
EXPOSURE DRAFT

OMNIBUS PROPOSAL

AICPA PROFESSIONAL ETHICS DIVISION

INTERPRETATIONS AND DEFINITION

- Proposed New Interpretation No. 501-9, “Confidential information obtained from employment,” under Rule 501**
- Proposed New Interpretation No. 501-10, “Financial interests,” under Rule 501**
- Proposed New Interpretation No. 501-11, “False, misleading, or deceptive acts in promoting or marketing professional services,” under Rule 501**
- Proposed New Definition, “Member in business and industry,” under ET section 92**

April 4, 2011

COMMENTS ARE REQUESTED BY JUNE 5, 2011

Prepared by the AICPA Professional Ethics Executive Committee for comments from persons interested in independence, behavioral, and technical standards matters.

**Comments should be addressed to
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at lsnyder@aicpa.org**



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April 4, 2011

This exposure draft contains important proposals for review and comment by the AICPA's membership and other interested parties regarding pronouncements for possible adoption by the Professional Ethics Executive Committee (PEEC). The text and an explanation of the proposed pronouncements are included in this exposure draft.

Members in Business and Industry

All proposals in this exposure draft apply to members in business and industry. As provided in the proposed definition, this would include members employed or engaged on a contractual basis or volunteer basis in an executive, staff, or administrative capacity in such areas as industry, the public sector, education, the not-for-profit sector, regulatory bodies, or professional bodies.

Members in Public Practice

This exposure draft contains two proposed interpretations applicable to members in business and industry and one proposed interpretation applicable to all members. Specifically, proposed Interpretation No. 501-9, "Confidential information obtained from employment," under Rule 501, *Acts Discreditable* (AICPA, *Professional Standards*), provides guidance to all members on maintaining confidentiality of an employer's confidential information. This would apply to a member in public practice relative to confidential information of his or her firm. Accordingly, feedback from all members is of great importance.

After the exposure period is concluded and the PEEC has evaluated the comments, the PEEC may decide to publish one or more of the proposed pronouncements. Once published, the pronouncements become effective on the last day of the month in which they are published in the *Journal of Accountancy*, except if otherwise stated in the pronouncements.

Your comments are an important part of the standard setting process. Please take this opportunity to comment. Responses must be received at the AICPA by June 5, 2011. All written replies to this exposure draft will become part of the public record of the AICPA.

All comments received will be considered by the PEEC at its next open meeting.

Please send comments to Lisa A. Snyder, Director, Professional Ethics Division, via e-mail to lsnyder@aicpa.org.

Sincerely,

Wes Williams, Chair
AICPA Professional Ethics Executive Committee

Lisa A. Snyder, Director
AICPA Professional Ethics Division

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Table of Contents

Proposed New Interpretation No. 501-9, “Confidential Information Obtained From Employment,” Under Rule 501, <i>Acts Discreditable</i>	6
Explanation.....	6
Text of Proposed New Interpretation	6
Effective Date.....	8
Proposed New Interpretation No. 501-10, “Financial Interests,” Under Rule 501, <i>Acts Discreditable</i>	9
Explanation.....	9
Text of Proposed New Interpretation	9
Effective Date.....	11
Proposed New Interpretation No. 501-11, “False, Misleading, or Deceptive Acts in Promoting or Marketing Professional Services,” Under Rule 501, <i>Acts Discreditable</i>	12
Explanation.....	12
Text of Proposed New Interpretation	12
Effective Date.....	12
Proposed New Definition, “Member in Business and Industry,” Under ET Section 92, <i>Definitions</i>	14
Explanation.....	14
Request for Specific Comments	14
Text of Proposed New Definition	14
Effective Date.....	15

Proposed New Interpretation No. 501-9, “Confidential Information Obtained From Employment,” Under Rule 501, *Acts Discreditable*

Explanation

The Professional Ethics Executive Committee (PEEC) is exposing for comment the proposed Interpretation No. 501-9, “Confidential information obtained from employment,” under Rule 501, *Acts Discreditable* (AICPA, *Professional Standards*), of the AICPA Code of Professional Conduct (AICPA Code). The proposed interpretation addresses confidential information that a member may obtain concerning his or her employer, guidance which is not currently addressed in the AICPA Code. This would include any confidential information pertaining to a current or previous employer as well as any entities for which the member is working in a volunteer capacity.

