



May 19, 2017

Professional Ethics Executive Committee  
Attention: Lisa A. Snyder, Director  
Professional Ethics Division  
American Institute of Certified Public Accountants  
1211 Avenue of the Americas, 19<sup>th</sup> Floor  
New York, NY 10036

**Grant Thornton LLP**  
175 W Jackson Boulevard, 20th Floor  
Chicago, IL 60604-2687  
T 312.856.0200  
F 312.565.4719  
[www.GrantThornton.com](http://www.GrantThornton.com)

Via e-mail: [lsnyder@aicpa.org](mailto:lsnyder@aicpa.org)

Re: Comments on Exposure Draft, *Responding to Non-Compliance with Laws and Regulations*:  
Proposed Interpretation of the AICPA Professional Ethics Division dated March 10, 2017

Dear Ms. Snyder and Committee Members:

Grant Thornton LLP (“Grant Thornton” or the “Firm”) appreciates the opportunity to comment on the American Institute of Certified Public Accountants (“AICPA”) Professional Ethics Executive Committee’s (“PEEC”) recently issued Exposure Draft (“ED”), which proposes two new interpretations each entitled “Responding to Non-Compliance with Laws and Regulations” (“NOCLAR”) (ET sec. 1.170.010 and 2.170.010) under the “Integrity and Objectivity Rule” (ET sec. 1.100.001 and 2.100.001), applicable to members in public practice and in business, respectively, of the *AICPA Code of Professional Conduct* (“Code”). Our focus when reviewing the ED was on the “members in public practice” and our comments below reflect this.

We strongly support the PEEC’s commitment to provide robust guidance to assist AICPA members to converge with the International Ethics Standards Board of Accountants’ Code (“IESBA Code”) when encountering or suspecting of an instance of NOCLAR at a client. It is our understanding that certain differences between the IESBA Code and Code are necessary for the provisions under the Code to be compatible with most state laws and regulations on client confidentiality. However, we disagree with PEEC’s current position in the ED as it relates to the evaluation and documentation of NOCLAR for the reasons noted below and especially when nonattest services are being provided to a client. We believe that PEEC should further evaluate whether certain nonattest services (e.g., forensic investigations or other nonattest services performed under privilege or where concerns about compliance with laws, regulations, or contractual agreements known and are the reason the member is being engaged to provide assistance and tax services that are already subject to similar and in some instances stricter requirements under both the AICPA Statements on Standards for Tax Services and IRS Circular 230) should be excluded from all or certain NOCLAR requirements based on the nature and scope of the work. In the tax services area it is unwise to impose new standards in place of long standing well understood existing standards which achieve a similar result. Our comments below support our Firm’s overall concerns with the current position taken in the ED.

PEEC should further review and reconsider the proposed NOCLAR requirements including the impact it has on the profession and risk management concerns members may be forced to conclude and report a client that has not complied with laws and regulations when members cannot practice law and the client has not gone through any adjudication process. Furthermore, our Firm currently uses a framework similar to the structure the AICPA has established on breaches of an independence interpretation (ET sec. 1.298.010) and its application of the conceptual framework for independence and ethical conflicts (ET sec. 1.200.005) to evaluate any potential concerns or instances of NOCLAR. In addition, other professional standards exist that provide guidance to attest and nonattest engagement teams with the identification, evaluation and documentation of fraud, illegal acts or other errors or omissions by clients (and/or their employees), and teams are required to adhere to these standards. The new interpretation should clearly state that members are required to adhere to those standards.

We agree attest teams should continue to evaluate whether to resign or perform additional procedures to reduce the threats to an acceptable level when the firm encounters or suspects a NOCLAR. We agree that the litmus test is the determination of whether the attest engagement team's integrity, objectivity, and professional skepticism has been compromised as a result of the NOCLAR. Therefore, in the event a firm concludes that it can continue to provide attest services that firms should be in the position to provide its documentation on how it reached that conclusion. Each firm should understand that even though they may have satisfactorily addressed the consequences of the NOCLAR, it would not necessarily preclude an investigation or an enforcement action from an applicable regulator as it relates to the underlying NOCLAR.

### **Other comments**

Grant Thornton understands that there is the necessity for the AICPA to converge on the regulations established by IESBA. In addition, we understand the NOCLAR requirements under the Code need to be at least as restrictive as IESBA. We agree that some regulators have provisions governing how members should address non-compliance or suspected non-compliance which may differ from or go beyond the proposed NOCLAR interpretation. However, below we have identified the following specific comments for PEEC's consideration:

- **Certain nonattest services do not permit disclosure of matters due to privilege or other confidentiality requirements** - We believe that based on the nature of the service, members participating in public practice can be hired under privilege and this would prevent matters from being disclosed to management. The disclosure requirement may result in undue risk of restricting ability to perform services if competitors are not members, being inadvertently drawn into a commercial dispute or criminal proceeding as work product becomes evidence, violating legal privilege requirements by recording matters that are not directed to be documented by legal counsel and being subjected to a law suit for documented findings that are found to be untrue or unproven. Certain nonattest services may also be subject to discovery or may be bound to other confidentiality requirements. Therefore, certain nonattest services should be excluded from being required to comply with the disclosure and documentation requirements based on the nature of their services. We would suggest that any service that is permitted to be performed under privilege, such as forensics

work or certain tax services, or transaction services that require confidentiality be excluded from such requirements or carved-out from the NOCLAR requirements in their entirety.

