

Pros and Cons of Having a Rebuttable Presumption Standard that Audit Work not Documented has not been Performed
[Extracted from comment letters to the PCAOB (November 2003 exposure draft on Audit Documentation)]

Commentator	Comment
Arguments For	
Bruce Nearon, Steve Teppler & Charles Merrill, Information Security Committee of the American Bar Association	Allowing oral explanation to support conclusions will open the door for abuse if auditors are allowed to not document their work but orally claim after the fact that they did do the work.
Charles Drott, California Board of Accountancy	The California Board of Accountancy has continually encountered instances in enforcement proceedings where auditors claimed that audit work was performed but not documented. This has made the California Board's investigations and enforcement proceedings very difficult because the burden of proof rested with the Board. In order to better protect consumers and investors by enhancing the ability of its enforcement staff to engage in meaningful investigations of alleged audit failures, the California Board adopted a rebuttable presumption provision which shifted the burden of proof to the auditor. The California Board determined that this was not only logical but also fairer to consumers and investors for the burden of proof to be shifted from the California Board to the auditor because the auditor is the most knowledgeable about the actual work performed.
Arguments against	
National State Auditors Association	In response to the rule that the presumption can be rebutted by persuasive other evidence that the procedures were applied and the evidence was obtained: It is uncertain how evidence can be persuasive for providing sufficient support for the conclusions reached if it is not part of written audit documentation.
KPMG	In response to the rule that oral explanation alone would not constitute persuasive other evidence: The determination of whether persuasive other evidence exists is a matter of judgment dictated by individual facts and circumstances. It is not appropriate to limit the consideration of oral evidence when evaluating the sufficiency of audit procedures performed, evidence obtained and conclusions reached.
AICPA	It is unclear what the PCAOB means by persuasive other evidence, especially in light of the statement that oral explanation alone would not constitute persuasive other evidence.
GT	<p>This effectively prohibits the auditor from providing further clarification by means other than documentation in regards to all audit procedures, evidence obtained and conclusions reached. This establishes an impossible threshold, especially relating to matters that are low risk or immaterial. An auditor cannot fully document all of the observations, inquiries, judgments, etc. on each and every engagement, all of which are evidence used to support the conclusions reached.</p> <p>That said, GT believe that a rebuttable presumption is appropriate with respect to significant judgments and conclusions reached. Accordingly, GT recommend that the PCAOB (a) primarily apply the rebuttable presumption requirement to</p>

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	significant judgments and conclusions, (b) clarify the types of persuasive other evidence that could potentially exist, and (c) clarify the extent to which the auditor could utilize oral evidence in support of the procedures performed, the evidence obtained, and the conclusions reached, including those related to significant judgments and conclusions and those relating to other auditing procedures.
Crowe Chizek	Individuals should be allowed every possible means to present the truth. Also, although oral evidence may be less persuasive, in the absence of written documentation, it is not necessarily so in all cases. It would be clearly overkill if each and every possible and potential, and redundant, basis for a belief were to be documented in every single circumstance because the auditor was limited to what is written. The big question is, how far should the auditor have to go to document a matter if oral evidence cannot be accepted?
Deloitte	<p><i>The presumption does not belong in an auditing standard.</i> It pertains neither to the procedures by which audits are conducted nor to the retention of documentation. Instead, the proposal seeks to establish evidentiary rules for use in later adjudicatory proceedings and it therefore has no place in an auditing standard. Establishing evidentiary standards for judicial and administrative proceedings in other jurisdictions is far outside the Board’s authority. It would also threaten the accuracy and fairness of the Board’s inspections and disciplinary processes by preventing the Board from fairly considering all the available information. In addition, it would jeopardize the ability of other judicial and disciplinary proceedings to produce fair and accurate judgments.</p> <p>Also, the proposal appears to suggest that a violation of the Board’s rule, predicated solely on the application of the presumption, is a violation of auditing standards. Such a result would be unfair and unjust in a Board proceeding, and may well have litigation consequences far beyond Board proceedings, as the private plaintiffs’ bar may seek to establish a violation of securities laws or other legal liability based on a failure to satisfy a Board auditing standard.</p> <p><i>The presumption would be detrimental to quality:</i> The presumption would demand that the auditor attempt to foresee, and to document, any issue that could possibly be relevant in any future dispute, however immaterial during the audit. The presumption would also diminish audit quality by shifting the primary focus of the audit team from the conduct of the audit to the preparation of documentation. The presumption attaches a sanction to any matter that is not documented and strips the auditor of any degree of judgment about the nature and extent of audit documentation to be obtained or created and retained. By requiring excessive detail on matters not yet determined to be of significance from an audit perspective, the presumption will most likely cause the inefficient expenditure of resources on over-documentation and divert those resources from conducting a quality audit.</p> <p><i>It would threaten the accuracy and fairness of the Board’s inspections and disciplinary proceedings.</i> It would require the Board to ignore the best available evidence for determining what occurred during an audit. Thus, the Board may not be able to weigh fairly circumstantial evidence that would indicate that certain audit procedures were performed. By minimizing the need for the Board initially to prove, rather than merely assert, any flaw in the audit, the presumption reduces the enforcement staff’s burden of proof and undermines this fundamental safeguard against arbitrary disciplinary action.</p>

