such amendment made by this subsection, and

(B) such plan amendment applies retroactively to the period after such amendment made by this subsection takes effect and before such first plan year.

(c) **EFFECTIVE DATE.**—The provisions of this section (including the amendments made thereby) shall take effect 180 days after the date of the enactment of this Act. Good faith compliance with the requirements of such provisions in advance of the issuance of applicable regulations thereunder shall be treated as compliance with such provisions.

SEC. 307. RULES OF PROFESSIONAL RESPONSIBILITY FOR ATTORNEYS.

Not later than 180 days after the date of enactment of this Act, the Commission shall issue rules, in the public interest and for the protection of investors, setting forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of issuers, including a rule—

(1) requiring an attorney to report evidence of a material violation of securities law or breach of fiduciary duty or similar violation by the company or any agent thereof, to the chief legal counsel or the chief executive officer of the company (or the equivalent thereof); and

(2) if the counsel or officer does not appropriately respond to the evidence (adopting, as necessary, appropriate remedial measures or sanctions with respect to the violation), requiring the attorney to report the evidence to the audit committee of the board of directors of the issuer or to another committee of the board of directors comprised solely of directors not employed directly or indirectly by the issuer, or to the board of directors.

SEC. 308. FAIR FUNDS FOR INVESTORS.

(a) **CIVIL PENALTIES ADDED TO DISGORGEMENT FUNDS FOR THE RELIEF OF VICTIMS.**—If in any judicial or administrative action brought by the Commission under the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)) the Commission obtains an order requiring disgorgement against any person for a violation of such laws or the rules or regulations thereunder, or such person agrees in settlement of any such action to such disgorgement, and the Commission also obtains pursuant to such laws a civil penalty against such person, the amount of such civil penalty shall, on the motion or at the direction of the Commission, be added to and become part of the disgorgement fund for the benefit of the victims of such violation.

(b) **ACCEPTANCE OF ADDITIONAL DONATIONS.**—The Commission is authorized to accept, hold, administer, and utilize gifts, bequests and devises of property, both real and personal, to the United

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States for a disgorgement fund described in subsection (a). Such gifts, bequests, and devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the disgorgement fund and shall be available for allocation in accordance with subsection (a).

(c) STUDY REQUIRED.—

(1) SUBJECT OF STUDY.—The Commission shall review and analyze—

(A) enforcement actions by the Commission over the five years preceding the date of the enactment of this Act that have included proceedings to obtain civil penalties or disgorgements to identify areas where such proceedings may be utilized to efficiently, effectively, and fairly provide restitution for injured investors; and

(B) other methods to more efficiently, effectively, and fairly provide restitution to injured investors, including methods to improve the collection rates for civil penalties and disgorgements.

(2) REPORT REQUIRED.—The Commission shall report its findings to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate within 180 days after of the date of the enactment of this Act, and shall use such findings to revise its rules and regulations as necessary. The report shall include a discussion of regulatory or legislative actions that are recommended or that may be necessary to address concerns identified in the study.

(d) CONFORMING AMENDMENTS.—Each of the following provisions is amended by inserting “, except as otherwise provided in section 308 of the Sarbanes-Oxley Act of 2002” after “Treasury of the United States”:

(1) Section 21(d)(3)(C)(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(3)(C)(i)).

(2) Section 21A(d)(1) of such Act (15 U.S.C. 78u-1(d)(1)).

(3) Section 20(d)(3)(A) of the Securities Act of 1933 (15 U.S.C. 77t(d)(3)(A)).

(4) Section 42(e)(3)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a-41(e)(3)(A)).

(5) Section 209(e)(3)(A) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-9(e)(3)(A)).

(e) DEFINITION.—As used in this section, the term “disgorgement fund” means a fund established in any administrative or judicial proceeding described in subsection (a).

TITLE IV—ENHANCED FINANCIAL DISCLOSURES

SEC. 401. DISCLOSURES IN PERIODIC REPORTS.

(a) DISCLOSURES REQUIRED.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m) is amended by adding at the end the following:

“(i) ACCURACY OF FINANCIAL REPORTS.—Each financial report that contains financial statements, and that is required to be prepared in accordance with (or reconciled to) generally accepted accounting principles under this title and filed with the Commission shall reflect all material correcting adjustments that have been

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identified by a registered public accounting firm in accordance with generally accepted accounting principles and the rules and regulations of the Commission.

“(j) OFF-BALANCE SHEET TRANSACTIONS.—Not later than 180 days after the date of enactment of the Sarbanes-Oxley Act of 2002, the Commission shall issue final rules providing that each annual and quarterly financial report required to be filed with the Commission shall disclose all material off-balance sheet transactions, arrangements, obligations (including contingent obligations), and other relationships of the issuer with unconsolidated entities or other persons, that may have a material current or future effect on financial condition, changes in financial condition, results of operations, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses.”

(b) COMMISSION RULES ON PRO FORMA FIGURES.—Not later than 180 days after the date of enactment of the Sarbanes-Oxley Act of 2002, the Commission shall issue final rules providing that pro forma financial information included in any periodic or other report filed with the Commission pursuant to the securities laws, or in any public disclosure or press or other release, shall be presented in a manner that—

(1) does not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the pro forma financial information, in light of the circumstances under which it is presented, not misleading; and

(2) reconciles it with the financial condition and results of operations of the issuer under generally accepted accounting principles.

(c) STUDY AND REPORT ON SPECIAL PURPOSE ENTITIES.—

(1) STUDY REQUIRED.—The Commission shall, not later than 1 year after the effective date of adoption of off-balance sheet disclosure rules required by section 13(j) of the Securities Exchange Act of 1934, as added by this section, complete a study of filings by issuers and their disclosures to determine—

(A) the extent of off-balance sheet transactions, including assets, liabilities, leases, losses, and the use of special purpose entities; and

(B) whether generally accepted accounting rules result in financial statements of issuers reflecting the economics of such off-balance sheet transactions to investors in a transparent fashion.

(2) REPORT AND RECOMMENDATIONS.—Not later than 6 months after the date of completion of the study required by paragraph (1), the Commission shall submit a report to the President, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives, setting forth—

(A) the amount or an estimate of the amount of off-balance sheet transactions, including assets, liabilities, leases, and losses of, and the use of special purpose entities by, issuers filing periodic reports pursuant to section 13 or 15 of the Securities Exchange Act of 1934;

(B) the extent to which special purpose entities are used to facilitate off-balance sheet transactions;

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(C) whether generally accepted accounting principles or the rules of the Commission result in financial statements of issuers reflecting the economics of such transactions to investors in a transparent fashion;

(D) whether generally accepted accounting principles specifically result in the consolidation of special purpose entities sponsored by an issuer in cases in which the issuer has the majority of the risks and rewards of the special purpose entity; and

(E) any recommendations of the Commission for improving the transparency and quality of reporting off-balance sheet transactions in the financial statements and disclosures required to be filed by an issuer with the Commission.

SEC. 402. ENHANCED CONFLICT OF INTEREST PROVISIONS.

(a) PROHIBITION ON PERSONAL LOANS TO EXECUTIVES.—Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by this Act, is amended by adding at the end the following:

“(k) PROHIBITION ON PERSONAL LOANS TO EXECUTIVES.—

“(1) IN GENERAL.—It shall be unlawful for any issuer (as defined in section 2 of the Sarbanes-Oxley Act of 2002), directly or indirectly, including through any subsidiary, to extend or maintain credit, to arrange for the extension of credit, or to renew an extension of credit, in the form of a personal loan to or for any director or executive officer (or equivalent thereof) of that issuer. An extension of credit maintained by the issuer on the date of enactment of this subsection shall not be subject to the provisions of this subsection, provided that there is no material modification to any term of any such extension of credit or any renewal of any such extension of credit on or after that date of enactment.

“(2) LIMITATION.—Paragraph (1) does not preclude any home improvement and manufactured home loans (as that term is defined in section 5 of the Home Owners’ Loan Act (12 U.S.C. 1464)), consumer credit (as defined in section 103 of the Truth in Lending Act (15 U.S.C. 1602)), or any extension of credit under an open end credit plan (as defined in section 103 of the Truth in Lending Act (15 U.S.C. 1602)), or a charge card (as defined in section 127(c)(4)(e) of the Truth in Lending Act (15 U.S.C. 1637(c)(4)(e))), or any extension of credit by a broker or dealer registered under section 15 of this title to an employee of that broker or dealer to buy, trade, or carry securities, that is permitted under rules or regulations of the Board of Governors of the Federal Reserve System pursuant to section 7 of this title (other than an extension of credit that would be used to purchase the stock of that issuer), that is—

“(A) made or provided in the ordinary course of the consumer credit business of such issuer;

“(B) of a type that is generally made available by such issuer to the public; and

“(C) made by such issuer on market terms, or terms that are no more favorable than those offered by the issuer to the general public for such extensions of credit.

“(3) RULE OF CONSTRUCTION FOR CERTAIN LOANS.—Paragraph (1) does not apply to any loan made or maintained

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by an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), if the loan is subject to the insider lending restrictions of section 22(h) of the Federal Reserve Act (12 U.S.C. 375b)."

SEC. 403. DISCLOSURES OF TRANSACTIONS INVOLVING MANAGEMENT AND PRINCIPAL STOCKHOLDERS.

(a) **AMENDMENT.**—Section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p) is amended by striking the heading of such section and subsection (a) and inserting the following:

"SEC. 16. DIRECTORS, OFFICERS, AND PRINCIPAL STOCKHOLDERS.

"(a) DISCLOSURES REQUIRED.—

"(1) DIRECTORS, OFFICERS, AND PRINCIPAL STOCKHOLDERS REQUIRED TO FILE.—Every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which is registered pursuant to section 12, or who is a director or an officer of the issuer of such security, shall file the statements required by this subsection with the Commission (and, if such security is registered on a national securities exchange, also with the exchange).

"(2) TIME OF FILING.—The statements required by this subsection shall be filed—

"(A) at the time of the registration of such security on a national securities exchange or by the effective date of a registration statement filed pursuant to section 12(g);

"(B) within 10 days after he or she becomes such beneficial owner, director, or officer;

"(C) if there has been a change in such ownership, or if such person shall have purchased or sold a security-based swap agreement (as defined in section 206(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 78c note)) involving such equity security, before the end of the second business day following the day on which the subject transaction has been executed, or at such other time as the Commission shall establish, by rule, in any case in which the Commission determines that such 2-day period is not feasible.

"(3) CONTENTS OF STATEMENTS.—A statement filed—

"(A) under subparagraph (A) or (B) of paragraph (2) shall contain a statement of the amount of all equity securities of such issuer of which the filing person is the beneficial owner; and

"(B) under subparagraph (C) of such paragraph shall indicate ownership by the filing person at the date of filing, any such changes in such ownership, and such purchases and sales of the security-based swap agreements as have occurred since the most recent such filing under such subparagraph.

"(4) ELECTRONIC FILING AND AVAILABILITY.—Beginning not later than 1 year after the date of enactment of the Sarbanes-Oxley Act of 2002—

"(A) a statement filed under subparagraph (C) of paragraph (2) shall be filed electronically;

"(B) the Commission shall provide each such statement on a publicly accessible Internet site not later than the end of the business day following that filing; and

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“(C) the issuer (if the issuer maintains a corporate website) shall provide that statement on that corporate website, not later than the end of the business day following that filing.”.

(b) **EFFECTIVE DATE.**—The amendment made by this section shall be effective 30 days after the date of the enactment of this Act.

SEC. 404. MANAGEMENT ASSESSMENT OF INTERNAL CONTROLS.

(a) **RULES REQUIRED.**—The Commission shall prescribe rules requiring each annual report required by section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) to contain an internal control report, which shall—

(1) state the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and

(2) contain an assessment, as of the end of the most recent fiscal year of the issuer, of the effectiveness of the internal control structure and procedures of the issuer for financial reporting.

(b) **INTERNAL CONTROL EVALUATION AND REPORTING.**—With respect to the internal control assessment required by subsection (a), each registered public accounting firm that prepares or issues the audit report for the issuer shall attest to, and report on, the assessment made by the management of the issuer. An attestation made under this subsection shall be made in accordance with standards for attestation engagements issued or adopted by the Board. Any such attestation shall not be the subject of a separate engagement.

SEC. 405. EXEMPTION.

Nothing in section 401, 402, or 404, the amendments made by those sections, or the rules of the Commission under those sections shall apply to any investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8).

SEC. 406. CODE OF ETHICS FOR SENIOR FINANCIAL OFFICERS.

(a) **CODE OF ETHICS DISCLOSURE.**—The Commission shall issue rules to require each issuer, together with periodic reports required pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934, to disclose whether or not, and if not, the reason therefor, such issuer has adopted a code of ethics for senior financial officers, applicable to its principal financial officer and comptroller or principal accounting officer, or persons performing similar functions.

(b) **CHANGES IN CODES OF ETHICS.**—The Commission shall revise its regulations concerning matters requiring prompt disclosure on Form 8–K (or any successor thereto) to require the immediate disclosure, by means of the filing of such form, dissemination by the Internet or by other electronic means, by any issuer of any change in or waiver of the code of ethics for senior financial officers.

(c) **DEFINITION.**—In this section, the term “code of ethics” means such standards as are reasonably necessary to promote—

(1) honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;

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(2) full, fair, accurate, timely, and understandable disclosure in the periodic reports required to be filed by the issuer; and

(3) compliance with applicable governmental rules and regulations.

(d) DEADLINE FOR RULEMAKING.—The Commission shall—

(1) propose rules to implement this section, not later than 90 days after the date of enactment of this Act; and

(2) issue final rules to implement this section, not later than 180 days after that date of enactment.

SEC. 407. DISCLOSURE OF AUDIT COMMITTEE FINANCIAL EXPERT.

(a) RULES DEFINING "FINANCIAL EXPERT".—The Commission shall issue rules, as necessary or appropriate in the public interest and consistent with the protection of investors, to require each issuer, together with periodic reports required pursuant to sections 13(a) and 15(d) of the Securities Exchange Act of 1934, to disclose whether or not, and if not, the reasons therefor, the audit committee of that issuer is comprised of at least 1 member who is a financial expert, as such term is defined by the Commission.

(b) CONSIDERATIONS.—In defining the term "financial expert" for purposes of subsection (a), the Commission shall consider whether a person has, through education and experience as a public accountant or auditor or a principal financial officer, comptroller, or principal accounting officer of an issuer, or from a position involving the performance of similar functions—

(1) an understanding of generally accepted accounting principles and financial statements;

(2) experience in—

(A) the preparation or auditing of financial statements of generally comparable issuers; and

(B) the application of such principles in connection with the accounting for estimates, accruals, and reserves;

(3) experience with internal accounting controls; and

(4) an understanding of audit committee functions.

(c) DEADLINE FOR RULEMAKING.—The Commission shall—

(1) propose rules to implement this section, not later than 90 days after the date of enactment of this Act; and

(2) issue final rules to implement this section, not later than 180 days after that date of enactment.

SEC. 408. ENHANCED REVIEW OF PERIODIC DISCLOSURES BY ISSUERS.

(a) REGULAR AND SYSTEMATIC REVIEW.—The Commission shall review disclosures made by issuers reporting under section 13(a) of the Securities Exchange Act of 1934 (including reports filed on Form 10-K), and which have a class of securities listed on a national securities exchange or traded on an automated quotation facility of a national securities association, on a regular and systematic basis for the protection of investors. Such review shall include a review of an issuer's financial statement.

(b) REVIEW CRITERIA.—For purposes of scheduling the reviews required by subsection (a), the Commission shall consider, among other factors—

(1) issuers that have issued material restatements of financial results;

(2) issuers that experience significant volatility in their stock price as compared to other issuers;

(3) issuers with the largest market capitalization;

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(4) emerging companies with disparities in price to earning ratios;

(5) issuers whose operations significantly affect any material sector of the economy; and

(6) any other factors that the Commission may consider relevant.

(c) MINIMUM REVIEW PERIOD.—In no event shall an issuer required to file reports under section 13(a) or 15(d) of the Securities Exchange Act of 1934 be reviewed under this section less frequently than once every 3 years.

SEC. 409. REAL TIME ISSUER DISCLOSURES.

Section 13 of the Securities Exchange Act of 1934 (15 U.S.C. 78m), as amended by this Act, is amended by adding at the end the following:

“(1) REAL TIME ISSUER DISCLOSURES.—Each issuer reporting under section 13(a) or 15(d) shall disclose to the public on a rapid and current basis such additional information concerning material changes in the financial condition or operations of the issuer, in plain English, which may include trend and qualitative information and graphic presentations, as the Commission determines, by rule, is necessary or useful for the protection of investors and in the public interest.”.

