



Professional Ethics Executive Committee

Open meeting agenda

November 17, 2020
Virtual

AICPA Professional Ethics Executive Committee
Open meeting agenda
November 17, 2020

Phone access: +1 312 626 6799 (US toll) or +1 646 876 9923 (US toll)
Meeting ID: 992 8016 6081 | **Web access:** <https://aicpa.zoom.us/j/99280166081>
International numbers available: <https://aicpa.zoom.us/u/abUFEIo5pt>
Observers must register: www.aicpa.org/PEECmeeting

<i>November 17th</i>	<i>Open meeting begins</i>	
10:00 a.m. – 10:05 a.m.	Welcome Mr. Lynch will welcome the committee members and discuss administrative matters.	
10:05 a.m. – 11:00 a.m.	NOCLAR Mr. Denham and Ms. Craig will provide an update on the revised NOCLAR proposals and request approval for re-exposure. (Note: Agenda item 1D is an external link)	Agenda item 1A Agenda item 1B Agenda item 1C Agenda item 1D
11:00 a.m. – 11:45 a.m.	Records requests Mmes. Ullmann, Gorla, and Ziemba will seek adoption of the revised interpretation.	Agenda item 2A Agenda item 2B Agenda item 2C Agenda item 2D Agenda item 2E
11:45 a.m. – 12:20 p.m.	Strategy and work plan Mr. Lynch and Ms. Klepcha will request the committee's approval to issue the Strategy and Work Plan.	Agenda item 3A Agenda item 3B Agenda item 3C
12:20 p.m. – 12:30 p.m.	Compliance audit affiliates Mmes. Miller and Powell will seek the committee's approval of the task force's charge and input on proposed next steps.	
12:30 p.m. – 1:00 p.m.	<i>Break</i>	
1:00 p.m. – 1:30 p.m.	Inducements Mmes. Dourdourekas and Craig will seek input from committee on the practice aid before issuance.	Agenda item 4A Agenda item 4B
1:30 p.m. – 1:45 p.m.	Pooled employee plans Ms. Gorla will seek the committee's input on FAQs drafted to assist members who are auditing pooled employee plans and pooled plan providers.	Agenda item 5
1:45 p.m. – 2:30 p.m.	IESBA update Mr. Mintzer, Ms. Madden and Ms. Gorla will engage in discussion with the committee on the activities from the September meeting.	Agenda item 6A Agenda item 6B Agenda item 6C Agenda item 6D

2:30 p.m. – 2:40 p.m.	Information system services Mmes. Dourdourekas and Gorla will report on the task force's discussions regarding implementation guidance it is considering developing for the revised interpretation.	
2:40 p.m. – 2:50 p.m.	SEC Update Ms. Gorla will seek the committee's direction on whether a task force should be appointed to consider revisions to the code based upon the recently issued revised SEC independence rules. <ul style="list-style-type: none"> • External Link – Final rule • External Link – Press release 	
2:50 p.m. – 2:55 p.m.	Statements on Standards for Tax Services Ms. Saunders, Mr. Grzes and Mr. Wiley will provide the committee with a status report on this project.	
2:55 p.m. – 3:00 p.m.	Member enrichment update Ms. Gorla will provide the committee with an overview of the division's member enrichment projects. <ul style="list-style-type: none"> • External link – Plain English Guide to Independence 2020 • External link – SLG implementation tools • External link – Employee benefit plan audits – Common violations reports • External link – Government and not-for-profit audits – Common violations reports 	
3:00 p.m. – 3:05 p.m.	Minutes of the PEEC open meeting The committee is asked to approve the minutes from the August 2020 open meeting.	Agenda item 7
	Future meeting dates <ul style="list-style-type: none"> • February 9–10, 2021 (virtual) • May 4–5, 2021 (virtual) 	

Non-Compliance with Laws and Regulations Task Force

Task force members

Bob Denham (Chair), Sam Burke, Brian Lynch, Bill Mann, Elizabeth Pittelkow, Stephanie Saunders, Lisa Snyder

Observers: Coalter Baker, Dan Dustin, Tom Neill

AICPA staff: Toni Lee-Andrews, Jim Brackens, Ellen Goria, Michele Craig

Task force charge

The task force's charge is to develop conforming guidance in response to standards entitled Responding to NOCLAR promulgated by the International Ethics Standards Board for Accountants (IESBA).

Reason for agenda item

To provide an update on the task force's activities on the proposed new interpretations 1.170.010 and 2.170.010, both entitled "Responding to Non-Compliance With Laws and Regulations."

Task force activities

The task force met twice since the August 2020 meeting to discuss revisions of the extant proposed NOCLAR interpretations.

Revisions to the proposed interpretations

At the August PEEC meeting the task force reported on the following changes to the proposed interpretations (see **agenda item 1B**):

Members in public practice

Separate requirements

The task force separated requirements for members in public practice and decided that

- members providing financial statement attest services would follow the specific requirements outlined in paragraphs .13 - .30 that are similar to the extant proposed guidance for members in public practice; and
- members providing services other than financial statement attest services would comply with the specific requirements outlined in paragraphs .31 – 44, which include the requirements for communicating the matter to the client's auditor.

The task force decided to use the term *financial statement attest services* throughout the interpretation for consistency. When making this decision, the task force considered whether the same requirements should apply for all attest services or whether more robust requirements should apply for certain attest services only, such as, financial statement audit and review services. The task force concluded that the guidance should be more robust for financial statement attest services.

To avoid confusion, the task force decided to define the newly introduced and frequently used term, “financial statement attest services,” under the “Definitions” section (0.400) of the AICPA code as follows:

Financial statement attest services. Services in which a member performs a financial statement audit, review, or compilation when the member’s report does not disclose a lack of independence.”

Geography

For further clarification, the task force moved paragraph .10 under the new subheading, “Applicability” (new paragraph .06) that explains situations or specific engagements where the proposed interpretation would not apply.

Members in business

The task force added external factors, as indicated in paragraph .27, that would determine whether to disclose a NOCLAR to an appropriate authority. A reference to this paragraph was included in paragraph .34 under the requirements for members other than those who are senior professional accountants in business.

Professional judgment

For both members in public practice and members in business, the task force

- removed paragraphs .29 (members in public practice) and .25 (members in business) related to a member exercising his or her professional judgment in determining the need to withdraw from an engagement and whether the member acted appropriately from a third-party perspective; and
- removed language from paragraphs .30d (members in public practice) and .44d (members in business) related to a member documenting his or her course of action from a third-party perspective.

Question for the committee

1. Does the committee agree with defining the term “financial statement attest services” and the task force’s proposed definition?

Exclusion of certain nonattest services from the proposed interpretation

Forensic accounting services

At the August PEEC meeting, the task force reported that there was one pending issue related to the exclusion of certain nonattest services from the members in public practice proposed interpretation. Based on the review of services that were the subject of comments to the original exposure draft, the task force identified forensic accounting as a service where the proposed interpretation should not apply, since a member may be hired to specifically address an

identified NOCLAR. Accordingly, the task force added language to paragraph .06c that excludes a litigation or investigative engagement as defined and subject to the AICPA's *Statements on Standards for Forensic Services No. 1* (SSFS).

Tax engagements

The task force also considered tax engagements where there may be applicable privileges that should be retained and would therefore be inconsistent with the NOCLAR requirements, such as "client privilege" and "Kovel arrangements." The task force concluded that tax services pursuant to the protection of the Internal Revenue code (IRC) Section 7525 ("client privilege") should be carved out and identified in paragraph .06d of the proposed interpretation.

The task force did not specifically exclude Kovel arrangements, because these engagements are not defined by an AICPA or other professional standard or regulation. The task force believed that based on the nature of these engagements, Kovel arrangements could, depending on their circumstances, be covered under the proposed interpretation's guidance provided for forensic accounting engagements documented in paragraph .06. Moreover, this interpretation would generally not be relevant to Kovel arrangements where a law firm is the client since the interpretation does not apply to non-compliance by parties other than the client. Additionally, the task force believed that, if needed, Kovel arrangements could be addressed under nonauthoritative guidance.

Question for the committee

2. Does the committee agree with the nonattest services that the task force identified as exclusions from the proposed interpretation for members in public practice?

Other interpretations in the code

For consistency within the AICPA code, the task force decided that references to the proposed NOCLAR interpretations should be included in the "Confidential Information Obtained from Employment or Volunteer Activities" ([1.400.070](#) and [2.400.070](#)) and "Subordination of Judgment" ([1.130.020](#) and [2.130.020](#)) interpretations for both members in public practice and members in business.

The task force also considered the AICPA code's extant "Ethical Conflicts" interpretation ([1.000.020](#)) for members in public practice that provides guidance as to what constitutes an ethical conflict and steps that should be taken when a member encounters an ethical conflict. The example provided in the interpretation specifically addresses if a member suspects that fraud may have occurred but reporting the suspected fraud would violate the client's confidentiality. The task force concluded that the following example provided in the extant interpretation should be deleted, as the proposed NOCLAR interpretation for members in public practice will address this specific situation:

Excerpt of the “Ethical Conflict” interpretation

1.000.020 Ethical Conflicts

.01 An **ethical conflict** arises when a *member* encounters one or both of the following:

- a. Obstacles to following an appropriate course of action due to internal or external pressures
- b. **Conflicts** in applying relevant professional standards or legal standards

~~For example, a *member* suspects a fraud may have occurred, but reporting the suspected fraud would violate the *member's* responsibility to maintain *client* confidentiality.~~

Questions for the committee

3. Does the committee agree with references to other interpretations in the code: “Confidential Information Obtained from Employment or Volunteer Activities” and “Subordination of Judgment” interpretations for both members in public practice and members in business?
4. Does the committee agree with removing the example in the extant “Ethical conflicts” interpretation related to suspected fraud?

Communication With Respect to Group Audit Engagements

The task force removed the language under this section related to statutory audits, as a member being engaged to perform a component audit for purposes of a statutory audit is not common in the United States.

The task force also noted that the member has a requirement to communicate a NOCLAR to the group audit partner in accordance with AU-C 600 *Special Considerations—Audits of Group Financial Statements [Including the Work of Component Auditors]* (AICPA, *Professional Standards*) and concluded that the requirement in the professional standards sufficiently addresses this matter. Accordingly, the task force added to paragraph .22 under the members in public practice proposed interpretation, the member’s requirement to communicate a NOCLAR in accordance with professional standards.

Question for the committee

5. Does the committee agree with the proposed revisions to the guidance provided for the member’s communication with respect to group audit engagements?

Clarifications

The following are the task force's clarifying edits to the proposed interpretations (see **agenda item 1B**):

- 1.170.010.09 and 2.170.010 "*clearly inconsequential*"-

For consistency with ASB standards (AU-C sec. 250 and AU-C sec. 210), the task force revised these paragraphs as they relate to the term "clearly inconsequential." The ASB does not define "clearly inconsequential" and the task force believes that there could be a possible conflict with the ASB's standards.

- 1.170.013 and 1.170.031 "*credible information*"-.

The task force considered the sources of information, such as other parties from which a member obtains information concerning an instance of a NOCLAR. The task force concluded that adding the term "credible" was appropriate to further clarify the level of information obtained by the member, including whether the member directly obtains such information during the engagement or indirectly through other sources.

- 1.170.015 "*likely to occur*" and "*access*"-

The task force believed that the term "may occur" was too broad for the occurrence of a potential NOCLAR that would require the member to discuss the matter with the appropriate level of management and replaced this term with the phrase "is likely to occur."

The task force deleted the phrase "if the member has access to them" as it relates to discussing a NOCLAR with the appropriate level of management, as the task force believed a member will likely have access to such individuals when providing financial statement attest services. This term is included in the guidance for members providing services other than financial statement attest services where a member, depending on the nature of the engagement, might not have access to the appropriate level of management.

Other edits to the proposed guidance were made for consistency within the interpretation and AICPA drafting conventions.

Questions for the committee

6. Does the committee agree with the revisions to the term “clearly inconsequential” in paragraph .10 for members in public practice for consistency with the ASB’s guidance and paragraph .09 for members in business for further consistency within the interpretation?
7. Does the committee agree with members in public practice obtaining “credible” information concerning an instance of a NOCLAR?
8. Does the committee agree with using the term “is likely to occur” rather than “may occur” as it relates to when a member in public practice identifies or suspects the occurrence of a NOCLAR that would require the member to discuss with the appropriate level of management?

ASB update

The ASB’s NOCLAR task force (ASB task force) presented the proposed amendment to the ASB to vote on exposure at their October 2020 meeting. However, the ASB has decided to defer its vote to expose the proposed standard for public comment.

Action needed

The committee is asked to review and provide feedback on the revisions made to the extant proposed interpretation for NOCLAR (**agenda item 1B**) to approve for re-exposure.

Materials presented

- **Agenda item 1B:** Revisions to extant proposed NOCLAR interpretations
- **Agenda item 1C:** NOCLAR Exposure Draft for re-exposure of proposed interpretations
- **Agenda item 1D:** [March 10, 2017 Responding to NOCLAR exposure draft](#)

Revisions to extant text of proposed new interpretation “Responding to Non-Compliance with Laws and Regulations”

Revisions are in ***Boldface italic or stricken text that is highlighted***

(Applicable to members in public practice)

[Terms in italic only are defined terms]

1.170 Responding to Non-Compliance With Laws and Regulations

1.170.010 Responding to Non-Compliance With Laws and Regulations

Introduction

.01 When a [member](#) encounters or is made aware of non-compliance or suspected non-compliance with laws and regulations in the course of providing a [professional service](#) to a client, [threats](#) to compliance with the “[Integrity and Objectivity Rule](#)” [1.100.001] may exist. The purpose of this interpretation is to set out the [member’s](#) responsibilities when encountering such non-compliance or suspected non-compliance, and guide the [member](#) in **assessing evaluating** the implications of the matter and the possible courses of action when responding to it. ***The [member’s](#) responsibilities in this interpretation are owed to a person or entity that engages the [member](#) or [member’s](#) firm to perform professional services (engaging entity). Therefore, when the engaging entity and subject entity are different, the term client refers to the engaging entity.***

.02 Non-compliance with laws and regulations (non-compliance) comprises acts of omission or commission, intentional or unintentional, that are contrary to the prevailing laws or regulations and are committed by a client or by [those charged with governance](#), by management, or by other individuals working for or under the direction of a *client*.

.03 When responding to non-compliance or suspected non-compliance in the course of providing a [professional service](#) to a client, the [member](#) should consider the [member’s](#) obligations under the “[Confidential Client Information Rule](#)” [1.700.001]. For example, a [member](#) should not disclose the non-compliance or suspected non-compliance to a third party without the *client’s* consent unless expressly permitted under the “Confidential Client Information Rule,” such as when reporting the non-compliance or suspected non-compliance to a regulatory authority in order to comply with applicable laws and regulations **or compliance with professional standards**, as discussed in paragraphs **.04** and **.05d., respectively.**

.04 Some regulators, such as the SEC or state boards of accountancy, may have regulatory provisions governing how a [member](#) should address non-compliance or suspected non-compliance which may differ from or go beyond this interpretation. In some circumstances, state and federal civil and criminal laws may also impose additional requirements. When encountering non-compliance or suspected non-compliance, a [member](#) has a responsibility to obtain an understanding of those legal or regulatory provisions and comply with them, including any requirement to report the matter to an appropriate authority, and any prohibition on alerting the client prior to making any disclosure.

.05 A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. When responding to non-compliance or suspected non-compliance, the objectives of a [member](#) are as follows:

- a. To comply with the [“Integrity and Objectivity Rule”](#) [1.100.001]
- b. To alert management or, when appropriate, [those charged with governance](#) of the client, to enable them to
 - i. rectify, remediate or mitigate the consequences of the identified or suspected non-compliance or
 - ii. deter the commission of the non-compliance where it has not yet occurred
- c. To determine whether withdrawal from the engagement and the professional relationship is necessary, when permitted by law and regulation
- d. To report in accordance with regulations and professional standards**

Scope Applicability

.06 This interpretation does not apply to the following:

- a. Personal misconduct unrelated to the business activities of the client.**
- b. Non-compliance by parties other than by the client or [those charged with governance](#), management, or other individuals working for or under the direction of the such client. This includes, for example, circumstances in which a [member](#) has been engaged by a client to perform a due diligence**

assignment on a third-party entity (i.e., subject entity) and the identified or suspected non-compliance has been committed by that third party.

c. A litigation or investigation engagement as defined in, and subject to, the AICPA's Statement on Standards for Forensic Services No. 1

d. An engagement pursuant to which the protections set forth in Internal Revenue Code Section 7525 may apply

A [member](#) may nevertheless find the guidance in this interpretation helpful in considering how to respond in these situations.

Scope

.07 This interpretation sets out the approach to be taken by a [member](#) who encounters or is made aware of non-compliance or suspected non-compliance with the following:

- a. Laws and regulations generally recognized to have a direct effect on the determination of material amounts and disclosures in the client's [financial statements](#)
- b. Other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the *client's financial statements*, but compliance with which may be fundamental to the operating aspects of the *client's* business, to its ability to continue its business, or to avoid material penalties

.08 Examples of laws and regulations which this interpretation addresses include those that deal with these issues:

- a. Fraud, corruption, and bribery
- b. Money laundering
- c. Securities markets and trading
- d. Banking and other financial products and services

- e. Data protection
- f. Tax and pension liabilities and payments
- g. Environmental protection
- h. Public health and safety

.09 Non-compliance may result in fines, litigation, or other consequences for the client that may have a material effect on its [financial statements](#). Importantly, such non-compliance may have wider public interest implications in terms of potentially substantial harm to investors, creditors, employees, or the general public. 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. Examples include the perpetration of a fraud resulting in significant financial losses to investors and breaches of environmental laws and regulations endangering the health or safety of employees or the public.

