

May 23, 2017

Lisa A. Snyder, Senior Director
AICPA Professional Ethics Division
1211 Avenue of the Americas, 19th Floor
New York, NY 10036-8775

Re: March 10, 2017 Exposure Draft and Invitation to Comment on proposed interpretations, “Responding to Non-Compliance with Laws and Regulations” (Applicable to Members in Public Practice) and “Responding to Non-Compliance with Laws and Regulations” (Applicable to Members in Business).

Dear Ms. Snyder:

The American Institute of CPAs (AICPA) is the world’s largest member association representing the accounting profession, with more than 418,000 members in 143 countries, and a history of serving the public interest since 1887. One of the objectives that the Council of the AICPA established for the Private Company Practice Section (PCPS) Executive Committee is to speak on behalf of local and regional firms and represent those firms’ interests on professional issues in keeping with the public interest, primarily through the Technical Issues Committee (TIC). This communication is in accordance with that objective. These comments, however, do not necessarily reflect the positions of the AICPA.

TIC has reviewed the Invitation to Comment (ITC) and is providing the following comments for your consideration.

GENERAL COMMENTS

TIC agrees that there are instances of known or suspected noncompliance with laws and regulations (“NOCLAR”) that may warrant documentation in audit work papers. While we appreciate the efforts of PEEC to incorporate the rulings of the International Ethics Standards Board for Accountants (“IESBA”), TIC believes there are differences in the business environments and practices of members in the United States of America and those members subject to the IESBA which makes adoption of similar requirements problematic.

The Interpretation would require documentation of NOCLAR for all attest and nonattest services provided by members. TIC believes the proposed documentation requirement could create an unintended consequence by subjecting members to increased litigation risk and their work papers to the risk of increased subpoenas for documents since there will be an expectation that members will have NOCLAR documented in their work papers. Members may be subjected to increased costs of defending against attorneys searching for information and in defending why the member was not aware of a matter or why it wasn't investigated or documented to a court's satisfaction.

TIC believes documentation of these matters should be left to members', and member's firms', discretion in determining which instances of NOCLAR should be documented. There may be instances in which documentation of NOCLAR could be detrimental to a member, or firm, and should not be documented as it could exacerbate litigation issues. Currently, members may document NOCLAR after consulting with their attorney or insurance carriers to be certain they are not making wrongful accusations or improperly documenting a matter that is beyond a member's expertise. While a member may be subjected to litigation costs as in the previous paragraph, there isn't a requirement to investigate NOCLAR regardless of the service provided. TIC believes that absent a law, or regulation, that addresses a documentation requirement, the need for, and level of, documentation should be at the member's discretion or limited to the requirements in other professional standards such as in applicable Auditing Standards or Governmental Auditing Standards.

We believe similar issues arise for members in business. Even though a member in business is only "encouraged" to document NOCLAR, the member will need to document, or defend, why they did not document the NOCLAR. If the NOCLAR would have an effect on the financial statements, the member in business has an obligation to inform the person, or firm, providing the attest service.

When a member is subject to a nondisclosure and confidentiality agreement, what documentation would be required? Would the agreement override the Interpretation, or does the Interpretation override the agreement?

The Interpretation addresses withdrawing from the engagement in certain circumstances, but does not appear to clearly identify a member's responsibilities when they are terminated from an engagement with NOCLAR. Once terminated, is a member required to continue to investigate the NOCLAR and complete documentation, or once terminated, do their responsibilities cease under the Interpretation?

Paragraph .08 indicates, “For the purposes of this interpretation, an act that causes substantial harm is one that results in serious adverse consequences to any of these parties in financial or non-financial terms.” Paragraph .09 indicates, “A *member* who encounters or is made aware of matters that are clearly inconsequential in their nature and their impact, financial or otherwise, on the *client*, its stakeholders and the general public, is not required to comply with this interpretation with respect to such matters.” TIC discussed instances in which a NOCLAR may not be material monetarily and may not have a material future effect on the business and, therefore, no effect on the financial statement reporting or on other nonattest services, but could result in harm to an individual. It appears this would require documentation of the NOCLAR due to the possible harm to an individual or the general public. How do members determine what is clearly inconsequential? Any harm to an individual is more than clearly inconsequential to that individual. We believe the term ‘clearly inconsequential’ clearly should be defined to better eliminate these potential conflicts and the apparent requirement to document non-financial NOCLAR.

The Interpretation appears to address and emphasize the impact on an audit such as in paragraph .21, which addresses the consideration of the effect of the NOCLAR on the auditor’s report. Wouldn’t the same considerations be applicable to review engagements or compilations? When considering the various levels of services provided by members, it appears NOCLAR may be more likely to be discovered through outsourced accounting/CFO services since a member is often heavily involved in day to day operations and which are a nonattest service. If the Interpretation will apply to all services, including nonattest services, considerations of the effects on all reporting should be identified as well as considerations in nonattest services.

TIC is providing detailed feedback on PEEC’s questions in the specific comments section below.

SPECIFIC COMMENTS

Question 1: *Should members in public practice who provide only nonattest services to a client be required to document certain aspects of the NOCLAR? Or, rather, should they be encouraged to document certain aspects of the NOCLAR?*

TIC believes that members who only provide nonattest services should not be required to document NOCLAR unless the documentation is required by laws or regulations. The proposed Interpretation would require documentation of NOCLAR that would exceed documentation requirements in nonattest engagements. We believe this creates an unnecessary burden on members only performing nonattest services.

TIC also believes that, while encouraging documentation does not carry a must document requirement, encouraging documentation would create a requirement for members to document, or defend, why they did not document NOCLAR.

Question 2: Is a one year transition period for the effective date appropriate? If not, what is an appropriate time period and why?

Yes, TIC believes a one year transition period is appropriate.

TIC appreciates the opportunity to present these comments on behalf of PCPS member firms. We would be pleased to discuss our comments with you at your convenience.

Sincerely,

A handwritten signature in black ink that reads "Michael A. Westervelt". The signature is written in a cursive, slightly slanted style.

Michael A. Westervelt, Chair
PCPS Technical Issues Committee
cc: PCPS Executive and Technical Issues Committees