TITLE V—ANALYST CONFLICTS OF INTEREST

SEC. 501. TREATMENT OF SECURITIES ANALYSTS BY REGISTERED SECURITIES ASSOCIATIONS AND NATIONAL SECURITIES EXCHANGES.

(a) RULES REGARDING SECURITIES ANALYSTS.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 15C the following new section:

“SEC. 15D. SECURITIES ANALYSTS AND RESEARCH REPORTS.

“(a) ANALYST PROTECTIONS.—The Commission, or upon the authorization and direction of the Commission, a registered securities association or national securities exchange, shall have adopted, not later than 1 year after the date of enactment of this section, rules reasonably designed to address conflicts of interest that can arise when securities analysts recommend equity securities in research reports and public appearances, in order to improve the objectivity of research and provide investors with more useful and reliable information, including rules designed—

“(1) to foster greater public confidence in securities research, and to protect the objectivity and independence of securities analysts, by—

“(A) restricting the prepublication clearance or approval of research reports by persons employed by the broker or dealer who are engaged in investment banking activities, or persons not directly responsible for investment research, other than legal or compliance staff;

“(B) limiting the supervision and compensatory evaluation of securities analysts to officials employed by the broker or dealer who are not engaged in investment banking activities; and

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"(C) requiring that a broker or dealer and persons employed by a broker or dealer who are involved with investment banking activities may not, directly or indirectly, retaliate against or threaten to retaliate against any securities analyst employed by that broker or dealer or its affiliates as a result of an adverse, negative, or otherwise unfavorable research report that may adversely affect the present or prospective investment banking relationship of the broker or dealer with the issuer that is the subject of the research report, except that such rules may not limit the authority of a broker or dealer to discipline a securities analyst for causes other than such research report in accordance with the policies and procedures of the firm;

"(2) to define periods during which brokers or dealers who have participated, or are to participate, in a public offering of securities as underwriters or dealers should not publish or otherwise distribute research reports relating to such securities or to the issuer of such securities;

"(3) to establish structural and institutional safeguards within registered brokers or dealers to assure that securities analysts are separated by appropriate informational partitions within the firm from the review, pressure, or oversight of those whose involvement in investment banking activities might potentially bias their judgment or supervision; and

"(4) to address such other issues as the Commission, or such association or exchange, determines appropriate.

"(b) DISCLOSURE.—The Commission, or upon the authorization and direction of the Commission, a registered securities association or national securities exchange, shall have adopted, not later than 1 year after the date of enactment of this section, rules reasonably designed to require each securities analyst to disclose in public appearances, and each registered broker or dealer to disclose in each research report, as applicable, conflicts of interest that are known or should have been known by the securities analyst or the broker or dealer, to exist at the time of the appearance or the date of distribution of the report, including—

"(1) the extent to which the securities analyst has debt or equity investments in the issuer that is the subject of the appearance or research report;

"(2) whether any compensation has been received by the registered broker or dealer, or any affiliate thereof, including the securities analyst, from the issuer that is the subject of the appearance or research report, subject to such exemptions as the Commission may determine appropriate and necessary to prevent disclosure by virtue of this paragraph of material non-public information regarding specific potential future investment banking transactions of such issuer, as is appropriate in the public interest and consistent with the protection of investors;

"(3) whether an issuer, the securities of which are recommended in the appearance or research report, currently is, or during the 1-year period preceding the date of the appearance or date of distribution of the report has been, a client of the registered broker or dealer, and if so, stating the types of services provided to the issuer;

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"(4) whether the securities analyst received compensation with respect to a research report, based upon (among any other factors) the investment banking revenues (either generally or specifically earned from the issuer being analyzed) of the registered broker or dealer; and

"(5) such other disclosures of conflicts of interest that are material to investors, research analysts, or the broker or dealer as the Commission, or such association or exchange, determines appropriate.

"(c) DEFINITIONS.—In this section—

"(1) the term 'securities analyst' means any associated person of a registered broker or dealer that is principally responsible for, and any associated person who reports directly or indirectly to a securities analyst in connection with, the preparation of the substance of a research report, whether or not any such person has the job title of 'securities analyst'; and

"(2) the term 'research report' means a written or electronic communication that includes an analysis of equity securities of individual companies or industries, and that provides information reasonably sufficient upon which to base an investment decision."

(b) ENFORCEMENT.—Section 21B(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78u-2(a)) is amended by inserting "15D," before "15B".

(c) COMMISSION AUTHORITY.—The Commission may promulgate and amend its regulations, or direct a registered securities association or national securities exchange to promulgate and amend its rules, to carry out section 15D of the Securities Exchange Act of 1934, as added by this section, as is necessary for the protection of investors and in the public interest.

TITLE VI—COMMISSION RESOURCES AND AUTHORITY

SEC. 601. AUTHORIZATION OF APPROPRIATIONS.

Section 35 of the Securities Exchange Act of 1934 (15 U.S.C. 78kk) is amended to read as follows:

"SEC. 35. AUTHORIZATION OF APPROPRIATIONS.

"In addition to any other funds authorized to be appropriated to the Commission, there are authorized to be appropriated to carry out the functions, powers, and duties of the Commission, \$776,000,000 for fiscal year 2003, of which—

"(1) \$102,700,000 shall be available to fund additional compensation, including salaries and benefits, as authorized in the Investor and Capital Markets Fee Relief Act (Public Law 107-123; 115 Stat. 2390 et seq.);

"(2) \$108,400,000 shall be available for information technology, security enhancements, and recovery and mitigation activities in light of the terrorist attacks of September 11, 2001; and

"(3) \$98,000,000 shall be available to add not fewer than an additional 200 qualified professionals to provide enhanced oversight of auditors and audit services required by the Federal securities laws, and to improve Commission investigative and

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disciplinary efforts with respect to such auditors and services, as well as for additional professional support staff necessary to strengthen the programs of the Commission involving Full Disclosure and Prevention and Suppression of Fraud, risk management, industry technology review, compliance, inspections, examinations, market regulation, and investment management.”.

SEC. 602. APPEARANCE AND PRACTICE BEFORE THE COMMISSION.

The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 4B the following:

“SEC. 4C. APPEARANCE AND PRACTICE BEFORE THE COMMISSION.

“(a) **AUTHORITY TO CENSURE.**—The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found by the Commission, after notice and opportunity for hearing in the matter—

“(1) not to possess the requisite qualifications to represent others;

“(2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or

“(3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations issued thereunder.

“(b) **DEFINITION.**—With respect to any registered public accounting firm or associated person, for purposes of this section, the term ‘improper professional conduct’ means—

“(1) intentional or knowing conduct, including reckless conduct, that results in a violation of applicable professional standards; and

“(2) negligent conduct in the form of—

“(A) a single instance of highly unreasonable conduct that results in a violation of applicable professional standards in circumstances in which the registered public accounting firm or associated person knows, or should know, that heightened scrutiny is warranted; or

“(B) repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards, that indicate a lack of competence to practice before the Commission.”.

SEC. 603. FEDERAL COURT AUTHORITY TO IMPOSE PENNY STOCK BARS.

(a) **SECURITIES EXCHANGE ACT OF 1934.**—Section 21(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)), as amended by this Act, is amended by adding at the end the following:

“(6) **AUTHORITY OF A COURT TO PROHIBIT PERSONS FROM PARTICIPATING IN AN OFFERING OF PENNY STOCK.**—

“(A) **IN GENERAL.**—In any proceeding under paragraph (1) against any person participating in, or, at the time of the alleged misconduct who was participating in, an offering of penny stock, the court may prohibit that person from participating in an offering of penny stock, conditionally or unconditionally, and permanently or for such period of time as the court shall determine.

“(B) **DEFINITION.**—For purposes of this paragraph, the term ‘person participating in an offering of penny stock’ includes

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any person engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of, any penny stock. The Commission may, by rule or regulation, define such term to include other activities, and may, by rule, regulation, or order, exempt any person or class of persons, in whole or in part, conditionally or unconditionally, from inclusion in such term."

(b) SECURITIES ACT OF 1933.—Section 20 of the Securities Act of 1933 (15 U.S.C. 77t) is amended by adding at the end the following:

"(g) AUTHORITY OF A COURT TO PROHIBIT PERSONS FROM PARTICIPATING IN AN OFFERING OF PENNY STOCK.—

"(1) IN GENERAL.—In any proceeding under subsection (a) against any person participating in, or, at the time of the alleged misconduct, who was participating in, an offering of penny stock, the court may prohibit that person from participating in an offering of penny stock, conditionally or unconditionally, and permanently or for such period of time as the court shall determine.

"(2) DEFINITION.—For purposes of this subsection, the term 'person participating in an offering of penny stock' includes any person engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of, any penny stock. The Commission may, by rule or regulation, define such term to include other activities, and may, by rule, regulation, or order, exempt any person or class of persons, in whole or in part, conditionally or unconditionally, from inclusion in such term."

SEC. 604. QUALIFICATIONS OF ASSOCIATED PERSONS OF BROKERS AND DEALERS.

(a) BROKERS AND DEALERS.—Section 15(b)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended—

(1) by striking subparagraph (F) and inserting the following:

"(F) is subject to any order of the Commission barring or suspending the right of the person to be associated with a broker or dealer;" and

(2) in subparagraph (G), by striking the period at the end and inserting the following: "; or

"(H) is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, savings associations, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), or the National Credit Union Administration, that—

"(i) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or

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"(ii) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct."

(b) INVESTMENT ADVISERS.—Section 203(e) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(e)) is amended—

(1) by striking paragraph (7) and inserting the following:

"(7) is subject to any order of the Commission barring or suspending the right of the person to be associated with an investment adviser;"

(2) in paragraph (8), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(9) is subject to any final order of a State securities commission (or any agency or officer performing like functions), State authority that supervises or examines banks, savings associations, or credit unions, State insurance commission (or any agency or office performing like functions), an appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q))), or the National Credit Union Administration, that—

"(A) bars such person from association with an entity regulated by such commission, authority, agency, or officer, or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or

"(B) constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct."

(c) CONFORMING AMENDMENTS.—

(1) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended—

(A) in section 3(a)(39)(F) (15 U.S.C. 78c(a)(39)(F))—

(i) by striking "or (G)" and inserting "(H), or (G)"; and

(ii) by inserting ", or is subject to an order or finding," before "enumerated";

(B) in each of section 15(b)(6)(A)(i) (15 U.S.C. 78o(b)(6)(A)(i)), paragraphs (2) and (4) of section 15B(c) (15 U.S.C. 78o-4(c)), and subparagraphs (A) and (C) of section 15C(c)(1) (15 U.S.C. 78o-5(c)(1))—

(i) by striking "or (G)" each place that term appears and inserting "(H), or (G)"; and

(ii) by striking "or omission" each place that term appears, and inserting ", or is subject to an order or finding,"; and

(C) in each of paragraphs (3)(A) and (4)(C) of section 17A(c) (15 U.S.C. 78q-1(c))—

(i) by striking "or (G)" each place that term appears and inserting "(H), or (G)"; and

(ii) by inserting ", or is subject to an order or finding," before "enumerated" each place that term appears.

(2) INVESTMENT ADVISERS ACT OF 1940.—Section 203(f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(f)) is amended—

(A) by striking "or (8)" and inserting "(8), or (9)"; and

(B) by inserting "or (3)" after "paragraph (2)".

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TITLE VII—STUDIES AND REPORTS

SEC. 701. GAO STUDY AND REPORT REGARDING CONSOLIDATION OF PUBLIC ACCOUNTING FIRMS.

(a) **STUDY REQUIRED.**—The Comptroller General of the United States shall conduct a study—

(1) to identify—

(A) the factors that have led to the consolidation of public accounting firms since 1989 and the consequent reduction in the number of firms capable of providing audit services to large national and multi-national business organizations that are subject to the securities laws;

(B) the present and future impact of the condition described in subparagraph (A) on capital formation and securities markets, both domestic and international; and

(C) solutions to any problems identified under subparagraph (B), including ways to increase competition and the number of firms capable of providing audit services to large national and multinational business organizations that are subject to the securities laws;

(2) of the problems, if any, faced by business organizations that have resulted from limited competition among public accounting firms, including—

(A) higher costs;

(B) lower quality of services;

(C) impairment of auditor independence; or

(D) lack of choice; and

(3) whether and to what extent Federal or State regulations impede competition among public accounting firms.

(b) **CONSULTATION.**—In planning and conducting the study under this section, the Comptroller General shall consult with—

(1) the Commission;

(2) the regulatory agencies that perform functions similar to the Commission within the other member countries of the Group of Seven Industrialized Nations;

(3) the Department of Justice; and

(4) any other public or private sector organization that the Comptroller General considers appropriate.

(c) **REPORT REQUIRED.**—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit a report on the results of the study required by this section to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

SEC. 702. COMMISSION STUDY AND REPORT REGARDING CREDIT RATING AGENCIES.

(a) **STUDY REQUIRED.**—

(1) **IN GENERAL.**—The Commission shall conduct a study of the role and function of credit rating agencies in the operation of the securities market.

(2) **AREAS OF CONSIDERATION.**—The study required by this subsection shall examine—

(A) the role of credit rating agencies in the evaluation of issuers of securities;

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(B) the importance of that role to investors and the functioning of the securities markets;

(C) any impediments to the accurate appraisal by credit rating agencies of the financial resources and risks of issuers of securities;

(D) any barriers to entry into the business of acting as a credit rating agency, and any measures needed to remove such barriers;

(E) any measures which may be required to improve the dissemination of information concerning such resources and risks when credit rating agencies announce credit ratings; and

(F) any conflicts of interest in the operation of credit rating agencies and measures to prevent such conflicts or ameliorate the consequences of such conflicts.

(b) **REPORT REQUIRED.**—The Commission shall submit a report on the study required by subsection (a) to the President, the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate not later than 180 days after the date of enactment of this Act.

SEC. 703. STUDY AND REPORT ON VIOLATORS AND VIOLATIONS.

(a) **STUDY.**—The Commission shall conduct a study to determine, based upon information for the period from January 1, 1998, to December 31, 2001—

(1) the number of securities professionals, defined as public accountants, public accounting firms, investment bankers, investment advisers, brokers, dealers, attorneys, and other securities professionals practicing before the Commission—

(A) who have been found to have aided and abetted a violation of the Federal securities laws, including rules or regulations promulgated thereunder (collectively referred to in this section as “Federal securities laws”), but who have not been sanctioned, disciplined, or otherwise penalized as a primary violator in any administrative action or civil proceeding, including in any settlement of such an action or proceeding (referred to in this section as “aiders and abettors”); and

(B) who have been found to have been primary violators of the Federal securities laws;

(2) a description of the Federal securities laws violations committed by aiders and abettors and by primary violators, including—

(A) the specific provision of the Federal securities laws violated;

(B) the specific sanctions and penalties imposed upon such aiders and abettors and primary violators, including the amount of any monetary penalties assessed upon and collected from such persons;

(C) the occurrence of multiple violations by the same person or persons, either as an aider or abettor or as a primary violator; and

(D) whether, as to each such violator, disciplinary sanctions have been imposed, including any censure, suspension, temporary bar, or permanent bar to practice before the Commission; and

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(3) the amount of disgorgement, restitution, or any other fines or payments that the Commission has assessed upon and collected from, aiders and abettors and from primary violators.

(b) REPORT.—A report based upon the study conducted pursuant to subsection (a) shall be submitted to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives not later than 6 months after the date of enactment of this Act.

SEC. 704. STUDY OF ENFORCEMENT ACTIONS.

(a) STUDY REQUIRED.—The Commission shall review and analyze all enforcement actions by the Commission involving violations of reporting requirements imposed under the securities laws, and restatements of financial statements, over the 5-year period preceding the date of enactment of this Act, to identify areas of reporting that are most susceptible to fraud, inappropriate manipulation, or inappropriate earnings management, such as revenue recognition and the accounting treatment of off-balance sheet special purpose entities.

(b) REPORT REQUIRED.—The Commission shall report its findings to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, not later than 180 days after the date of enactment of this Act, and shall use such findings to revise its rules and regulations, as necessary. The report shall include a discussion of regulatory or legislative steps that are recommended or that may be necessary to address concerns identified in the study.

SEC. 705. STUDY OF INVESTMENT BANKS.

(a) GAO STUDY.—The Comptroller General of the United States shall conduct a study on whether investment banks and financial advisers assisted public companies in manipulating their earnings and obfuscating their true financial condition. The study should address the role of investment banks and financial advisers—

(1) in the collapse of the Enron Corporation, including with respect to the design and implementation of derivatives transactions, transactions involving special purpose vehicles, and other financial arrangements that may have had the effect of altering the company's reported financial statements in ways that obscured the true financial picture of the company;

(2) in the failure of Global Crossing, including with respect to transactions involving swaps of fiberoptic cable capacity, in the designing transactions that may have had the effect of altering the company's reported financial statements in ways that obscured the true financial picture of the company; and

(3) generally, in creating and marketing transactions which may have been designed solely to enable companies to manipulate revenue streams, obtain loans, or move liabilities off balance sheets without altering the economic and business risks faced by the companies or any other mechanism to obscure a company's financial picture.