.10 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.

~~.10 This interpretation does not address the following:~~

- a. ~~Personal misconduct unrelated to the business activities of the client.~~
- b. ~~Non-compliance **by parties** other than by the **a client that is the engaging entity** or **those charged with governance**, management, or other individuals working for or under the direction of the **such client**. This includes, for example, circumstances in which a [member](#) has been engaged by a *client* to perform a due diligence assignment on a third party entity (**i.e., subject entity**) and the identified or suspected non-compliance has been committed by that third party.~~

~~A [member](#) may nevertheless find the guidance in this interpretation helpful in considering how to respond in these situations.~~

Responsibilities of the Client's Management and Those Charged with Governance

- .11 The client's management is responsible, with the oversight of those charged with governance, to ensure that the *client's* business activities are conducted in accordance with laws and regulations. It is also the responsibility of management and those charged with governance to identify and address any non-compliance by the *client*, by an individual charged with governance of the entity, by a member of management, or by other individuals working for or under the direction of the *client*.

Responsibilities of Members in Public Practice

- .12 When a member becomes aware of a matter to which this interpretation applies, the member should take timely steps to comply with this interpretation, taking into account the member's understanding of the nature of the matter and the potential harm to the interests of the entity, investors, creditors, employees or the general public.

Members Providing Financial Statement Attest Services

Obtaining an Understanding of the Matter

- .13 If a member engaged to perform ~~attest services~~ **financial statement attest services** becomes aware of **credible** information concerning an instance of non-compliance or suspected non-compliance, whether in the course of performing the engagement or through information provided by other parties, the member should obtain an understanding of the matter, including the nature of the act and the circumstances in which it has occurred or may occur.
- .14 A member is expected to apply knowledge, professional judgment, and expertise, but is not expected to have a level of knowledge of laws and regulations greater than that required to undertake the engagement. Whether an act constitutes non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body. Depending on the nature and significance of the matter, the member may consult on a confidential basis with others within the firm, a network firm or a professional body, or with legal counsel.
- .15 If the member identifies or suspects that non-compliance has occurred or **may is likely to** occur, the member should discuss the matter with the appropriate level of management and, ~~if the member has access to them and~~ when appropriate, those charged with governance.
- .16 Such discussion serves to clarify the member's understanding of the facts and circumstances relevant to the matter and its potential consequences. The discussion also may prompt management or those charged with governance to investigate the matter.

.17 The appropriate level of management with whom to discuss the matter is a question of professional judgment. Relevant factors to consider include these:

- a. The nature and circumstances of the matter
- b. The individuals actually or potentially involved
- c. The likelihood of collusion
- d. The potential consequences of the matter
- e. Whether that level of management is able to investigate the matter and take appropriate action

.18 The appropriate level of management is generally at least one level above the person or persons involved or potentially involved in the matter. If a member believes that management is involved in the non-compliance or suspected non-compliance, the member should discuss the matter with those charged with governance. The member may also consider discussing the matter with internal auditors, when applicable. In the context of a group **attest audit** engagement, the appropriate level may be management at an entity that controls the client.

Addressing the Matter

.19 In discussing the non-compliance or suspected non-compliance with management and, when appropriate, those charged with governance, the member should advise them to take the following appropriate and timely actions, if they have not already done so:

- a. Rectify, remediate or mitigate the consequences of the non-compliance.
- b. Deter the commission of the non-compliance if it has not yet occurred.
- c. Disclose the matter to an appropriate authority where required by law or regulation or when considered necessary in the public interest.

.20 The member should consider whether the client's management and, **if applicable**, those charged with governance understand their legal or regulatory responsibilities with respect

to the non-compliance or suspected non-compliance. If not, the member may suggest appropriate sources of information or recommend that they obtain legal advice.

.21 The member should comply with the following:

- a. Applicable laws and regulations, including legal or regulatory provisions governing the reporting of non-compliance or suspected non-compliance to an appropriate authority. In this regard, some laws and regulations may stipulate a period within which reports are to be made.
- b. Applicable requirements under **auditing or other** professional standards, including those relating to
 - i. identifying and responding to non-compliance, including fraud.
 - ii. communicating with those charged with governance.
 - iii. considering the implications of the non-compliance or suspected non-compliance **for on** the auditor's **audit, review, or compilation** report.
 - iv. **communicating a former client's non-compliance to the successor auditor to the extent required under professional standards.**

Communication With Respect to Group **Attest Audit** Engagements

.22 A member may, ~~do the following:~~ **for purposes of a group audit engagement, be requested by the group engagement team to perform work on financial or other information related to a component of the group.**

- a. ~~For purposes of a group attest **audit** engagement, be requested by the group engagement team to perform work on financial or other information related to a component of the group~~
- b. ~~Be engaged to perform an attest **audit** engagement of a component for purposes other than the group attest **audit** engagement, for example, a statutory audit~~

If the member becomes aware of non-compliance or suspected non-compliance **in relation to the component in either situation**, the member should, in addition to responding to the matter in accordance with the provisions of this **interpretation section**, communicate **it to**

the group audit partner in accordance with AU-C sec. 600 Special Considerations- Audits of Group Financial Statements [Including the Work of Component Auditors](AICPA, Professional Standards). to the group engagement partner unless prohibited from doing so by law or regulation. This is to enable the group engagement partner to be informed about the matter and to determine, in the context of the group attest **audit** engagement, whether it should be addressed in accordance with the provisions in this interpretation **section** and, if so, how.

.23 If the group **audit** engagement partner becomes aware of non-compliance or suspected non-compliance in the course of a group **attest audit** engagement, including as a result of being informed of such a matter in accordance with paragraph .22, the group **audit** engagement partner should, in addition to responding to the matter in the context of the group **attest audit** engagement in accordance with the provisions of this interpretation **section**, consider whether the matter may be relevant to one or more components **whose financial or other information is subject to procedures performed for purposes of the group audit engagement.**

- a. **Whose financial or other information is subject to procedures performed for purposes of the group attest **audit** engagement**
- b. **Whose financial or other information is subject to procedures performed for purposes other than the group attest **audit** engagement, for example, a statutory audit**

In these circumstances, the group **audit** engagement partner should take steps to have the non-compliance or suspected non-compliance communicated to those performing work at components where the matter may be relevant, unless prohibited from doing so by law or regulation. **If necessary in relation to paragraph 23b, appropriate inquiries should be made (either of management or from publicly available information) as to whether the relevant component is subject to attest **audit** procedures and, if so, to ascertain, to the extent practicable, the identity of the accountant. The communication is to enable those responsible for work at such components to be informed about the matter and to determine whether and, if so, how it should be addressed in accordance with the provisions in this interpretation **section**.**

Determining Whether Withdrawal From the Engagement Is Necessary

.24 The member should **assess evaluate** the appropriateness of the response of management and, if applicable, those charged with governance.

.25 Relevant factors to consider ~~in assessing~~ **when evaluating** the appropriateness of the response of management and, where applicable, those charged with governance include whether

- a. the response is timely.
- b. the non-compliance or suspected non-compliance has been adequately investigated.
- c. action has been, or is being, taken to rectify, remediate, or mitigate the consequences of any non-compliance.
- d. action has been or is being taken to deter the commission of any non-compliance if it has not yet occurred.
- e. appropriate steps have been, or are being, taken to reduce the risk of recurrence, for example, additional controls or training.
- f. the non-compliance or suspected non-compliance has been disclosed to an appropriate authority where appropriate and, if so, whether the disclosure appears adequate.

.26 In light of the response of management and, if applicable, those charged with governance, the member should determine whether withdrawing from the engagement and the professional relationship is necessary, where permitted by law and regulation.

.27 The determination of whether withdrawing from the engagement and the professional relationship is necessary, will depend on various factors, including these:

- a. The legal and regulatory framework
- b. The urgency of the matter
- c. The pervasiveness of the matter throughout the client
- d. Whether the member continues to have confidence in the integrity of management and, if applicable, those charged with governance

- e. Whether the non-compliance or suspected non-compliance is likely to recur
 - f. Whether there is credible evidence of actual or potential substantial harm to the interests of the entity, investors, creditors, employees, or the general public
- .28** Examples of circumstances that may cause a [member](#) no longer to have confidence in the integrity of management and, where applicable, [those charged with governance](#) include situations such as the following:
- a. The [member](#) suspects or has evidence of management's involvement or intended involvement in any non-compliance.
 - b. The [member](#) is aware that management has knowledge of such non-compliance and, contrary to legal or regulatory requirements, has not reported, or authorized the reporting of, the matter to an appropriate authority within a reasonable period.

~~.29 In determining the need to withdraw from the engagement and the professional relationship, a [member](#) should exercise professional judgment and take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the [member](#) at the time, would be likely to conclude that the [member](#) has acted appropriately and in the public interest.~~

- .29** As consideration of the matter may involve complex analysis and judgments, a [member](#) may consider consulting internally, obtaining legal advice to understand the [member's](#) options and the professional or legal implications of taking any particular course of action, or consulting on a confidential basis with a regulator or professional body.

Documentation

- .30** In relation to an identified or suspected act of non-compliance that falls within the scope of this [interpretation section](#), the [member](#) should, in addition to complying with the documentation requirements under applicable professional standards, document the following:
- a. The matter
 - b. The results of discussion with management and, where applicable, [those charged with governance](#) and other parties

- c. How management and, where applicable, those charged with governance have responded to the matter
- d. The courses of action the member considered, the judgments made and the decisions that were taken, having regard to the reasonable and informed third party perspective

Members Providing Services other than a Financial Statement Attest Service

Obtaining an Understanding of the Matter and Addressing the Matter

.31 If a member engaged to perform professional services other than a financial statement attest service becomes aware of credible information concerning an instance of non-compliance or suspected non-compliance, whether in the course of performing the engagement or through information provided by other parties, the member should seek to obtain an understanding of the matter, including the nature of the act and the circumstances in which it has occurred or may occur.

.32 A member is expected to apply knowledge, professional judgment, and expertise, but is not expected to have a level of knowledge of laws and regulations greater than that required to undertake the engagement. Whether an act constitutes non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body. Depending on the nature and significance of the matter, the member may consult on a confidential basis with others within the firm, a network firm or a professional body, or with legal counsel.

.33 If the member identifies or suspects that non-compliance has occurred or may be likely to occur, the member should discuss the matter with the appropriate level of management and, if the member has access to them and when appropriate, those charged with governance.

.34 Such discussion serves to clarify the member's understanding of the facts and circumstances relevant to the matter and its potential consequences. The discussion also may prompt management or those charged with governance to investigate the matter.

.35 The appropriate level of management with whom to discuss the matter is a question of professional judgment. Relevant factors to consider include these:

- a. *The nature and circumstances of the matter*
- b. *The individuals actually or potentially involved*
- c. *The likelihood of collusion*
- d. *The potential consequences of the matter*
- e. *Whether that level of management is able to investigate the matter and take appropriate action*

Communicating the Matter to the Client's Auditor

Members Performing a Service, other than a Financial Statement Attest Service, for a Financial Statement Attest Client

- .36 If the member is performing a service for ~~other than~~ a financial statement attest ~~audit or review~~ **service, for a financial statement attest** client of the firm, or a component of a financial statement ~~audit or review~~ **attest** client of the firm, the member should communicate the non-compliance or suspected non-compliance within the firm. The communication should be made in accordance with the firm's protocols or procedures or, in the absence of such protocols and procedures, directly to the ~~attest~~ ~~audit or review~~ engagement partner.
- .37 If the member is performing a service for a financial statement ~~audit or review~~ **attest** client of a network firm, or a component of a financial statement ~~audit or review~~ **attest** client of a network firm, the member should consider whether to communicate the non-compliance or suspected non-compliance to the network firm. If the communication is made, it should be made in accordance with the network's protocols or procedures or, in the absence of such protocols and procedures, directly to the ~~audit or review~~ **attest** engagement partner.
- .38 In all cases, the communication is to enable the ~~audit or review~~ **attest** engagement partner to be informed about the non-compliance or suspected non-compliance and to determine whether it should be addressed in accordance with the provisions of this interpretation and if so, how.

Members Providing Services to a Client that is not a Financial Statement Attest Client

.39 If the member is performing ~~a service~~ services for a client that is not a financial statement audit or review attest client of the firm, except as required by law or regulation, the member is not permitted to communicate the non-compliance or suspected non-compliance to the firm that is the client's external auditor, if one exists. See the "Confidential Client Information Rule" [1.700.001].

Determining Whether Withdrawal From the Engagement Is Necessary

.40 The member should determine whether withdrawal from the engagement is necessary in the public interest.

.41 Whether withdrawal from the engagement is necessary, will depend on various factors, including the member's understanding of the following:

- a. The legal and regulatory framework
- b. The appropriateness and timeliness of the response of management and, where applicable, those charged with governance.
- c. The urgency of the matter
- d. Whether the member continues to have confidence in the integrity of management and, if applicable, those charged with governance
- e. The likelihood of actual or potential substantial harm to the interests of the entity, investors, creditors, employees, or the general public
- f. The pervasiveness of the matter throughout the client
- g. Whether the non-compliance or suspected non-compliance is likely to recur

.42 Examples of circumstances that may cause the member no longer to have confidence in the integrity of management and, where applicable, those charged with governance include such situations as:

- a. The member suspects or has evidence of management's involvement or intended involvement in any non-compliance.

b. The member is aware that management has knowledge of such non-compliance and, contrary to legal or regulatory requirements, has not reported, or authorized the reporting of, the matter to an appropriate authority within a reasonable period.

. 43 As consideration of the matter may involve complex analysis and judgments, a member may consider consulting internally, obtaining legal advice to understand the member's options and the professional or legal implications of taking any particular course of action, or consulting on a confidential basis with a regulator or professional body.

Documentation

. 44 In relation to an identified or suspected act of non-compliance that falls within the scope of this section, the member is encouraged to document the following in addition to complying with the documentation requirements under applicable professional standards:

a. The matter

b. The results of discussion with management and, where applicable, those charged with governance and other parties

c. How management and, where applicable, those charged with governance have responded to the matter

d. The courses of action the member considered, the judgments made and the decisions that were taken

Text of Proposed New Interpretation “Responding to Non-Compliance with Laws and Regulations”

(Applicable to Members in Business)

[Terms in *italic* only are defined terms]

2.170 Responding to Non-Compliance with Laws and Regulations

2.170.010 Responding to Non-Compliance with Laws and Regulations

Introduction

Applicable to All Members in Business

- .01 When a *member in business* encounters or is made aware of non-compliance or suspected non-compliance with laws and regulations in the course of carrying out *professional services*, *threats* to compliance with the “*Integrity and Objectivity Rule*” [2.100.010] may exist. The purpose of this interpretation is to set out the *member’s* responsibilities when encountering such non-compliance or suspected non-compliance and guide the *member* in **assessing evaluating** the implications of the matter and the possible courses of action when responding to it. This interpretation applies regardless of the nature of the *employing organization*.
- .02 Non-compliance with laws and regulations (non-compliance) comprises acts of omission or commission, intentional or unintentional, committed by the *member’s employing organization* or by *those charged with governance*, by management, or by other individuals working for or under the direction of the *employing organization* which are contrary to the prevailing laws or regulations.
- .03 When responding to non-compliance or suspected non-compliance in the course of carrying out *professional services*, the *member* should consider the *member’s* obligations under the “*Confidential Information Obtained from Employment or Volunteer Activities*” interpretation [2.400.070]. For example, a *member* should not disclose the non-compliance or suspected non-compliance to a third party without the employer’s consent unless expressly permitted under the “Confidential Information Obtained from Employment or Volunteer Activities” interpretation, such as when reporting the non-compliance or suspected non-compliance to a regulatory authority in order to comply with applicable laws and regulations, as discussed in paragraph .04.

.04 Some regulators, for example, the SEC or state boards of accountancy, may have provisions governing how [members](#) should address non-compliance or suspected non-compliance which may differ from or go beyond this interpretation, and state and federal civil and criminal laws, in some circumstances, may impose additional requirements. When encountering such non-compliance or suspected non-compliance, the [member](#) has a responsibility to obtain an understanding of those provisions and comply with them, including any requirement to report the matter to an appropriate authority and any prohibition on alerting the relevant party prior to making any disclosure, for example, pursuant to anti-money laundering legislation.

.05 A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. When responding to non-compliance or suspected non-compliance, the objectives of the [member](#) are as follows:

- a. To comply with the [“Integrity and Objectivity Rule”](#) [2.100.010]
- b. To alert management or, if appropriate, [those charged with governance](#) of the [employing organization](#), to enable them to
 - i. rectify, remediate or mitigate the consequences of the identified or suspected non-compliance or
 - ii. deter the commission of the non-compliance where it has not yet occurred
- c. To take such further action as appropriate in the public interest

Scope

.06 This interpretation sets out the approach to be taken by a [member](#) who encounters or is made aware of non-compliance or suspected non-compliance with the following:

- a. Laws and regulations generally recognized to have a direct effect on the determination of material amounts and disclosures in the [employing organization’s financial statements](#)
- b. Other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the [employing organization’s financial statements](#), but compliance with which may be fundamental to the operating aspects of the

employing organization's business, to its ability to continue its business, or to avoid material penalties

.07 Examples of laws and regulations which this interpretation addresses include those that deal with the following:

- a. Fraud, corruption, and bribery
- b. Money laundering
- c. Securities markets and trading
- d. Banking and other financial products and services
- e. Data protection
- f. Tax and pension liabilities and payments
- g. Environmental protection
- h. Public health and safety

.08 Non-compliance may result in fines, litigation or other consequences for the employing organization that may have a material effect on its financial statements. Importantly, such non-compliance may have wider public interest implications in terms of potentially substantial harm to investors, creditors, employees or the general public. For the purposes of this section, 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. Examples include the perpetration of a fraud resulting in significant financial losses to investors, and breaches of environmental laws and regulations endangering the health or safety of employees or the public.

