

**AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS
DIVISION OF PROFESSIONAL ETHICS
PROFESSIONAL ETHICS EXECUTIVE COMMITTEE
OPEN MEETING MINUTES
JANUARY 28-29, 2015
SAN JUAN, PUERTO RICO**

The Professional Ethics Executive Committee (Committee) held a duly called meeting on January 28-29, 2015. The meeting convened at 9:05 a.m. on January 28th and concluded at 3:00 p.m. The meeting reconvened at 9:02 a.m. on January 29th and concluded at 9:21 a.m.

<p><u>Attendance:</u> Samuel L. Burke, Chair* Carlos Barrera* Tom Campbell Richard David Robert E. Denham* Jana Dupree Greg Guin* Raymond Johnson Brian S. Lynch John Malahoski Linda J. McAninch Andrew Mintzer</p>	<p>Jarold Mittleider Steven Reed Ray Roberts Michael Schmitz Edward Schultz* Lawrence I. Shapiro (Acting Chair) Laurie Tish* Shelly Van Dyne</p>
<p><u>Staff:</u> Lisa Snyder, Director James Brackens, VP - Ethics & Practice Quality (January 28th only) Michael Jones, Assistant General Counsel Carl Peterson, VP Small Firms Jason Evans, Sr. Technical Manager Ellen Gorla, Sr. Manager*</p>	<p>Michele Craig, Technical Manager* Brandon Mercer, Technical Manager* April Sherman, Technical Manager* James West, Technical Manager* Shannon Ziemba, Technical Manager* Liese Faircloth, Technical Manager</p>
<p><u>Guests:</u> Ian Benjamin, Chair, Technical Standards Subcommittee Al Pruskowski, Chair, Independence/Behavioral Standards Subcommittee Corey Arvizu* (Definition of Client Agenda Item Only) Martin Benison* (Campaign Treasurer Agenda Item Only) Dan Dustin, VP State Board Relations, NASBA Nancy Miller, KPMG Catherine Allen, PwC* Sonia Araujo, PwC* George Dietz, PwC* Edith Yaffe, E&Y* Vincent DiBlanda, DT* Eric Holbrook, GAO* Vassilios Karapanos, SEC* Karen Liu, SEC*</p> <p style="text-align: right;">*Via Phone</p>	

1. **Definition of Client**

Mr. Arvizu provided the Committee with an overview of the project and the Committee approved a clarifying edit to the government exception portion of the definition. Mr. Arvizu explained that the main outstanding issue was whether the phrase “the entity with respect to which professional services are performed” should be removed from the definition of client or if there are significant unintended consequences for doing so.

Contingent Fees and Commission and Referral Fees Rules

Mr. Arvizu reported that the Task Force believes an unintended consequence is that the prohibitions in the Contingent Fees and Commission and Referral Fees Rules would only extend to the entity that engages the member and may not extend to the entity for which the member is doing attest work. Although the Task Force offered some possible solutions, the Committee tabled its decision on how to address the unintended consequence.

Confidential Client Information

Mr. Arvizu explained that although there was general agreement by the Committee that a firm did not owe a responsibility to maintain client confidentiality to the entity with respect to which professional services are performed, if different from the engaging entity, the Committee agreed that the Task Force should study the issue and identify the unintended consequences. Mr. Arvizu reported that the Task Force believes that if a third party retains a member to provide professional services on another entity, removing the phrase would result in the other entity not being a client. As such, members would not be required to keep information they obtain from that entity confidential. He explained that the Task Force members are concerned with relying on contractual arrangements to address the unintended consequence.

By way of a straw poll, a majority of the Committee was in agreement that for nonattest services and agreed upon procedure engagements the Confidential Client Information Rule should only extend to the entity that engages the member.

Government Employee Exception

A committee member voiced concern about whether “professional services” is the best term for this exception. Specifically, the exception relates to attest services for independence purposes and not all professional services performed by government employees are included in this exception.

Next Steps

The PEEC agreed that there are unintended consequences of removing the phrase “the person or entity with respect to which professional services are performed” from the definition of client. The PEEC decided that further evaluation needs to be done to determine the best way to deal with these unintended consequences and that the Task Force may need to be reorganized. The Task Force was asked to evaluate whether to further edit the client definition, add interpretations to applicable rules, or possibly change the applicable rules. The Task Force was also asked to re-evaluate if “professional services” is the best term for purposes of the government employee exception.

