



National Association of State Boards of Accountancy

150 Fourth Avenue North ♦ Suite 700 ♦ Nashville, TN 37219-2417 ♦ Tel 615/880-4200 ♦ Fax 615/880-4290 ♦ Web www.nasba.org

February 25, 2019

Professional Ethics Executive Committee
c/o Toni Lee-Andrews, Director
American Institute of Certified Public Accountants
1211 Avenue of the Americas
New York, NY 10036-8775

Via e-mail: Ethics-ExposureDraft@aicpa-cima.com

Re: **Staff Augmentation Arrangements Interpretation (ET sec. 1.295.157)**

Dear Members and Staff of the AICPA Professional Ethics Executive Committee (PEEC):

The National Association of State Boards of Accountancy (NASBA) appreciates the opportunity to comment on the above-referenced Exposure Draft, *Staff Augmentation Arrangements Interpretation* (the Exposure Draft). NASBA's mission is to enhance the effectiveness and advance the common interests of State Boards of Accountancy (State Boards) that regulate all Certified Public Accountants (CPAs) and their firms in the United States and its territories, which includes all audit, attest and other services provided by CPAs. State Boards are charged by law with protecting the public.

NASBA has been encouraging the State Boards to adopt the AICPA *Code of Professional Conduct* (the Code) with the goal of having consistent uniform standards in all jurisdictions. Accordingly, we are keenly focused on proposed changes to the Code that might be unacceptable to the State Boards because they are not considered to be in the public interest.

In furtherance of these objectives, NASBA offers the following comments and responses to the *Request for Specific Comments*.

GENERAL COMMENTS

We have several concerns with the proposed *Staff Augmentation Arrangements Interpretation* (ET sec. 1.295.157), which would address a nonattest service in which a firm's staff provide services to

an attest client under the client's supervision. Our concerns about the independence implications of these arrangements are summarized below:

Appearance of prohibited employment cannot be overcome by the application of safeguards.

First and foremost, we are concerned that the manner in which staff would be employed in this proposal would make them indistinguishable from an attest client's other employees because client management would be responsible for directing the staff's daily activities. We believe this will be the case even if the member applies the required and suggested, optional safeguards described in the Exposure Draft. Avoiding simultaneous employment, in substance and appearance, is fundamental to independence and should be respected in all circumstances. We do not believe *any* safeguards would effectively mitigate threats to the appearance of independence when a firm uses these arrangements.

The proposed interpretation weakens the Code's independence requirements and does not serve the public or profession's interests.

For decades, the Code (ET Section 1.275.005) has prohibited any firm professional from simultaneous employment with an attest client during the period covered by the financial statements or the period of the professional engagement. The Code provides only one exception to this rule; it allows members to serve as part-time, non-tenured adjunct instructors at educational institutions if the member applies safeguards, notably that the member not be a member of the institution's attest engagement team or in a position to influence the engagement. The PEEC adopted this exception only after much debate, due to shortages of qualified teaching personnel. While the PEEC was reluctant to create an exception to this rule, it was agreed to be in the public and the profession's best interests to allow members to teach the next generation of accountants and auditors.

Further, we believe that in most cases, the client in need of staff augmentation could obtain these services from a provider that is not required to be independent.

The proposed interpretation will be challenging to interpret, apply and enforce.

The proposed interpretation requires the member to apply significant judgement in determining whether independence would be maintained during a staff augmentation engagement. For example, the notion of whether an engagement would be of "short duration" can be interpreted broadly to mean anything from one week to one year. Further, NASBA is concerned that some members, especially from smaller firms, may justify performing staff augmentation services even though, because of their size, they lack adequate safeguards to help mitigate self-review and other threats to independence, e.g., use of separate teams to perform attest and staff augmentation services.

We also believe State Board regulators will find it particularly challenging to enforce the rule given its subjectivity, which may result in disciplinary actions against licensees and firms for violating independence.