.09 A member who encounters or is made aware of matters that are clearly inconsequential, ~~judged by their nature and their impact, financial or otherwise, on the~~ employing organization, ~~its stakeholders and the general public~~, is not required to comply with this interpretation with respect to such matters.

.10 This interpretation does not address the following:

- a. Personal misconduct unrelated to the business activities of the employing organization
- b. Non-compliance other than by the *employing organization* or those charged with governance, management, or other individuals working for or under the direction of the *employing organization*

The member may nevertheless find the guidance in this section helpful in considering how to respond in these situations.

Responsibilities of the Employing Organization's Management and Those Charged with Governance

- .11 It is the responsibility of the employing organization's management, with the oversight of those charged with governance, to ensure that the *employing organization's* business activities are conducted in accordance with laws and regulations. It is also the responsibility of management and those charged with governance to identify and address any non-compliance by the *employing organization* or by an individual charged with governance of the entity, by a member of management, or by other individuals working for or under the direction of the *employing organization*.

Responsibilities of Members in Business

- .12 Many employing organizations have established protocols and procedures (for example, an ethics policy or internal whistle-blowing mechanism) regarding how non-compliance or suspected non-compliance by the *employing organization* should be raised internally. Such protocols and procedures may allow for matters to be reported anonymously through designated channels. If these protocols and procedures exist within the member's *employing organization*, the member should consider them in determining how to respond to such non-compliance.
- .13 If a member becomes aware of a matter to which this interpretation applies, the steps that the member takes to comply with this section ~~shall~~ **should** be taken on a timely basis, having regard to the member's understanding of the nature of the matter and the potential harm to the interests of the employing organization, investors, creditors, employees, or the general public.

Responsibilities of Members who are Senior Professional Accountants in Business

- .14 Members who are senior professional accountants in business are directors, officers, or senior employees able to exert significant influence over, and make decisions regarding, the acquisition, deployment and control of the employing organization's human, financial, technological, physical and intangible resources. Because of their roles, positions, and spheres of influence within the *employing organization*, there is a greater expectation for them to take whatever action is appropriate in the public interest to respond to non-compliance or suspected non-compliance than other professional accountants within the *employing organization*.

Obtaining an Understanding of the Matter

- .15 If, in the course of carrying out professional services, a member who is a senior professional accountant becomes aware of information concerning an instance of non-compliance or suspected non-compliance, the member should obtain an understanding of the matter, including the following:

- a. The nature of the act and the circumstances in which it has occurred or may occur
- b. The application of the relevant laws and regulations to the circumstances
- c. The potential consequences to the employing organization, investors, creditors, employees or the wider public

- .16 A member who is a senior professional accountant is expected to apply knowledge, professional judgment and expertise, but is not expected to have a level of understanding of laws and regulations beyond that required for the member's role within the employing organization. Whether an act constitutes non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body.

- .17 Depending on the nature and significance of the matter, the member may cause, or take appropriate steps to cause, the matter to be investigated internally. The member may also consult on a confidential basis with others within the employing organization or a professional body or with legal counsel.

Addressing the Matter

- .18 If the member who is a senior professional accountant identifies or suspects that non-compliance has occurred or may occur, the member should, subject to paragraph .12, discuss the matter with the member's immediate superior, if any, to determine how the

matter should be addressed. If the [member's](#) immediate superior appears to be involved in the matter, the [member](#) should discuss the matter with the next higher level of authority within the [employing organization](#).

.19 The [member](#) who is a senior professional accountant should also take the following appropriate steps:

- a. Have the matter communicated to [those charged with governance](#) to obtain their concurrence regarding appropriate actions to take to respond to the matter and to enable them to fulfill their responsibilities.
- b. Comply with applicable laws and regulations, including legal or regulatory provisions governing the reporting of non-compliance or suspected non-compliance to an appropriate authority.
- c. Have the consequences of the non-compliance or suspected non-compliance rectified, remediated, or mitigated
- d. Reduce the risk of re-occurrence
- e. Seek to deter the commission of the non-compliance if it has not yet occurred

.20 In addition to responding to the matter in accordance with the provisions of this [interpretation section](#), the [member](#) who is a senior professional accountant should ~~determine whether disclosure~~ **disclose** of the matter to the [employing organization's](#) external auditor, if any, **if the member determines such disclosure** is necessary pursuant to the [member's](#) ~~duty or legal~~ obligation to provide all information necessary to enable the auditor to perform the audit. See the "[Obligation of a Member to His or Her Employer's External Accountant](#)" [2.130.030] interpretation for additional guidance.

Determining Whether Further Action Is Necessary

.21 The [member](#) who is a senior professional accountant should ~~assess~~ **evaluate** the appropriateness of the response of the [member's](#) superiors, if any, and [those charged with governance](#).

.22 Relevant factors to consider in ~~assessing~~ **evaluating** the appropriateness of the response of the [member's](#) superiors, if any, and [those charged with governance](#) include whether

- a. the response is timely.
- b. they have taken or authorized appropriate action to seek to rectify, remediate or mitigate the consequences of the non-compliance, or to avert the non-compliance if it has not yet occurred.
- c. the matter has been disclosed to an appropriate authority where appropriate and, if so, whether the disclosure appears adequate.

.23 In light of the response of the member's superiors, if any, and those charged with governance, the member should determine if further action is necessary in the public interest. The determination of whether further action is necessary, and the nature and extent of it, will depend on various factors, including these:

- a. The legal and regulatory framework
- b. The urgency of the matter
- c. The pervasiveness of the matter throughout the employing organization
- d. Whether the member who is a senior professional accountant continues to have confidence in the integrity of the member's superiors and those charged with governance
- e. Whether the non-compliance or suspected non-compliance is likely to recur
- f. Whether there is credible evidence of actual or potential substantial harm to the interests of the employing organization, investors, creditors, employees or the general public

.24 Examples of circumstances that may cause the member who is a senior professional accountant no longer to have confidence in the integrity of the member's superiors and those charged with governance include such situations as these:

- a. The member suspects or has evidence of management's involvement or intended involvement in any non-compliance.

- b. Contrary to legal or regulatory requirements, management has not reported the matter, or authorized the matter to be reported, to an appropriate authority within a reasonable period.

~~.25~~ In determining the need for, and nature and extent of any further action necessary, the member who is a senior professional accountant should exercise professional judgment and take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the member at the time, would be likely to conclude that the member has acted appropriately in the public interest.

~~.26~~ **.25** Further action by the member who is a senior professional accountant may include the following:

- a. Informing the management of the parent entity of the matter if the employing organization is a *member* of a group
- b. Resigning from the *employing organization*

c. *Reporting the non-compliance or suspected non-compliance to an appropriate authority unless prohibited by laws or regulations*

~~.27~~ **.26** When the member who is a senior professional accountant determines that resigning from the employing organization would be appropriate, doing so would not be a substitute for taking other actions that may be necessary to achieve the member's objectives under this section.

~~.28~~ **.27** *The determination of whether to disclose the matter to an appropriate authority will also depend on external factors such as:*

a. *Whether there is an appropriate authority that is able to receive the information and cause the matter to be investigated and action to be taken. Identifying an appropriate authority will depend upon the nature of the matter. For example, an appropriate authority could be a securities regulator in the case of fraudulent financial reporting or an environmental protection agency in the case of a breach of environmental laws and regulations.*

b. *Whether there exists robust and credible protection from civil, criminal or professional liability or retaliation afforded by legislation or regulation, such as under whistle-blowing legislation or regulation.*

c. Whether there are actual or potential threats to the physical safety of the senior professional accountant or other individuals.

.28 As consideration of the matter may involve complex analysis and judgments, the [member](#) who is a senior professional accountant may consider consulting internally, obtaining legal advice to understand the [member's](#) options and the professional or legal implications of taking any particular course of action or consulting on a confidential basis with a regulator or professional body.

Documentation

.29 In relation to an identified or suspected act of non-compliance that falls within the scope of this **interpretation section**, the [member](#) who is a senior professional accountant is encouraged to have the following matters documented:

- a. The matter
- b. The results of discussions with the [member's](#) superiors, if any, and [those charged with governance](#) and other parties
- c. How the [member's](#) superiors, if any, and [those charged with governance](#) have responded to the matter
- d. The courses of action the [member](#) considered, the judgments made and the decisions that were taken
- e. How the [member](#) is satisfied that the *member* has fulfilled the responsibility set out in paragraph .23

Responsibilities of Members Other Than Those Who Are Senior Professional Accountants in Business

.30 If, in the course of carrying out [professional services](#), a [member](#) becomes aware of information concerning an instance of non-compliance or suspected non-compliance, the [member](#) should seek to obtain an understanding of the matter, including the nature of the act and the circumstances in which it has occurred or may occur.

.31 The [member](#) is expected to apply knowledge, professional judgment, and expertise, but is not expected to have a level of understanding of laws and regulations beyond that required for the [member's](#) role within the [employing organization](#). Whether an act constitutes non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body. Depending on the nature and significance of the matter, the [member](#) may consult on a

confidential basis with others within the *employing organization* or a professional body, or with legal counsel.

.32 If the [member](#) identifies or suspects that non-compliance has occurred or may occur, the [member](#) should, subject to paragraph .12, inform an immediate superior to enable the superior to take appropriate action. If the [member's](#) immediate superior appears to be involved in the matter, the [member](#) should inform the next higher level of authority within the [employing organization](#).

.33 In addition to responding to the matter in accordance with the provisions of this **interpretation section**, the [member](#) should ~~determine whether disclosure~~ **disclose** of the matter to the [employing organization's](#) external auditor, if any, **if the [member](#) determines such disclosure** is necessary pursuant to the [member's](#) ~~duty or legal~~ obligation to provide all information necessary to enable the auditor to perform the audit. See the "[Obligation of a Member to His or Her Employer's External Accountant](#)" interpretation [2.130.030] for additional guidance.

.34 Further action by the [member](#) may include reporting the non-compliance or suspected non-compliance to an appropriate authority unless prohibited by laws or regulations. In determining whether to disclose the matter to an appropriate authority, the [member](#) may consider the factors in paragraph .27 above.

Documentation

.35 In relation to an identified or suspected act of non-compliance that falls within the scope of this **interpretation section**, the [member](#) is encouraged to have the following matters documented:

- a. The matter
- b. The results of discussions with the [member's](#) superior, management and, where applicable, [those charged with governance](#) and other parties
- c. How the [member's](#) superior has responded to the matter
- d. The courses of action the [member](#) considered, the judgments made and the decisions that were taken

Exposure draft

Proposed interpretations and
definition

Responding to Non-Compliance With
Laws and Regulations

**AICPA Professional Ethics Division
XX, 2020**

Comments are requested by XX, 2020

Prepared by the AICPA Professional Ethics Executive Committee for comments from those interested in independence, behavioral, and technical standards matters. Please address comments to Ethics-ExposureDraft@aicpa-cima.com

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XX, 2020

If you're an AICPA member or someone interested in the ethics of auditing and accounting, we want to hear your thoughts on this ethics exposure draft!

This proposal is part of the AICPA's Professional Ethics Executive Committee (PEEC) project to converge with the standards of the International Ethics Standards Board for Accountants (IESBA), specifically sections 260 and 360, *Responding to Non-Compliance with Laws and Regulations*.

This exposure draft is an explanation of the proposed pronouncement and the full text of the guidance being considered.

After the exposure period concludes and PEEC has evaluated the comments, PEEC may decide to publish the new interpretations.

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 XX, 2020. All written replies to this exposure draft will become part of the public record of the AICPA and will be available at www.aicpa.org/peecprojects. PEEC will consider comments at its subsequent meetings.

Please email comments to Ethics-ExposureDraft@aicpa.com.

Sincerely,

Brian S. Lynch, Chair
Professional Ethics Executive Committee

Toni Lee-Andrews, Director, CPA, PFS,
CGMA
Professional Ethics Division

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DRAFT

Explanation for the new Interpretations “Responding to Non-Compliance With Laws and Regulations”

The Professional Ethics Executive Committee (PEEC) is re-exposing for comment two new interpretations, each entitled “Responding to Non-Compliance with Laws and Regulations.” If adopted as final, the new interpretations will be in ET sec. 1.170.010 and 2.170.010 of the AICPA Code of Professional Conduct¹, applicable to members in public practice and in business, respectively.

I. Purpose

1. As part of its international convergence efforts, on March 10, 2017, PEEC issued for comments an exposure draft proposing two new interpretations, “Responding to Non-Compliance with Laws and Regulations,” under the “Integrity and Objectivity Rule.” In developing the proposed interpretations, PEEC considered the International Ethics Standards Board for Accountants’ (IESBA) new ethics standards, sections 260 and 360, each entitled, Responding to Non-Compliance with Laws and Regulations². PEEC believes that though many of the proposed requirements are consistent with that of the IESBA Code of Ethics for Professional Accountants (IESBA code), certain differences are necessary to enhance the clarity of the proposed interpretations and make them relevant to AICPA members in the United States. Most notably, as discussed further in a subsequent section, certain provisions were not included in the AICPA proposals, as they would be incompatible with most state laws and regulations on client and employer confidentiality.
2. The AICPA Code of Professional Conduct (AICPA code) does not currently address guidance for members when they may encounter non-compliance with laws or regulations (NOCLAR) or suspected NOCLAR. PEEC believes the public interest is served with the inclusion of the robust guidance in the proposed interpretations, which sets forth a member’s responsibilities when encountering a NOCLAR at a client or within the employing organization. For purposes of this document, the term “NOCLAR” covers both actual NOCLARs and suspected NOCLARs.
3. The general objective of members when encountering a NOCLAR is to enable a client’s or employing organization’s management and those charged with governance to rectify the NOCLAR, mitigate the effects of the NOCLAR or deter the commission of the NOCLAR by alerting the appropriate parties.

II. Scope

4. The interpretations state that a NOCLAR comprises acts of omission or commission, intentional or unintentional, committed by a client or an employer, or by those charged with governance, by management or by other individuals working for or under the direction of a

¹ All ET sections can be found in AICPA *Professional Standards*.

² Approved in April 2016 for inclusion in the IESBA’s Code of Ethics for Professional Accountants.

client or employer which are contrary to the prevailing laws or regulations. The laws recognized by the interpretations include those generally recognized to have a direct effect on the determination of material amounts and disclosures in the financial statements. Other laws recognized by the interpretations are those that do not have a direct effect on the material amounts and disclosures in the financial statements, but compliance with them may be fundamental to the operating aspects of the business of the client or employing organization, to its ability to continue business or to avoid material penalties. The interpretations do not address personal misconduct unrelated to the business activities of the employing organization.

5. Though the proposed interpretations require a member to obtain an understanding of the matter when a NOCLAR is discovered, the member is only expected to have a level of knowledge and understanding of laws and regulations necessary for the [professional service](#) for which the member was engaged or employed to perform. In addition, for members performing audit services for a client, the proposals are not intended to modify or interpret AU-C section 250, Consideration of Laws and Regulations in an Audit of Financial Statements. The proposed guidance, however, does impose requirements on auditors that go beyond the audit standards for purposes of fulfilling their ethical obligations under the AICPA code.

III. Background

Original proposed interpretations

6. As noted above, PEEC is re-exposing its interpretations. In the original proposal:
 - a. The proposed NOCLAR requirements for members in public practice were generally the same for members who provide attest services and those who provide nonattest services to clients.
 - b. When performing professional services for a component of a group during a group attest engagement, a member in public practice would be required to respond to a NOCLAR by communicating it to the group engagement partner, unless prohibited by law or regulation.
 - c. When performing a service for a financial statement audit or review client of the firm, or a component of a financial statement audit or review client of the firm, the member would be required to communicate the NOCLAR within the firm in accordance with the firm's policies and procedures. When performing a service for a client that is not a financial statement audit or review client of the firm, the member would be prohibited from communicating the NOCLAR to the external auditor without the client's consent.

- d. The proposed interpretation required certain steps be taken by a member who is a senior professional accountant in business, including having the matter communicated to those charged with governance to obtain concurrence regarding the appropriate actions to take to enable them to fulfill their responsibilities.
- e. In responding to a NOCLAR, a member who is a professional accountant in business or a senior professional accountant in business would be required to determine whether disclosing the matter to the employing organization's external auditor was necessary, pursuant to the member's duty or legal obligation to provide all information necessary to enable the auditor to perform the audit.

Exposure draft feedback

- 7. PEEC received 16 comment letters on the original proposal. Ten commenters did not support the proposed interpretations as drafted. The principal concerns identified in the comment letters related to confidentiality requirements of members in public practice and members in business, and the performance of nonattest services. Specifically, some believed the proposed language would discourage CPAs from acting in the public interest, because it limits or prohibits a NOCLAR disclosure without written client consent. Others did not support the original proposal because the interpretation did not differentiate requirements for those performing attest services and those performing nonattest services.

IV. Revisions to Original Proposal

- 8. Based upon comments received and further discussion of the issues, PEEC has made a number of changes to the originally proposed interpretations. The following summarizes the substantive changes to the original proposal:

Revisions to the originally proposed interpretation applicable to members in public practice

Separate requirements for members in public practice

- 9. Certain commenters believed that the original proposal was not in line with IESBA's guidance for professional services other than audits of financial statements, and that it did not sufficiently recognize differences between auditors and non-auditors (attestation and non-attestation services). To address these comments, PEEC bifurcated the guidance for members in public practice, so that there are now separate requirements for members providing financial statement attest services and members providing services other than financial statement attest services.
- 10. For members providing financial statement attest services:
 - a. PEEC considered whether the same requirements should apply for all attest services, or whether additional steps should be required for certain attest services,

such as financial statement audit and review services. PEEC decided that the requirements should be more stringent for financial statement attest services and uses the term “financial statement attest services” throughout the proposed interpretation. This term is not specifically defined in the AICPA code so PEEC will define “financial statement attest services” under the Definitions section (0.400). The AICPA code defines the term “financial statement attest client”.