2. **Client Affiliates**

Mr. Lynch explained that at the November 2014 meeting, the Committee received feedback concerning the propriety of including all multiple employer and multiemployer plans as affiliates of participating employers that sponsor these plans. As a result, the Committee

reinstated the Affiliate Task Force to study this issue. Mr. Lynch reported that upon researching the issue further, the Task Force found that the Department of Labor and Internal Revenue Service rules do not consider participating employers of multiemployer plans to be the sponsor, rather, identifies the plan's Board of Trustees as the governing entity and sponsor.

Given this clarification, he explained that the Task Force recommends a change in position. Specifically, the Task Force recommends that only those entities that participate on the Board of Trustees of a multiemployer plan could potentially have significant influence over the plan. Mr. Lynch further explained that to determine if an entity has significant influence, the Task Force looked to the FAQ document. This document explains that to have significant influence the entity would need to have 20% or more of the voting rights on the Board of Trustees or if it has less than 20 percent of the voting rights, some other factor, such as the ability to otherwise participate in the plan's policy-making processes. In addition, the Task Force noted that when significant influence is used elsewhere in the affiliate definition, it is paired with materiality. For consistency purposes, the Task Force recommends the incorporation of materiality as well.

Although the Committee was supportive of this change, it believed the position would be clearer if it were presented separately from the position for multiple employer plans. As such the position for multiple employer plans was moved into its own bullet. A similar change was made for the conclusion on when entities that sponsor a multiple employer or multiemployer should be considered affiliates of the plans.

Mr. Lynch also explained that while researching this position, the Task Force learned that sometimes instead of participating employers having representation on the Board of Trustees, the seats may be held by members of a group association. He explained that a group association of employers is typically a trade association established for the promotion of a particular industry as well as the cooperation and collaboration between companies in that industry. The association creates a level of standardization for the industry and provides participating companies with a unified voice in advocating for their common interests. Given this information, the Task Force recommends adding this entity to the affiliate interpretation.

It was moved, seconded and unanimously agreed to expose the proposed revisions for 30-45 days after busy season.

3. Entities Included in State and Local Government Financial Statements

Ms. Miller explained that the Task Force met twice since the last Committee meeting and has primarily focused on identifying the various issues that should be discussed. She explained that the Task Force is moving slowly so that it ensures it identifies all the issues. As such, she does not believe the Task Force will be in a position to solicit the Committee's feedback before the July meeting.

4. Maintaining or Hosting Client Data

Ms. VanDyne explained that the Task Force believes that some of the language used in the nonattest services interpretation is in need of modernization. She explained that two of the areas that the Task Force believes are in need of modernization are the bookkeeping and information technology topics. Specifically, with regard to maintaining or hosting client records, the Task Force believes that in some situations services could include manipulating client data such as when firms provide bookkeeping services whereas, other services might

not such as when the client uses firm software to manipulate its own data and where that software resides.

She explained that the third area that is in need of modernization is the advisory services topic. Currently, this topic does not cover services such as IT training and infrastructure where the firm assists a client in designing and implementing its cloud technology solution or assists a client with designing a training and awareness program to educate client personnel about the opportunities, issues, risks and standard operating procedures when considering cloud services. Ms. Snyder suggested that the charge for this component indicate that any additional examples be added to either the Advisory Services or IT Services interpretations depending upon where they fit best.

Ms. VanDyne explained that the Task Force believes it would address these issues through standard-setting as opposed to issuing non-authoritative frequently asked questions. The Committee approved the proposed scope with an editorial revision.

5. Codification

Ms. Craig provided the Committee with a brief update on the development of the three Conceptual Framework Toolkits. She explained that since approving the independence toolkit in November, staff had the document edited and is working with the graphic design team to ensure the toolkits are properly branded and to incorporate interactive components.

Ms. Craig explained that staff is in the process of developing the toolkits for Members in Public Practice and Members in Business using the approved format of the independence toolkit. She explained that the Codification Task Force will meet in February to discuss the draft versions of the remaining toolkits with a focus on the examples in each toolkit.