The proposed interpretation is unique among the nonattest services currently addressed in the Code in that it requires the member to apply greater judgment than is typically required. Other nonattest services provisions in the Code more clearly describe the types of services and activities that would or would not impair independence. For example, the interpretation on Executive or Employee Recruiting (ET 1.295.135) describes the activities that would or would not impair independence:

1.295.135 Executive or Employee Recruiting

- .01 When a member provides executive or employee recruiting services to an *attest client*, self-review and management participation *threats* to the *covered member's* compliance with the "Independence Rule" [1.200.001] may exist.
- .02 If the member applies the "General Requirements for Performing Nonattest Services" interpretation [1.295.040] of the "Independence Rule" [1.200.001], *threats* would be at an *acceptable level* and *independence* would not be *impaired*. For example, a member may
 - a. recommend a position description or candidate specifications.
 - b. solicit and screen candidates based on criteria approved by the *attest client*, such as required education, skills, or experience.
 - c. recommend qualified candidates to the *attest client* for their consideration based on criteria approved by the *attest client*.
 - d. participate in employee hiring or compensation discussions in an advisory capacity.
- .03 However, *threats* to compliance with the "Independence Rule" [1.200.001] would not be at an *acceptable level* and could not be reduced to an *acceptable level* by the application of *safeguards*, and *independence* would be *impaired*, if, for example, a member
 - a. commits the *attest client* to employee compensation or benefit arrangements.
 - b. hires or terminates the *attest client's* employees. [Prior reference: paragraph .05 of ET section 101]

NASBA acknowledges that the proposed interpretation for staff augmentation requires the member to apply certain safeguards. However, even those safeguards rely to some extent on member judgment as to what would be considered an arrangement of "short duration." Factors the member should consider in evaluating the appearance of prohibited employment (e.g., frequency, recurrence) are similarly vague. Though the interpretation would prohibit certain actions, in the end whether the member applies safeguards (such as the use of separate engagement teams) is purely a matter of member judgment.

Overall, NASBA recommends the PEEC not adopt the proposed interpretation as we believe the premise that firms may lend their staff to perform services under the client's supervision is inconsistent with the existing and longstanding provision in the Code that bars simultaneous employment with an attest client.

Request for Specific Comments

1. Do you agree that the duration of the arrangement should be addressed in paragraph .02, and do you agree with the term short period of time? Are there other terms that you recommend PEEC consider that would be more appropriate and better understood?

As noted above, NASBA is concerned about the use of subjective terms in this proposed interpretation, which we see as problematic.

2. Do you agree that staff augmentation is a nonattest service and that the proposed interpretation should be placed in ET section 1.295? If not, please explain where you believe it would be better placed.

NASBA does not believe the proposed interpretation should be incorporated into the Code.

3. Do you have any concerns regarding application of the proposed interpretation to client affiliates? If so, please specify the type of affiliate (that is, parent, subsidiary, or sister entity), and describe the concerns and related threats and potential safeguards.

NASBA does not agree that the service should be provided to the attest client or to client affiliates included in the financial statement reporting entity's financial statements.

4. Do you foresee any hardships or regulatory issues that are created by the proposal? If so, please explain.

As noted above, NASBA believes that both members and State Board regulators would struggle to apply and enforce the proposed interpretation. Similarly, bodies such as professional ethics committees of state CPA societies, the PEEC and AICPA Joint Trial Board will likely find it difficult to apply. We foresee the rule's application by all these parties will be far from uniform.

5. Do you agree with PEEC's approach to address the appearance of prohibited employment set forth in paragraphs .03-.05? If not, please explain what you believe would be a better approach.

NASBA does not believe there are any safeguards a firm could apply to effectively mitigate threats to independence (either in fact or appearance) under this proposal.

6. Do you suggest any additional factors for evaluation of the appearance of prohibited employment that PEEC should consider?

NASBA suggests the PEEC not move forward with this proposal. If the AICPA staff are receiving inquiries on these services, PEEC may wish to consider frequently-asked-questions or other nonauthoritative guidance to address the independence implications of such arrangements.

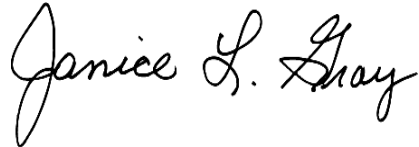
7. Do you suggest any other safeguards that PEEC should consider to reduce threats to an acceptable level?

NASBA does not believe that additional safeguards would be effective in mitigating threats to independence caused by staff augmentation arrangements as described in the Exposure Draft.

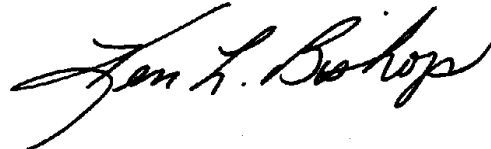
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Again, we appreciate the opportunity to comment on the Exposure Draft.

Very truly yours,

A handwritten signature in black ink that reads "Janice L. Gray". The signature is written in a cursive style with a large, looped initial "J".

Janice L. Gray, CPA, CVA
NASBA Chair

A handwritten signature in black ink that reads "Ken L. Bishop". The signature is written in a cursive style with a large, looped initial "K".

Ken L. Bishop
NASBA President and CEO