(b) REPORT.—The Comptroller General shall report to Congress not later than 180 days after the date of enactment of this Act on the results of the study required by this section. The report shall include a discussion of regulatory or legislative steps that

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are recommended or that may be necessary to address concerns identified in the study.

TITLE VIII—CORPORATE AND CRIMINAL FRAUD ACCOUNTABILITY

SEC. 801. SHORT TITLE.

This title may be cited as the "Corporate and Criminal Fraud Accountability Act of 2002".

SEC. 802. CRIMINAL PENALTIES FOR ALTERING DOCUMENTS.

(a) IN GENERAL.—Chapter 73 of title 18, United States Code, is amended by adding at the end the following:

"§ 1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy

"Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

"§ 1520. Destruction of corporate audit records

"(a)(1) Any accountant who conducts an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j-1(a)) applies, shall maintain all audit or review workpapers for a period of 5 years from the end of the fiscal period in which the audit or review was concluded.

"(2) The Securities and Exchange Commission shall promulgate, within 180 days, after adequate notice and an opportunity for comment, such rules and regulations, as are reasonably necessary, relating to the retention of relevant records such as workpapers, documents that form the basis of an audit or review, memoranda, correspondence, communications, other documents, and records (including electronic records) which are created, sent, or received in connection with an audit or review and contain conclusions, opinions, analyses, or financial data relating to such an audit or review, which is conducted by any accountant who conducts an audit of an issuer of securities to which section 10A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78j-1(a)) applies. The Commission may, from time to time, amend or supplement the rules and regulations that it is required to promulgate under this section, after adequate notice and an opportunity for comment, in order to ensure that such rules and regulations adequately comport with the purposes of this section.

"(b) Whoever knowingly and willfully violates subsection (a)(1), or any rule or regulation promulgated by the Securities and Exchange Commission under subsection (a)(2), shall be fined under this title, imprisoned not more than 10 years, or both.

"(c) Nothing in this section shall be deemed to diminish or relieve any person of any other duty or obligation imposed by Federal or State law or regulation to maintain, or refrain from destroying, any document."

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(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 of title 18, United States Code, is amended by adding at the end the following new items:

"1519. Destruction, alteration, or falsification of records in Federal investigations and bankruptcy.

"1520. Destruction of corporate audit records."

SEC. 803. DEBTS NONDISCHARGEABLE IF INCURRED IN VIOLATION OF SECURITIES FRAUD LAWS.

Section 523(a) of title 11, United States Code, is amended—

(1) in paragraph (17), by striking "or" after the semicolon;

(2) in paragraph (18), by striking the period at the end and inserting "; or"; and

(3) by adding at the end, the following:

"(19) that—

"(A) is for—

"(i) the violation of any of the Federal securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), any of the State securities laws, or any regulation or order issued under such Federal or State securities laws; or

"(ii) common law fraud, deceit, or manipulation in connection with the purchase or sale of any security; and

"(B) results from—

"(i) any judgment, order, consent order, or decree entered in any Federal or State judicial or administrative proceeding;

"(ii) any settlement agreement entered into by the debtor; or

"(iii) any court or administrative order for any damages, fine, penalty, citation, restitutionary payment, disgorgement payment, attorney fee, cost, or other payment owed by the debtor."

SEC. 804. STATUTE OF LIMITATIONS FOR SECURITIES FRAUD.

(a) IN GENERAL.—Section 1658 of title 28, United States Code, is amended—

(1) by inserting "(a)" before "Except"; and

(2) by adding at the end the following:

"(b) Notwithstanding subsection (a), a private right of action that involves a claim of fraud, deceit, manipulation, or contrivance in contravention of a regulatory requirement concerning the securities laws, as defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)), may be brought not later than the earlier of—

"(1) 2 years after the discovery of the facts constituting the violation; or

"(2) 5 years after such violation."

(b) EFFECTIVE DATE.—The limitations period provided by section 1658(b) of title 28, United States Code, as added by this section, shall apply to all proceedings addressed by this section that are commenced on or after the date of enactment of this Act.

(c) NO CREATION OF ACTIONS.—Nothing in this section shall create a new, private right of action.

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SEC. 805. REVIEW OF FEDERAL SENTENCING GUIDELINES FOR OBSTRUCTION OF JUSTICE AND EXTENSIVE CRIMINAL FRAUD.

(a) **ENHANCEMENT OF FRAUD AND OBSTRUCTION OF JUSTICE SENTENCES.**—Pursuant to section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and amend, as appropriate, the Federal Sentencing Guidelines and related policy statements to ensure that—

(1) the base offense level and existing enhancements contained in United States Sentencing Guideline 2J1.2 relating to obstruction of justice are sufficient to deter and punish that activity;

(2) the enhancements and specific offense characteristics relating to obstruction of justice are adequate in cases where—

(A) the destruction, alteration, or fabrication of evidence involves—

(i) a large amount of evidence, a large number of participants, or is otherwise extensive;

(ii) the selection of evidence that is particularly probative or essential to the investigation; or

(iii) more than minimal planning; or

(B) the offense involved abuse of a special skill or a position of trust;

(3) the guideline offense levels and enhancements for violations of section 1519 or 1520 of title 18, United States Code, as added by this title, are sufficient to deter and punish that activity;

(4) a specific offense characteristic enhancing sentencing is provided under United States Sentencing Guideline 2B1.1 (as in effect on the date of enactment of this Act) for a fraud offense that endangers the solvency or financial security of a substantial number of victims; and

(5) the guidelines that apply to organizations in United States Sentencing Guidelines, chapter 8, are sufficient to deter and punish organizational criminal misconduct.

(b) **EMERGENCY AUTHORITY AND DEADLINE FOR COMMISSION ACTION.**—The United States Sentencing Commission is requested to promulgate the guidelines or amendments provided for under this section as soon as practicable, and in any event not later than 180 days after the date of enactment of this Act, in accordance with the procedures set forth in section 219(a) of the Sentencing Reform Act of 1987, as though the authority under that Act had not expired.

SEC. 806. PROTECTION FOR EMPLOYEES OF PUBLICLY TRADED COMPANIES WHO PROVIDE EVIDENCE OF FRAUD.

(a) **IN GENERAL.**—Chapter 73 of title 18, United States Code, is amended by inserting after section 1514 the following:

“§ 1514A. Civil action to protect against retaliation in fraud cases

“(a) WHISTLEBLOWER PROTECTION FOR EMPLOYEES OF PUBLICLY TRADED COMPANIES.—No company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l), or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)),

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or any officer, employee, contractor, subcontractor, or agent of such company, may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee—

“(1) to provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by—

“(A) a Federal regulatory or law enforcement agency;

“(B) any Member of Congress or any committee of Congress; or

“(C) a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct); or

“(2) to file, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders.

“(b) ENFORCEMENT ACTION.—

“(1) IN GENERAL.—A person who alleges discharge or other discrimination by any person in violation of subsection (a) may seek relief under subsection (c), by—

“(A) filing a complaint with the Secretary of Labor;

or

“(B) if the Secretary has not issued a final decision within 180 days of the filing of the complaint and there is no showing that such delay is due to the bad faith of the claimant, bringing an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.

“(2) PROCEDURE.—

“(A) IN GENERAL.—An action under paragraph (1)(A) shall be governed under the rules and procedures set forth in section 42121(b) of title 49, United States Code.

“(B) EXCEPTION.—Notification made under section 42121(b)(1) of title 49, United States Code, shall be made to the person named in the complaint and to the employer.

“(C) BURDENS OF PROOF.—An action brought under paragraph (1)(B) shall be governed by the legal burdens of proof set forth in section 42121(b) of title 49, United States Code.

“(D) STATUTE OF LIMITATIONS.—An action under paragraph (1) shall be commenced not later than 90 days after the date on which the violation occurs.

“(c) REMEDIES.—

“(1) IN GENERAL.—An employee prevailing in any action under subsection (b)(1) shall be entitled to all relief necessary to make the employee whole.

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“(2) COMPENSATORY DAMAGES.—Relief for any action under paragraph (1) shall include—

“(A) reinstatement with the same seniority status that the employee would have had, but for the discrimination;

“(B) the amount of back pay, with interest; and

“(C) compensation for any special damages sustained as a result of the discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

“(d) RIGHTS RETAINED BY EMPLOYEE.—Nothing in this section shall be deemed to diminish the rights, privileges, or remedies of any employee under any Federal or State law, or under any collective bargaining agreement.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 73 of title 18, United States Code, is amended by inserting after the item relating to section 1514 the following new item:

“1514A. Civil action to protect against retaliation in fraud cases.”.

SEC. 807. CRIMINAL PENALTIES FOR DEFRAUDING SHAREHOLDERS OF PUBLICLY TRADED COMPANIES.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

“§ 1348. Securities fraud

“Whoever knowingly executes, or attempts to execute, a scheme or artifice—

“(1) to defraud any person in connection with any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)); or

“(2) to obtain, by means of false or fraudulent pretenses, representations, or promises, any money or property in connection with the purchase or sale of any security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d));

shall be fined under this title, or imprisoned not more than 25 years, or both.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 63 of title 18, United States Code, is amended by adding at the end the following new item:

“1348. Securities fraud.”.

**TITLE IX—WHITE-COLLAR CRIME
PENALTY ENHANCEMENTS**

SEC. 901. SHORT TITLE.

This title may be cited as the “White-Collar Crime Penalty Enhancement Act of 2002”.

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SEC. 902. ATTEMPTS AND CONSPIRACIES TO COMMIT CRIMINAL FRAUD OFFENSES.

(a) **IN GENERAL.**—Chapter 63 of title 18, United States Code, is amended by inserting after section 1348 as added by this Act the following:

“§ 1349. Attempt and conspiracy

“Any person who attempts or conspires to commit any offense under this chapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

(b) **CLERICAL AMENDMENT.**—The table of sections at the beginning of chapter 63 of title 18, United States Code, is amended by adding at the end the following new item:

“1349. Attempt and conspiracy.”.

SEC. 903. CRIMINAL PENALTIES FOR MAIL AND WIRE FRAUD.

(a) **MAIL FRAUD.**—Section 1341 of title 18, United States Code, is amended by striking “five” and inserting “20”.

(b) **WIRE FRAUD.**—Section 1343 of title 18, United States Code, is amended by striking “five” and inserting “20”.

SEC. 904. CRIMINAL PENALTIES FOR VIOLATIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

Section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131) is amended—

- (1) by striking “\$5,000” and inserting “\$100,000”;
- (2) by striking “one year” and inserting “10 years”; and
- (3) by striking “\$100,000” and inserting “\$500,000”.

SEC. 905. AMENDMENT TO SENTENCING GUIDELINES RELATING TO CERTAIN WHITE-COLLAR OFFENSES.

(a) **DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.**—Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and related policy statements to implement the provisions of this Act.

(b) **REQUIREMENTS.**—In carrying out this section, the Sentencing Commission shall—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses and the penalties set forth in this Act, the growing incidence of serious fraud offenses which are identified above, and the need to modify the sentencing guidelines and policy statements to deter, prevent, and punish such offenses;

(2) consider the extent to which the guidelines and policy statements adequately address whether the guideline offense levels and enhancements for violations of the sections amended by this Act are sufficient to deter and punish such offenses, and specifically, are adequate in view of the statutory increases in penalties contained in this Act;

(3) assure reasonable consistency with other relevant directives and sentencing guidelines;

(4) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

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(5) make any necessary conforming changes to the sentencing guidelines; and

(6) assure that the guidelines adequately meet the purposes of sentencing, as set forth in section 3553(a)(2) of title 18, United States Code.

(c) **EMERGENCY AUTHORITY AND DEADLINE FOR COMMISSION ACTION.**—The United States Sentencing Commission is requested to promulgate the guidelines or amendments provided for under this section as soon as practicable, and in any event not later than 180 days after the date of enactment of this Act, in accordance with the procedures set forth in section 219(a) of the Sentencing Reform Act of 1987, as though the authority under that Act had not expired.

SEC. 906. CORPORATE RESPONSIBILITY FOR FINANCIAL REPORTS.

(a) **IN GENERAL.**—Chapter 63 of title 18, United States Code, is amended by inserting after section 1349, as created by this Act, the following:

“§ 1350. Failure of corporate officers to certify financial reports

(a) **CERTIFICATION OF PERIODIC FINANCIAL REPORTS.**—Each periodic report containing financial statements filed by an issuer with the Securities Exchange Commission pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a) or 78o(d)) shall be accompanied by a written statement by the chief executive officer and chief financial officer (or equivalent thereof) of the issuer.

“(b) **CONTENT.**—The statement required under subsection (a) shall certify that the periodic report containing the financial statements fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) and that information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of the issuer.

“(c) **CRIMINAL PENALTIES.**—Whoever—

“(1) certifies any statement as set forth in subsections (a) and (b) of this section knowing that the periodic report accompanying the statement does not comport with all the requirements set forth in this section shall be fined not more than \$1,000,000 or imprisoned not more than 10 years, or both; or

“(2) willfully certifies any statement as set forth in subsections (a) and (b) of this section knowing that the periodic report accompanying the statement does not comport with all the requirements set forth in this section shall be fined not more than \$5,000,000, or imprisoned not more than 20 years, or both.”

(b) **CLERICAL AMENDMENT.**—The table of sections at the beginning of chapter 63 of title 18, United States Code, is amended by adding at the end the following:

“1350. Failure of corporate officers to certify financial reports.”

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TITLE X—CORPORATE TAX RETURNS

SEC. 1001. SENSE OF THE SENATE REGARDING THE SIGNING OF CORPORATE TAX RETURNS BY CHIEF EXECUTIVE OFFICERS.

It is the sense of the Senate that the Federal income tax return of a corporation should be signed by the chief executive officer of such corporation.

TITLE XI—CORPORATE FRAUD ACCOUNTABILITY

SEC. 1101. SHORT TITLE.

This title may be cited as the "Corporate Fraud Accountability Act of 2002".

SEC. 1102. TAMPERING WITH A RECORD OR OTHERWISE IMPEDING AN OFFICIAL PROCEEDING.

Section 1512 of title 18, United States Code, is amended—

(1) by redesignating subsections (c) through (i) as subsections (d) through (j), respectively; and

(2) by inserting after subsection (b) the following new subsection:

"(c) Whoever corruptly—

"(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or

"(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so,

shall be fined under this title or imprisoned not more than 20 years, or both."

SEC. 1103. TEMPORARY FREEZE AUTHORITY FOR THE SECURITIES AND EXCHANGE COMMISSION.

(a) IN GENERAL.—Section 21C(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78u-3(c)) is amended by adding at the end the following:

"(3) TEMPORARY FREEZE.—

"(A) IN GENERAL.—

"(i) ISSUANCE OF TEMPORARY ORDER.—Whenever, during the course of a lawful investigation involving possible violations of the Federal securities laws by an issuer of publicly traded securities or any of its directors, officers, partners, controlling persons, agents, or employees, it shall appear to the Commission that it is likely that the issuer will make extraordinary payments (whether compensation or otherwise) to any of the foregoing persons, the Commission may petition a Federal district court for a temporary order requiring the issuer to escrow, subject to court supervision, those payments in an interest-bearing account for 45 days.

"(ii) STANDARD.—A temporary order shall be entered under clause (i), only after notice and opportunity for a hearing, unless the court determines that

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notice and hearing prior to entry of the order would be impracticable or contrary to the public interest.

"(iii) EFFECTIVE PERIOD.—A temporary order issued under clause (i) shall—

"(I) become effective immediately;

"(II) be served upon the parties subject to it;

and

"(III) unless set aside, limited or suspended by a court of competent jurisdiction, shall remain effective and enforceable for 45 days.

"(iv) EXTENSIONS AUTHORIZED.—The effective period of an order under this subparagraph may be extended by the court upon good cause shown for not longer than 45 additional days, provided that the combined period of the order shall not exceed 90 days.

"(B) PROCESS ON DETERMINATION OF VIOLATIONS.—

"(i) VIOLATIONS CHARGED.—If the issuer or other person described in subparagraph (A) is charged with any violation of the Federal securities laws before the expiration of the effective period of a temporary order under subparagraph (A) (including any applicable extension period), the order shall remain in effect, subject to court approval, until the conclusion of any legal proceedings related thereto, and the affected issuer or other person, shall have the right to petition the court for review of the order.