- **Period and nature of nonattest services may present a challenge for discussing instances of NOCLAR with management** - Guidance should be included within the interpretation that would highlight the minimal quality control standards or policies that a firm should have in place to adequately identify and evaluate circumstances or relationships when a NOCLAR is encountered or suspected, including detection of NOCLAR. Therefore, providing firms with a base line of what those standards or policies are will assist firms in applying the new interpretation. As nonattest engagements may vary in length, expectations for disclosing to management after a service is completed should be clarified, since it may not be practical to communicate while performing the service. PEEC also needs to provide further clarity on the level of management to communicate such matters to since nonattest engagement teams generally do not have access to “those charged with governance”.
- **Additional guidance should be provided on determining materiality** - We believe that based on the nature of the service, nonattest engagement teams may not have the appropriate information to assess whether the instance of NOCLAR is material to the financial statements or whether it would result in significant financial losses to investors. PEEC should consider including specific thresholds for communicating and documenting instances of NOCLAR in the new interpretation. Qualitative considerations could also be included to assist engagement teams in evaluating the nature and significance of the matter which will ultimately assist teams in determining whether the matter is a NOCLAR requiring the teams to follow the requirements under the new interpretation.
- **Further clarification on a member’s role on identifying NOCLAR is needed** - It is our understanding that engagement teams are not required to look for NOCLAR or build additional procedures to identify actual or suspected NOCLAR instances. Therefore, this should be clarified in the new interpretation.
- **Additional clarification on how the term “client” is defined within the new interpretation is necessary** - We understand that PEEC has recently exposed a new definition for “client”, therefore, once the definition is adopted it should be either be referenced within this new interpretation or the “client” definition should be explicitly stated. PEEC may also want to consider adding a few examples of a client or “not” a client in the new interpretation.
- **Firms are subject to other professional standards when providing attest and nonattest services that relate to the identification, evaluation and documentation of client fraud or illegal acts (or other omissions/errors)** - PEEC should consider adding a statement in the new interpretation that firms should also adhere to other professional standards that cover fraud or illegal acts (or other omissions/errors), and that firms should adhere to the most restrictive requirements. Furthermore, PEEC should consider referencing other applicable AICPA standards that firms should be adhering to when performing attest or specific nonattest services.

- **Recommendation for development of a practice aid or frequently asked questions (FAQs) document** - Grant Thornton believes that PEEC should consider developing non-authoritative guidance in the format of a practice aid or FAQs to provide more clarity in assisting members in better understanding the application of the proposed interpretation, including examples of documentation for identifying, evaluating, documenting, and communicating an instance of NOCLAR. For example, the following can be covered in the guidance:
  - Other examples of quality control related policies and procedures (or best practices) that will assist firms in fulfilling its responsibilities to have established sufficient policies to identify professionals' requirements and address instances of NOCLAR, including notification to management (or those charged with governance).
  - Specific illustrative examples, scenarios and/or action steps that firms should consider when addressing an instance of NOCLAR such as, (1) determining whether or not a NOCLAR has occurred, (2) evaluating the significance of the NOCLAR (e.g., determining whether the NOCLAR is inadvertent), (3) examples of specific safeguards (or certain actions), (4) determining whether a firm should resign from the attest or nonattest engagement, (5) determining when disclosure is necessary, (6) evaluating the impact on the engagement team's ability to perform their services, and (7) the timing of communications internally and with management or those charged with governance, including documentation or communication format (or templates).

### **Effective date**

Grant Thornton disagrees with PEEC on the current effective date and believes that a further delayed effective date is necessary. We believe the effective date should be at least two years from the last day of the month in which the new interpretations are published in the Journal of Accountancy. If NOCLAR requirements extend to nonattest engagements, firms will need to develop specific training for nonattest engagement teams and develop specific policies and procedures for teams to follow in order to comply with the new interpretation. Since we believe significant changes to the NOCLAR requirements are necessary when nonattest services are provided to clients based on the current ED, PEEC should reissue a revised ED for further comments before approving the adoption of the new interpretation.

\* \* \*

We would be pleased to discuss our letter with you. If you have any questions, please contact Anna Dourdourekas, National Partner in Charge, Ethical Standards at [Anna.Dourdourekas@us.gt.com](mailto:Anna.Dourdourekas@us.gt.com) or (630)-873-2633.

Very truly yours,