6. Affiliate Exception for Client Acquisitions

Mr. Shapiro reported on the comments received on the proposed revisions to the client affiliate interpretation and definition of “attest client” as well as the recommendations of the Task Force as to whether such comments warranted revision to the proposal. He noted that overall, comments were favorable.

Mr. Shapiro explained that the Task Force focused much of its discussion on the issue raised in Comment Letter 6 which recommended that the auditor should have to consider his or her independence with respect to the attest client as a result of the relationship with the acquirer. He noted that this Comment Letter also implied that certain relationships such as a financial interest in the acquirer may result in significant threats whereas the provision of prohibited nonattest services generally would not. Mr. Shapiro explained that the Task Force believed it was the Committee’s intent to apply the exception regardless of the type of independence impairment with respect to the acquirer and noted that the exception refers members to the Conflicts of Interest interpretation with regard to any relationships that the member may have with the acquirer. He also noted that the majority of task force members believed that if a requirement was added for the member to evaluate the significance of the threats to independence with respect to the attest client resulting from the relationship with the acquirer, this could result in members having to evaluate every relationship and document any significant threats which could potentially lead to a situation where the exception could not be applied as intended by PEEC (i.e., where no safeguards could reduce threats to an acceptable level). Accordingly, Mr. Shapiro asked the Committee to

confirm that the exception should apply regardless of the type of impairment and an evaluation of the significance of threats should not be required.

Mr. Burke reminded the Committee that the proposal does not cover continuing relationships with the acquirer and would only apply for pre-acquisition historical financial statements of the financial statement attest client. The Committee agreed with the Task Force's conclusion that the exception should apply to all types of independence impairments and it was unnecessary to incorporate a requirement to evaluate the significance of the threats created by the relationship with the acquirer.

Mr. Shapiro reviewed all other comments with the Committee and the Committee agreed with the Task Force's recommendations that no revisions to the proposal were warranted with the exception of the following comment in Comment Letter 7. Specifically, Comment Letter 7 recommended that the requirement in paragraph .07 to consider the "Conflicts of Interest" interpretation should be expanded to include relationships existing with the financial statement attest client as well as the acquirer. The Task Force agreed that the relationship with the acquirer could also result in a potential conflict of interest with respect to the financial statement attest client as well as the firm. Accordingly, the Task Force recommends that paragraph .07 be revised to state, "...has reason to believe exist with the acquirer, ***the financial statement attest client or the firm.***" (emphasis added). The Committee agreed with the proposed revision.

It was moved, seconded, and unanimously agreed to approve the proposed revision to the client affiliate interpretation and the definition of attest client. With regard to the effective date, the Committee agreed with the Task Force's recommendation that no transition period was necessary and the revisions should be effective on the last day of the month that they are released in the Journal of Accountancy.

7. Campaign Treasurer

Mr. Benison provided the Committee with a brief overview of the history of the project for the benefit of the newer Committee members. Mr. Benison then explained that overall the feedback received on the proposal was supportive and resulted in only a few substantive comments.

One such comment was that the proposal should extend to other non-financial positions such as the campaign manager. Mr. Benison explained that the Committee had discussed this but decided to not extend the interpretation to non-financial positions since the responsibilities of campaign managers and others working on the campaign are so diverse. He explained that the Task Force recommended that the interpretation direct members to the Conceptual Framework for Independence if partners or professional employees serve in campaign positions not specifically addressed by the interpretation and that the requirement that the interpretation apply to these individuals be moved to the beginning of the interpretation. The Committee did not raise any concerns with these recommendations.

Mr. Benison noted that another comment received was that the paragraph under the "Candidate Running for Election of a Governmental Entity That Is an Attest Client" was cumbersome and so the Task Force recommends some editorial revisions to address that comment. The Committee did not raise any concerns with this recommendation.

Next, Mr. Benison explained that a commenter recommended that situations where the political party is an attest client be treated the same as the other components of the interpretation and result in independence being impaired. He explained that the Task Force continues to believe that aside from when the candidate is a member of the governing body of the political party, that it is still appropriate for members to assess the threats created using the reasonable and informed third party approach. The Committee did not have any feedback on this recommendation.

Mr. Benison also noted that a commenter recommended that because of the professional judgement involved in this situation, the interpretation should remind members of the documentation requirements when safeguards are applied to reduce significant threats to an acceptable level. He explained that the Task Force drafted some sample language to address this comment but ultimately believed the Committee should develop a position regarding when such reminders were appropriate. Overall, the Committee believed a reminder to document was not necessary and noted that a reference to the Conceptual Framework for Independence appears in the first paragraph in connection with assessing non-financial positions.