"(ii) VIOLATIONS NOT CHARGED.—If the issuer or other person described in subparagraph (A) is not charged with any violation of the Federal securities laws before the expiration of the effective period of a temporary order under subparagraph (A) (including any applicable extension period), the escrow shall terminate at the expiration of the 45-day effective period (or the expiration of any extension period, as applicable), and the disputed payments (with accrued interest) shall be returned to the issuer or other affected person."

(b) TECHNICAL AMENDMENT.—Section 21C(c)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78u-3(c)(2)) is amended by striking "This" and inserting "paragraph (1)".

SEC. 1104. AMENDMENT TO THE FEDERAL SENTENCING GUIDELINES.

(a) REQUEST FOR IMMEDIATE CONSIDERATION BY THE UNITED STATES SENTENCING COMMISSION.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission is requested to—

(1) promptly review the sentencing guidelines applicable to securities and accounting fraud and related offenses;

(2) expeditiously consider the promulgation of new sentencing guidelines or amendments to existing sentencing guidelines to provide an enhancement for officers or directors of publicly traded corporations who commit fraud and related offenses; and

(3) submit to Congress an explanation of actions taken by the Sentencing Commission pursuant to paragraph (2) and

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any additional policy recommendations the Sentencing Commission may have for combating offenses described in paragraph (1).

(b) CONSIDERATIONS IN REVIEW.—In carrying out this section, the Sentencing Commission is requested to—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of securities, pension, and accounting fraud and the need for aggressive and appropriate law enforcement action to prevent such offenses;

(2) assure reasonable consistency with other relevant directives and with other guidelines;

(3) account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements;

(4) ensure that guideline offense levels and enhancements for an obstruction of justice offense are adequate in cases where documents or other physical evidence are actually destroyed or fabricated;

(5) ensure that the guideline offense levels and enhancements under United States Sentencing Guideline 2B1.1 (as in effect on the date of enactment of this Act) are sufficient for a fraud offense when the number of victims adversely involved is significantly greater than 50;

(6) make any necessary conforming changes to the sentencing guidelines; and

(7) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553 (a)(2) of title 18, United States Code.

(c) EMERGENCY AUTHORITY AND DEADLINE FOR COMMISSION ACTION.—The United States Sentencing Commission is requested to promulgate the guidelines or amendments provided for under this section as soon as practicable, and in any event not later than the 180 days after the date of enactment of this Act, in accordance with the procedures set forth in section 21(a) of the Sentencing Reform Act of 1987, as though the authority under that Act had not expired.

SEC. 1105. AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.

(a) SECURITIES EXCHANGE ACT OF 1934.—Section 21C of the Securities Exchange Act of 1934 (15 U.S.C. 78u-3) is amended by adding at the end the following:

“(f) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 10(b) or the rules or regulations thereunder, from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12, or that is required to file reports pursuant to section 15(d), if the conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer.”

(b) SECURITIES ACT OF 1933.—Section 8A of the Securities Act of 1933 (15 U.S.C. 77h-1) is amended by adding at the end of the following:

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"(f) AUTHORITY OF THE COMMISSION TO PROHIBIT PERSONS FROM SERVING AS OFFICERS OR DIRECTORS.—In any cease-and-desist proceeding under subsection (a), the Commission may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as it shall determine, any person who has violated section 17(a)(1) or the rules or regulations thereunder, from acting as an officer or director of any issuer that has a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934, or that is required to file reports pursuant to section 15(d) of that Act, if the conduct of that person demonstrates unfitness to serve as an officer or director of any such issuer."

SEC. 1106. INCREASED CRIMINAL PENALTIES UNDER SECURITIES EXCHANGE ACT OF 1934.

Section 32(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78ff(a)) is amended—

- (1) by striking "\$1,000,000, or imprisoned not more than 10 years" and inserting "\$5,000,000, or imprisoned not more than 20 years"; and
- (2) by striking "\$2,500,000" and inserting "\$25,000,000".

SEC. 1107. RETALIATION AGAINST INFORMANTS.

(a) IN GENERAL.—Section 1513 of title 18, United States Code, is amended by adding at the end the following:

"(e) Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both."

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

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ADDENDUM ACKNOWLEDGEMENT FORM
SOLICITATION NO.: PDS201410

Instructions: Please acknowledge receipt of all addenda issued with this solicitation by completing this addendum acknowledgment form. Check the box next to each addendum received and sign below. Failure to acknowledge addenda may result in bid disqualification.

Acknowledgment: I hereby acknowledge receipt of the following addenda and have made the necessary revisions to my proposal, plans and/or specification, etc.

Addendum Numbers Received:

(Check the box next to each addendum received)

<input checked="" type="checkbox"/> Addendum No. 1	<input type="checkbox"/> Addendum No. 6
<input type="checkbox"/> Addendum No. 2	<input type="checkbox"/> Addendum No. 7
<input type="checkbox"/> Addendum No. 3	<input type="checkbox"/> Addendum No. 8
<input type="checkbox"/> Addendum No. 4	<input type="checkbox"/> Addendum No. 9
<input type="checkbox"/> Addendum No. 5	<input type="checkbox"/> Addendum No. 10

I understand that failure to confirm the receipt of addenda may be cause for rejection of this bid. I further understand that any verbal representation made or assumed to be made during any oral discussion held between Vendor's representatives and any state personnel is not binding. Only the information issued in writing and added to the specifications by an official addendum is binding.

Balestra, Horv, & Schenck CPAs, Inc.
Company

Michele Balestra
Authorized Signature

7-28-14
Date

NOTE: This addendum acknowledgment should be submitted with the bid to expedite document processing.
Revised 6/8/2012

PROPOSAL
FOR
WEST VIRGINIA PUBLIC DEFENDER SERVICES
FOR
PROFESSIONAL AUDITING SERVICES
JULY 1, 2013 THROUGH JUNE 30, 2014
RFQ# PDS201410

SUBMITTED JULY 28, 2014 BY
BALESTRA, HARR & SCHERER, CPAs, INC.
MICHAEL A. BALESTRA, SHAREHOLDER/DIRECTOR
balestra@bhscpas.com

528 SOUTH WEST STREET
PIKETON, OHIO 45661
740-289-4131

129 PICKNEY STREET
CIRCLEVILLE, OHIO 43113
740-474-5210

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Balestra, Harr & Scherer, CPAs, Inc.

ACCOUNTING, AUDITING, AND CONSULTING SERVICES

FOR FEDERAL, STATE, AND LOCAL GOVERNMENTS

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528 SOUTH WEST STREET

PIKETON, OHIO 45661

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129 PICKNEY STREET

CIRCLEVILLE, OHIO 43113

(740) 474-5210

July 28, 2014

WEST VIRGINIA PUBLIC DEFENDER SERVICES

Building 3, Room 330

1900 Kanawha Boulevard, East

Charleston, WV 25305-0730

In accordance with the State of West Virginia Purchasing Division and WEST VIRGINIA PUBLIC DEFENDER SERVICES's request for proposal (RFP), Balestra, Harr & Scherer, CPAs, Inc. is pleased to submit this proposal to perform the financial and compliance audit of the WEST VIRGINIA PUBLIC DEFENDER SERVICES 17 Public Defender Corporations for period July 1, 2013 through June 30, 2014, with option to audit financial statements for each of the two (2) subsequent fiscal years.

Balestra, Harr & Scherer, CPAs, Inc. is committed to perform the audit of the WEST VIRGINIA PUBLIC DEFENDER SERVICES 17 Public Defender Corporations for the period in question in accordance with the requirements of the "Request for Proposal."

Balestra, Harr & Scherer, CPAs, Inc. specializes in providing services to federal, state, and local governmental units. We believe our experience in providing auditing, accounting, and management consulting services for numerous government clients similar to the WEST VIRGINIA PUBLIC DEFENDER SERVICES 17 Public Defender Corporations makes us uniquely qualified to assist you with the proposed contract. As you will find the key personnel have the experience to perform this engagement in a timely and efficient manner.

We are very interested in doing business with the WEST VIRGINIA PUBLIC DEFENDER SERVICES and hope to be able to be your auditor for the period July 1, 2013 through June 30, 2014 for the 17 Public Defender Corporations. Thank you for the opportunity to present this proposal.

Sincerely yours,



Michael A. Balestra, CPA, CFE, CGFM, CISM

AUDIT OF WEST VIRGINIA PUBLIC DEFENDER SERVICES'S BASIC FINANCIAL STATEMENTS

LICENSE TO PRACTICE IN WEST VIRGINIA/INDEPENDENCE/NONDISCRIMINATION

Balestra, Harr & Scherer, CPAs, Inc. is a small business in accordance with the U.S. Small Business Administration, a Professional Corporation in the State of Ohio. We are currently authorized to engage in practice as a Certified Public Accountant pursuant to 4701.10, Revised Code. All assigned key professional staffs are properly licensed to practice in West Virginia. Balestra, Harr & Scherer, CPAs, Inc. will not use a subcontractor for this engagement.

The principal and all key professional staff have complied with the governmental qualification standards, including governmental continuing education. Included in the qualification and experience for the key personnel is a listing of continuing education courses attended over the past three years. The firm's most recent external quality review was conducted in November 20011 for which it received an unqualified opinion.

AFFIRMATIONS

The firm of Balestra, Harr & Scherer, CPAs, Inc. hereby affirms that all assigned key professional staffs who are indicated to be a licensed CPA, are properly licensed to practice in Ohio, have complied with the governmental qualification standards, including the governmental continuing education requirements, have undergone an external quality peer review.

The firm of Balestra, Harr & Scherer, CPAs, Inc. hereby affirms that the firm and all key professional staff are independent of the WEST VIRGINIA PUBLIC DEFENDER SERVICES and the State of West Virginia as defined by the U.S. General Accounting Office's Governmental Auditing Standards, Amendment Number 3 (2003).

The firm of Balestra, Harr & Scherer, CPAs, Inc. hereby affirms that they will not provide non-audit services to WEST VIRGINIA PUBLIC DEFENDER SERVICES during the term of the contract that would require the firm to perform management functions or make management decisions for the client, or would lead reasonable third parties with knowledge of the relevant facts and circumstances to conclude that the IPA would be auditing their own work.

The firm of Balestra, Harr & Scherer, CPAs, Inc. hereby affirms that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, handicap, or national origin. The firm has complied with Presidential Executive Order 11246, "Equal Employment Opportunity," as amended by Presidential Executive Order 11375, and as supplemented by 41 CFR Part 60. The firm is committed to Affirmative Action.

EXPERTISE AND EXPERIENCE

FIRM QUALIFICATION AND EXPERIENCE

Balestra, Harr & Scherer, CPAs, Inc. is a certified public accounting firm with clients located throughout Ohio, Indiana, Kentucky, Michigan and West Virginia. Our firm was established in 1992 and has a proven history of service which serves a broad range of nonprofit, government, and private sector clients. We provide a broad range of services to our clients including auditing, accounting, management consulting, and tax preparation and planning. Our firm is registered with the American Institute of Certified Public Accountants, Ohio, Indiana, Kentucky, Michigan, and West Virginia State Accountancy Board, and the Auditor of State of Ohio - IPA Division. Our firm is classified as a Hub-zone small business in accordance with the U.S. Small Business Administration. We have four office locations in Circleville, Worthington and Piketon, Ohio, and Huntington, WV. The location of the office from which the work on this engagement is to be performed is 528 S. West St., Piketon, Ohio 45661.

Balestra, Harr & Scherer, CPAs, Inc. is a member of the Private Companies Practice Sections (PCPS) of the American Institute of Certified Public Accountants. As members we subject ourselves to triennial peer reviews in an effort to ensure that the quality of work and our staff's education is maintained at the highest level of our profession. Membership in the PCPS also requires that our professional staff obtain at least forty hours of continuing education annually. In addition, we encourage our staff to become involved in professional and civic organizations. These organizations include the American Institute of Public Accountants, West Virginia Society of Certified Public Accountants, Association of Government Accountants, Government Finance Officers Association, Information Systems Audit and Control Association and many other organizations.

Our firm's membership in the Independent Accountant's International and other networks provides us with technical resources and manpower not only on a national level but a global level as well. Members of Independent Accountants International network are thoroughly screened to ensure that the quality of their work meets professional standards and the standards established by the network. When the need arises, we have a proven, quality contact in other cities across the nation as well as around the world that we can use for technical resources or provide help on a project in another part of the country or world.

Balestra, Harr & Scherer, CPAs, Inc. is a group of dedicated professionals. We employ 64 people full-time of which 60 are professional staff. Of this total, 15 are Certified Public Accountants, 2 are Certified Fraud Examiners, 2 are Certified Information System Auditors, 1 is Certified Information Technology Professional, 1 is a Certified Government Audit Professional, 1 is a Certified Information Security Manager and 2 is a Certified Government Financial Manager. All professional staff has a Bachelors Degree in Accounting. Our firm has a substantial audit and consulting practice of government clients, so we have 15 full-time and 2 part-time audit staff members dedicated to this important client base. The staffing for this engagement will entail the following; Engagement Partner, Director of Quality Assurance/Concurring Reviewer, Manager, Supervisor, staff auditors, and a systems auditor.

Experience and professionalism are the keys to our success. Members of the firm have worked in various entities including governmental and regulated industries. They understand the system from both sides of the equation. Maintaining the highest degree of independence, integrity, and competence, our staff treats all client matters with the utmost confidentiality. Consequently, every member of our firm is committed to providing a high level of service that is responsive to the needs and expectations of each individual client. The firm uses state of the art computerized equipment to insure accurate and timely preparation of reports.

One way we insure quality service is to have an effective quality control program. Our firm underwent a external review of its internal quality control program by an independent review team in November 2011 and received an unqualified opinion. This review process is a requirement of our professional organization, the American Institute of Certified Public Accountants, and is completed to insure that firms are meeting professional standards.

Balestra, Harr & Scherer, CPAs, Inc. is a firm registered with the Accountancy Boards in Ohio, Indiana, Kentucky, Michigan and West Virginia and has no record of outstanding complaints on file with the Boards during the past 3 years. The firm has no pending disciplinary action against it nor has it had any disciplinary action taken against it during the past 3 years with state regulatory bodies or professional organizations.

ASSIGNED PARTNER QUALIFICATIONS AND EXPERIENCE

MICHAEL A. BALESTRA

Current position	President/Director		
Current employer	Balestra, Harr & Scherer, CPAs, Inc.		
Education	B.B.A., Accounting, Ohio University		
Professional certifications	CPA, CFE, CGFM, CISM		
Total years of experience	30	Years of audit experience	30
Proposed position	Engagement Partner	Years of Government experience	30

Relevant experience

- Mr. Balestra served as the engagement partner on the fiscal years 1995 through 2013 Government engagements.

State and local government audit experience

- **States of Ohio, West Virginia and Kentucky.** Mr. Balestra served as a engagement partner on financial statement and compliance audits of State Agencies, Counties, Cities, Villages, Townships, School District, Universities, PDS, and Not for Profits conducted in accordance with *Government Auditing Standards* and the Single Audit Act. These audits involved accounting and auditing principles and techniques that closely resemble those of the PDS. Mr. Balestra's responsibilities include supervising and reviewing all phases of field work.
- Also, Mr. Balestra worked for 13 years as a Senior Auditor Manager for the Auditor of State of Ohio and has experience with an international accounting firm. While at the Auditor of State's office he performed audits in a 10 county area which involved numerous government and nonprofit engagements.

Professional accomplishments, affiliations, and other

Member, Association of Government Accountants	Member, Information Systems Audit and Control Association
Member, Government Financial Officers Association	Member, American Institute of Certified Public Accountants
Member, WV, KY and Ohio Society of CPAs	Member, Association of Certified Fraud Examiners

Continuing professional education (last three years)

<u>Course</u>	<u>Participant (P)/ Instructor (I)</u>	<u>CPE Hours</u>	<u>Date</u>
Uniform Cost Reporting	P	8	01/11
The Higher Education Accounting Forum: GFOA	P	18	04/11
Ohio Professional Standards and Responsibilities	P	3	12/11
Auditing Networked Computers	P	22	11/11
GASB Statement No.44 – The New Statistical Section	P	4	02/12
Core A&A Training – CCH	P	8	03/12
GASB #34 – CCH	P	8	03/12
Workshop – CCH	P	8	03/12
Compliance Issues and How to Design Policies to Avoid Them	P	2	03/12
Annual Update for Accountants and Auditors	P	8	03/12
Fraud Red Flags in Local Government	P	4	04/12
Training – Governmental Auditing – BHS	I	8	04/12
Fraudulent Payroll Schemes and Prevention	P	2	01/13
101 st Annual GFOA Conference	P	24	06/13
Community School Training	P	6	07/13
Government Accounting and Auditing Update Training	P	9	08/13

BRENDEN BALESTRA

Current position	Audit manager		
Current employer	Balestra, Harr & Scherer, CPAs, Inc.		
Education	B.B.A., Accounting, Liberty University		
Professional certifications	CPA, CISA, CGAP		
Total years of experience	16	Years of audit experience	16
Proposed position	Audit Manager	Years of PDS experience	16

Relevant experience

- Mr. Balestra served as the audit manager on the fiscal years 1997 through 2013 government engagements. Mr. Balestra's responsibilities include supervising and reviewing all phases of field work and completing field work.