- b. Specifically, for financial statement attest services, when a member in public practice discovers a NOCLAR, the member will be required to obtain an understanding of the matter, including the nature of the act and the circumstances in which it has occurred or may occur. After obtaining an understanding, the member would then be required to discuss the matter with the appropriate level of management and, if appropriate, those charged with governance. The member should advise the client to take appropriate actions to rectify or remediate the NOCLAR, and where appropriate, disclose the matter to an authority where required by law or regulation. If the member determines that management’s response was not appropriate, then the member is required to consider withdrawing from the engagement, unless prohibited by law or regulation.

11. For members providing services other than financial statement attest services:

- a. PEEC considered the requirements for members providing services other than financial statement attest services and has added guidance to the proposed interpretation that is consistent with IESBA’s guidance for professional accountants providing non-attest services. For example, members providing such services would only be required to seek to obtain an understanding of the matter. Addressing the matter would be limited to communicating the matter to the appropriate level of management and those charged with governance, if the member has access to them, whereas members providing financial statement attest services are also required to “advise management to take specified appropriate and timely actions” when addressing a NOCLAR. Additionally, members providing services other than financial statement attest services would be encouraged to document, rather than be required to document, certain aspects of the NOCLAR.

Applicability

Use of the term “client”

12. PEEC discussed the responsibility a member would have to report a NOCLAR if the subject entity is not the entity that engaged the member, as well as the use of the term “client” throughout the proposed interpretation. PEEC noted that the IESBA’s code (paragraph 360.7A3) does not impose responsibility with respect to reporting to management of parties not identified in its guidance, such as a third party that is the subject of due diligence performed by a member. PEEC decided that the member’s responsibility throughout the proposed interpretation should be exclusively to the “engaging entity,” if not the same as the

“subject entity”. PEEC therefore added language to paragraph .06b (formerly paragraph .10) that clarifies the member’s responsibility when a NOCLAR is committed by a third party and added an explanation in paragraph .01 that if the subject entity and engaging entity are different, the term “client” refers to the engaging entity.

Exclusion of certain nonattest services

13. Based on the review of services that were the subject of comments on the original proposal, PEEC has carved out certain nonattest services from the proposed interpretation applicable to members in public practice. Specifically, PEEC identified forensic accounting as a service where the proposed interpretation should not apply, since a member often is engaged in such services to specifically address an identified NOCLAR.
14. PEEC also considered tax engagements, where there may be applicable privileges that should be retained and would therefore be inconsistent with the NOCLAR requirements, such as “client privilege” and “Kovel arrangements”. PEEC decided to specifically carve out tax services pursuant to the protection of the Internal Revenue code (IRC) Section 7525 (“client privilege”) in paragraph .06 of the proposed interpretation. PEEC did not specifically exclude Kovel arrangements, because these engagements are not defined by an AICPA or other professional standard or regulation. However, PEEC believes that based on the nature of these engagements, Kovel arrangements could, depending on their circumstances, be excluded under the proposed interpretation’s guidance provided for forensic accounting engagements documented in paragraph .06. Moreover, this interpretation would generally not apply to Kovel arrangements where a law firm is the client, since the interpretation does not apply to non-compliance by parties other than the client.

Confidentiality

15. Due to state laws and regulations protecting client confidentiality, the original proposal did not contain provisions that would require a member who has withdrawn from a professional relationship to disclose a NOCLAR including to the successor accountant when there is an information request by the successor accountant.
16. Certain commenters believed that the originally proposed interpretation was too restrictive on NOCLAR disclosure. PEEC believes that it was in the public interest for an auditor who is aware of a NOCLAR, to be able to communicate the NOCLAR to the successor auditor. The “Confidential Client Information Rule” (1.700.001) would prohibit such disclosure without the client’s consent, unless the communication met one of the specified exceptions set forth in the rule, such as requiring such communication to comply with professional standards. Accordingly, on October 22, 2019, PEEC voted to formally request the Auditing Standards Board (ASB) to modify its current standards and require communication between predecessor and successor auditors if at the time of termination of the assurance engagement the predecessor auditor is aware of the client’s NOCLAR. The ASB accepted

PEEC's request to consider this matter. PEEC revised paragraphs .03, .05d, and 21b.iv of the proposed interpretation to emphasize the member's requirement to comply with standards in accordance with the ASB's possible revision to its standards.

17. Some commenters believed that the interpretation should go farther and require reporting of a NOCLAR to an outside authority. PEEC considered these comments but still believes that disclosure of a NOCLAR to a third-party without the client's consent is inconsistent with client confidentiality, law and regulations, except in certain instances where law already requires it.

Revisions to the originally proposed interpretation applicable to members in business

Confidentiality

18. PEEC believes it would be in the public interest for members in business to have the ability to communicate a NOCLAR to an appropriate authority and unlike the "Confidential Client Information Rule" (1.700.001) applicable to members in public practice, the "Confidential Information Obtained From Employment or Volunteer Activities" interpretation (2.400.070) would permit a member in business to disclose confidential employer information if "there is a professional responsibility or right to disclose information, when not prohibited by law, to comply with professional standards and other ethics requirements." PEEC therefore agreed to revise the proposed interpretation to allow both senior professional accountants in business and other professional accountants in business to report a NOCLAR to a regulatory body. Accordingly, PEEC added paragraphs .25c and .34 to indicate that a member may report a NOCLAR to an appropriate authority unless prohibited by laws or regulations. Factors that members would consider when determining whether to disclose a NOCLAR to an appropriate authority, such as when protection exists under whistle-blowing legislation or regulation were also added as paragraph .27.

V. Other Clarifications

19. PEEC is proposing a number of clarifications to the original proposal. PEEC believes these clarifications do not change the substance of the requirements in the original proposal; rather, they will assist members with operationalizing the requirements. The following summarizes significant clarifications included in the revised proposal:

Members in public practice

Geography

20. PEEC revised the geography of the proposed interpretation applicable to members in public practice and added a new section, "Applicability," to provide clear guidance on situations to which the interpretation would not apply.

Communication with respect to group engagements

21. PEEC replaced the term “group attest engagements” with “group audit engagements,” under the “Communication With Respect to Group Auditor” section, as the Statements on Standards for Attestation Engagements (SSAEs) do not refer to group engagements. PEEC also noted that the member has a requirement to communicate a NOCLAR to the group audit partner in accordance with professional standards (i.e., AU-C 600 *Special Considerations—Audits of Group Financial Statements [Including the Work of Component Auditors]*(AICPA, Professional Standards)). PEEC believes the requirement in the professional standards sufficiently addresses this matter and added language to the proposed interpretation referencing the professional standards.
22. PEEC also removed the language under this section related to statutory audits, as a member being engaged to perform a component audit for purposes of a statutory audit is not common in the U.S.

Clearly inconsequential

23. PEEC revised paragraph .10 of the proposed interpretation as it relates to the term “clearly inconsequential” for consistency with ASB standards (AU-C sec. 210 and AU-C sec. 250). The ASB does not define “clearly inconsequential”, PEEC will not define this term either, in order to avoid any possible conflict with the ASB’s standards.

Credible information

24. PEEC considered the sources of information, such as “other parties,” concerning an instance of a NOCLAR. PEEC concluded that adding the term “credible” was appropriate to further clarify the level of information obtained by the member, whether the member directly obtains such information during the engagement or indirectly through other sources.

Occurrence

25. PEEC replaced term “may occur” with the phrase “is likely to occur.” PEEC believes that the former term was too broad.

Access to management

26. PEEC deleted the phrase “if the member has access to them” as it relates to discussing a NOCLAR with the appropriate level of management, as PEEC believes that a member will likely have access to such individuals when providing financial statement attest services. This term remains included in the guidance for members providing services other than financial statement attest services where a member, depending on the nature of the engagement, might not have access to the appropriate level of management.

Members in business

Disclosing a NOCLAR to the external auditor

27. PEEC clarified the language in paragraphs .20 and .33 applicable to members in business to require both senior professional accountants in business and other professional accountants in business to disclose a NOCLAR to the external auditor if the member determines such disclosure is necessary pursuant to the member's obligation to provide all information necessary to enable the auditor to perform the audit. PEEC believes the language in the original proposal may have been ambiguous or may have conflicted with the "Obligation of a Member to His or Her Employer's External Accountant" interpretation (2.130.030).
28. PEEC also deleted the phrase "duty or legal" because the AICPA code does not define the term "duty" and the preceding paragraphs in the proposed interpretations require members to comply with laws and regulations. This revision would leave flexibility for whistleblowing protection.

Members in public practice and members in business

Professional judgment

29. For both members in public practice and members in business, to avoid redundancy and vaguely worded requirements, PEEC removed language related to a member exercising his or her professional judgment in determining the need to withdraw from an engagement, as compliance with all elements of this interpretation requires the exercise of professional judgment.

Clearly inconsequential

30. PEEC revised paragraph .09 of the proposed interpretation as it relates to the term "clearly inconsequential" for consistency with the revision to paragraph .10 of the proposed interpretation for members in public practice.

VI. Consideration of other comments

Members in public practice

Communication and documentation

31. A commenter recommended that PEEC include specific thresholds for communicating and documenting instances of NOCLAR in the proposed interpretation for members in public practice. PEEC considered this comment and decided not to include thresholds for communicating and documenting instances of NOCLAR, as it would be impossible to

identify the many potential scenarios to establish a single threshold. Rather, PEEC believes each situation needs to be evaluated based on its own facts and circumstances.

Non-compliance or suspected non-compliance

32. PEEC received a comment recommending that PEEC clarify the phrase “non-compliance or suspected non-compliance” used throughout the proposed interpretations. Additionally, PEEC was asked to include explicit language specifying that members are neither required nor expected to perform additional procedures designed to detect NOCLARs. PEEC considered this comment and concluded that the language in the interpretation is consistent with IESBA and did not believe that further clarification of this phrase was necessary. PEEC believes that the term “made aware” in paragraph .01, is clear and implies that additional procedures are not required. Accordingly, PEEC believes explicit language is not necessary regarding detection of NOCLARs and did not want to create potential inconsistencies with other professional standards applicable to illegal acts.

Client’s understanding of legal or regulatory responsibilities

33. PEEC was requested to provide guidance regarding the procedures expected to be performed by the member to consider the client’s understanding of its legal or regulatory responsibilities. PEEC believes that the proposed guidance is clear that the member may advise the client to obtain legal advice if it is clear to the member that the client does not understand the applicable laws and regulations and that the member will not be providing legal advice in complying with the proposed interpretation

VII. Revisions to other interpretations in the AICPA code

34. PEEC added references to the NOCLAR interpretations in the “Confidential Information Obtained from Employment or Volunteer Activities” (1.400.070 and 2.400.070) and “Subordination of Judgment” (1.130.020 and 2.130.020) interpretations for consistency in the AICPA code.
35. The “Ethical Conflicts” interpretation (1.000.020) of the “Introduction” section (1.000) for members in public practice provides an example to members that addresses if a member suspects that a fraud may have occurred the member would violate his or her responsibility to maintain the client’s confidentiality if the member reports the suspected fraud. PEEC decided to remove this example as the proposed NOCLAR interpretation for members in public practice will address this specific situation.

Effective date

36. PEEC recommends that the proposal be effective one year after notice is published by the *Journal of Accountancy*.

Request for comments

37. PEEC welcomes comments on all aspects of the proposed revisions. In addition, PEEC is seeking feedback on the following specific aspects of the proposed interpretations:

- a. Do you agree with the differentiation in requirements applicable to members in public practice providing services other than financial statement attest services?
- b. Do you agree that certain nonattest services should be excluded from the proposed interpretation for members in public practice?
- c. Is a one-year transition period for the effective date appropriate? If not, why?

DRAFT

Text of proposed interpretation “Responding to Non-Compliance With Laws and Regulations” (Applicable to members in public practice)

1.170. Responding to Non-Compliance With Laws and Regulations

1.170.010 Responding to Non-Compliance With Laws and regulations

Revisions since the March 10, 2017 exposure draft are highlighted

Introduction

.01 When a [member](#) encounters or is made aware of non-compliance or suspected non-compliance with laws and regulations in the course of providing a [professional service](#) to a client, [threats](#) to compliance with the “[Integrity and Objectivity Rule](#)” [1.100.001] may exist. The purpose of this interpretation is to set out the [member’s](#) responsibilities when encountering such non-compliance or suspected non-compliance, and guide the [member](#) in **assessing evaluating** the implications of the matter and the possible courses of action when responding to it. **The [member’s](#) responsibilities in this interpretation are owed to a person or entity that engages the [member](#) or [member’s](#) firm to perform professional services (engaging entity). Therefore, when the engaging entity and subject entity are different, the term client refers to the engaging entity.**

.02 Non-compliance with laws and regulations (non-compliance) comprises acts of omission or commission, intentional or unintentional, that are contrary to the prevailing laws or regulations and are committed by a client or by [those charged with governance](#), by management, or by other individuals working for or under the direction of a *client*.

.03 When responding to non-compliance or suspected non-compliance in the course of providing a [professional service](#) to a client, the [member](#) should consider the [member’s](#) obligations under the “[Confidential Client Information Rule](#)” [1.700.001]. For example, a [member](#) should not disclose the non-compliance or suspected non-compliance to a third party without the *client’s* consent unless expressly permitted under the “Confidential Client Information Rule,” such as when reporting the non-compliance or suspected non-compliance to a regulatory authority in order to comply with applicable laws and regulations **or compliance with professional standards**, as discussed in paragraphs **.04 and .05d., respectively.**

.04 Some regulators, such as the SEC or state boards of accountancy, may have regulatory provisions governing how a [member](#) should address non-compliance or suspected non-compliance which may differ from or go beyond this interpretation. In some circumstances, state and federal civil and criminal laws may also impose additional requirements. When encountering non-compliance or suspected non-compliance, a [member](#) has a responsibility to obtain an understanding of those legal or regulatory provisions and comply with them,

including any requirement to report the matter to an appropriate authority, and any prohibition on alerting the client prior to making any disclosure.

.05 A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. When responding to non-compliance or suspected non-compliance, the objectives of a member are as follows:

- a. To comply with the "Integrity and Objectivity Rule" [1.100.001]
- b. To alert management or, when appropriate, those charged with governance of the client, to enable them to
 - i. rectify, remediate or mitigate the consequences of the identified or suspected non-compliance or
 - ii. deter the commission of the non-compliance where it has not yet occurred
- c. To determine whether withdrawal from the engagement and the professional relationship is necessary, when permitted by law and regulation

d. To report in accordance with regulations and professional standards

Scope Applicability

.06 This interpretation does not apply to the following:

- a. **Personal misconduct unrelated to the business activities of the client.**
- b. **Non-compliance by parties other than by the client or those charged with governance, management, or other individuals working for or under the direction of the such client. This includes, for example, circumstances in which a member has been engaged by a client to perform a due diligence assignment on a third-party entity (i.e., subject entity) and the identified or suspected non-compliance has been committed by that third party.**
- c. **A litigation or investigation engagement as defined in, and subject to, the AICPA's Statement on Standards for Forensic Services No. 1**
- d. **An engagement pursuant to which the protections set forth in Internal Revenue Code Section 7525 may apply**

A member may nevertheless find the guidance in this interpretation helpful in considering how to respond in these situations.

Scope

.07 This interpretation sets out the approach to be taken by a member who encounters or is made aware of non-compliance or suspected non-compliance with the following:

- a. Laws and regulations generally recognized to have a direct effect on the determination of material amounts and disclosures in the client's financial statements
- b. Other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the *client's financial statements*, but compliance with which may be fundamental to the operating aspects of the *client's* business, to its ability to continue its business, or to avoid material penalties

.08 Examples of laws and regulations which this interpretation addresses include those that deal with these issues:

- a. Fraud, corruption, and bribery
- b. Money laundering
- c. Securities markets and trading
- d. Banking and other financial products and services
- e. Data protection
- f. Tax and pension liabilities and payments
- g. Environmental protection
- h. Public health and safety

.09 Non-compliance may result in fines, litigation, or other consequences for the client that may have a material effect on its financial statements. Importantly, such non-compliance may have wider public interest implications in terms of potentially substantial harm to investors, creditors, employees, or the general public. 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. Examples include the perpetration of a fraud resulting in significant financial losses to investors and breaches of environmental laws and regulations endangering the health or safety of employees or the public.

.10 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.

.10 This interpretation does not address the following:

- a. Personal misconduct unrelated to the business activities of the client.
- b. Non-compliance ~~by parties~~ other than by the ~~a client that is the engaging entity~~ or ~~those charged with governance~~, management, or other individuals working for or under the direction of the ~~such client~~. This includes, for example, circumstances in which a [member](#) has been engaged by a ~~client~~ to perform a due diligence assignment on a third party entity (~~i.e., subject entity~~) and the identified or suspected non-compliance has been committed by that third party.

A [member](#) may nevertheless find the guidance in this interpretation helpful in considering how to respond in these situations.

Responsibilities of the Client's Management and Those Charged with Governance

.11 The client's management is responsible, with the oversight of [those charged with governance](#), to ensure that the *client's* business activities are conducted in accordance with laws and regulations. It is also the responsibility of management and [those charged with governance](#) to identify and address any non-compliance by the *client*, by an individual charged with governance of the entity, by a [member](#) of management, or by other individuals working for or under the direction of the *client*.

