
EXPOSURE DRAFT

OMNIBUS PROPOSAL

AICPA PROFESSIONAL ETHICS DIVISION

November 25, 2015

Comments are requested by May 16, 2016

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 Lisa A. Snyder, Director of the Professional Ethics Division, at lsnyder@aicpa.org

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November 25, 2015

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

After the exposure period is concluded and the PEEC has evaluated the comments, the PEEC may decide to adopt the proposed pronouncement. Once published, the pronouncement will become effective on the last day of the month in which it is published in the *Journal of Accountancy*, unless otherwise stated in the pronouncement.

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 May 16, 2016. All written replies to this exposure draft will become part of the public record of the AICPA and will be available at <http://aicpa.org/InterestAreas/ProfessionalEthics/Community/ExposureDrafts/Pages/CommentLettersFortheNovember2015OmnibusExposureDraft.aspx>. Comments received will be considered by the PEEC at its July 12–13, 2016 meeting.

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

Sincerely,

Samuel L. Burke, *Chair*
AICPA Professional Ethics Executive
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Lisa A. Snyder, *Director*
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Explanation for the Proposed Interpretation “Transfer of Files and Return of Client Records in Sale, Transfer, or Discontinuance of Member’s Practice” and Revised Interpretation “Disclosing Client Information in Connection With a Review or Acquisition of the Member’s Practice”

The Professional Ethics Executive Committee (PEEC or committee) is exposing for comment, new and revised interpretations that provide guidance related to a member’s obligations concerning the confidentiality and return of client files when the member either transfers, sells, or discontinues his or her practice or the member acquires a practice.

Proposed Interpretation “Transfer of Files and Return of Client Records in Sale, Transfer or Discontinuance of Member’s Practice”

Discontinuance, Sale, or Transfer of All or Part of a Practice

The committee believes that when a member discontinues, sells or transfers all or part of their practice and the member no longer retains ownership in or control of the practice, the member should take certain steps to notify his or her clients and maintain the confidentiality of any client files the member possesses. The proposed guidance requires that a member who discontinues, sells or transfers his or her practice provide written notification to all clients of the firm and make arrangements to return any client records that the member is required to provide to the client under the Records Requests Interpretation [1.400.200] of the AICPA Code of Professional Conduct (code). In addition, as the “Confidential Client Information Rule” [1.700.001] requires that the member obtain consent from a client prior to disclosing any confidential client information, a member who sells or transfers his or her practice to another firm would be required to obtain the client’s consent before transferring any client files to the successor firm.

The committee acknowledges that despite a member taking best efforts, there may be situations in which the member is unsuccessful in contacting a client or a client may not respond to the member’s request for consent to transfer files or to arrange for the return of client files. The committee is therefore proposing that under such situations, the member may presume that the client consents to the transfer of client files to a successor firm if it does not respond to the member within 90 days. In addition, any client files that are not transferred or are unable to be returned to the client need to be retained by the member in a confidential manner and in accordance with the firm’s record retention policy and applicable legal or regulatory requirements, whichever is longer.

The proposal also emphasizes that when practicing before taxing authorities, such as the IRS, or regulatory bodies, members should ensure compliance with any requirements that may be more restrictive.

Acquisition of All or Part of a Practice

With regard to a member who acquires all or part of a practice from another person or firm, the committee is proposing that the member should be satisfied that all clients of the predecessor firm subject to the acquisition have been notified of the acquisition and have consented to the member’s continuation of professional services and retention of any client files or records that the successor firm plans to retain.

Revised Interpretation “Disclosing Client Information in Connection With a Review or Acquisition of the Member’s Practice”

Extant interpretation, “*Disclosing Client Information in Connection With a Review of the Member’s Practice*,” provides guidance on maintaining confidentiality of confidential client information when a member has his or her practice reviewed, or a member is reviewing a practice, in conjunction with a prospective purchase, sale, or merger of all or part of a member’s practice. The interpretation requires that a member who performs such a review of a practice should not use to his or her advantage or disclose any confidential client information that is obtained during the review.

The PEEC believes that it is appropriate to expand the guidance beyond just the review of a member’s practice by also addressing the situation in which a member obtains client files as the result of acquiring the practice. The proposed revision requires that members who obtain client files as a result of acquiring all or part of a member’s practice should not disclose any confidential client information contained in those files.

Text of Proposed Interpretation “Transfer of Files and Return of Client Records in Sale, Transfer or Discontinuance of Member’s Practice”

1.400.205 Transfer of Files and Return of Client Records in Sale, Transfer or Discontinuance of Member’s Practice

- .01 A member who sells or transfers all or part of the member’s practice to another person, firm or entity (successor firm) and will no longer retain ownership in, or control of, the practice should do all of the following:
- a. Notify each client in writing of the sale or transfer of the member’s practice and obtain the client’s consent prior to transferring its files to the successor firm and, in addition, notify the client that its consent will be presumed if it does not respond within 90 days.
 - b. With respect to files not transferred, make arrangements to return any client records that the member is required to provide to the client as set forth in the “Records Requests” interpretation [1.400.200] unless the member and client agree to some other arrangement.