State and local government audit experience

- **State of Ohio, Kentucky and West Virginia.** Mr. Balestra served as Audit manager on financial statement and compliance audits of Counties, Cities, Villages, Townships, School Districts, Special Districts and Not for Profits conducted in accordance with *Government Auditing Standards* and the Single Audit Act. These audits involved accounting and auditing principles and techniques that closely resemble those of the PDS. Mr. Balestra's responsibilities include supervising and reviewing all phases of field work and completing field work.

Professional accomplishments, affiliations, and other

Member, Association of Government Accountants
 Member, American Institute of Certified Public Accountants
 Member, Ohio Society of Certified Public Accountants

Continuing professional education (last three years)

<u>Course</u>	<u>Participant (P)/ Instructor (I)</u>	<u>CPE Hours</u>	<u>Date</u>
Fraud & the Financial Statement Audit (SAS 99) – AICPA	P	8	08/11
Audit Sampling – RSM McGladrey	P	3	08/11
SAS 99 and Identity Theft/ Forged Documents Seminar – Central Ohio AGA	P	4	09/11
Going Concerns Issues – RSM McGladrey	P	1	09/11
Consideration of Internal Controls in a Financial Statement Audit – RSM McGladrey	P	4	09/11
Audit Sampling Materiality & Risk – Video Education	P	8	09/11
Student Financial Aid Seminar – NASFFA	P	8	10/11
Accounting & Auditing for ADAMH – Franklin PDS ADAMH	P	8	12/11
The Revised Yellow Book – Government Auditing Standards – AICPA	P	8	01/12
Auditor of State Accounting, Auditing and Ohio Supplement Update	P	8	03/12
Central Ohio AGA Professional Development Conference	P	24	12/12
Ohio Professional Standards and Responsibilities	P	3	12/12
Uniform Cost Report Training	P	12	01/13
Emerging Trend In Fraud Investigation and Prevention Conference	P	12	05/13
The Higher Education Accounting Forum	P	18	04/13

RICK GALLOWAY

Current position	Audit manager		
Current employer	Balestra, Harr & Scherer, CPAs, Inc.		
Education	B.B.A., Accounting, Ohio University		
Professional certifications	CPA		
Total years of experience	20	Years of audit experience	20
Proposed position	Audit Manager	Years of PDS experience	20

Relevant experience

- Mr. Galloway has served as the audit manager on the fiscal years 1997 through 2013 government engagements. Mr. Galloway's responsibilities include supervising and reviewing all phases of field work and completing field work.

State and local government audit experience

- **State of Ohio, West Virginia and Kentucky.** Mr. Galloway served as Audit manager on financial statement and compliance audits of Counties, Cities, Villages, Townships, School Districts, Special Districts and Not for Profits conducted in accordance with *Government Auditing Standards* and the Single Audit Act. These audits involved accounting and auditing principles and techniques that closely resemble those of the PDS. Mr. Galloway's responsibilities include supervising and reviewing all phases of field work and completing field work.

Professional accomplishments, affiliations, and other

Member, Association of Government Accountants
 Member, American Institute of Certified Public Accountants
 Member, Ohio Society of Certified Public Accountants
 Member, West Virginia Society of Certified Public Accountants

Continuing professional education (last three years)

<u>Course</u>	<u>Participant (P)/ Instructor (I)</u>	<u>CPE Hours</u>	<u>Date</u>
Fraud & the Financial Statement Audit (SAS 99) – AICPA	P	8	08/11
Audit Sampling – RSM McGladrey	P	3	08/11
SAS 99 and Identity Theft/ Forged Documents Seminar – Central Ohio AGA	P	4	09/11
Going Concerns Issues – RSM McGladrey	P	1	09/11
Consideration of Internal Controls in a Financial Statement Audit – RSM McGladrey	P	4	09/11
Audit Sampling Materiality & Risk – Video Education	P	8	09/11
Student Financial Aid Seminar – NASFFA	P	8	10/11
Accounting & Auditing for ADAMH – Franklin PDS ADAMH	P	8	12/11
The Revised Yellow Book – Government Auditing Standards – AICPA	P	8	01/12
Auditor of State Accounting, Auditing and Ohio Supplement Update	P	8	03/12
Central Ohio AGA Professional Development Conference	P	24	12/12
Ohio Professional Standards and Responsibilities	P	3	12/12
Uniform Cost Report Training	P	12	01/13
Emerging Trend In Fraud Investigation and Prevention Conference	P	12	05/13
The Higher Education Accounting Forum	P	18	04/13

AVAILABILITY AND EXPERIENCE OF MANAGEMENT SUPPORT PERSONNEL

The following personnel are available support personnel for technical consultation during the audit and as needed throughout the term of the contract. They can be assessed daily by staff and client, either by email, cell phone or land phone. Also, they have the capabilities to review our electronic work papers while at another location or off the audit site.

JEFF HARR, CPA

Jeff graduated from the Ohio State University with a BSBA in accounting. He is a shareholder and the firm's Director of Quality Control. Before starting the firm, he worked as an audit manager for an international accounting firm. He is a peer reviewer in the AICPA peer review program. Jeff has extensive experience in auditing government entities. He performs a stringent, independent technical review process of all opinion audits to ensure its accuracy and unbiased reporting. Also, he is available for consultation on technical matters, as needed. He meets the 40 hours CPE yellow book requirement every year.

PAUL RENNICK, CPA

Paul graduated from Wilmington College with a BS in accounting. He is the firm's Director of Quality of Assurance/Accounting and Auditing Support and has held various other audit and accounting management positions in his 24+ years in the field. Prior to joining our firm, he was the Senior Deputy Auditor for Local Government Services with the Auditor of State and an audit manager for an international accounting firm. Paul has served on GASB Task Forces, is an annual reviewer for the AICPA's governmental sector Audit Risk Alert and is a member of the GFOA Certificate Special Review Committee. He has extensive experience in auditing government entities. Paul is trained in the implementation of new reporting and disclosure requirements for Counties. To assist with compliance in the complex and evolving regulatory environment, Paul monitors the activities of the Auditor of State and GFOA. He also monitors state agencies and others regarding government funding and audit requirements of government entities. He meets the 40 hours of CPE yellow book requirement every year.

ZACH HOLBERT, CPA

Zach graduated from Shawnee State University with a BSBA in accounting. He is the firm's Assistant Director of Government Auditing and has 10 years of experience. Zach has extensive experience in auditing government entities and IT systems. His specialty is government audits and federal programs. Zach is a member of the Institute of Internal Auditors, Association of Government Accountants and the Information Systems Audit and Control Association. He meets the 40 hours CPE yellow book requirement every year. He is available for consultation on technical matters, as and when needed.

CHRIS GLEASON, CISA

Chris graduated from the Ohio State University with a BSBA in accounting. He is the firm's IT Director and has 15 years experience. Chris has extensive experience in auditing government entities and IT systems. His specialty is reviewing general and application controls for IT systems. Chris is a member of the Information Systems Audit and Control Association. He meets the 40 hours CPE yellow book requirement every year. He is available for consultation on technical matters, as and when needed.

All the above listed personnel have provided technical support on the firm's government audits.

SIMILAR GOVERNMENT EXPERIENCE

WV PDS – 17 PDC JUDICIAL CIRCUITS
WV EDUCATIONAL BROADCASTING AUTHORITY
WV PUBLIC BROADCASTING FOUNDATION, INC.
FRIENDS OF WV BROADCASTING, INC
WV ALCOHOL BUREAU CONTROL ADMINISTRATION
WV DEPARTMENT OF EDUCATION
WORKFORCE WEST VIRGINIA
FORT GAY, WV
WAYNE, WV
SPENCER, WV
KEYSER, WV
MOUNDSVILLE, WV
CLEARVIEW, WV
WEST UNION, WV
CCCSO, INC.
CHARLESTON SANITARY BOARD
CHARLESTON CVB
CABELL-HUNTINGTON BOARD OF HEALTH

PLEASE NOTE OUR FIRM PERFORMS OVER 100 GOVERNMENT AND NONPROFIT AUDITS ANNUALLY. THESE ARE TOO LARGE TO SCHEDULE OUT BUT THE LIST CAN BE MADE AVAILABLE ON REQUEST.

UNDERSTANDING OF THE SCOPE OF THE WORK AND AUDIT APPROACH

We understand that the WEST VIRGINIA PUBLIC DEFENDER SERVICES seeks an independent CPA firm to perform an audit of the PDS's basic financial statements for the fiscal year ending June 30, 2014, with the option for auditing the subsequent two fiscal years. We understand that the PDS's basic financial statements include the following:

- Management's Discussion and Analysis
- Financial Statements
 - Statement of Net Assets
 - Statement of Revenues, Expenses and Changes in Fund Net Assets
 - Statement of Cash Flows
- Notes to the Financial Statements
- Schedule of Budget to Actual Expenses – Cash Basis

We will conduct the audit in accordance with *Government Auditing Standards* issued by the comptroller general of the United States, and subsequent revisions. Our audits of the PDS will be performed in accordance with auditing standards generally accepted in the United States of America as set forth by the American Institute of Public Accountants, the standards for financial audits set forth by *Government Auditing Standards* issued by the comptroller general of the United States, and subsequent revisions (2003), and the provisions of the Single Audit Act Amendments of 1996. In addition, we will perform tests of compliance using the West Virginia Code to determine the audit steps to be performed. Upon completion of the audit of the financial statements of the West Virginia Public Defender Services we will issue the reports listed on page 22 for the 17 Public Defender Corporations.

We are also required to audit the additional financial information schedules required by the Financial Accounting and Reporting Section (FARS) of the West Virginia Department of Administration. Also, limited procedures will be performed on RSI and OFI.

Understanding of the WEST VIRGINIA PUBLIC DEFENDER SERVICES

The WEST VIRGINIA PUBLIC DEFENDER SERVICES serves as an oversight agency responsible for the Public Defender Corporations. There are 17 Public Defender Corporations required to be audited. The Public Defender Corporations are component units which will be blended as a special revenue fund for the State of West Virginia in its CAFR for the fiscal year ended June 30, 2014. State Code Section 29021-11 allows the Public Defender Corporations to apply to the executive director of the WV Public Defender Services for state financial assistance. All 17 corporations received this funding for 2014.

Audit Methodology and Approach

Audit methodologies and technical approaches can vary significantly among CPA firms, even though auditing standards and accounting principles have been uniformly established. Balestra, Harr & Scherer, CPAs, Inc. has developed an approach to auditing financial statements that has proved effective in meeting both professional standards and the high expectations of the general community. This methodology incorporates the best practices of the Firm's Audit Service Manual with the unique applications and requirements of the PDS and government sector's own authoritative literature.

We have already successfully implemented this methodology on previous audits. This methodology integrates both the financial and EDP audit approaches seamlessly. The traditional audit approach is based upon an important premise—financial statements are not an end unto themselves. They are only one result of numerous operational processes and other variables that ultimately contributed to the financial results. With this in mind, we recognize that PDS and government entities today expect more than a certification statement for their audit fee. Although the auditors' opinion as to whether the financial statements are free of material misstatements is a critical outcome, the most important outcome of PDS and government audits today is practical recommendations for improving controls and increasing efficiency.

Technology-Enabled

Balestra, Harr & Scherer, CPAs, Inc. audit teams armed with proprietary applications that help to ensure that you receive a quality audit. Balestra, Harr & Scherer, CPAs, Inc.'s technology tools provide our teams with a structured, risk-focused workflow that puts industry information at their fingertips and enables team collaboration. These state-of-the-art tools are more than simple work papers; these tools help teams focus on the key risks of your business and drive concise analysis that is fundamental to the financial statement audit.

Given today's highly complex financial management systems, and evaluation of the IT control environment is a critical component of auditing the financial statements of most entities. Such an evaluation determines the degree of reliance an auditor can place on the internal controls of the systems that generate financial statements. Our IS auditors perform thorough reviews of the overall control procedures within the IT environment and of the specific controls unique to each client's application systems and transactions. The IT general control environment, combined with the specific applications controls unique to individual transaction cycles, will determine the reliability of data produced by computerized systems.

In determining our EDP audit approach, we use our technical expertise and understanding of the PDS and government agencies and its operating environments. Our EDP audits comply with Information Systems Audit and Control Association's audit methodology, COSO and COBIT.

Our EDP audit approach and work plan are simple and straightforward. We deploy a methodology that evaluates general controls at the entity and installation levels, we evaluate general controls as they are applied to the applications being examined, and we assess applications controls, which are the controls over input, processing, output, and security of data associated with individual applications.

This methodology examines the effectiveness of general controls as a significant factor in determining the effectiveness of application controls. We realize that without effective general controls, application controls may be rendered ineffective by circumvention or modification. Our methodology examines both general and application controls to examine their effectiveness and to help ensure the reliability, appropriate confidentiality, and availability of critical automated information.

Balestra, Harr & Scherer, CPAs, Inc.'s Approach is Successful and Efficient

Our comprehensive engagement approach is based on a clear understanding of the client. We take into consideration the mission, business and operating objectives, and business and operating processes unique to your organization. This enables us to provide you with tailored results that specifically address opportunities for improvement.

Balestra, Harr & Scherer, CPAs, Inc. has audited more government entities than most other firms. Because our audit approach has proved to be successful at numerous government entities, we will not have to create a new approach of the PDS's, as any other firm would be required to do.

The chart below details the differences between traditional audits and Balestra, Harr & Scherer, CPAs, Inc.'s unique audit approach.

What You Should Expect	How Traditional Audits Respond	How Our Audit Responds
Understanding of your business, operations, and market challenges	Financial statement focus	Business approach built upon a foundation of understanding your mission and strategic operating objectives
Focus on compliance and controls	Internal control evaluation for interim test work	Continuous contact involving key members or our service team; integration with the audit objectives
The right team to match your operations	Functional audit team (auditors "borrowing" consultants)	Multidisciplinary integrated team that works together, year-round
A firm that listens to your concerns	Responds to client-raised concerns; visits from a "sales partner"	Continuously asks how we can improve

Our audit methodology is founded on several key points:

- Consideration and use of existing documentation and related work products. We review the PDS's strategic plans, annual reports, five-year plans, budgets, and audit reports, and make use of prior-year work papers to the maximum extent possible. These sources of information save us time and enable us to better understand the PDS's business and operating environment, to assess control risk, and to plan the audit.
- Analytical review techniques in the planning phase of the audit to assess inherent risk and to identify account inter-relationships or results that may differ from expectations. This allows us to focus our audit effort on critical areas, providing an earlier and more effective identification of potential problems and areas most likely to result in material misstatement.
- Early consideration and discussion of the more contentious and often troublesome issues, such as the accounts most likely to require adjustment, most difficult to audit, or most difficult for which to obtain adequate audit evidence, and legal letters, management representation letters, and their ramifications.
- Maximum use of technology in the audit process, including the use of statistical sampling techniques to select and evaluate samples more efficiently and to minimize audit risk; extensive use of the PDS's computers to automate the audit process; use of other technology-based audit tools and techniques to audit "through the computer" where practicable; and use of IS auditors experienced in PDS and government audit engagements.
- Assignment of experienced professionals with specialized knowledge and skills in auditing PDS and government entities in accordance with related authoritative guidance.
- Strong reliance on planning, communication, and coordination between all parties.
- Continuous consideration and updates on the status of any reportable conditions, communicated through progress meetings and notices of findings, so that there are no surprises at the audit's completion.

Our audit methodology is risk-based and concentrates on areas that present a higher risk of financial statement loss or misstatement. Our approach focuses on planning, communicating, and coordinating with PDS's management and audit committee. Maintaining communication throughout the audit is critically important. Therefore, we will inform the audit committee and PDS's management of our progress as well as of potential audit issues and findings.

Four-Phase Approach

Our audit approach includes four phases: planning, internal control review, substantive testing, and reporting and is consistent with auditing standards generally accepted in the United States of America and *Government Auditing Standards*. The four phases and the work to be performed as part of each phase are summarized below. This summary does not limit the audit scope, as additional areas of focus may surface as the audit progresses.

Planning Phase

The primary purpose of this phase is to establish a proper foundation for the direction of the audit. The procedures performed during the planning phase will help ensure that the audit work performed is adequate and supports our opinion on the financial statements and our Report on Compliance and Internal Controls over Financial Reporting based on an audit of the financial statements performed in accordance with *Government Auditing Standards*.