One of the PEEC’s ongoing initiatives is to achieve international convergence of ethics standards. The PEEC assigned a task force to review Part A, “General Application of the IESBA Code,” and Part C, “Professional Accountants in Business,” of the International Ethics Standards Board for Accountants’ Code of Ethics for Professional Accountants (IESBA Code) and consider when additional guidance may be appropriate for AICPA members in business and industry. The PEEC concluded that while guidance exists for confidential client information under Rule 301, *Confidential Client Information* (AICPA, *Professional Standards*), of the AICPA Code, the extant AICPA Code does not address confidential information concerning a member’s employer. This topic is addressed in Section 140, *Confidentiality*, of the IESBA Code, which is applicable to both professional accountants in public practice and professional accountants in business. Because the interpretation deals with confidential information of the employer, the PEEC agreed that the proposed interpretation should be applicable to all members, not just members in business and industry.

The proposed interpretation states that a member would be considered to have committed an act discreditable if the member uses any confidential information acquired as a result of employment relationships without the proper authority or specific consent of the employer unless a legal or professional responsibility exists to use or disclose such information. For the purposes of the interpretation, “confidential employer information is any proprietary information pertaining to the employer that is not known to be in the public domain or available to the public and is obtained as a result of an employment relationship.” The proposed interpretation also provides specific circumstances about when members are permitted or may be required to disclose confidential employer information.

Text of Proposed New Interpretation

501-9—Confidential information obtained from employment

A member should maintain confidentiality of his or her employer’s or firm’s (“employer”) confidential information and should not use or disclose any confidential employer information obtained as a result of an employment relationship (for example, discussions with the employer’s vendors, customers, or lenders). This includes but is not limited to any confidential information pertaining to a current or previous employer, subsidiary, affiliate, or parent thereof as well as any entities for which the member is working in a volunteer capacity. For purposes of this interpretation, confidential employer information is any proprietary information pertaining to the employer that is

not known to be in the public domain or available to the public and is obtained as a result of an employment relationship.

A member should be alert to the possibility of inadvertent disclosure, particularly to a close business associate or a close or immediate family member. The member should also take reasonable steps to ensure that staff under his or her control, or others within the employing organization, and persons from whom advice and assistance is obtained are aware of the requirement of confidentiality.

When a member changes employment, the member is entitled to use prior experience. However, the requirement to maintain confidentiality of an employer's information continues even after the end of the relationship between a member and the employer. This is not intended to prohibit a member from using expertise gained through prior employment relationships. However, the member should be alert to his or her responsibility to continue to maintain the confidentiality of employer information he or she may have gained through those relationships.

A member would be considered to have committed an act discreditable to the profession if the member discloses or uses any confidential employer information acquired as a result of employment relationships without the proper authority or the specific consent of the employer unless there is a legal or professional responsibility to use or disclose such information.

The following are examples when members are permitted or may be required to disclose confidential employer information or when such disclosure may be appropriate:

- a. Disclosure is permitted by law and is authorized by the employer.
- b. Disclosure is required by law, for example, to
 - i. comply with a validly issued and enforceable subpoena or summons or
 - ii. inform the appropriate public authorities of infringements of law that have been discovered.
- c. There may be a professional responsibility to disclose information, when not prohibited by law, to
 - i. initiate a complaint with, or respond to any inquiry made by, the professional ethics division or trial board of the AICPA or a duly constituted investigative or disciplinary body of a state CPA society, board of accountancy, or other regulatory body;
 - ii. protect the professional interests of a member in legal proceedings;
 - iii. comply with professional standards and other ethics requirements; or
 - iv. report potential concerns regarding questionable accounting, auditing, or other matters to the employer's confidential complaint hotline or those charged with governance.
- d. Disclosure may be permitted on behalf of the employer to
 - i. obtain financing with lenders;
 - ii. deal with vendors, clients, and customers; or
 - iii. deal with the employer's external accountant, attorneys, regulators, and other business professionals.

In deciding whether to disclose employer confidential information, relevant factors to consider include but are not limited to

- a.* whether all the relevant information is known and substantiated, to the extent it is practicable (when the situation involves unsubstantiated facts, incomplete information, or unsubstantiated conclusions, professional judgment should be used in determining the type of disclosure to be made, if any);
- b.* the type of communication that is expected and to whom it is addressed; and
- c.* whether the parties to whom the communication is addressed are appropriate recipients.

Effective Date

Interpretation No. 501-9 will be effective on the last day of the month in which it is published in the *Journal of Accountancy*.

Proposed New Interpretation No. 501-10, “Financial Interests,” Under Rule 501, *Acts Discreditable*

Explanation

The PEEC is exposing for comment the proposed Interpretation No. 501-10, “Financial interests,” under Rule 501 of the AICPA Code. The proposed interpretation addresses threats to integrity and objectivity that a member in business and industry may face due to the member or his or her family member’s financial interest in or other relationship with the employer, guidance which is not currently addressed in the AICPA Code. The proposed interpretation would be applicable to members in business and industry only.