Responsibilities of Members in Public Practice

.12 When a [member](#) becomes aware of a matter to which this interpretation applies, the [member](#) should take timely steps to comply with this interpretation, taking into account the [member's](#) understanding of the nature of the matter and the potential harm to the interests of the entity, investors, creditors, employees or the general public.

Members Providing Financial Statement Attest Services

Obtaining an Understanding of the Matter

- .13 If a member engaged to perform ~~attest services~~ **financial statement attest services** becomes aware of **credible** information concerning an instance of non-compliance or suspected non-compliance, whether in the course of performing the engagement or through information provided by other parties, the member should obtain an understanding of the matter, including the nature of the act and the circumstances in which it has occurred or may occur.
- .14 A member is expected to apply knowledge, professional judgment, and expertise, but is not expected to have a level of knowledge of laws and regulations greater than that required to undertake the engagement. Whether an act constitutes non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body. Depending on the nature and significance of the matter, the member may consult on a confidential basis with others within the firm, a network firm or a professional body, or with legal counsel.
- .15 If the member identifies or suspects that non-compliance has occurred or **may is likely to** occur, the member should discuss the matter with the appropriate level of management and, **if the member has access to them and** when appropriate, those charged with governance.
- .16 Such discussion serves to clarify the member's understanding of the facts and circumstances relevant to the matter and its potential consequences. The discussion also may prompt management or those charged with governance to investigate the matter.
- .17 The appropriate level of management with whom to discuss the matter is a question of professional judgment. Relevant factors to consider include these:
- a. The nature and circumstances of the matter
 - b. The individuals actually or potentially involved
 - c. The likelihood of collusion
 - d. The potential consequences of the matter
 - e. Whether that level of management is able to investigate the matter and take appropriate action
- .18 The appropriate level of management is generally at least one level above the person or persons involved or potentially involved in the matter. If a member believes that management is involved in the non-compliance or suspected non-compliance, the member should discuss the matter with those charged with governance. The member may also

consider discussing the matter with internal auditors, when applicable. In the context of a group **attest** audit engagement, the appropriate level may be management at an entity that controls the client.

Addressing the Matter

.19 In discussing the non-compliance or suspected non-compliance with management and, when appropriate, those charged with governance, the member should advise them to take the following appropriate and timely actions, if they have not already done so:

- a. Rectify, remediate or mitigate the consequences of the non-compliance.
- b. Deter the commission of the non-compliance if it has not yet occurred.
- c. Disclose the matter to an appropriate authority where required by law or regulation or when considered necessary in the public interest.

.20 The member should consider whether the client's management and, **if applicable**, those charged with governance understand their legal or regulatory responsibilities with respect to the non-compliance or suspected non-compliance. If not, the member may suggest appropriate sources of information or recommend that they obtain legal advice.

.21 The member should comply with the following:

- a. Applicable laws and regulations, including legal or regulatory provisions governing the reporting of non-compliance or suspected non-compliance to an appropriate authority. In this regard, some laws and regulations may stipulate a period within which reports are to be made.
- b. Applicable requirements under **auditing or other** professional standards, including those relating to
 - i. identifying and responding to non-compliance, including fraud.
 - ii. communicating with those charged with governance.
 - iii. considering the implications of the non-compliance or suspected non-compliance **for on** the auditor's **audit, review, or compilation** report.

iv. communicating a former client's non-compliance to the successor auditor to the extent required under professional standards.

Communication With Respect to Group ~~Attest~~ **Audit** Engagements

.22 A **member** may, ~~do the following:~~ **for purposes of a group audit engagement, be requested by the group engagement team to perform work on financial or other information related to a component of the group.**

- a. ~~For purposes of a group ~~attest~~ **audit** engagement,~~ be requested by the group engagement team to perform work on financial or other information related to a component of the group
- b. ~~Be engaged to perform an ~~attest~~ **audit** engagement of a component for purposes other than the group ~~attest~~ **audit** engagement, for example, a statutory audit~~

If the **member** becomes aware of non-compliance or suspected non-compliance **in relation to the component in either situation**, the **member** should, in addition to responding to the matter in accordance with the provisions of this **interpretation section**, communicate **it to the group audit partner in accordance with AU-C sec. 600 Special Considerations- Audits of Group Financial Statements [Including the Work of Component Auditors](AICPA, Professional Standards)**. ~~to the group engagement **partner** unless prohibited from doing so by law or regulation. This is to enable the group engagement **partner** to be informed about the matter and to determine, in the context of the group ~~attest~~ **audit** engagement, whether it should be addressed in accordance with the provisions in this interpretation **section** and, if so, how.~~

.23 If the group **audit** engagement **partner** becomes aware of non-compliance or suspected non-compliance in the course of a group ~~attest~~ **audit** engagement, including as a result of being informed of such a matter in accordance with paragraph .22, the group **audit** engagement **partner** should, in addition to responding to the matter in the context of the group ~~attest~~ **audit** engagement in accordance with the provisions of this **interpretation section**, consider whether the matter may be relevant to one or more components **whose financial or other information is subject to procedures performed for purposes of the group audit engagement.**

- a. **Whose financial or other information is subject to procedures performed for purposes of the group ~~attest~~ **audit** engagement**
- b. **Whose financial or other information is subject to procedures performed for purposes other than the group ~~attest~~ **audit** engagement, for example, a statutory audit**

In these circumstances, the group **audit** engagement **partner** should take steps to have the non-compliance or suspected non-compliance communicated to those performing work at

components where the matter may be relevant, unless prohibited from doing so by law or regulation. If necessary in relation to paragraph 23b, appropriate inquiries should be made (either of management or from publicly available information) as to whether the relevant component is subject to attest **audit** procedures and, if so, to ascertain, to the extent practicable, the identity of the accountant. The communication is to enable those responsible for work at such components to be informed about the matter and to determine whether and, if so, how it should be addressed in accordance with the provisions in this interpretation **section**.

Determining Whether Withdrawal From the Engagement Is Necessary

- .24 The member should **assess evaluate** the appropriateness of the response of management and, if applicable, those charged with governance.
- .25 Relevant factors to consider **in assessing when evaluating** the appropriateness of the response of management and, where applicable, those charged with governance include whether
- a. the response is timely.
 - b. the non-compliance or suspected non-compliance has been adequately investigated.
 - c. action has been, or is being, taken to rectify, remediate, or mitigate the consequences of any non-compliance.
 - d. action has been or is being taken to deter the commission of any non-compliance if it has not yet occurred.
 - e. appropriate steps have been, or are being, taken to reduce the risk of recurrence, for example, additional controls or training.
 - f. the non-compliance or suspected non-compliance has been disclosed to an appropriate authority where appropriate and, if so, whether the disclosure appears adequate.
- .26 In light of the response of management and, if applicable, those charged with governance, the member should determine whether withdrawing from the engagement and the professional relationship is necessary, where permitted by law and regulation.
- .27 The determination of whether withdrawing from the engagement and the professional relationship is necessary, will depend on various factors, including these:

- a. The legal and regulatory framework
- b. The urgency of the matter
- c. The pervasiveness of the matter throughout the client
- d. Whether the [member](#) continues to have confidence in the integrity of management and, if applicable, [those charged with governance](#)
- e. Whether the non-compliance or suspected non-compliance is likely to recur
- f. Whether there is credible evidence of actual or potential substantial harm to the interests of the entity, investors, creditors, employees, or the general public

.28 Examples of circumstances that may cause a [member](#) no longer to have confidence in the integrity of management and, where applicable, [those charged with governance](#) include situations such as the following:

- a. The [member](#) suspects or has evidence of management's involvement or intended involvement in any non-compliance.
- b. The [member](#) is aware that management has knowledge of such non-compliance and, contrary to legal or regulatory requirements, has not reported, or authorized the reporting of, the matter to an appropriate authority within a reasonable period.

.29 In determining the need to withdraw from the engagement and the professional relationship, a [member](#) should exercise professional judgment and take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the [member](#) at the time, would be likely to conclude that the [member](#) has acted appropriately and in the public interest.

.29 As consideration of the matter may involve complex analysis and judgments, a [member](#) may consider consulting internally, obtaining legal advice to understand the [member's](#) options and the professional or legal implications of taking any particular course of action, or consulting on a confidential basis with a regulator or professional body.

Documentation

.30 In relation to an identified or suspected act of non-compliance that falls within the scope of this [interpretation section](#), the [member](#) should, in addition to complying with the documentation requirements under applicable professional standards, document the following:

- a. The matter
- b. The results of discussion with management and, where applicable, [those charged with governance](#) and other parties
- c. How management and, where applicable, [those charged with governance](#) have responded to the matter
- d. The courses of action the [member](#) considered, the judgments made and the decisions that were taken, ~~having regard to the reasonable and informed third party perspective~~

Members Providing Services other than a Financial Statement Attest Service

Obtaining an Understanding of the Matter and Addressing the Matter

.31 If a [member](#) engaged to perform professional services other than a financial statement attest service becomes aware of credible information concerning an instance of non-compliance or suspected non-compliance, whether in the course of performing the engagement or through information provided by other parties, the [member](#) should seek to obtain an understanding of the matter, including the nature of the act and the circumstances in which it has occurred or may occur.

.32 A [member](#) is expected to apply knowledge, professional judgment, and expertise, but is not expected to have a level of knowledge of laws and regulations greater than that required to undertake the engagement. Whether an act constitutes non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body. Depending on the nature and significance of the matter, the [member](#) may consult on a confidential basis with others within the [firm](#), a [network firm](#) or a professional body, or with legal counsel.

.33 If the [member](#) identifies or suspects that non-compliance has occurred or may be likely to occur, the [member](#) should discuss the matter with the appropriate level of management and, if the [member](#) has access to them and when appropriate, [those charged with governance](#).

.34 Such discussion serves to clarify the [member's](#) understanding of the facts and circumstances relevant to the matter and its potential consequences. The discussion also may prompt management or [those charged with governance](#) to investigate the matter.

.35 The appropriate level of management with whom to discuss the matter is a question of professional judgment. Relevant factors to consider include these:

- a. The nature and circumstances of the matter**

b. The individuals actually or potentially involved

c. The likelihood of collusion

d. The potential consequences of the matter

e. Whether that level of management is able to investigate the matter and take appropriate action

Communicating the Matter to the Client's Auditor

Members Performing a Service, other than a Financial Statement Attest Service, for a Financial Statement Attest Client

- .36 If the member is performing a service for ~~other than~~ a financial statement attest ~~audit or review~~ **service, for a financial statement attest** client of the firm, or a component of a financial statement ~~audit or review~~ **attest** client of the firm, the member should communicate the non-compliance or suspected non-compliance within the firm. The communication should be made in accordance with the firm's protocols or procedures or, in the absence of such protocols and procedures, directly to the **attest** ~~audit or review~~ engagement partner.
- .37 If the member is performing a service for a financial statement ~~audit or review~~ **attest** client of a network firm, or a component of a financial statement ~~audit or review~~ **attest** client of a network firm, the member should consider whether to communicate the non-compliance or suspected non-compliance to the network firm. If the communication is made, it should be made in accordance with the network's protocols or procedures or, in the absence of such protocols and procedures, directly to the ~~audit or review~~ **attest** engagement partner.
- .38 In all cases, the communication is to enable the ~~audit or review~~ **attest** engagement partner to be informed about the non-compliance or suspected non-compliance and to determine whether it should be addressed in accordance with the provisions of this interpretation and if so, how.

Members Providing Services to a Client that is not a Financial Statement Attest Client

- .39 If the member is performing ~~a service~~ **services** for a client that is not a financial statement ~~audit or review~~ **attest** client of the firm, except as required by law or regulation, the member is not permitted to communicate the non-compliance or suspected non-compliance to the firm that is the client's external auditor, if one exists. See the "Confidential Client Information Rule" [1.700.001].

Determining Whether Withdrawal From the Engagement Is Necessary

.40 The member should determine whether withdrawal from the engagement is necessary in the public interest.

.41 Whether withdrawal from the engagement is necessary, will depend on various factors, including the member's understanding of the following:

- a. The legal and regulatory framework**
- b. The appropriateness and timeliness of the response of management and, where applicable, those charged with governance.**
- c. The urgency of the matter**
- d. Whether the member continues to have confidence in the integrity of management and, if applicable, those charged with governance**
- e. The likelihood of actual or potential substantial harm to the interests of the entity, investors, creditors, employees, or the general public**
- f. The pervasiveness of the matter throughout the client**
- g. Whether the non-compliance or suspected non-compliance is likely to recur**

.42 Examples of circumstances that may cause the member no longer to have confidence in the integrity of management and, where applicable, those charged with governance include such situations as:

- a. The member suspects or has evidence of management's involvement or intended involvement in any non-compliance.**
- b. The member is aware that management has knowledge of such non-compliance and, contrary to legal or regulatory requirements, has not reported, or authorized the reporting of, the matter to an appropriate authority within a reasonable period.**

. 43 As consideration of the matter may involve complex analysis and judgments, a member may consider consulting internally, obtaining legal advice to understand the member's options and the professional or legal implications of taking any particular course of action, or consulting on a confidential basis with a regulator or professional body.

Documentation

. 44 In relation to an identified or suspected act of non-compliance that falls within the scope of this section, the member is encouraged to document the following in addition to complying with the documentation requirements under applicable professional standards:

- a. The matter
- b. The results of discussion with management and, where applicable, those charged with governance and other parties
- c. How management and, where applicable, those charged with governance have responded to the matter
- d. The courses of action the member considered, the judgments made and the decisions that were taken

Effective Date

.45 Effective one year after announcement is published in the Journal of Accountancy.

Text of proposed interpretation “Responding to Non-Compliance With Laws and Regulations” (Applicable to Members in Business)

2.170. Responding to Non-Compliance With Laws and Regulations

2.170.010 Responding to Non-Compliance With Laws and regulations

(Revisions since the March 10, 2017 exposure draft are highlighted)

Introduction

Applicable to All Members in Business

- .01 When a [member in business](#) encounters or is made aware of non-compliance or suspected non-compliance with laws and regulations in the course of carrying out [professional services](#), [threats](#) to compliance with the “[Integrity and Objectivity Rule](#)” [2.100.010] may exist. The purpose of this interpretation is to set out the [member’s](#) responsibilities when encountering such non-compliance or suspected non-compliance and guide the [member](#) in **assessing evaluating** the implications of the matter and the possible courses of action when responding to it. This interpretation applies regardless of the nature of the [employing organization](#).
- .02 Non-compliance with laws and regulations (non-compliance) comprises acts of omission or commission, intentional or unintentional, committed by the [member’s employing organization](#) or by [those charged with governance](#), by management, or by other individuals working for or under the direction of the [employing organization](#) which are contrary to the prevailing laws or regulations.
- .03 When responding to non-compliance or suspected non-compliance in the course of carrying out [professional services](#), the [member](#) should consider the [member’s](#) obligations under the “[Confidential Information Obtained from Employment or Volunteer Activities](#)” interpretation [2.400.070]. For example, a [member](#) should not disclose the non-compliance or suspected non-compliance to a third party without the employer’s consent unless expressly permitted under the “[Confidential Information Obtained from Employment or Volunteer Activities](#)” interpretation, such as when reporting the non-compliance or suspected non-compliance to a regulatory authority in order to comply with applicable laws and regulations, as discussed in paragraph .04.
- .04 Some regulators, for example, the SEC or state boards of accountancy, may have provisions governing how [members](#) should address non-compliance or suspected non-compliance which may differ from or go beyond this interpretation, and state and federal civil and criminal laws, in some circumstances, may impose additional requirements. When encountering such non-compliance or suspected non-compliance, the [member](#) has a

responsibility to obtain an understanding of those provisions and comply with them, including any requirement to report the matter to an appropriate authority and any prohibition on alerting the relevant party prior to making any disclosure, for example, pursuant to anti-money laundering legislation.

.05 A distinguishing mark of the accountancy profession is its acceptance of the responsibility to act in the public interest. When responding to non-compliance or suspected non-compliance, the objectives of the [member](#) are as follows:

- a. To comply with the [“Integrity and Objectivity Rule”](#) [2.100.010]
- b. To alert management or, if appropriate, [those charged with governance](#) of the [employing organization](#), to enable them to
 - i. rectify, remediate or mitigate the consequences of the identified or suspected non-compliance or
 - ii. deter the commission of the non-compliance where it has not yet occurred
- c. To take such further action as appropriate in the public interest

Scope

.06 This interpretation sets out the approach to be taken by a [member](#) who encounters or is made aware of non-compliance or suspected non-compliance with the following:

- a. Laws and regulations generally recognized to have a direct effect on the determination of material amounts and disclosures in the [employing organization’s financial statements](#)
- b. Other laws and regulations that do not have a direct effect on the determination of the amounts and disclosures in the [employing organization’s financial statements](#), but compliance with which may be fundamental to the operating aspects of the *employing organization’s* business, to its ability to continue its business, or to avoid material penalties

.07 Examples of laws and regulations which this interpretation addresses include those that deal with the following:

- a. Fraud, corruption, and bribery

- b. Money laundering
- c. Securities markets and trading
- d. Banking and other financial products and services
- e. Data protection
- f. Tax and pension liabilities and payments
- g. Environmental protection
- h. Public health and safety

.08 Non-compliance may result in fines, litigation or other consequences for the [employing organization](#) that may have a material effect on its [financial statements](#). Importantly, such non-compliance may have wider public interest implications in terms of potentially substantial harm to investors, creditors, employees or the general public. For the purposes of this section, 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. Examples include the perpetration of a fraud resulting in significant financial losses to investors, and breaches of environmental laws and regulations endangering the health or safety of employees or the public.