Step 1.1 – Hold an entrance conference. We will hold an audit entrance conference with the PDS's management and Audit Committee to ensure all relevant concerns are incorporated into our procedures, to provide an overview of our objectives and planned approach, and to discuss administrative issues. We will provide at least five working days notice to PDS's management prior to the meeting. Topics we expect to address during the conference include:

- Identification of key contacts
- General audit approach
- Timeline
- Coordination with management regarding audit assistance needed
- Coordination of EDP and statistical specialist involvement
- Preliminary audit concerns
- PDS's management concerns
- Notification of findings and recommendations process (our "no surprises" audit technique)
- Content, format, and timing of progress and financial status reports
- Space and equipment needs

Step 1.2 – Meeting with key PDS personnel. We will meet with designated PDS personnel to discuss certain aspects of the overall audit planning process, including the following:

- Initial audit concerns
- Management concerns
- Fraud risk factors and management's response to such risk
- EDP general and application control environment
- Potential accounting and reporting issues
- Financial highlights
- Status of implementation of new GASB 34
- Any concerns not addressed in the entrance conference

We anticipate that the meeting described above will assist us in determining information needed for interim and final testing and establishing timetables. We believe that communication is vital for a successful audit; therefore, we will ensure that we discuss the information needed for the audit, the format of the information, and the due dates that will enable us to meet the deadlines.

Step 1.3 – Plan for interim fieldwork. We will design our audit so that we perform most of the detailed audit procedures throughout the year instead of after year-end. Example audit procedures that we will perform prior to year-end include:

All Processes

- Test the design and operating effectiveness of EDP controls
- Test the design and operating effectiveness of non-EDP internal controls, such as reconciliations and management review controls, for all audit processes

Cash and Investment Management Processes

- Test controls over cash and reconciliation activity

Budget Management Process

- Test controls over monthly budgetary statements

- Test a sample of appropriations and transfers approvals
- Test a sample of obligations incurred

Revenue Management Process

- Test controls and compliance with revenue policy and related laws and regulations

Human Resources Management Process

- Test controls over compliance with payroll and benefit related laws and regulations
- Test controls over payroll policy
- Substantively sample payroll

Procurement Management Process

- Test controls over compliance with procurement policy and laws
- Test controls over procurement policy
- Substantively sample vouchers

Step 1.4 – Perform high-level review of organization, programs, controls, and risk. We will obtain and review the following documentation as necessary:

- Enabling legislation
- Appropriations and related internal budgets
- Applicable laws and regulations
- Strategic plans
- Five year plans
- Accounting policies and procedures manuals
- Recent financial statements and annual reports
- Key statistical data
- Annual performance plans and related reports

Two key elements of our audit process are assessing business risks affecting the client and obtaining an understanding, sufficient to plan and execute the audit, of the key processes and controls in place to manage and mitigate those risks, including the use of information systems.

Step 1.5 – Review prior year audit work papers. We will review the prior year work papers and reports. We will also review any relevant internal audit reports that may have been issued that would affect PDS's financial systems, internal controls, or operations. This will allow us to build upon prior work and avoid duplication of effort. Our review of prior year work papers will focus on:

- Background information on operations and policies
- Overall control environment, financial management systems, and control procedures
- Controls and systems to ensure compliance with laws and regulations
- Other work papers supporting prior year reports

Step 1.6 – Make preliminary materiality determinations. Materiality determinations help focus the audit on key areas. We will preliminarily determine materiality to identify significant line items, accounts, assertions, processes, and accounting applications. We will document these determinations in the work papers and include them in our planning document. We will also preliminarily determine materiality for analytical, internal control, and substantive testing purposes.

Step 1.7 – Review sources of financial statement data. We will review the flow of accounting data from the point of transfer or exchange to the general ledger. We will determine how the financial statement amounts are obtained from the general ledger and type of supporting documentation that supports the key general ledger activity. The information we obtain in this step will be used to prepare internal control cycle matrices.

Step 1.8 – Identify significant line items, accounts, and assertions. Based on our understanding of the source of financial statement data, we will begin to prepare an account risk analysis (discussed later in this section), in which we identify the material financial statement cycles, accounts, line items, components, and audit assertions. This will focus our attention on those financial statement elements that will require the most audit attention. Based upon our understanding of PDS's operations, we will have identified the following significant processes and related financial statement accounts:

- Cash and investment management
 - a. Cash and Cash Equivalents – pooled and segregated
- Budget Management
 - a. Appropriations
 - b. Status of budgetary resources
 - c. Estimated resources

- d. Encumbrances and un-obligated balances
 - e. Transfers in and out, due to and from other funds
- Financial Reporting
 - a. Basic Financial statements
 - b. MD & A
 - c. Required supplementary information
 - d. Other financial information
 - Revenue Management Process
 - a. Unemployment Compensation Premiums and other receivables
 - b. Charges for services and operating grants, interest and other
 - c. Due from other governments
 - Procurement Management Process
 - a. Accounts payable and expenses
 - b. Material and supplies inventories
 - c. Capital assets, additions, deletions and depreciation
 - Human Resource Management Process
 - a. Salaries, Wages and Benefit expense
 - b. Employee Pension contributions
 - c. Employer Pension contributions
 - d. Salaries, Wages and Benefits Payable, intergovernmental payable
 - e. Compensation Absences due

Step 1.9 – Identify significant internal control processes, cycles and accounting applications. Based on our definition of material financial statement accounts, line items, and components, and our understanding of the flow of information from the original points of entry, through the accounting application, to the financial statements, we will identify significant internal control processes, cycles, and accounting applications. In this effort, we will focus on those key controls directly affecting each material financial statement item, as well as those controls over the reported performance measures. This will guide our work in the internal control phase of the audit, where we understand, document, and test internal controls for purposes of determining whether they are adequately designed and their overall effectiveness. We expect the significant internal control processes and cycles to be:

- Cash and Investment management
- Budget management
- Revenue management
- Procurement management
- Human Resource management
- Financial Reporting management
- Federal Programs Grant management

Step 1.10 – Review general record keeping considerations. For each financial statement line item, we will determine the methodology, frequency of activity, and personnel involved in maintaining the accounting records. For example, we will determine how PDS's ensures that salary and benefits for new employees are calculated and entered into the payroll system accurately and timely and whether approved wage adjustments are properly made.

Step 1.11 – Assess adequacy of systems and procedures documentation. We will determine whether the accounting systems and control procedures are documented. We will also determine whether available systems and procedures documentation have been updated for any significant changes in accounting applications.

Step 1.12 – Perform preliminary analytical review procedures. Analytical procedures included reviewing interim account balances for trends, fluctuations, and relationships. We will perform analytical procedures for selected financial information and discuss unusual relationships and trends with management.

Step 1.13 – Identify major areas of audit concern and define the major audit objectives. Based on areas important to PDS's management, auditor of state and the audit committee, our understanding of the operating environment, the results of our analytical reviews, and our other planning procedures, we will highlight areas to emphasize during the engagement. We will then define the engagement objectives, concentrating on identified areas of concern.

These objectives will form the basis for the design of the audit programs and procedures to be performed. We will design our procedures based on the nature and materiality of the information to be tested, the likelihood of misstatements, the information gathered in the planning process, prior engagement experience, and our overall pension and government experience. We will design our engagement procedures to ensure we neither omit required procedures nor perform unnecessary procedures.

Step 1.14 – Identify significant provisions of laws and regulations. We will perform the following to identify laws and regulations that could have a direct and material effect on the financial statements:

- Inquire of the PDS's management and audit committee to discuss laws and regulations that could have a direct and material effect on the financial statements.
- Review the Request for Proposal
- Review work done in the prior year, as documented in prior year reports and work papers
- Review applicable authorizing and enabling legislation and any related PDS's
- Request PDS's general counsel to identify laws and regulations that it believes could have a direct and material effect on the retirement funds
- Review Auditor of State's Ohio Compliance Supplement
- Review applicable grant agreements

Step 1.15 – Determine preliminary risk assessments. We will determine the preliminary risk assessments based on quantitative and qualitative risk factors. Quantitative risk factors are a function of size and volume, while qualitative risk factors are more subjective and can include:

- The nature of operations and operating environment
- The strength of the internal control structure
- Transaction procedures and systems
- Accounting capabilities and policies
- The degree of subjective judgment required in determining significant dollar amounts
- The size, volume, and nature of transactions
- The systems to ensure compliance with laws and regulations
- The level and degree of management review
- The integrity and experience of management

During the planning phase, we will make preliminary risk assessments for each assertion. We will update and refine risk assessments based on results of our internal control test work and our assessment of effectiveness of internal control procedures. This will help us to focus the procedures we will perform in the testing phase on critical objectives, consistent with our assessments of control risk. More significant risk areas will receive more attention in terms of the procedures performed.

Step 1.16 – Identify uses for computerized audit applications. Our team will have multiple personal computers on site to automate certain functions. Automation makes engagement process more efficient and allows our professionals more time to analyze data and solve problems. We will use personal computers to automate analytical reviews, audit programs, system documentation, and detailed work papers; calculate statistical sample sizes and select sample items; test down load files; and automate various other tasks to produce an efficient and professional work product. Our work papers will include planning memoranda, internal control memoranda, spreadsheets, analytical reviews, and internal and external memoranda in Microsoft Word and Excel (format). Our IS auditors have developed computer assisted auditing techniques (CAATs) using our computer tools. The use of computers and our audit software enables our staff to perform the following functions electronically:

- Directly load client files into our microcomputer systems
- Update financial analyses and benchmarking indices
- Prepare or revise internal control analyses
- Select and analyze statistical and non-statistical audit samples for use in compliance and substantive audit test
- Exchange data among our offices, using our email system
- Track audit adjustments and their effect on financial statement balances

We will use sampling software to select sample sizes for non-payroll and payroll area.

The following summarizes certain automated software available to our audit team.

Audit Software	Application	Benefits
CCH Prosystems FX	Documents and manages audit strategy and execution	Improves audit team communication and efficiency
CCH CorpSystem Workpaper Manager Software	Workpaer Manger and Financial Statement Preparation	Improves audit team workpaper quality and efficiency and integrates Financial Statement Preparation
CAATs Automation Tools (ACL Software)	Enables automated data extraction, analysis, and reporting	Increases the efficiency of the audit
Cobit (ISAACA)	Models for microcomputer and mainframe based internal control documentation and review	Provides customized documentation in accordance with the Committee on Sponsored Organizations (COSO)
PPC Librarian	Professional accounting and auditing literature retrieval	Provides up to date guidance and key word searches
IT Control Reviews	IT documentation tool designed specifically for evaluating IT controls	Increases audit efficiency; minimizes time in documenting the IT control environment
IT Risk Management Benchmarking	Benchmarks the organization's key IT risk and controls against other organizations	Provides an objective means of reviewing the risk faced by an organization in relation to its use of IT

Step 1.17 – Assess work performed by other firms. We will inquire of PDS's management and the Auditor of State to identify any audits, reviews, or agreed upon procedures performed by other firms. We expect to review the work of these firms.

Step 1.18 - Review form and content of financial statements. We will review the prior year financial report and provide suggestions for improving presentation of the financial statements and related disclosures, as necessary. We will meet with PDS's management to discuss these suggestions and any new reporting requirements.

Step 1.19 – Review preparation of the MD & A. We will review the process for preparing the MD & A, developing and documenting performance measures, determining source(s) of the information, and determining whether the information is appropriately supported by source documentation.

Step 1.20 – Prepare the strategic audit plan. We will document the results of the planning phase in the strategic audit plan. Our standard work papers include business understanding documents, risk analysis documents, significant issues and decision documents, process analysis documents, control risk matrices, and audit program guides. Our strategic audit plan will include the following:

- Entity Profile, which provides a background of the PDS's and describes our overall engagement approach. This information is documented in our standard work papers entitled Engagement Planning Memorandum.
- General Risk Analysis, which identifies the overall engagement risks, the impact of accounting and engagement issues, the significant accounting cycles, laws and regulations, preliminary analytical procedures, engagement plan, and the materiality levels. This information is documented in our standard work papers entitled Engagement Planning Memorandum.
- Cycle Matrix, which links each of the accounts to a cycle, an accounting application, and a financial statement line item. The cycle memorandum sill document significant cycles or processes that will then be used to help identity significant internal controls within the cycle. This information is documented in our standard work papers entitled Engagement Planning Memorandum.
- Account Risk Analysis, which will bridge the internal control procedures to the substantive procedures in a narrative and table format. This document will identify, by account or financial statement line item, the relationship between identified internal control risks and the planned substantive procedures and assertions. This information is documented in our standard work papers entitled Engagement Planning Memorandum.
- Cycle Memorandum, which identifies the cycle transactions, each significant accounting application, and each significant financial management system included in the cycle. It describes the interfaces with other cycles and identifies financial statement line items and general ledger accounts in the cycle. It also describes the operating policies and procedures relating to the processing of cycle transactions and major internal controls. This information is documented our standard work papers titled, Record of Application Controls, Record of Monitoring Controls, Assessment of the Control Environment, and Record of Computer Environment Controls.

- Special Control Evaluation Worksheet, which summarizes our evaluation of the effectiveness of the design and operation of specific control techniques for each significant accounting application or significant line item, including EDP controls. We will prepare a preliminary worksheet that will be updated in the internal control phase. This information is documented in our standard work papers entitled Engagement Planning Memorandum.
- Audit Programs, which document the specific objectives and procedures to be applied to each of PDS's significant financial statement line items and classes of transactions. These programs will help engagement staff organize planning procedures, perform system reviews and evaluations, perform sampling and computer assisted procedures, and summarize procedures by objective and applicable law and regulations.
- Sample Plans and Substantive Test of Details Worksheets will help determine the number of transactions to test in both statistical and non-statistical samples.

We will review the strategic engagement plan with PDS's management and audit committee and obtain approval of the strategic engagement plan.

Section 1.21 – Prepare a list of information needed for the audit. Based on past PDS and government audit experience and our understanding of WEST VIRGINIA PUBLIC DEFENDER SERVICES, we will prepare a preliminary list of information needed for the audit (i.e., the PBC list and Client Assistance Package). We will try to use information already available to minimize PDS's efforts in preparing information for the audit. We will meet with PDS's management to discuss the timing of the information needed. We will maintain and update this list as the audit progresses.

Section 1.22 – Conduct periodic progress meetings. We will regularly communicate with the PDS's management and audit committee. We emphasize communication in our audit process because it is an important part of avoiding surprises, resolving questions, and meeting deadlines. We will hold periodic briefings with PDS's management and audit committee to discuss the progress of the engagement during every other week that we work on the engagement. At the periodic meetings, we will discuss any concerns of PDS's management and audit committee and the following:

- Progress to date compared to our audit timetable included in our proposal
- Significant issues and discrepancies, including audit findings, audit issues, and potential scope limitations
- Matters that could impact the deliverable due dates
- Recommended audit adjustments

Step 1.23 - Prepare monthly status or periodic meeting reports. We will prepare monthly progress reports for every month that we work on the engagement. We will also prepare reports summarizing the results of periodic meetings. The written reports will include summaries of the periodic meetings and list of participants and the following:

- Progress to date compared to our audit timetable included in our proposal
- Significant issues and discrepancies, including audit findings, audit issues, and potential scope limitations, and the proposed resolution
- Matters that could impact the deliverable due dates
- Recommended audit adjustments

We will submit these monthly reports to PDS's Management and audit committee no later than five business days after the end of the month.

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Internal Control Phase

After completing the planning phase, we will begin the internal control phase. This phase will include reviewing, documenting, and testing internal controls, including EDP controls, as necessary. It will also serve as the basis for our final risk assessments and lead to the development of our substantive and compliance test procedures.

Internal control is a process designed to provide reasonable assurance as to the reliability of financial information and compliance with applicable laws and regulations. During the planning phase, we will have obtained a preliminary understanding of the internal control policies and procedures that will enable us to develop audit procedures to assess and address control risk. Control risk is a factor that is used to determine the nature, timing, and extent of substantive procedures for the testing phase.

During the internal control phase, we will further our understanding of significant internal controls and procedures and determine whether internal control policies and procedures have been placed in operation and are functioning properly. The specific procedures we will utilize to review and evaluate internal controls follow.

Step 2.1 – Understand, document, and evaluate the general control environment. We will use Balestra, Harr & Scherer, CPAs, Inc.'s control overview documents to gain an understanding of, document, and evaluate PDS's current control environment over financial reporting. Balestra, Harr & Scherer, CPAs, Inc.'s control overview documents address the following:

- Risk assessment. Management's process for identifying risk, entity-level objectives, and activity level objectives and managing change
- Control environment. Management's attitude toward ethical values, fraud prevention and detection, commitment to competence, philosophy and operating style, organizational structure, assignment of PDS's and responsibility, and human resources policies and procedures.
- Information and communication. Design of information systems and flow of communication
- Monitoring and control activities. Management review process, information system controls, physical controls, and internal controls.