One of the PEEC’s ongoing initiatives is to achieve international convergence of ethics standards. The PEEC assigned a task force to review Part A and Part C of the IESBA Code and consider when additional guidance may be appropriate for AICPA members in business and industry. The PEEC concluded that the AICPA Code does not address threats to integrity and objectivity that a member in business and industry may face due to certain financial interests. This topic is addressed in Section 340, *Financial Interests*, of the IESBA Code, which is applicable to professional accountants in business.

The proposed interpretation is intended to point out threats to objectivity and integrity that a member in business and industry may encounter when the member or the member’s immediate family or close relative holds a direct or indirect financial interest in the member’s employer and the decisions of the member could affect the value of that financial interest. It also addresses financial relationships with the employer such as holding or being eligible for performance-related bonuses and share options. The proposed interpretation also provides safeguards to reduce the threats to an acceptable level. The proposed interpretation is not intended to create new requirements or bar members in business and industry from having financial interests in an employer, but rather, to provide guidance to members in business and industry on evaluating potential threats to their integrity and objectivity and apply appropriate safeguards, when necessary.

Text of Proposed New Interpretation

501-10—Financial interests

Members in business and industry may have financial interests or may know of financial interests of immediate family members or close relatives that, in certain circumstances, may create threats to their integrity and objectivity. A self-interest threat may be created through the existence of the motive and opportunity to manipulate or withhold information or use confidential information in order to gain financially. For example, a threat exists that the member may act in a manner that is adverse to the legitimate interests of his or her employer or the public, as a result of the member or his or her immediate or close family member’s financial interest in or other relationship with the employer. For purposes of this interpretation, a financial interest includes an interest in equity or other security, debenture, loan, or other debt instrument of an entity, including the rights and obligations to acquire such an interest and derivatives directly related to such an interest.

A member in business and industry should evaluate potential threats to his or her integrity and objectivity and, when appropriate and reasonable, apply safeguards to eliminate such threats or reduce them to an acceptable level. Examples of circumstances that may create self-interest threats include situations when the member in business and industry or an immediate family member or close relative

- Holds a direct financial interest in the employing organization and the value of that financial interest could be directly affected by decisions made by the member in business and industry. A direct financial interest includes any financial interest directly owned by the individual or is beneficially owned through an investment vehicle, estate, trust, or other intermediary when the individual controls the intermediary or has the ability to supervise or participate in the intermediary's investment decisions.
- Holds an indirect financial interest in the employing organization and the value of that financial interest could be directly affected by decisions made by the member in business and industry. An indirect financial interest includes a financial interest owned through an investment vehicle, estate, trust, or other intermediary when the individual neither controls the intermediary nor has the authority to supervise or participate in the intermediary's investment decisions.
- Is eligible for a profit or other performance-related bonus and the value of that bonus could be directly affected by decisions made by the member in business and industry.
- Holds, directly or indirectly, share options in the employing organization, the value of which could be directly affected by the decisions made by the member in business and industry.
- Holds, directly or indirectly, share options in the employing organization which are, or will soon be, eligible for conversion.
- May qualify for share options in the employing organization or performance-related bonuses if certain targets are achieved.

The significance of any threat should be evaluated and safeguards applied, when appropriate and reasonable, to eliminate the threat or reduce it to an acceptable level. In evaluating the significance of any threat, a member in business and industry should evaluate the nature of the financial interest including the significance of the financial interest. What constitutes a significant financial interest in an organization will vary from individual to individual, depending on personal circumstances and whether the financial interest is direct or indirect. Examples of such safeguards include the following:

- Consultation, when appropriate, with relevant professional bodies
- Up-to-date education on ethical issues and legal restrictions
- Policies and procedures for a committee independent of the member in business and industry to determine the level or form of remuneration
- Consultation, when appropriate, with superiors within the employing organization
- Consultation, when appropriate, with those charged with governance of the employing organization

- Disclosure of all relevant interests and any plans to trade in relevant shares to those charged with governance of the employing organization, in accordance with any internal policies
- Internal and external audit procedures
- Current knowledge of regulations such as insider trading and fraud

In determining which safeguards may be appropriate and reasonable, a member in business and industry should use his or her professional judgment and consider factors such as the size and structure of the employing organization.

Effective Date

Interpretation No. 501-10 will be effective on the last day of the month in which it is published in the *Journal of Accountancy*.