.09 A [member](#) who encounters or is made aware of matters that are clearly inconsequential, judged by their nature and their impact, financial or otherwise, on the [employing organization](#), its stakeholders and the general public, is not required to comply with this interpretation with respect to such matters.

.10 This interpretation does not address the following:

- a. Personal misconduct unrelated to the business activities of the [employing organization](#)
- b. Non-compliance other than by the *employing organization* or [those charged with governance](#), management, or other individuals working for or under the direction of the *employing organization*

The [member](#) may nevertheless find the guidance in this section helpful in considering how to respond in these situations.

Responsibilities of the Employing Organization's Management and Those Charged with Governance

- .11 It is the responsibility of the [employing organization's](#) management, with the oversight of [those charged with governance](#), to ensure that the *employing organization's* business activities are conducted in accordance with laws and regulations. It is also the responsibility of management and [those charged with governance](#) to identify and address any non-compliance by the *employing organization* or by an individual charged with governance of the entity, by a member of management, or by other individuals working for or under the direction of the *employing organization*.

Responsibilities of Members in Business

- .12 Many [employing organizations](#) have established protocols and procedures (for example, an ethics policy or internal whistle-blowing mechanism) regarding how non-compliance or suspected non-compliance by the *employing organization* should be raised internally. Such protocols and procedures may allow for matters to be reported anonymously through designated channels. If these protocols and procedures exist within the [member's](#) *employing organization*, the [member](#) should consider them in determining how to respond to such non-compliance.
- .13 If a [member](#) becomes aware of a matter to which this interpretation applies, the steps that the [member](#) takes to comply with this section ~~shall~~ **should** be taken on a timely basis, having regard to the [member's](#) understanding of the nature of the matter and the potential harm to the interests of the [employing organization](#), investors, creditors, employees, or the general public.

Responsibilities of Members who are Senior Professional Accountants in Business

- .14 [Members](#) who are senior professional accountants in business are directors, officers, or senior employees able to exert significant influence over, and make decisions regarding, the acquisition, deployment and control of the [employing organization's](#) human, financial, technological, physical and intangible resources. Because of their roles, positions, and spheres of influence within the *employing organization*, there is a greater expectation for them to take whatever action is appropriate in the public interest to respond to non-compliance or suspected non-compliance than other professional accountants within the *employing organization*.

Obtaining an Understanding of the Matter

- .15 If, in the course of carrying out [professional services](#), a [member](#) who is a senior professional accountant becomes aware of information concerning an instance of non-compliance or

suspected non-compliance, the [member](#) should obtain an understanding of the matter, including the following:

- a. The nature of the act and the circumstances in which it has occurred or may occur
- b. The application of the relevant laws and regulations to the circumstances
- c. The potential consequences to the [employing organization](#), investors, creditors, employees or the wider public

.16 A [member](#) who is a senior professional accountant is expected to apply knowledge, professional judgment and expertise, but is not expected to have a level of understanding of laws and regulations beyond that required for the [member's](#) role within the [employing organization](#). Whether an act constitutes non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body.

.17 Depending on the nature and significance of the matter, the [member](#) may cause, or take appropriate steps to cause, the matter to be investigated internally. The [member](#) may also consult on a confidential basis with others within the [employing organization](#) or a professional body or with legal counsel.

Addressing the Matter

.18 If the [member](#) who is a senior professional accountant identifies or suspects that non-compliance has occurred or may occur, the [member](#) should, subject to paragraph .12, discuss the matter with the [member's](#) immediate superior, if any, to determine how the matter should be addressed. If the [member's](#) immediate superior appears to be involved in the matter, the [member](#) should discuss the matter with the next higher level of authority within the [employing organization](#).

.19 The [member](#) who is a senior professional accountant should also take the following appropriate steps:

- a. Have the matter communicated to [those charged with governance](#) to obtain their concurrence regarding appropriate actions to take to respond to the matter and to enable them to fulfill their responsibilities.
- b. Comply with applicable laws and regulations, including legal or regulatory provisions governing the reporting of non-compliance or suspected non-compliance to an appropriate authority.

- c. Have the consequences of the non-compliance or suspected non-compliance rectified, remediated, or mitigated
- d. Reduce the risk of re-occurrence
- e. Seek to deter the commission of the non-compliance if it has not yet occurred

.20 In addition to responding to the matter in accordance with the provisions of this ~~interpretation~~ **section**, the member who is a senior professional accountant should ~~determine whether disclosure~~ **disclose** of the matter to the employing organization's external auditor, if any, **if the member determines such disclosure** is necessary pursuant to the member's ~~duty or legal~~ obligation to provide all information necessary to enable the auditor to perform the audit. See the "[Obligation of a Member to His or Her Employer's External Accountant](#)" [2.130.030] interpretation for additional guidance.

Determining Whether Further Action Is Necessary

.21 The member who is a senior professional accountant should ~~assess~~ **evaluate** the appropriateness of the response of the member's superiors, if any, and those charged with governance.

.22 Relevant factors to consider in ~~assessing~~ **evaluating** the appropriateness of the response of the member's superiors, if any, and those charged with governance include whether

- a. the response is timely.
- b. they have taken or authorized appropriate action to seek to rectify, remediate or mitigate the consequences of the non-compliance, or to avert the non-compliance if it has not yet occurred.
- c. the matter has been disclosed to an appropriate authority where appropriate and, if so, whether the disclosure appears adequate.

.23 In light of the response of the member's superiors, if any, and those charged with governance, the member should determine if further action is necessary in the public interest. The determination of whether further action is necessary, and the nature and extent of it, will depend on various factors, including these:

- a. The legal and regulatory framework
- b. The urgency of the matter

- c. The pervasiveness of the matter throughout the employing organization
- d. Whether the member who is a senior professional accountant continues to have confidence in the integrity of the member's superiors and those charged with governance
- e. Whether the non-compliance or suspected non-compliance is likely to recur
- f. Whether there is credible evidence of actual or potential substantial harm to the interests of the employing organization, investors, creditors, employees or the general public

.24 Examples of circumstances that may cause the member who is a senior professional accountant no longer to have confidence in the integrity of the member's superiors and those charged with governance include such situations as these:

- a. The member suspects or has evidence of management's involvement or intended involvement in any non-compliance.
- b. Contrary to legal or regulatory requirements, management has not reported the matter, or authorized the matter to be reported, to an appropriate authority within a reasonable period.

~~.25~~ In determining the need for, and nature and extent of any further action necessary, the member who is a senior professional accountant should exercise professional judgment and take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the member at the time, would be likely to conclude that the member has acted appropriately in the public interest.

~~.26~~ **.25** Further action by the member who is a senior professional accountant may include the following:

- a. Informing the management of the parent entity of the matter if the employing organization is a *member* of a group
- b. Resigning from the *employing organization*
- c. Reporting the non-compliance or suspected non-compliance to an appropriate authority unless prohibited by laws or regulations**

~~.27~~ **.26** When the member who is a senior professional accountant determines that resigning from the employing organization would be appropriate, doing so would not be a substitute for taking other actions that may be necessary to achieve the member's objectives under this section.

.28-.27 The determination of whether to disclose the matter to an appropriate authority will also depend on external factors such as:

- a. Whether there is an appropriate authority that is able to receive the information and cause the matter to be investigated and action to be taken. Identifying an appropriate authority will depend upon the nature of the matter. For example, an appropriate authority could be a securities regulator in the case of fraudulent financial reporting or an environmental protection agency in the case of a breach of environmental laws and regulations.***
- b. Whether there exists robust and credible protection from civil, criminal or professional liability or retaliation afforded by legislation or regulation, such as under whistle-blowing legislation or regulation.***
- c. Whether there are actual or potential threats to the physical safety of the senior professional accountant or other individuals.***

.28 As consideration of the matter may involve complex analysis and judgments, the [member](#) who is a senior professional accountant may consider consulting internally, obtaining legal advice to understand the [member's](#) options and the professional or legal implications of taking any particular course of action or consulting on a confidential basis with a regulator or professional body.

Documentation

.29 In relation to an identified or suspected act of non-compliance that falls within the scope of this **interpretation section**, the [member](#) who is a senior professional accountant is encouraged to have the following matters documented:

- a. The matter
- b. The results of discussions with the [member's](#) superiors, if any, and [those charged with governance](#) and other parties
- c. How the [member's](#) superiors, if any, and [those charged with governance](#) have responded to the matter
- d. The courses of action the [member](#) considered, the judgments made and the decisions that were taken
- e. How the [member](#) is satisfied that the *member* has fulfilled the responsibility set out in paragraph .23

Responsibilities of Members Other Than Those Who Are Senior Professional Accountants in Business

.30 If, in the course of carrying out [professional services](#), a [member](#) becomes aware of information concerning an instance of non-compliance or suspected non-compliance, the [member](#) should seek to obtain an understanding of the matter, including the nature of the act and the circumstances in which it has occurred or may occur.

.31 The [member](#) is expected to apply knowledge, professional judgment, and expertise, but is not expected to have a level of understanding of laws and regulations beyond that required for

the [member's](#) role within the [employing organization](#). Whether an act constitutes non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body. Depending on the nature and significance of the matter, the [member](#) may consult on a confidential basis with others within the [employing organization](#) or a professional body, or with legal counsel.

.32 If the [member](#) identifies or suspects that non-compliance has occurred or may occur, the [member](#) should, subject to paragraph .12, inform an immediate superior to enable the superior to take appropriate action. If the [member's](#) immediate superior appears to be involved in the matter, the [member](#) should inform the next higher level of authority within the [employing organization](#).

.33 In addition to responding to the matter in accordance with the provisions of this [interpretation section](#), the [member](#) should ~~determine whether disclosure~~ **disclose** of the matter to the [employing organization's](#) external auditor, if any, **if the [member](#) determines such disclosure** is necessary pursuant to the [member's](#) ~~duty or legal~~ obligation to provide all information necessary to enable the auditor to perform the audit. See the "[Obligation of a Member to His or Her Employer's External Accountant](#)" interpretation [2.130.030] for additional guidance.

.34 Further action by the [member](#) may include reporting the non-compliance or suspected non-compliance to an appropriate authority unless prohibited by laws or regulations. In determining whether to disclose the matter to an appropriate authority, the [member](#) may consider the factors in paragraph .27 above.

Documentation

.35 In relation to an identified or suspected act of non-compliance that falls within the scope of this [interpretation section](#), the [member](#) is encouraged to have the following matters documented:

- a. The matter
- b. The results of discussions with the [member's](#) superior, management and, where applicable, [those charged with governance](#) and other parties
- c. How the [member's](#) superior has responded to the matter
- d. The courses of action the [member](#) considered, the judgments made and the decisions that were taken

Effective Date

.36 Effective one year after announcement is published in the Journal of Accountancy.

Text of new proposed definition “Financial Statement Attest Services”

“Financial statement attest services. Services in which a member performs a financial statement audit, review, or compilation when the member’s report does not disclose a lack of independence.”

DRAFT

Text of proposed revision to interpretation “Ethical Conflicts”

1.000 Introduction

1.000.020 Ethical Conflicts

(Deletions are stricken)

.01 An ethical conflict arises when a member encounters one or both of the following:

- a. Obstacles to following an appropriate course of action due to internal or external pressures
- b. Conflicts in applying relevant professional standards or legal standards

~~For example, a member suspects a fraud may have occurred, but reporting the suspected fraud would violate the member's responsibility to maintain client confidentiality.~~

.02 Once an ethical conflict is encountered, a member may be required to take steps to best achieve compliance with the rules and law. In weighing alternative courses of action, the member should consider factors such as the following:

- a. Relevant facts and circumstances, including applicable rules, laws, or regulations
- b. Ethical issues involved
- c. Established internal procedures

.03 The member should also be prepared to justify any departures that the member believes were appropriate in applying the relevant rules and law. If the member was unable to resolve the conflict in a way that permitted compliance with the applicable rules and law, the member may have to address the consequences of any violations.

.04 Before pursuing a course of action, the member should consider consulting with appropriate persons within the firm or the organization that employs the member.

.05 If a member decides not to consult with appropriate persons within the firm or the organization that employs the member and the conflict remains unresolved after pursuing the selected course of action, the member should consider either consulting with other individuals for help in reaching a resolution or obtaining advice from an appropriate professional body or legal counsel. The member also should consider documenting the substance of the issue, the parties with whom the issue was discussed, details of any discussions held, and any decisions made concerning the issue.

.06 If the ethical conflict remains unresolved, the member will in all likelihood be in violation of one or more rules if he or she remains associated with the matter creating the conflict. Accordingly, the member should consider his or her continuing relationship

with the engagement team, specific assignment, client, firm, or employer. [No prior reference: new content.]

Effective Date

.07 Effective December 15, 2014.

DRAFT

Records Requests Task Force

Task force members

Peggy Ullmann (Chair), Martin Levin, Jeff Lewis, Stephanie Saunders, Anika Heard

AICPA Staff: Ellen Gorla, Shannon Ziemba

Task force charge

The task force's charge is to recommend to the committee changes to the "Records Requests" interpretation regarding the charging of copying, shipping, and retrieval fees.

Reason for agenda item

On May 1, 2020 the division issued an [exposure draft](#) wherein it proposed revisions to the "Records Requests" interpretation (1.400.200). The division received 11 [comment letters](#) and 3 responses to its outreach survey.¹ The task force considered the feedback received and developed the following recommendations for the committee.

Summary of issues

The exposure draft proposed revisions that fall into the following four categories:

1. Client-provided records previously made available to a client
2. Costs incurred by the member to make records available
3. Making records available to a client
4. Making records available to a beneficiary

All commenters were supportive of the overall objectives of the proposal. In addition to providing the committee with feedback in the categories above, feedback was also received related to the provision of formulas to clients and clarification regarding a cross reference. The feedback received is summarized below.

Category 1: Client-provided records previously made available to a client

The exposure draft proposed some editorial revisions to paragraphs .06 and .11 to make it clear that the provision that permitted withholding previously provided client-provided records² was not intended to be applied to a client's initial request for these records to be returned. All commenters supported the substance of this clarification. The following commenters offered some input for consideration.

CL 1 believes it would be clearer that the requirement only applies to a second request for client-provided records if the order of paragraph .11 (renumbered as .10 in agenda item 2B) was revised to read:

¹ To obtain more feedback from interested parties, the division issued a survey that allowed individuals to easily indicate if they did or did not support the exposure draft and to provide comments. The survey was anonymous but all three individuals who completed the survey indicated they read the proposal and agreed with the proposal.

² Client-provided records are accounting or other records, including hardcopy and electronic reproductions of such records, belonging to the client that were provided to the member by, or on behalf of, the client.

In fulfilling a request for the member's copy of client-provided records previously provided to the client (as referenced in paragraph .08), member-prepared records, or member's work products, the member may....

The task force incorporated the substance of this recommendation into the revised interpretation found in **agenda item B**.

CL 3 believes that since paragraph .08 does not discuss client-provided records, the reference to paragraph .08 would be better placed if it came immediately after "a member's work products." The task force recommends eliminating the reference to paragraph .08 because the phrase "that was previously provided to the client" was added and because the applicable terms in paragraph .11 (renumbered as .10 in agenda item 2B) were adequately defined in the terminology section.

CL 7 recommends that the phrase "or make available" be added to the first sentence of paragraph .06 to conform with the committee's proposal that making records available would satisfy the requirement to return records. The task force believes it was an oversight not to extend this to client-provided records that had not previously been made available and proposes revisions in **agenda item B** to address this oversight. However, since the explanation that accompanied the exposure draft indicated this change was with respect to member-prepared records, work products and member's copy of client-provided records previously provided to the client, the task force seeks the committee's input regarding whether it had intended to scope out client-provided records that had not previously been made available.

CL 7 also recommends "or delayed" be removed from the last sentence of paragraph .06 because there could be delays which are not intended to withhold client records. The task force recommends that "or delayed" be removed since paragraph .12 (renumbered to .11 in agenda item 2B) already provides guidance related to the timeliness of complying with requests.

Questions for the committee:

1. Does the committee agree that when it comes to the first request for client-provided records that a member would be in compliance with the interpretation if they only made these records available and not necessarily physically provide these records? For example, could the member make these records available through a portal and be in compliance with the interpretation or must they physically provide the documents back in the format they were received?
2. Does the committee agree with the other recommendations proposed by the task force?

Clarify the kind of client-provided records

CL 5 recommends that the request for client-provided records covered by paragraph .06 be clarified as "initial" client-provided records to help reduce misapplication or oversight.

Alternatively, **CL 8** suggests the intent of this paragraph should be to cover "original" client-provided records. **CL 8** believes the committee should consider modernizing the definition of

client-provided records³ to address today's professional work environment by considering how common it is for clients to share original documents as opposed to copies of these documents which are uploaded electronically. They suggest the committee consider developing a FAQ to differentiate between *original* financial records provided to the member in connection with a tax compliance engagement from electronic *copies* of a large volume of corporate records uploaded to an electronic portal for an advisory engagement. **CL 8** further notes that without this clarification, members may be put in the position of acting as the uncompensated, de facto records managers for clients that do a poor job of their own records management.

CL 10 recommends the interpretation be clarified that the member only has to provide client-provided records to the extent that the client does not already have the original records in their possession. For example, if the client-provided records are provided to the member through a portal, should the member be required to provide them back to the client? They believe that without the clarification, the requirement would seem to be at odds with the hosting provision where a CPA cannot be the sole repository of a client's records and would be at odds with the relief in paragraph .08a.

The task force believes that paragraph .06 is intended to apply to the initial request for client-provided records to be returned and proposes a revision to clarify this in **agenda item B**. The task force noted that the definition of client-provided records includes hardcopies and electronic reproductions and so does not believe further clarification is necessary.