Step 2.2 – Document and understand the system of internal controls (including control objectives and related control techniques). We will gain an understanding of internal controls and assess internal controls and related audit risk. We will examine the existing system documentation, written accounting policies and procedures, and any other related materials. We will also obtain and review the most recent reports in order to understand reported internal control weaknesses and corrective action plans.

We will interview the appropriate personnel involved in processing the data and study the systems to document the transactions cycles in the form of an overview of each accounting process. Specifically, we will trace the flow of financial information from its origination to its entry into the accounting system to the eventual reporting or use of the information. We will document the key internal controls for each accounting cycle and compliance process, considering the following controls:

- Financial reporting controls for each significant assertion in each significant process or accounting application
- Budget controls for each relevant restriction identified in the planning phase
- Compliance controls for each significant provision of materially applicable laws and regulations
- Cash and Investment management controls for each significant assertion in each significant process or accounting application
- Revenue management controls for each significant assertion in each significant process or accounting application
- Procurement management controls for each significant assertion in each significant process or accounting application
- Human Resource management controls for each significant assertion in each significant process or accounting application
- Federal Grants management controls for each significant assertion in each significant process or accounting application

In preparing the internal controls documentation, we will identify control objectives and determine the points in the process where a control should exist and which type of control. We will identify each significant accounting application included in the transaction cycles. We also will identify the significant EDP controls included in the transaction cycles. We will describe interfaces with other cycles and feeder systems, identify financial statement line items and general ledger accounts affected by the process, and describe the operating policies and procedures controlling the accuracy and completeness of transactions. We also will document our assessment of missing controls, if any.

PDS's management should have designed and implemented internal control policies and procedures that provide for the PDS's to (1) comply with significant provisions of laws and regulations and (2) monitor its overall compliance with such laws and regulations. We will obtain an initial understanding of the PDS's compliance with internal controls by interviewing appropriate PDS's management personnel.

Step 2.3 – Review and document EDP general and application controls. Our IS auditors will assist in conducting reviews of the overall EDP control environment and specific evaluations of application controls deemed significant to its financial statements. The results of our EDP controls assessment enables us to (1) determine whether general controls are properly designed and operating effectively and (2) consider application controls as part of the internal control assessment in the audit. We will document our understanding of EDP controls and systems and determine the extent of further audit procedures over EDP systems.

We will also review the following:

- | Management's attitude toward and awareness of EDP
- | Organization and structure of the EDP function
- | Assignment of responsibilities and PDS's
- | Management's ability to identify and respond to potential risk
- | Function and relationship of systems

As part of our EDP control assessment, we will consider the following general control categories:

- | **Entity wide security program and management.** These controls ensure a framework and continuing cycle of activity for managing risk, developing security policies, assigning responsibilities, and monitoring the adequacy of computer related controls.
- | **Access Controls.** These controls limit or detect access to computer resources (data, programs, equipment, and facilities), thereby protecting these resources from unauthorized modification, loss, and disclosure. This includes controls to prevent unauthorized access to computer resources, including access control software, dial-in procedures, and controls over network interconnections.
- | **Application software development and change controls.** These controls ensure that processes exist that prevent unauthorized programs or modifications to an existing program from being implemented.

- | **Segregation of duties.** Policies, procedures, and an organizational structure are established so that one individual cannot control key aspects of computer related operations and thereby conduct unauthorized actions or gain unauthorized access to assets or records.
- | **System Software.** These controls limit and monitor access to powerful programs and sensitive files that (1) control the computer hardware and (2) secure applications.
- | These controls ensure that when unexpected events occur, critical operations continue without interruption or are promptly resumed and critical and sensitive data are protected.

Our application control assessment will include certain application controls from the following categories:

- | **Automated input controls.** These controls ensure that only complete data are processed; errors or other rejected data are properly corrected in the system; data are controlled when converting data to machine form; only authorized transactions are processed; transactions are received from authorized sources; and transactions are captured for processing into the application in an accurate, complete, and timely manner. This includes the records that the system will process and the associated processes from origination to storage in the computer (any internal or external interfaces).
- | **Processing and storage controls.** These controls ensure that data are processed correctly; any errors detected during processing are properly reported and monitored; transactions are processed by the programmed calculations completely and accurately and in accordance with user specifications; and the electronic information maintained on files remain authorized, complete, and accurate. This includes all computer processing after input has been accepted by the system and before output has been created, including the processing that matches or merges files, modifies data, updates master files, and performs file maintenance.
- | **Automated output controls.** These controls ensure that output data is complete and reasonable; output reports are distributed only to authorized personnel; sensitive output is controlled properly; and files and reports generated by the application are complete, accurate, and distributed to authorized recipients on a timely basis. This includes the preparation of output and reports produced by the system and the associated manual process (automated or manual reconciliation) from the computer to the user.

Step 2.4 – Identify control objectives and evaluate internal controls. We will evaluate each internal control determined to be properly designed and placed in operation, in order to determine whether it meets the objectives of the control procedure and whether it is likely to be effective when properly performed (i.e., whether it would prevent or detect errors in financial data).

We will inform management of controls and procedures that have not been properly designed or implemented and controls determined to be ineffective even when properly performed.

Step 2.5 – Test of the PDS’s Internal Controls. We will determine the nature, timing, and extent of control testing necessary to ensure that controls are functioning as designed. We will test internal controls using a combination of non-sampling control tests (i.e., inquiry and observation) and sampling control tests (i.e., inspection and re-performance). We will determine appropriate sample sizes for internal control tests by considering the expected rate of error in the population, the desired confidence levels, and the desired precision limits in determining sample sizes.

We will develop and perform detailed test for testing the effectiveness of the internal control procedures. Test of internal controls will be designed to determine whether:

- | Transactions are properly authorized, reviewed, and processed
- | Source documentation exist to support transactions and assertions
- | Assets are safeguarded against loss from unauthorized acquisition, use, or disposition
- | Transactions are recorded in the proper accounts
- | Transactions are summarized completely and properly in the financial statements
- | Transactions are executed in accordance with (1) laws and regulations that could have a direct and material effect on determining on financial statements and (2) any other laws and regulations that the audit committee, PDS and Foundation management, or legal sources have identified as being significant, for which compliance can be objectively measured and evaluated
- | Transactions are recorded in the proper budgetary accounts

Step 2.6 – Update the specific control evaluations. During the internal control phase, we will update the RCEC that we had preliminarily completed in the planning phase. Specifically, we will document the evaluation of control techniques and update other sections of the RCEC based on the procedures we performed in the internal control phase.

Step 2.7 – Update control risk assessment. After documenting and testing internal controls, we will reassess our preliminary control risk. We will use these control risk assessments to determine the nature, timing, and extent of substantive tests to be performed in the testing phase. We will document this assessment by updating the Engagement Planning Memorandum initial developed during the planning phase.

Step 2.8 – Document findings. Throughout the internal control phase, and continuing through the testing phase, we will continually document and discuss all findings with the key members of the engagement team, PDS’s management, and the audit committee. We will use our standard form titled “Notice of Findings and Recommendations (NFR)” to document findings.

We have found that the use of NFRs is an effective and efficient method for communicating our findings as we identify them. It also provides for early management feedback, to ensure that the facts in the findings are accurate and our recommendations reasonable before we draft our report.

The NFR document includes;

- | **Source of information.** The source is a description of how we discovered the findings as well as a cross reference to the related process and attestation guide.
- | **Condition.** The condition is a description of the area examined and issued noted.
- | **Cause.** The cause is the underlying reason why the condition occurred, if know.
- | **Criteria.** The criteria is the authoritative literature that we used to determine that a condition exists.
- | **Effect.** The effect is what has resulted or could result from the conditions noted.
- | **Recommendation.** The recommendation is our suggestion for correcting the condition.
- | **Management Response.** The management response states whether management agrees with the NFR and its plan.

We will work with PDS’s management and audit committee to confirm each finding and develop cost effective recommendations. After we incorporate suggestions into the NFRs, we will obtain management’s and the audit committee’s approval of each NFR.

Through the engagement we will maintain a summary of NFRs issued, management’s response, and the disposition of the NFRs. At the conclusion of the audit, we will categorize the NFRs into three broad categories:

- | **Material weaknesses.** Conditions in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements, in amounts that would be material in relation to the financial statements being examined, may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions.
- | **Significant Deficiencies.** Significant deficiencies in the design or operation of the internal control structure that could adversely affect management’s ability to record, process, summarize, and report financial data consistent with the assertions of management in the financial statements.
- | **Management issues.** Deficiencies not serious enough to be considered significant deficiencies, but that require corrective action. The conditions could also represent opportunities to improve effectiveness and efficiency.

Based on the categories of the NFRs, we will cross reference the NFRs to our report or management letter.

Step 2.9 – Holding periodic progress meetings. We will hold periodic progress meetings with PDS’s management and audit committee to discuss the results of interim testing and an assessment of the status of the audit, including whether the remaining due dates can be met. We will discuss any additional items.

Testing Phase

The third phase of our engagement approach consists of performing substantive tests to determine the following:

- Accuracy of the amounts included in the financial statements
- Completeness and consistency of footnote data
- Compliance with the laws and regulations identified in the planning phase that could have a direct and material effect on the trust fund schedules

Substantive tests principally involve obtaining or examining corroborating evidence to verify the propriety of the PDS’s assertions related to the financial statements. The financial statement assertions include:

- **Existence or occurrence.** Assets and liabilities exist at a given date and recorded transactions have occurred during a given time period.
- **Completeness.** All transactions and accounts that should be presented in the financial statements are included.
- **Rights and obligations.** Assets represent rights of the entity at a given date and liabilities represent obligations of the entity at a given date.
- **Valuation or allocation.** Assets, liabilities, revenues, and expense components have been included in the financial statements in the appropriate amounts.
- **Presentation and disclosure.** Particular components of the financial statements are properly classified, described, and disclosed.

To ensure we meet the deadlines, we will perform certain testing-phase steps at the same time we perform certain internal-control-phase steps. For example, we will perform dual-purpose control and substantive testing of payroll and benefits.

The steps in the testing phase are summarized below.

Step 3.1 – Update audit programs. Based on our review and evaluation of the financial and EDP internal control structure and our resultant control-risk assessments, we will update our audit programs to include efficient substantive test procedures for each material financial statement account and line item. These audit programs will guide the tests of financial records and other source documents that provide evidence for the financial statement amounts.

Step 3.2 – Perform substantive testing. Using the audit program guides, we will perform the substantive tests, which will provide reasonable assurance as to the validity of the information provided by the accounting system. Substantive testing involves obtaining or examining corroborating evidence to verify the propriety of reported balances and the related management assertions that are embodied in the Schedules. The substantive test procedures generally include third-party confirmations and other balance verification procedures, recalculations and other re-performance procedures, inspection of supporting documentation, analytical reviews, and financial analysis. We will document our test work, including the nature, timing, and extent of tests performed, and the conclusions reached. Our documentation will include the following:

- For tests involving sampling:
 - The sampling method used and any key factors regarding the sample selection
 - The sample size and the method for determination (PPC and AICPA Guidance)
 - The audit procedures performed
 - The results of tests, including evaluations of sample results and conclusions
- For substantive analytical procedures:
 - The model used to develop the expectation and the basis for the model
 - The data used and the data sources
 - The assessment of the reliability of the data used and the procedures performed to establish or increase the amount of reliability, if applicable
 - The amount of the tolerable limit and the criteria for establishing the limit
 - Explanations for fluctuations considered significant, sources of these explanations, and corroborating evidence obtained
 - Any additional procedures performed and related conclusions where misstatements are detected or the initial procedures are not considered adequate
 - The conclusions regarding findings, including proper treatment of any misstatements detected and assessments of any other effects of these misstatements.

Based on our analysis of the PDS's fiscal year 2013 audited financial statements for each corporation, we anticipate performing the following substantive procedures at a minimum for each corporation.

Process	Other Substantive Procedures
Cash, Investments and Cash Equivalents	Re-perform December reconciliations, perform fluctuation analysis, detail tests of receipts and disbursements
Prepaid Expenses, Fixed Assets and revenue	Obtain support documentation and analytically review for reasonableness, perform substantive analysis of revenue
Accrued Liability, Accounts Payable/ Expense, Debt and other liabilities	Obtain support documentation and analytically review for reasonableness, perform substantive analysis of expense
Changes in Restricted and Unrestricted Net Assets, Investments in Capital Assets, Net of related debt	Roll forward and perform fluctuation analysis

Step 3.3 – Test compliance with laws and regulations. The testing phase will also include tests to determine compliance with laws that could have a direct and material effect on the financial statements and any other laws/regulations that the audit committee, PDS's management, or others have identified as being significant to PDS's. We will have identified these applicable laws and regulations as part of the planning phase. Our substantive tests of compliance with laws and regulations will include the following:

- Inquiries and observations
- Review of previously issued reports on compliance
- Discussions with PDS's management and general counsel
- Inspection and re-performance

Step 3.4 – Review required supplementary information. We will perform the procedures described in AU558, "Required Supplementary Information," of the *Codification of Statements on Auditing Standards* for the MD&A. Our audit approach will include at least the following procedures:

- Inquire of management regarding the methods of preparing the MD&A
- Compare the information for consistency with the PDS's responses to information inquiries, audited financial statements, and other knowledge obtained during the audit of the financial statements.

Reporting Phase

Based on the work performed in the planning, internal control, and testing phases, we will form our final conclusions and prepare our reports.

Step 4.1 – Perform the final analytical review. We will perform a final overall analytical review. This will include comparing current-year amounts with comparative information and identifying and determining the reasons for significant fluctuations. These final analytical procedures will allow us to determine whether we have obtained from other procedures an adequate understanding of all fluctuations and relationships in the PDS's financial statements and whether our audit evidence is consistent with the analytical results.

Step 4.2 – Review the MD&A and supplementary financial management information. During the reporting phase, we will review the MD&A to ensure that it is not materially inconsistent with the information contained in the principal financial statements and related footnotes.

Regarding reported performance measures, we will verify the mathematical accuracy of any computations, ratios, and the presented percentage of financial and non-financial data, and determine if such measures are supported by source documentation. However, under current OMB guidance, we are not responsible for determining the accuracy of reported performance measures.

Step 4.3 – Review the form and content of the comprehensive annual financial report. We will agree the basic financial statements to the general ledger and verify the mathematical accuracy of the basic financial statements. We will verify that the amounts in the footnotes are consistent with the amounts reported in the Schedules. In addition, we will use Balestra, Harr & Scherer, CPAs, Inc. and PPC checklists to verify that the financial statements and related footnotes are in accordance with financial accounting and reporting standards.

Step 4.4 – Determine the adequacy of audit procedures. Because the scope and procedures were determined based on materiality determinations made during the planning phase, as well as preliminary assessments of risk, we will consider whether the extent of the procedures performed was adequate. We will also consider the final risk assessments made and the effects of any limitations on the scope of the procedures.

Step 4.5 – Perform final audit steps. Final audit steps consist of the following:

- **Evaluate materiality of misstatements.** We will discuss the differences resulting from procedures completed with the audit committee and PDS's management. We will encourage PDS's to record adjustments for known errors and other misstatements. We will summarize any differences that are not recorded and evaluate these differences in relation to the financial statements. The senior, manager, engagement partner, and concurring review partner will review and approve the summary of unrecorded differences prior to issuing the report.
- **Question attorneys.** We will send general counsel legal inquiries to address any litigation, claims and assessments, and known noncompliance.
- **Review subsequent events.** Subsequent events are those events or transactions that occur after the end of the fiscal period, but before the report is issued. We will perform the following:
 - Gain an understanding of management's procedures for identifying subsequent events
 - Read relevant reports and documents (i.e., financial reports, regulations, agreements, etc.)
 - Inquire of management as to the significant financial developments, internal actions, and external events impacting PDS's
 - Request that general counsel update our previous inquiries on litigation, claims and assessments, and known noncompliance
 - For subsequent events that are identified, consider the effect of the events on the financial statements and related footnotes
- **Obtain management representations.** We will request written representations from management.
- **Consider related-party transactions.** Parties are considered related if one party has the ability either to control the other party or to exercise significant influence over the other party in making financial and operating decisions. We will inquire of management and be alert for the existence of related-party transactions during the engagement. We will consider the purpose, nature, and extent of related-party transactions to evaluate the presentation of related-party transactions in the Schedules.