Mr. Benison noted that the Task Force did not believe the comment concerning expanding the conflicts of interest interpretation in Part 2 was something within its purview.

The Committee then discussed the transition provision noting that it believed the provision should appear in the interpretation for two years and then be moved to the transition provision webpage.

It was moved, seconded and unanimously approved to adopt the revised interpretation as revised by the Committee.

8. PEEC Planning Subgroup

Ms. Gorla explained that staff had received feedback from all but two of the internal stakeholders. The overall feedback was that the stakeholders would monitor the environment for any emerging ethics issues and if any were identified, they would bring them to staff's attention.

9. Comparison of AICPA Code to State Board Rules

Ms. Snyder introduced the topic noting that the AICPA and the National Association of State Boards of Accountancy (NASBA) agreed to promote the newly codified AICPA Code of Professional Conduct (the Code) for adoption by State Boards. In order to facilitate state board adoption of the Code, the PEEC was asked to identify significant differences between the Code and the rules of the state boards. The PEEC would examine those differences to determine if the guidance in the Code should be revisited. Ms. Snyder categorized the state boards as follows:

- 17 jurisdictions have adopted the AICPA Code;
- 4 jurisdictions have adopted the AICPA Code with exceptions;
- 6 jurisdictions have adopted portions of the AICPA Code; and
- 22 jurisdictions have not adopted the AICPA Code.

Mr. Johnson noted that many states adopt the Code or a portion of the Code as of a certain date at the recommendation of the Attorney General. He further noted that some of these states update their Codes regularly. A goal of this project is to have all the states update

their rules regularly so that they refer to, or incorporate, the current version of the AICPA Code.

Ms. Craig reported that Staff conducted a comparison of the AICPA Code and the rules of seven of the larger states which included: New York, Florida, California, Colorado, North Carolina, Illinois, and Texas. Each state in the sample either did not adopt the Code or adopted sections of the Code. Ms. Craig briefly explained the parameters of the comparison. Specifically, staff compared the codes of conduct for the states selected as well as other ethical topics that were addressed in the rules and regulations outside of the state boards' codes of conduct to the AICPA code. Staff noted the following situations as significant differences that may need to be addressed by the PEEC:

- Three or more states having a more restrictive rule than that of the relative AICPA rule or interpretation; and
- A state board having a rule that the AICPA did not address.

Ms. Snyder noted a trend in significant differences identified within guidance pertaining to:

- Record requests;
- Contingent fees; and
- Commissions and referral fees.

Ms. Snyder recommended that the comparison project should continue to focus on differences that are common in many states as opposed to specific "one-off" differences within an individual state and requested that the Committee form a Task Force to continue with the project and make recommendations to PEEC. She further recommended that the Task Force include Messrs. Ray Johnson and Rick David (NASBA representatives), as well as a public member and other PEEC members. The Committee was supportive of appointing a task force. A Committee member specifically requested that staff review the differences in the wording for conflicts of interest including use of the terms "shall" and "may."

10. IESBA Update

Ms. Snyder reported on the January 2015 meeting of the IESBA held in London.

Non Assurance Services

Ms. Snyder reported that the IESBA unanimously approved revisions to the provisions addressing the performance of non-assurance services in Section 290 of the Code relating to the following areas:

- Withdrawal of the emergency exception provisions for bookkeeping and taxation services provided to audit clients that are public interest entities;
- Provisions addressing management responsibilities; and
- Clarifications regarding the concept of "routine or mechanical" services relating to the preparation of accounting records and financial statements.

Non-compliance with Laws and Regulations (NOCLAR)

Ms. Snyder reported that the IESBA considered a revised NOCLAR proposal that was based on feedback received from stakeholders who attended the roundtable discussions this past summer. She noted the IESBA was generally supportive of the key issues and

key elements of the proposal and agreed with the differential approach to NOCLAR for different categories of accountants (i.e., auditors, professional accountants in public practice who only provide non-assurance services, senior professional accountants in business, and junior professional accountants in business). She also noted that IESBA members provided additional feedback for improvements and the Task Force is expected to present a revised proposal to the IESBA at its April 2016 meeting for approval to re-expose.