Questions for the committee:

3. Does the committee agree with the task force's recommendation?
4. Does the committee believe a separate work stream should consider modernizing the definition of client-provided records?

Category 2: Costs incurred by the member to make records available

CL 11 does not believe the guidance related to shipping fees is clear. They believe the exposure draft should clarify whether shipping fees will be included with time and expense fees so that everything falls under one single cost or if there are circumstances in which the client will only be charged fees for time and expense but not shipping (such as when a client picks up the records in person or when the records are sent electronically).

CL 11 also believes that if a member fails to update a client's address and mails the records to a previous address instead of the current address, that the client should not have to pay the shipping fees for the member's mistake.

CL 11 further believes that while clients should have to pay for the time, expense and shipment of the records requested, paragraph .12 (renumbered as .10 in agenda item 2B) should

³ Client-provided records are accounting or other records, including hardcopy and electronic reproductions of such records, belonging to the client that were provided to the member by, or on behalf of, the client.

elaborate regarding what would happen if after the 45 days the client still hasn't received the records requested since the request would not have been fulfilled, and suggested the interpretation require the member reimburse the client for all costs/fees paid.

The task force believes the proposal is sufficiently clear that the fees charged should be for only those expenses incurred. The task force does not recommend the interpretation address the shipping fees to prior addresses or whether the member should be required to reimburse all fees when the 45-day requirement is not met.

Question for the committee:

5. Does the committee agree with the task force's recommendations?

Category 3: Making records available to a client

The exposure draft proposed that making member-prepared records and work products available to the client would satisfy the member's ethical responsibility under the interpretation to "return or provide" these records. All commenters supported this change and [CL 3](#) noted that these revisions will simplify compliance with such requests. The following commenters offered some input for consideration.

Add examples and ensure accessibility

Five commenters acknowledged that examples would be helpful. [CL 2](#) is concerned that the term "make available" could be broadly interpreted to include being available in the member's place of work that could be in a different city or state and so including examples would help avoid such unintended consequences. Staff believes it was the committee's intent for the phrase "make available" to be broadly interpreted.

[CL 3](#) believes the examples included in the explanation to the exposure draft (i.e., picked up, portal) be added to the interpretation.

[CL 5](#) is concerned that without examples the term "make available" could result in confusion in practice and recommends some FAQs be issued that would include examples of how members can make records available in an electronic or paper environment.

[CL 10](#) recommends clarification on what the term "make available" means and provides examples of two situations to demonstrate where a diversity of practice could evolve. One situation would be where records are left for the client to come and pick up and the other would involve the member having to spend money to mail the records even when the client may not reimburse the member for the costs. [CL 10](#) also questions why the references in paragraphs .08a and .09 to 'make available' is in parentheses where in all other places it has replaced "provided."

[CL 11](#) suggests that adding definitions and examples for both terms under paragraph .01 will help clarify and distinguish the minor intricacies between both types of deliveries (i.e., providing a document assures the delivery of such a document with responsibility placed on the member as opposed to *making* that document available where responsibility to retrieve the document is placed on the client). [CL 11](#) notes that by providing a document, a member would directly hand a client the document, whereas making the document available would resemble a situation

where the member would upload the document and grant the client access to that uploaded document via a specific software or form of communication.

CL 11 is also concerned with the accessibility of records. They recommend the interpretation clarify the difference between making a record available to a client versus the client being able to access it since making a record available through a portal or another electronic format may not guarantee that the client will be able to retrieve the record. To demonstrate their concern, they present a scenario where certain clients may be incapable of using portals or any cloud-based or internet-based alternative to receiving their records. Under those circumstances the availability of information, and thus the interpretation's requirement, would not be satisfied if a member made the client's records available through a portal, if they were knowledgeable of the fact that the client would not be able to access it.

CL 11 suggests that for a member to be in compliance with the interpretation when making records available through a portal, they also have to make sure that the information can be accessed by the client. They do not believe a member should be expected to just upload the records through the portal and think that they have completed the request. The record request may not be completed until the member has been reassured by the client that they have retrieved the information from the portal.

The task force recommends that a new definition be added to the terminology section of the interpretation that explains that

Making records available means providing the records in any format usable and accessible, whether electronic or otherwise, regardless of the format in which they were received.

In order to provide as much flexibility as possible for practice to evolve, the task force believes that the interpretation should not specify the format that information be made available, rather, should focus on the fact that the records be in a format that is usable and accessible.

Question for the committee:

6. Does the committee agree with the task force's recommendation?

Security precautions

CL 11 is also concerned with the security of records citing the pandemic as one reason why clients are leaning toward online resources such as emails or cloud databases to deliver records. They indicate that this change in practice may increase the risk of potential hackers and unwanted individuals to steal that highly important client information. They believe it is not enough to simply make such records available to the client, but members should be required to take additional precautions (use best practices) when making such electronic records available to their clients. For example, they could use a VPN or send records to their clients through an encrypted email.

Since changing "*provide*" to "*make available*" could further intensify the risk that records could be accessed by parties other than the client, **CL 11** recommends adding to paragraph .14 (renumbered as .13 in agenda item 2B) a reference to the *Confidential Client Information Rule*

reminding members of their obligation to ensure that the documents are made available to the correct individuals.

The task force believes the definition of client combined with paragraphs .02 through .04, provide enough of a reminder as to whom the records should be made available. So instead of including a reminder to the *Confidential Client Information Rule* the task force recommends clarifying throughout the interpretation, when parties other than the client might need to be considered.

The task force also believes that eliminating references to “client” in some of the paragraphs that provide additional guidance related to how members can achieve compliance with the interpretation, will help with the readability of the interpretation. For example, the introduction sentence in new paragraph .10 clarifies that the guidance discussed in new paragraph .10 might also be applicable to a party identified in paragraph .02 (i.e., the person that gave the member the records). So instead of having to add this clarification to items a. through c. of this paragraph, the task force proposes the reference to “client” be removed from items a. through c. since the scope of the parties is already clarified in the lead in sentence.

The task force added “*individual designated or held out as the engaging entity’s representative*” to paragraphs .02 through .04 which was in paragraph .09 of the extant interpretation to clarify to members that if they provide the records to the representative then the member has met the requirements of the interpretation. This aspect of the interpretation is used frequently by the hotline staff when, for example, a taxpayer going through a divorce is looking for copies of a tax return that was already provided to the other spouse and the member wants to minimize their involvement by not providing the tax return.

Question for the committee:

7. Does the committee agree with the task force’s recommendation and revisions made throughout **agenda item 2B**?

Natural disasters

CL 5 recommends the phrase “if practicable” be added at the end of the last sentence of paragraph .08 to clarify that there could be circumstances related to natural disasters that would make complying with an additional request to make records available, impracticable. The task force believes this clarification should be made.

Question for the committee:

8. Does the committee agree “if practicable” should be added to the last sentence of paragraph .08?

Unintended recordkeeper

CL 1 suggests guidance be provided to help members understand what to do when a client fails to retrieve information from a portal or physical location in a timely manner, or at all. They suggest that one way to address this issue would be to require the member notify the client that

it will make the information available for a finite (i.e., reasonable) period of time (e.g., 45 days, which would be consistent with the timeframe imposed on members to make the requested information available). They believe this approach would help establish the CPA's compliance with the rule and notify the client that the information will not be held in this manner indefinitely. They also believe that when the requester is an attest client, incorporating a time limit for document retrieval would also reduce any risk that the CPA has become a de facto host of the client's information.

CL 8 also expressed concerns with members being relied upon as the client's recordkeeper or repository. As such, they suggest a FAQ be developed that member's consider adding safeguard language to their engagement letters to make it clear the client has the sole responsibility for maintaining their books and records.

The task force does not believe the interpretation should address the impact hosting an attest client's records has on independence. However, the task force suggests the committee discuss whether adding a cross reference to the Hosting Services interpretation would be helpful or whether it would just further confuse the two issues. A possible cross reference could read as follows:

If attest services are provided to the client or any of the parties in paragraphs .02 or .03, refer to the "Hosting Services" interpretation [1.295.143] of the "Independence Rule" [1.200.001] for guidance on how independence is impacted when hosting services are provided.

Question for the committee:

9. Does the committee believe a cross reference should be added?

Category 4: Making records available to a beneficiary

The exposure draft proposes adding member-prepared records to paragraph .03 because the committee believes that it inadvertently overlooked extending the requirement to provide member-prepared records to a beneficiary.

All commenters support the substance of this clarification. **CL 6** recommends that an example of a member-prepared record be added to the situational example already included in paragraph .03 and that the committee consider providing additional examples of "member- prepared records" in paragraph .01d other than depreciation schedules. **CL 6** thinks that ambiguity could make compliance with these standards more difficult and suggests "client-prepared schedules" or "client-submitted schedules" could use additional clarifications.

The task force does not recommend a situational example be added since the definition of member-prepared records already provides some examples.

Question for the committee:

10. Does the committee agree with the task force's recommendation?

Formulas

The exposure draft did not propose changes to paragraph .11b (renumbered as .10b in agenda item 2B) related to when a member is required to provide formulas to a client. However, [CL 5](#) raised concerns that this requirement could result in confusion and prove difficult to apply in practice. To address these concerns, they recommend

- the term *however* as used in the second sentence be deleted.
- that the committee issue FAQs to clarify that formulas should be required to be made available only when the member is engaged to prepare a formula as part of a completed work product or when the client's financial information is incomplete without them. To demonstrate their concerns, they note that, in some cases,
 - formulas prepared by the member are considered proprietary in nature.
 - exporting formulas from certain IT systems could compromise data. For example, in instances where software programs are used to perform calculations, trying to extrapolate that data to include the underlying calculations could be burdensome since formulas often are built into the system, and the client may not have access to the same system that is owned or leased by the member.

The task force recommends some edits be made to the discussion related to formulas to make it consistent with the definition of *member-prepared records* and to clarify that the only time formulas need to be made available are when the member is engaged to make the formulas available as part of a completed work product or when they are used to create a member-prepared record and the client's financial information would be incomplete if they were not made available.

Question for the committee:

11. Does the committee agree with the task force's recommendation?

Cross reference

[CL 8](#) does not believe it is clear why paragraph .08a references paragraphs .03–.04 as opposed to paragraphs .06–.07. As such, **CL 8** recommends the committee confirm that this reference is correct or consider removing the reference.

The task force agrees that the cross reference seems off and so eliminated the reference to paragraphs .03–.04 and instead added a reference to paragraphs .02–.07 to the lead in of paragraph .08.

Question for the committee:

12. Does the committee agree with the task force's recommendation?

Action needed

In addition to feedback as noted above, the committee is asked to adopt the proposal as revised and for it to be effective 60 days after publication in the *Journal of Accountancy*.

Communication plan

Ms. Mullins will work with task force staff to develop an appropriate communications plan.

Materials presented

- **Agenda item 2B:** Revised interpretation with the task force's recommendations (Clean)
- **Agenda item 2C:** Revised interpretation with the task force's recommendations (Red line)
- **Agenda item 2D:** Comment summary
- **Agenda item 2E:** Exposed interpretation

Text of proposed revised interpretation “Records Requests”

(Clean version with task force’s proposed revisions)

1.400.200 Records Requests

Terminology

- .01 The following terms are defined here solely for use with this interpretation:
- a. A client includes current and former clients.
 - b. A member means the member or the member’s firm.
 - c. Client-provided records are accounting or other records, including hardcopy and electronic reproductions of such records, belonging to the client that were provided to the member by, or on behalf of, the client.
 - d. Member-prepared records are accounting or other records that the member was not specifically engaged to prepare and that are not in the client’s books and records or are otherwise not available to the client, thus rendering the client’s financial information incomplete. Examples include adjusting, closing, combining, or consolidating journal entries (including computations supporting such entries) and supporting schedules and documents that the member proposed or prepared as part of an engagement (for example, an audit).
 - e. Member’s work products are deliverables set forth in the terms of the engagement, such as tax returns.
 - f. Working papers are all other items prepared solely for purposes of the engagement and include items prepared by the
 - i. member, such as audit programs, analytical review schedules, and statistical sampling results and analyses.
 - ii. client at the request of the member and reflecting testing or other work done by the member.
 - g. Making records available means providing the records in any format usable and accessible, whether electronic or otherwise, regardless of the format in which they were received.
 - h. Beneficiary is a person or entity other than the engaging entity for whom the member performs professional services.

Applicability

- .02 When a person or entity engages a member to perform professional services (engaging entity) with respect to or for the benefit of another person or entity, the member will be considered in compliance with the requirements of this interpretation related to client-provided records if the member makes these records available to the person or entity that provided the records to the member, or individual designated or held out as the entity’s or individual’s representative.
- .03 The member will be considered in compliance with the requirements of this interpretation related to member-prepared records and a member’s work products if the member makes such records and work products available to the beneficiary, or individual designated or held out as the beneficiary’s representative . For example, if a company engages a member to perform personal tax services for the benefit of its executives, the member would be in compliance with the interpretation if the member made the tax

returns available to the executives (see the “[Confidential Client Information Rule](#)” [1.700.001]).

- .04 When an engaging entity engages a [member](#) to perform [professional services](#) with respect to another entity that is not the beneficiary of the professional services, absent an agreement stating otherwise, the member would be in compliance with the requirements of this interpretation related to a member’s work products if the member made such work products available to the engaging entity, or individual designated or held out as the engaging entity’s representative. For example, if a company engaged a member to value the assets of another company for a possible acquisition, absent an agreement stating otherwise, the member would be in compliance with this interpretation if the member made the valuation report available only to the engaging entity.

Interpretation

- .05 Members must comply with the rules and regulations of authoritative regulatory bodies, such as the member’s state board(s) of accountancy, when the member performs services for a client and is subject to the rules and regulations of such regulatory bodies. For example, a member’s state board(s) of accountancy may not permit a member to withhold certain records, even though fees are due to the member for the work performed. Failure to comply with the more restrictive provisions of the applicable regulatory body’s rules and regulations concerning the return of certain records would constitute a violation of this interpretation.
- .06 When an initial request for client-provided records is received, the member should make those records in the member’s custody or control available to the person or entity that provided the records to the member. The member may charge a reasonable fee for the time and expense incurred to retrieve, copy, and ship such records; however, the client-provided records may not be withheld due to non-payment of such fees.
- .07 A member and the client or beneficiary may agree to terms other than those stated in this paragraph. When this occurs, the member should respond in accordance with such agreement. Otherwise, a member should respond to a request for member-prepared records or a member’s work products that are in the member’s custody or control and that have not previously been provided to the client or beneficiary as follows:
- a. The member should make available member-prepared records relating to a completed and issued work product; however, such records may be withheld if fees are due to the member for that specific work product.
 - b. Member’s work products should be made available, however, such work products may be withheld if
 - i. fees are due to the member for the specific work product;
 - ii. the work product is incomplete;
 - iii. for purposes of complying with professional standards (for example, withholding an audit report due to outstanding audit issues); or
 - iv. threatened or outstanding litigation exists concerning the engagement or member’s work.
- .08 Once a member has complied with paragraphs .02 through .07, he or she is under no ethical obligation to
- a. comply with any subsequent requests to again make records or copies of records available. However, if after complying with a request, a loss of records due to a natural disaster or an act of war is experienced, the member should comply with an additional request to make such records available if practicable.

- b. retain records for periods that exceed applicable professional standards, state and federal statutes and regulations, and contractual agreements relating to the service performed. [Prior reference: paragraph .02 of ET section 501]
 - c. make the records available to any other associated parties such as the general partner, majority shareholder, or spouse. [Prior reference: paragraphs .377–.378 of ET section 591]
- .09 Working papers are the member's property, and the member is not required to make such information available. However, state and federal statutes and regulations and contractual agreements may impose additional requirements on the member.
- .10 In fulfilling a request for the member's copy of client-provided records, that was previously provided to the client or party identified in paragraph .02, member-prepared records, or a member's work products, the member may
 - a. charge a reasonable fee for the time and expense incurred to retrieve, copy and ship such records and require payment before the member makes the records available.
 - b. make the requested records available in any format usable and accessible. However, the member is not required to convert records that are not in electronic format to electronic format. If the records are requested in a specific format and the records are available in such format within the member's custody and control, the request should be honored. In addition, the member is not required to make formulas available, unless the member was engaged to make such formulas available as part of a completed work product or the formulas were used to create member-prepared records without which the client's financial information would be incomplete.
 - c. make and retain copies of any records that the member already made available.
- .11 A member who is required to make records available should comply with the request as soon as practicable but, absent extenuating circumstances, no later than 45 days after the request is made.
- .12 The fact that the statutes of the state in which the member practices grant the member a lien on certain records in his or her custody or control does not relieve the member of his or her obligation to comply with this interpretation. [Prior reference: paragraph .02 of ET section 501]
- .13 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 “Records Requests”

Additions to the extant interpretation that were included in the exposure draft appear in ***boldface italic*** and deletions in ~~strike through~~.

Additions made to the exposure draft version appear in ***purple boldface italic*** and deletions are in ~~double strike through~~. Both are also highlighted in yellow.