In cases in which the member is unable to contact the client, client files and records not transferred should be retained in a confidential manner and in accordance with the firm’s record retention policy and applicable legal or regulatory requirements, whichever is longer. When practicing before the IRS or other taxing authorities or regulatory bodies, members should ensure compliance with any requirements that are more restrictive.

- .02 A member who discontinues his or her practice but does not sell or transfer the practice to a successor firm, should do all of the following:
- a. Notify each client in writing of the discontinuation of the practice.
 - b. Make arrangements to return any client records that the member is required to provide to the client as set forth in the “Records Request” interpretation [1.400.200] unless the member and client agree to some other arrangement.

In cases in which the member is unable to contact the client, client files should be retained in a confidential manner and in accordance with the firm’s record retention policy or applicable legal or regulatory requirements, whichever is longer. When practicing before the IRS or other taxing authorities or regulatory bodies, members should ensure compliance with any requirements that are more restrictive.

- .03 A member who acquires all or part of a practice from another person, firm, or entity (predecessor firm) should be satisfied that all clients of the predecessor firm subject to the acquisition have been notified of the acquisition and have consented to the member’s continuation of professional services and retention of any client files or records the successor firm retains.
- .04 A member would be considered in violation of the “Acts Discreditable Rule” [1.400.001] if the member does not comply with the requirements of this interpretation.

Text of Proposed Revised Interpretation “Disclosing Client Information in Connection With a Review *or Acquisition* of the Member’s Practice”

[Additions appear in bold italic and deletions are stricken]

1.700.050 Disclosing Client Information in Connection With a Review *or Acquisition* of the Member’s Practice

- .01 For purposes of the “Confidential Client Information Rule” [1.700.001], a review of a *member’s* professional practice includes a review performed in conjunction with a prospective purchase, sale, or merger of all or part of a *member’s* practice. Such reviews may *threaten* a *member’s* compliance with the “Confidential Client Information Rule.” To reduce the *threat* to an *acceptable level*, a *member* must take appropriate precautions (for example, through a written confidentiality agreement with the prospective purchaser) to help ensure that the prospective purchaser does not disclose any *confidential client information* obtained in the course of the review.
- .02 *Members* who perform such reviews ~~shall~~***should*** not use to their advantage or disclose any *confidential client information* that comes to their attention during the review.
- .03 ***Members who obtain client files as the result of acquiring all or part of another member’s professional practice should not disclose any confidential client information contained in such files. Members should refer to the “Transfer of Files and Return of Client Records in Sale, Transfer or Discontinuance of Member’s Practice” interpretation under the “Acts Discreditable Rule” for guidance on the retention of client files obtained through acquiring a practice.***

Explanation for the Proposed Interpretation “Disclosure of a Commission and Referral Fee”

The PEEC is exposing for comment, a new interpretation that, if adopted, would require the disclosure of permitted commissions and referral fees to be in writing. Paragraph .03 of the [“Commissions and Referral Fees Rule”](#) [1.520.001] requires that a member disclose any permitted commission to the person or entity to whom the member recommends or refers a product or service; paragraph .04 of the rule requires a member who accepts or pays a referral fee to disclose such fee to the client. The rule, however, does not specify the type of disclosure required and therefore, verbal disclosure is currently permitted.

As part of its efforts to facilitate adoption of the AICPA code by state boards of accountancy, the PEEC has compared the code to the rules and regulations of state boards of accountancy to identify significant differences that may exist. One such difference noted during this review relates to the disclosure of permitted commissions and referral fees. Specifically, a significant number of state boards require such disclosures be written; some state boards also identify specific information that should be included in the written disclosure. Though the committee believes that requiring specific information to be included in the disclosure is unnecessary, it did agree that there was merit in requiring that the disclosure be in writing. In addition to aligning the code to be consistent with the disclosure requirements of a number of state boards’ rules, the committee believes written disclosure of commission and referral fee arrangements will enhance transparency and provide the client with an opportunity to further inquire about the specifics of the fee arrangement. Members would be expected to use their professional judgment in determining whether specific information regarding the fee arrangement should be included in the written disclosure.

Request for Specific Comments

Although the committee welcomes comments on all aspects of these proposals, it specifically requests feedback on whether you believe that a delayed effective date is necessary. If so, please explain why you believe additional time to implement the proposed interpretation would be necessary and how much time you believe would be adequate.

Text of Proposed Interpretation “Disclosure of a Commission and Referral Fee”

1.520.080 Disclosure of a Commission and Referral Fee

- .01** The member should make the disclosures required by paragraphs .03 and .04 of the *“Commissions and Referral Fees Rule”* [1.520.001] in writing.