Part C

Ms. Snyder reported that there is an outstanding exposure draft that proposes revisions to Part C applicable to professional accountants in business (see discussion below). She also reported that the Part C Task Force has just begun discussions on Phase 2 of the project which will cover “inducements.”

Safeguards

Ms. Snyder reported that the IESBA Safeguards project was primarily driven by feedback from regulators requesting that the Board review the clarity, appropriateness and effectiveness of safeguards of the IESBA Code. She explained that the project would address those safeguards contained in Section 100 of the Code and safeguards pertaining to non-assurance services in Section 290 of the Code. She noted that the IESBA approved the project proposal as presented by the Task Force and the Task Force expects to submit an Exposure Draft for approval by the Board at its December 2015 meeting.

Long Association

Ms. Snyder reported that the IESBA’s Task Force presented a preliminary summary of significant comments on key aspects of the long association proposal (i.e., exposure draft).

She noted that the Board tentatively agreed that:

- The length of the time-on period for all key audit partners (KAPs) should remain at seven years;
- The length of the cooling-off period for other KAPs, including the engagement quality control review partner, should remain at 2 years; and
- The length of the cooling-off period for the engagement partner should be five years and apply to all PIEs.

The Board provided additional feedback and the Task Force agreed to present a revised proposal to the Board at its April 2016 meeting for possible approval.

11. IESBA Consultation Paper, Improving the Structure of the Code of Ethics for Professional Accountants

Ms. Snyder reviewed the draft comment letter with the Board developed by the Task Force in response to the IESBA Consultation Paper. She noted that the Task Force believes the PEEC should not support the proposed restructuring of the IESBA Code due to the significant amount of resources that will be needed to pursue this project and the fact that the extant IESBA Code is sufficient from a clarity and enforcement perspective. The Committee agreed with the proposed answers to the various questions asked in the Consultation Paper and Ms. Snyder stated that a final draft would be sent via email to the Committee for approval prior to issuance.

12. IESBA Exposure Draft, Proposed Changes to Part C of the Code Addressing Presentation of Information and Pressure to Breach the Fundamental Principles

Ms. Snyder reported that there is an outstanding exposure draft that proposes revisions to Part C applicable to professional accountants in business (PAIB) issued in November 2014 with a comment deadline of April 15, 2015. She noted that members of the AICPA Business and Industry Executive Committee will be asked to join the PEEC's task force for purposes of drafting a comment letter in response to the proposal. Ms. Snyder provided the Committee with a high level overview of the proposed revisions including the following:

Proposed Revised Section 320, Presentation of Information

The IESBA proposes to:

- Broaden the focus of the section beyond written reports and to cover both financial and non-financial information for both internal and external purposes;
- Provide additional clarity and guidance on what it means to prepare information "fairly and honestly";
- Add new guidance addressing the "misuse of discretion" when preparing or presenting financial information (e.g., in determining accounting estimates);
- Provide additional guidance on steps a PAIB should consider in order to disassociate from misleading information; and
- Add a provision that the PAIB be encouraged to document the facts, the accounting principles or other relevant professional standards involved, and the communications and parties with whom these matters were discussed.

Proposed New Section 370, Pressure to Breach the Fundamental Principles

The IESBA proposes to add a new section to the Code to provide more robust and practical guidance on how a PAIB should respond when facing pressure that may result in a breach of the fundamental principles.

The IESBA proposes to:

- Incorporate a more specific description of pressure;
- Include a wide variety of practical examples to illustrate different kinds of situations in which pressure may arise;
- Provide guidance by setting out a number of actions the PAIB may wish to consider after he or she has determined that the pressure *would* lead to a breach of the fundamental principles;
- Incorporate a requirement that if the PAIB determines that the pressure would result in a breach of the fundamental principles and cannot be alleviated or eliminated, the PAIB should decline to undertake, or discontinue, the professional activity as well as consider resigning from the employing organization; and
- Include a provision that the PAIB be encouraged to document the relevant facts and circumstances in such a situation.

13. Minutes of the Professional Ethics Executive Committee Open Meeting

The Committee directed staff to correct the spelling of a committee member's name. It was moved, seconded and unanimously agreed to approve the minutes with the noted revision.