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E&Y	<p>Unlike paragraph 6 of the ED, which refers to “significant findings or issues,” this proposal does not have such a threshold. An auditor makes hundreds of inquiries in the course of performing an audit and, in doing so, continuously evaluates audit evidence and representations of client personnel that affect additional procedures that might be necessary. It would be unnecessary, time-consuming, and potentially counterproductive to require the auditor to make a written record of everything he does during the audit, including procedures that are not significant to the overall audit results. In addition, this proposal would make the presumption essentially irrebuttable – if there is no written record, then oral explanation would almost always be the only evidence.</p> <p>Also, an experienced auditor not previously connected with the audit would require oral explanations from members of the audit team to facilitate an effective review of the team’s work, even though oral discussions are not a substitute for documentation.</p> <p>Also, such proposal would force the auditor to allow documentation considerations to drive the selection of procedures. This would result in the development of and reliance on standardized checklists and extremely detailed forms for all aspects of the audit for fear that to do otherwise would result in insufficient documentation. Such a form-over-substance approach would not improve audit quality.</p>
American Bar Association	<p>Every set of financial statements contains literally hundreds, if not thousands, of assertions regarding the existence, value and ownership of client assets, not to mention the reasonableness of hundreds of accounting estimates. Accordingly, this presumption will require audit firms to formally record literally scores of tests and comparisons made during the audit, greatly retarding the audit process. While this well-intended change is quite logical, it nonetheless will compel a much higher degree of documentation that will only further add to the cost of audit services. This added burden could be significant, especially for small public companies. It is also unclear from the proposal what evidence is necessary to rebut the presumption. In addition, since this is an auditing standard, the standard and thus the presumption would be applicable in civil litigation.</p>
Piercy Bowler, Taylor & Kern	<p>We firmly believe that the California statute was ill-conceived and hastily drafted, that it inappropriately pre-judges facts and circumstances and denies auditors their rights to a fair consideration in a court of law. Accordingly, it should not be used as a model for other legislation or regulation. Also, it is entirely inappropriate for a professional standard effectively to predetermine for a court the relative value of evidence that may come before the court, which predetermination is inherent both in the establishment of such a rebuttable presumption and in the Board’s suggestion that “oral explanation alone would not constitute persuasive other evidence.” We believe a standard-setter’s influence should extend only to the performance of professional services.</p>
FEE	<p>Agrees that if there is no documentary evidence of any kind that an audit procedure was performed, this should result in a rebuttable presumption that the procedure was not performed. However, does not agree that oral explanation does not constitute persuasive evidence. Oral explanations and communications are an integral part of the audit process and they often supplement written documentation. It is ineffective and burdensome to document each and every detail of oral explanations. The presumption may in fact place the burden of proof on the auditor, which may be in contradiction with company law in a number of EU member states.</p>

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Commonwealth of Virginia	Does not agree with the presumption that conclusions that are not adequately documented are not suitably supported. There is a difference between not having done the test work and not having adequately documented the conclusion.
IAASB Staff	This places a very high hurdle on the rebuttal of the presumption. There will be instances in practice where auditors will have significant difficulty producing persuasive evidence that they did perform the work. As a result, the imposition of this rebuttable presumption may potentially lead auditors to document an inordinate amount of detail that is of minor or no consequence to the final conclusions, just to avoid the charge that they did not perform the work or that the performance of their work did not meet the required standard. This obligation may have the unintended consequence of diverting auditors' efforts from performing "thinking" audits to documenting detail to excess. Instead of improving audit quality, this would have the opposite effect.
IDW	If there is too much emphasis on documentation, it could lead to a concentration on that aspect to the detriment of other aspects. This presumption will place an unduly heavy burden on auditors as it will lead to attempts to document absolutely every thought, conversation, etc which hitherto may not have been considered necessary. Overemphasis on the documentation requirements can actually hinder the performance of high quality audits and lead to dysfunctional auditor behavior.
ICAEW	Strongly objects to wording that "oral explanations alone would not constitute persuasive other evidence to rebut the presumption." Not only does this suggestion defeat the proposals as a whole, which describe audit documentation as the <i>principal</i> support for the auditor's work, and not as the <i>only</i> support, it runs contrary to practice in other areas of law and regulation in which oral evidence is permissible and often essential. All advanced legal systems admit oral evidence and there is doubt as to the legitimacy of this apparent attempt to overturn a fundamental legal principle. Auditing standards have long recognized that oral explanations may have less value than documentary evidence, but there has never been any suggestion that such explanations have no value at all. Oral explanations and dialogue are an integral part of the audit process. A requirement to document each and every detail or oral explanations would be both ineffective and burdensome.
Swiss Institute	The exclusion of oral testimony as a means to rebut the presumption cannot be reconciled with the concept that partners form their opinions on the basis of oral discussions and other soft factors that do not lend themselves to complete and encompassing documentation. These persons should, under any circumstances, be allowed to testify in support of their work and conclusions drawn therefrom, even if not reflected, or not reflected in all detail, in the documentation. Insofar as the presumption excludes oral testimony as a means for rebuttal, it is unacceptable.
PwC	A rebuttable presumption standard is workable only if it applies exclusively to PCAOB proceedings to avoid impinging on the jurisdiction of the courts.