Step 4.6 – Prepare summary of significant issues and decisions. We will prepare a summary memorandum (titled Matters for Attention) that summarizes the engagement results and demonstrates the adequacy of the procedures and the reasonableness of the conclusions reached. The Matters for Attention document is intended to bring together the significant decisions made after the preparation of the engagement plan. The Matters for Attention document is an internal document that describes or refers to other work papers describing the following items:

- Significant changes in the planned procedures and the results of the procedures
- The critical objectives, the procedures completed, and the results of these procedures
- Conclusions on other significant and/or unusual accounting and reporting matters
- Conclusions related to the involvement of specialists
- Assessments and conclusions of any differences or findings discovered
- Assessment of overall financial statement presentation
- Evaluation of significant subsequent events

- Assessment of the risk of material misstatement on the financial statements due to any fraud or errors identified
- Conclusions on whether evidence obtained and our work papers are adequate to support our reports on the financial statements, internal control, and compliance with laws and regulations
- Conclusions on whether our procedures and our independent auditors' reports are in compliance with Firm and professional standards
- Statement acknowledging the responsibilities of each engagement team member
- Confirmation that the work papers were reviewed by the appropriate engagement personnel

Step 4.7 – Complete our quality-control review of the work papers. The audit manager, audit manager and engagement partner will review the work papers to ensure they meet professional standards and are sufficient to support our reports. The engagement partner will review all areas considered critical to the engagement prior to the issuance of the reports. In addition, the Director of Quality Assurance/AA will function as a concurring reviewer and will review selected work papers for quality-control purposes. In accordance with Balestra, Harr & Scherer, CPAs, Inc.'s policy, we will ensure that all work papers are reviewed by the preparer's supervisor. The audit manager, audit manager and engagement partner will supervise the team to verify that all review comments are addressed prior to issuance of the reports.

Step 4.8 – Prepare and submit the draft reports. We will prepare and submit the following draft reports:

- Report on whether the financial statements present fairly, in all material respects, in conformity with accounting principals generally accepted in the United States of America, the financial position, net costs and changes in net position, budgetary resources and reconciliation of nets costs to budgetary obligations for the fiscal year under audit
- Report on Compliance and Internal Controls Over Financial Reporting Based on an Audit of the Financial Statements Performed in Accordance With *Government Auditing Standards*

The audit manager, engagement partner, and the Director of Quality Assurance/concurring reviewer, who is not directly involved in the engagement but who also has experience with PDS and government audit engagements, will review the reports to verify they are in accordance with the reporting standards, Balestra, Harr & Scherer, CPAs, Inc. standards and professional standards. We will submit the draft and final reports to the PDS for review.

Step 4.9 – Prepare the draft management letter. We will also prepare a management letter, if necessary, that includes any findings/comments that are not required to be included in the reports noted above. For each comment we will include (1) a description of the comment; (2) the criteria used to assess the comment; (3) the cause of the comment; (4) any negative or potentially negative effects resulting from the comment; (5) Balestra, Harr & Scherer, CPAs, Inc.'s recommendation for correcting the comment; and (6) management's response, including action plan.

Step 4.10 – Prepare and submit final reports. We will prepare and submit the copies of the final reports to the Director of GAM. Also, an electronic copy of the report must be provided in a PDF or similar format for public review on the agency's website. We will complete the report production, binding, and delivery by the October 7th deadline.

Step 4.11 – Hold an exit conference. We will coordinate with the audit committee and PDS's management to schedule an exit conference to discuss engagement results and any pending matters.

Step 4.12 – Maintain files. We will develop complete and accurate work papers that document all work performed and support conclusions reached in accordance with document requirements included in the Yellow Book, Balestra, Harr & Scherer, CPAs, Inc. guidance, and AICPA standards, specifically Statement of Auditing Standards 96, *Audit Documentation*. We will provide the Auditor of State representatives easy access to our work papers during the course of the engagement. At the end of the engagement, we will store engagement work paper files and other pertinent reference documents under secured conditions for a minimum of five (5) years after the issuance of our final reports.

IDENTIFICATION OF ANTICIPATED AUDIT PROBLEMS

Based on our review of the Request for Proposal and discussions with the PDS's personnel, Balestra, Harr & Scherer, CPAs, Inc. does not anticipate any audit problems at this time. While we currently do not anticipate any problems, should problems occur we will communicate them to the appropriate PDS personnel before proceeding. Under the authority of Section 5A-2-23 of the State Code, we will give the Director of the Financial Accounting and Reporting Section (FARS) of the Department of Administration, and immediate, written report of all irregularities and illegal acts of which we become aware.

REPORTS TO BE ISSUED

Following the completion of each audit of the fiscal year's financial statements, we shall issue the following reports for each of the 17 Public Defender Corporations:

1. A report on the fair presentation of the financial statements in conformity with accounting principles generally accepted in the United States of America.
2. A combined report on the Compliance and Internal Controls over Financial Reporting based on an audit of the financial statements performed in accordance with *Government Auditing Standards*.
3. A management letter, separate from other electronically submitted reports.

Any issues that arise during the course of the audit that could cause delays in the issuance of the report or have an adverse impact on the audit opinion must be immediately communicated to the Executive Director of West Virginia Public Defender Services and the Director of FAM in writing within 24 hours.

Management Communication

West Virginia Public Defender Services 17 Public Defender Corporations' financial statements are to be included in the financial statements of the State of West Virginia as a blended component unit. The auditing firm will provide special assistance to West Virginia Public Defender Services, the State's auditors, and Financial Accounting and Reporting Section of the West Virginia Department of Administration.

PROPOSED ENGAGEMENT TIMETABLE FOR THE AUDIT OF THE FINANCIAL STATEMENTS OF THE WEST VIRGINIA PUBLIC DEFENDER SERVICES FOR THE CONTRACT PERIOD OF JULY 1, 2013 TO JUNE 30, 2014

	Date
1. IPA and representatives of public office entrance conference	Before August 14, 2014
2. IPA provides detailed audit plan and list of schedules to be prepared by public office	August 18, 2014
3. IPA begins fieldwork at public office	August 18, 2014
4. Draft of financial statements for review	September 1, 2014
5. Revised Draft with all changes and modification for review	September 2, 2014
6. Draft submitted to FARS with copies to ED of PDS	September 8, 2014
7. Unsigned final draft with all modifications to PDS for final review	October 17, 2014
8. Final Signed Report submitted to PDS and FARS	October 7, 2014

We acknowledge the penalty for failure to deliver the required reports by the dates specified above in accordance with WV State code 5A-3-4(8).

PDS requires the accounting firm to be available to assist with accounting issues and new reporting requirements as they arise on as needed basis. The bid includes a firm fixed fee for the services discussed above as well as an hourly rate scale for accounting and auditing consulting services. The total cost submitted for bid includes all travel and out of the pocket expenses.

Balestra, Harr & Scherer, CPAs, Inc.

Cost Bid

TOTAL ALL-INCLUSIVE MAXIMUM FEE
FOR THE AUDIT OF THE FINANCIAL STATEMENTS OF
THE WEST VIRGINIA PUBLIC DEFENDER SERVICES

For the period July 1, 2013 Through June 30, 2014

Total all-inclusive fixed fee: \$ 58,000.00

I certify that I am entitled to represent this firm, empowered to submit the bid and authorized to sign a contract with the West Virginia Public Defender Services. Further, the total all-inclusive fixed fee for this audit engagement shall be fifty eight thousand dollars.



Michael A. Balestra

Shareholder/Director

Title

July 28, 2014

Date



THE OHIO SOCIETY OF CPAs
PEER REVIEW PROGRAM



AICPA Peer Review Program
Administered in Ohio by The Ohio Society of CPAs

December 16, 2011

Jeffrey A Harr, CPA
Balestra, Harr & Scherer, CPAs, Inc.
129 Pinckney St
Circleville, OH 43113

Dear Mr. Harr:

It is my pleasure to notify you that on December 16, 2011 the Ohio Peer Review Committee accepted the report on the most recent system peer review of your firm. The due date for your next review is November 30, 2014. This is the date by which all review documents should be completed and submitted to the administering entity.

As you know, the report had a peer review rating of pass. The Committee asked me to convey its congratulations to the firm.

Sincerely,

John M Keller, CPA

John M. Keller, CPA
Chairman, Peer Review Committee
peerreview@ohio-cpa.com

cc: Lori Dearfield, CPA

Firm Number: 10081709 Review Number 320094

Letter ID652826

THE OHIO SOCIETY OF CPAs
535 Metro Place South, P.O. Box 1810, Dublin, Ohio 43017-7810
614.764.2727 • 800.686.2727 • fax 614.764.3977 • www.ohioscpa.com



Kelley,
Galloway &
Company, PSC

CERTIFIED PUBLIC ACCOUNTANTS

• 1200 CORPORATE COURT • P.O. BOX 990 • ASHLAND, KENTUCKY 41105-0990 •

• Phone (606) 329-1811 • Fax (606) 329-8756 • E-mail contact@kelleygalloway.com • Web site www.kelleygalloway.com •

Member of the Center for Public Company Audit Firms, the Private Companies Practice Section of the American Institute of Certified Public Accountants and PKF North America Network

SYSTEM REVIEW REPORT

November 15, 2011

To the Shareholders of
Balestra, Harr & Scherer, CPAs, Inc.
and the Peer Review Committee of the Ohio Society of CPA's

We have reviewed the system of quality control for the accounting and auditing practice of Balestra, Harr & Scherer, CPAs, Inc. (the firm) in effect for the year ended May 31, 2011. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants. The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review. The nature, objectives, scope, limitations of, and the procedures performed in a System Review are described in the standards at www.aicpa.org/prsummary.

As required by the standards, engagements selected for review included engagements performed under *Government Auditing Standards*; and audits of employee benefit plans.

In our opinion, the system of quality control for the accounting and auditing practice of Balestra, Harr & Scherer, CPAs, Inc. in effect for the year ended May 31, 2011, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass*, *pass with deficiency (ies)* or *fail*. Balestra, Harr & Scherer, CPAs, Inc. has received a peer review rating of *pass*.

Kelley, Galloway & Company, PSC

Kelley, Galloway & Company, PSC



SAIL SMOOTHLY THROUGH YOUR AUDIT

FINANCIAL STATEMENT PREPARATION

CAFR PREPARATION

FINANCIAL STATEMENT AND SINGLE AUDITS

REPORTING ON INTERNAL CONTROLS

GRANT AND CONTRACT AUDITS



BALESTRA, HARR & SCHERER, CPAS, INC. – GOVERNMENT SERVICES DIVISION

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Guided by our core values of competence, integrity, respect and value, Balestra, Harr & Scherer, CPAs, Inc. operates with the fundamental philosophy that every client deserves exceptional, timely service from our highly specialized, knowledgeable professionals.

Circleville

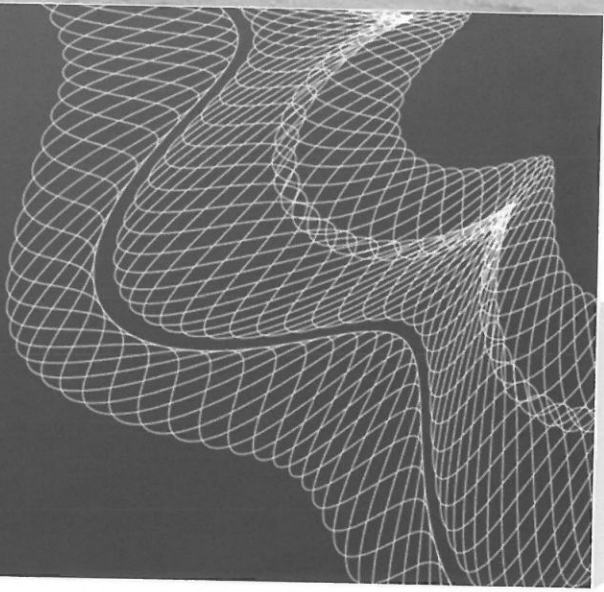
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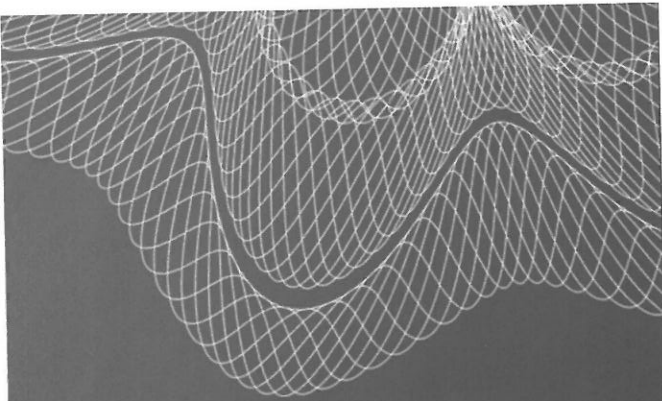
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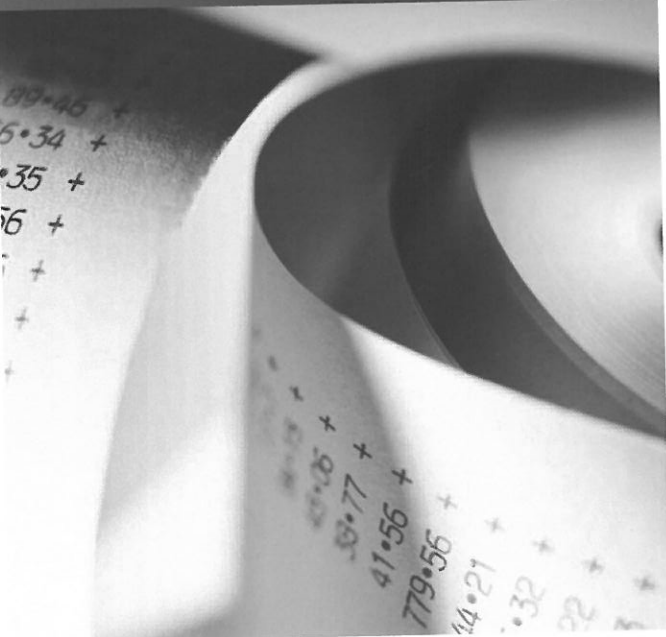
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FOR MORE THAN 20 YEARS, BALESTRA, HARR & SCHERER, CPAS, INC. HAS BEEN PROVIDING HIGH QUALITY AUDIT, CONSULTING AND ASSURANCE SERVICES TO FEDERAL, STATES, SCHOOL DISTRICTS, COUNTIES, GOVERNMENT AGENCIES, AND OTHER LOCAL GOVERNMENTS AND NON-PROFIT ORGANIZATIONS.



GOVERNMENT SERVICE PLANS INCLUDE:

- BASIC FINANCIAL STATEMENT PREPARATION
- CAFR PREPARATION
- PAYROLL AND BOOKKEEPING
- MONTHLY ACCOUNTING & CLOSEOUT REVIEW
- FINANCIAL STATEMENT & SINGLE AUDIT
- GRANT AND CONTRACT SERVICES
- FINANCIAL PROJECTIONS & BUDGETING SERVICES

ABOUT OUR FIRM:

Balestra, Harr & Scherer, CPAs, Inc. is an independent CPA firm dedicated to providing high quality audit, consulting and assurance services. Our firm has built a foundation of strong principles and the fundamental philosophy that our clients deserve premier caliber service. BHS has an outstanding record of timeliness and quality with the governments we have served over the past 20 years. BHS is a member of the AICPA's Government Audit Quality Center.

GOVERNMENT SERVICE STAFF EXPERIENCE:

MIKE BALESTRA, CPA – Mike has a total of 33 years' experience serving local governments. This experience includes 15 years with the State Auditor's Office in Ohio and 18 Years as co-founder and partner of BHS.

PAUL RENNICK, CPA – Paul has a total of 33 years' experience serving local governments. This experience includes the Auditor of State of Ohio, national CPA firm, and BHS Government Quality Director.

BRENDEN D. BALESTRA, CPA – Brenden has worked for 18 years exclusively with BHS and serves the company as its Director of Government Audits.

Please contact us at 740-289-4131.

WHY CHOOSE BHS?

We know as well as anyone that there are a lot of accounting providers to choose from. When choosing your accounting firm, look to the company with a dedicated government practice and years of experience. BHS will stand apart and provide a clear choice advantage.

FIRM EXPERIENCE:

BHS's Government Services Division offers a full range of services to every level of government, its agencies and grant recipients. Our expertise encompasses regulatory compliance requirements such as financial and performance audits, accounting and other financial management services. These services are provided by knowledgeable professionals

with a deep understanding of government agencies and municipalities. Our Government Services Partner and Directors have a combined 85 years of experience working exclusively

with state and local governments and non-profit organizations. Our experienced professionals have served over 400 federal, state and local governments throughout the United States. Serving a wide variety of federal and state governments and their agencies, we are ready to hit the ground running. Our Government Services Division delivers value through the application of industry best practices gained from our extensive government experience.



Balestra, Harr & Scherer, CPAs, Inc.