Proposed New Interpretation No. 501-11, “False, Misleading, or Deceptive Acts in Promoting or Marketing Professional Services,” Under Rule 501, *Acts Discreditable*

Explanation

The PEEC is exposing for comment the proposed Interpretation No. 501-11, “False, misleading, or deceptive acts in promoting or marketing professional services,” under Rule 501 of the AICPA Code. The proposed interpretation addresses false, misleading, or deceptive claims that a member in business and industry may make about the member’s qualifications, guidance which is not currently addressed in the AICPA Code. This would include any representation about CPA licensure or any other professional certification or accreditation that is not in compliance with the requirements of the relevant licensing authority or designating body. The proposed interpretation would be applicable to members in business and industry only.

One of the PEEC’s ongoing initiatives is to achieve international convergence of ethics standards. The PEEC assigned a task force to review Part A and Part C of the IESBA Code and consider when additional guidance may be appropriate for AICPA members in business and industry. The PEEC concluded that while guidance exists for false, misleading, or deceptive acts in advertising or solicitation of clients under Rule 502, *Advertising and Other Forms of Solicitation* (AICPA, *Professional Standards*), of the AICPA Code (applicable to members engaged in the practice of public accounting), the extant AICPA Code does not address false, misleading, or deceptive acts in promoting or marketing professional services by members in business and industry. This topic is addressed in Section 150, *Professional Behavior*, of the IESBA Code, which is applicable to both professional accountants in public practice and professional accountants in business.

The proposed interpretation states that a member in business and industry would be considered to have committed an act discreditable if the member promotes or markets his or her abilities to provide professional services or makes claims about his or her experience or qualifications in a manner that is false, misleading, or deceptive.

Text of Proposed New Interpretation

501-11—False, misleading, or deceptive acts in promoting or marketing professional services

A member in business and industry who promotes or markets his or her abilities to provide professional services or makes claims about his or her experience or qualifications in a manner that is false, misleading, or deceptive will be considered to have committed an act discreditable to the profession in violation of Rule 501, *Acts Discreditable* (AICPA, *Professional Standards*). A false, misleading, or deceptive promotion includes any claim or representation that would be likely to cause a reasonable person to misunderstand or be deceived. This includes any representation about CPA licensure or any other professional certification or accreditation that is not in compliance with the requirements of the relevant licensing authority or designating body.

Effective Date

Interpretation No. 501-11 will be effective on the last day of the month in which it is published in the *Journal of Accountancy*.

Proposed New Definition, “Member in Business and Industry,” Under ET Section 92, *Definitions*

Explanation

The PEEC is exposing for comment the proposed definition of *member in business and industry* under ET section 92, *Definitions* (AICPA, *Professional Standards*), of the AICPA Code. The proposed definition is intended to capture members that are not in the practice of public accounting while being descriptive by providing examples of members who are considered to be in business and industry. This term is not currently defined in the AICPA Code. The proposed definition includes members employed or engaged on a contractual basis or volunteer basis in an executive, staff, or administrative capacity in such areas as industry, the public sector, education, the not-for-profit sector, and regulatory or professional bodies.

One of the PEEC’s ongoing initiatives is to achieve international convergence of ethics standards. The PEEC assigned a task force to review Part A and Part C of the IESBA Code and consider when additional guidance may be appropriate for AICPA members in business and industry. The PEEC concluded that it would be beneficial to define *member in business and industry* so it is clear to whom certain rules and interpretations are applicable.

The definition also allows for the fact that a member in the practice of public accounting may simultaneously also be a member in business and industry if that member, for example, serves as a volunteer on a board of directors. However, under such circumstances, the rules applicable to members in business and industry would only apply while serving in the capacity as a board member. It should also be noted that if a member in business and industry is practicing public accounting (for example, preparing tax returns for clients), the member must also follow the rules applicable to members in the practice of public accounting when providing such services.

Request for Specific Comments

Although the PEEC welcomes comments on all aspects of this proposal, it specifically requests feedback on the following:

1. Does the proposed definition appropriately capture all members in business and industry? Should there be additional wording added to include any other examples of members in business and industry?
2. Should the AICPA Code use the term *member in business and industry*? Or, would a term such as “member in business” be sufficient?

Text of Proposed New Definition

Member in business and industry. A member employed or engaged on a contractual basis or volunteer basis in an executive, staff, or administrative capacity in such areas as industry, the public sector, education, the not-for-profit sector, regulatory bodies, or professional bodies. This does not include members while engaged in the practice of public accounting.

Effective Date

The definition will be effective on the last day of the month in which it is published in the *Journal of Accountancy*.