1.400.200 Records Requests

Terminology

- .01 The following terms are defined here solely for use with this interpretation:
- a. A client includes current and former clients.
 - b. A member means the member or the member's firm.
 - c. Client-provided records are accounting or other records, including hardcopy and electronic reproductions of such records, belonging to the client that were provided to the member by, or on behalf of, the client.
 - d. Member-prepared records are accounting or other records that the member was not specifically engaged to prepare and that are not in the client's books and records or are otherwise not available to the client, thus rendering the client's financial information incomplete. Examples include adjusting, closing, combining, or consolidating journal entries (including computations supporting such entries) and supporting schedules and documents that the member proposed or prepared as part of an engagement (for example, an audit).
 - e. Member's work products are deliverables set forth in the terms of the engagement, such as tax returns.
 - f. Working papers are all other items prepared solely for purposes of the engagement and include items prepared by the
 - i. member, such as audit programs, analytical review schedules, and statistical sampling results and analyses.
 - ii. client at the request of the member and reflecting testing or other work done by the member.
 - g. ***Making records available means providing the records in any format usable and accessible, whether electronic or otherwise, regardless of the format in which they were received.***
 - h. ***Beneficiary is a person or entity other than the engaging entity for whom the member performs professional services.***

Applicability

- .02 When a person or entity engages a member to perform professional services (engaging entity) with respect to or for the benefit of another person or entity, the member will be considered in compliance with the requirements of this interpretation related to client-provided records if the member ~~returns~~ ***makes*** these records ***available*** to the person or entity that ~~gave~~ ***provided*** the records to the member, ***or individual designated or held out as the entity's or individual's representative.***
- .03 ~~When an engaging entity engages a member to perform professional services for the benefit of another person or entity (beneficiary), t~~ ***The member*** will be considered in

compliance with the requirements of this interpretation related to **member-prepared records and a member's work products** if the *member* provides **makes** such work products **records and work products available** to the beneficiary, **or individual designated or held out as the beneficiary's representative**. For example, if a company engages a *member* to perform personal tax services for the benefit of its executives, the *member* would be in compliance with the interpretation if the *member* provided **made** the tax returns **available** to the executives (see the "[Confidential Client Information Rule](#)" [1.700.001]).

- .04 When an engaging entity engages a **member** to perform **professional services** with respect to another entity that is not the beneficiary of the *professional services*, absent an agreement stating otherwise, the *member* would be in compliance with the requirements of this interpretation related to a *member's work products* if the *member* provided **made** such work products **available** to the engaging entity, **or individual designated or held out as the engaging entity's representative**. For example, if a company engaged a *member* to value the assets of another company for a possible acquisition, absent an agreement stating otherwise, the *member* would be in compliance with this interpretation if the *member* provided **made** the valuation report **available** only to the engaging entity.

Interpretation

- .05 Members must comply with the rules and regulations of authoritative regulatory bodies, such as the member's state board(s) of accountancy, when the member performs services for a client and is subject to the rules and regulations of such regulatory bodies. For example, a member's state board(s) of accountancy may not permit a member to withhold certain records, even though fees are due to the member for the work performed. Failure to comply with the more restrictive provisions of the applicable regulatory body's rules and regulations concerning the return of certain records would constitute a violation of this interpretation.
- .06 The member should return client-provided records in the member's custody or control to the client at the client's request. **When a client makes an initial request for client-provided records is received, the member should return-make those records in the member's custody or control available to the person or entity that provided the records to the member to the client. Such client-provided records cannot be withheld regardless of nonpayment of fees. Further, although the The member may charge the client a reasonable fee for the time and expense incurred to retrieve, copy, and ship such records,; however, the client-provided records may not be withheld or delayed due to non-payment of such fees.**
- .07 Unless a **A** member and the client **or beneficiary may agree to terms other than those stated in this paragraph. When this occurs, the member should respond in accordance with such agreement. Otherwise, have agreed to the contrary, a member should respond to when a client makes** a request for member-prepared records or a member's work products that are in the member's custody or control and that have not previously been provided to the client, **or beneficiary** the member should respond to the client's request as follows:
- The member should provide **make available to the client** member-prepared records relating to a completed and issued work product to the client, **except that however,** such records may be withheld if fees are due to the member for that specific work product.
 - Member's work products should be provided **made available to the client, except that however,** such work products may be withheld **if**

- i. ~~if~~ fees are due to the member for the specific work product;
- ii. ~~if~~ the work product is incomplete;
- iii. ~~if~~ for purposes of complying with professional standards (for example, withholding an audit report due to outstanding audit issues); or
- iv. ~~if~~ threatened or outstanding litigation exists concerning the engagement or member's work.

.08 Once a member has complied with **paragraphs .02 through .07** these requirements, he or she is under no ethical obligation to

- a. comply with any subsequent requests to again provide ~~provide~~ **make** records or copies of records ~~described in paragraphs .03—.04~~ **available to the client**. However, if ~~after subsequent to~~ complying with a request, a client experiences a loss of records due to a natural disaster or an act of war **is experienced**, the member should comply with an additional request to ~~provide (or make available)~~ such records **available if practicable**.
- b. retain records for periods that exceed applicable professional standards, state and federal statutes and regulations, and contractual agreements relating to the service performed. [Prior reference: paragraph .02 of ET section 501]

c. .09 ~~A member who has provided (or made available)~~ **make the** records **available** to **any other associated parties** an individual designated or hold out as the client's representative, such as the general partner, majority shareholder, or spouse, ~~is not obligated to provide or make such records available to other individuals associated with the client.~~ [Prior reference: paragraphs .377—.378 of ET section 591]

.09 .10 Working papers are the member's property, and the member is not required to provide ~~provide~~ **make** such information **available** to the client. However, state and federal statutes and regulations and contractual agreements may impose additional requirements on the member.

.10 .11 In fulfilling a request for ~~client-provided records member-prepared records, or a member's work products,~~ **or the member's copy of client-provided records that was previously provided to the client or a party identified in paragraph .02, member-prepared records, or a member's work products (as referenced in paragraph .08),** the member may

- a. charge ~~the client~~ a reasonable fee for the time and expense incurred to retrieve and, copy **and ship** such records and require **payment** that the client pay the fee before the member provides ~~makes~~ the records **available** to the client.
- b. provide ~~make~~ the requested records **available** in any format usable **and accessible** by the client. However, the member is not required to convert records that are not in electronic format to electronic format. If the ~~client requests~~ records **are requested** in a specific format and the records are available in such format within the member's custody and control, the ~~client's~~ request should be honored. In addition, the member is not required to provide ~~make formulas available to the client~~ with formulas, unless ~~the formulas support the client's underlying accounting or other records or~~ the member was engaged to provide ~~make~~ such formulas **available** as part of a completed work product **or the formulas were used to create member-prepared records without which the client's financial information would be incomplete**.
- c. make and retain copies of any records that the member **already made available** ~~returned or provided to the client~~.

.11 .12 A member who is required to return or provide ~~make~~ records **available** to the client should comply with the ~~client's~~ request as soon as practicable but, absent extenuating circumstances, no later than 45 days after the request is made.

.12 ~~.13~~ The fact that the statutes of the state in which the member practices grant the member a lien on certain records in his or her custody or control does not relieve the member of his or her obligation to comply with this interpretation. [Prior reference: paragraph .02 of ET section 501]

.13 ~~.14~~ 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.



Comment summary

Proposed revised interpretation “Records Requests”

Comment letter	Feedback highlights	Task force response
<p>CL 1</p> <p><u>NASBA</u></p> <p><i>Support with Recommendations</i></p>	<p><i>Category 1: Client-provided records previously made available to a client</i></p> <p>CL 1 believes it would be clearer that the requirement only applies to a second request for client-provided records if the order of paragraph .11 was revised to read:</p> <p style="padding-left: 40px;">“In fulfilling a request for the member’s copy of client-provided records previously provided to the client (as referenced in paragraph .08), member-prepared records, or member’s work products, the member may...”</p> <p><i>Category 3: Making records available to a client</i></p> <p><i>Unintended recordkeeper</i></p> <p>CL 1 suggests guidance be provided to help members understand what to do when a client fails to retrieve information from a portal or physical location in a timely manner, or at all. The commenter suggests that one way to address this issue would be to require the member notify the client that it will make the information available for a finite (i.e., reasonable) period of time (e.g., 45 days, which would be consistent with the timeframe imposed on members to</p>	<p>The task force incorporated the substance of this recommendation into the revised interpretation found in Agenda Item 2B.</p> <p>The task force does not believe the interpretation should address the impact hosting an attest client’s records has on independence. However, the task force suggests PEEC discuss whether adding a cross reference to the Hosting</p>

Comment letter	Feedback highlights	Task force response
	<p>make the requested information available). This commenter believes this approach would help establish the CPA's compliance with the rule and notify the client that the information will not be held in this manner indefinitely. This commenter also believes that when the requester is an attest client, incorporating a time limit for document retrieval would also reduce any risk that the CPA has become a de facto host of the client's information.</p>	<p>Services interpretation would be helpful or whether it would just further confuse the two issues. A possible cross reference could read:</p> <p><i>If attest services are provided to the client or any of the parties in paragraphs .02 or .03, refer to the "Hosting Services" interpretation [1.295.143] of the "Independence Rule" [1.200.001] for guidance on how independence is impacted when hosting services are provided.</i></p>
<p>CL 2 <u>FICPA Accounting Principles and Auditing Standards Committee</u></p> <p>Support with Recommendations</p>	<p><i>Category 3: Making records available to a client</i></p> <p>Add examples and ensure accessibility</p> <p>CL 2 is concerned that the term "make available" could be broadly interpreted to include being available in the member's place of work that could be in a different city or state and so including examples would help avoid such unintended consequences.</p>	<p>The task force recommends that a new definition be added to the Terminology section of the interpretation that explains that</p> <p><i>Making records available means providing the records in any format usable and accessible, whether electronic or otherwise, regardless of the</i></p>

Comment letter	Feedback highlights	Task force response
		<p><i>format in which they were received.</i></p> <p>In order to provide as much flexibility as possible for practice to evolve, the task force believes that the interpretation should not specify the format that information be made available, rather, should focus on the fact that the records be in a format that is usable and accessible.</p>
<p>CL 3 <u>NYSSCPA Professional Ethics Committee</u></p> <p>Support with Recommendations</p>	<p><i>Category 1: Client-provided records previously made available to a client</i></p> <p>CL 3 believes that since paragraph .08 does not discuss client-provided records, the reference to paragraph .08 would be better placed if it came immediately after “a member’s work products.” Staff believes the refence to paragraph .08 should remain connected with the term “client-provided records” because paragraph .08 is referring to the requirements stipulated in paragraphs .05, .06 and .07. Since paragraph .05 implicitly and .06 explicitly addresses client-provided records, it seems appropriate. Another option would be to replace the reference to paragraph .08 with references to paragraphs .05 and .06.</p> <p><i>Category 3: Making records available to a client</i></p>	<p>The task force recommends eliminating the reference to paragraph .08 because the phrase “that was previously provided to the client” was added and because the applicable terms in paragraph .11 (renumbered as .10 in Agenda Item 2B) were adequately defined in the terminology section.</p> <p>The task force recommends that a new definition be added to the Terminology section of</p>

Comment letter	Feedback highlights	Task force response
	<p>Add examples and ensure accessibility</p> <p>CL 3 noted that these revisions will simplify compliance with such requests and recommends the examples included in the explanation to the exposure draft (i.e., picked up, portal) be added to the interpretation.</p>	<p>the interpretation that explains that</p> <p><i>Making records available means providing the records in any format usable and accessible, whether electronic or otherwise, regardless of the format in which they were received.</i></p> <p>In order to provide as much flexibility as possible for practice to evolve, the task force believes that the interpretation should not specify the format that information be made available, rather, should focus on the fact that the records be in a format that is usable and accessible.</p>
<p>CL 4 <u>NC State Board of CPA Examiners</u></p>		

Comment letter	Feedback highlights	Task force response
<i>Support</i>		
<p>CL 5 <u>AICPA PCPS Technical Issues Committee</u></p> <p><i>Support with Recommendations</i></p>	<p>Category 1: Client-provided records previously made available to a client</p> <p>CL 5 recommends that the request for client-provided records covered by paragraph .06 be clarified as "initial" client-provided records to help reduce misapplication or oversight.</p> <p>Category 3: Making records available to a client</p> <p>Add examples and ensure accessibility</p> <p>CL 5 is concerned that without examples the term "make available" could result in confusion in practice and recommends some FAQs be issued that would include examples of how members can make records available in an electronic or paper environment.</p>	<p>The task force believes that paragraph .06 is intended to apply to the initial request for client-provided records to be returned and proposes a revision to clarify this in Agenda Item 2B. The task force noted that the definition of client-provided records includes hardcopies and electronic reproductions and so does not believe further clarification is necessary.</p> <p>The task force recommends that a new definition be added to the Terminology section of the interpretation that explains that</p> <p><i>Making records available means providing the records in any format usable and accessible, whether electronic or otherwise, regardless of the format in which they were received.</i></p>

Comment letter	Feedback highlights	Task force response
	<p>Natural disasters</p> <p>CL 5 recommends the phrase “if practicable” be added at the end of the last sentence of paragraph .08 to clarify that there could be circumstances related to natural disasters that would make</p>	<p>In order to provide as much flexibility as possible for practice to evolve, the task force believes that the interpretation should not specify the format that information be made available, rather, should focus on the fact that the records be in a format that is usable and accessible.</p> <p>The task force believes this clarification should be made.</p> <p>The task force is recommending some edits be made to the discussion related to formulas to make it consistent with the definition of “member prepared records” and to clarify that the only time formulas need to be made available are when the</p>

Comment letter	Feedback highlights	Task force response
	<p>complying with an additional request to make records available, impracticable. Staff would support this addition.</p> <p>Formulas</p> <p>The exposure draft did not propose changes to paragraph .11b related to when a member is required to provide formulas to a client. However, CL 5 raised concerns that this requirement could result in confusion and prove difficult to apply in practice. To address these concerns, they recommend</p> <ul style="list-style-type: none"> • The term “however” as used in the second sentence be deleted; and • That PEEC issue FAQs to clarify that formulas should only be required to be made available when the member is engaged to prepare a formula as part of a completed work product or when the client’s financial information is incomplete without them. In an effort to demonstrate their concerns, they note that, in some cases, <ul style="list-style-type: none"> ○ Formulas prepared by the member are considered proprietary in nature. ○ Exporting formulas from certain IT systems could compromise data. For example, in instances where software programs are used to perform calculations, trying to extrapolate that data to include the underlying calculations could be burdensome since formulas often are built into the system, and the client may not have access to the same system that is owned or leased by the member. 	<p>member is engaged to make the formulas available as part of a completed work product or when they are used to create a member-prepared record and the client’s financial information would be incomplete if they were not made available.</p>
CL 6 <u>TSCPA Technical</u>	<i>Category 4: Making records available to a beneficiary</i>	The task force does not recommend a situational

Comment letter	Feedback highlights	Task force response
<p><u>Standards Committee</u></p> <p>Support with Recommendations</p>	<p>CL 6 recommends that an example of a member-prepared record be added to the situational example already included in paragraph .03 and consider providing additional examples of “member- prepared records” in paragraph .01d other than depreciation schedules. CL 6 thinks that ambiguity could make compliance with these standards more difficult and suggests “client-prepared schedules” or “client-submitted schedules” could use additional clarifications.</p>	<p>example be added since the definition of member-prepared records already provides some examples.</p>
<p>CL 7 <u>ICPAS Ethics Committee</u></p> <p>Support with Recommendations</p>	<p>Category 1: Client-provided records previously made available to a client</p> <p>CL 7 recommends that the phrase “or make available” be added to the first sentence of paragraph .06 to conform with PEEC’s proposal that making records available would satisfy the requirement to return records. Staff believes this was an oversight and recommends the sentence be revised to read:</p> <p style="padding-left: 40px;">“When a client makes a request for client-provided records, the member should return make those records in the member’s custody or control available to the client.</p> <p>CL 7 also recommends “or delayed” be removed from the last sentence of paragraph .06 because there could be delays which are not intended to withhold client records. Staff does not recall why the phrase was added so believes it would be helpful for the task force to discuss whether it is in fact needed and if so, if some clarification could be added to ensure the task force’s goal is achieved.</p>	<p>The task force believes it was an oversight not to extend this to client-provided records that had not previously been made available and proposes revisions in Agenda Item 2B to address this oversight. However, since the explanation that accompanied the exposure draft indicated this change was with respect to member-prepared records, work products and member’s copy of client-provided records previously provided to the client, the task force seeks PEEC’s input regarding whether it had intended to scope out client-provided records that had not previously been made available.</p>

Comment letter	Feedback highlights	Task force response
		The task force recommends that “or delayed” be removed since paragraph .12 (renumbered to .11 in Agenda Item 2B) already provides guidance related to the timeliness of complying with requests.
CL 8 <u>GT LLP</u> Support with Recommendations	<p><i>Category 1: Client-provided records previously made available to a client</i></p> <p>Clarify the kind of client-provided records</p> <p>CL 8 suggests the intent of this paragraph should be to cover “original” client-provided records. CL 8 believes PEEC should consider modernizing the definition of client-provided records⁴ to address today’s professional work environment by considering how common it is for clients to share original documents as opposed to copies of these documents which are uploaded electronically. This commenter suggests PEEC consider developing a FAQ to differentiate between <i>original</i> financial records provided to the member in connection with a tax compliance engagement from electronic <i>copies</i> of a large volume of corporate records uploaded to an electronic portal for an advisory engagement. CL 8 further</p>	<p>The task force believes that paragraph .06 is intended to apply to the initial request for client-provided records to be returned and proposes a revision to clarify this in Agenda Item 2B. The task force noted that the definition of client-provided records includes hardcopies and electronic reproductions and so does not believe further clarification is necessary.</p>

⁴ Client-provided records are accounting or other records, including hardcopy and electronic reproductions of such records, belonging to the client that were provided to the member by, or on behalf of, the client.

Comment letter	Feedback highlights	Task force response
	<p>notes that without this clarification, members may be put in the position of acting as the uncompensated, de facto records managers for clients that do a poor job of their own records management.</p> <p>Category 3: Making records available to a client</p> <p>Unintended recordkeeper</p> <p>CL 8 also expressed concerns with members being relied upon as the client's recordkeeper or repository. As such, the commenter suggests a FAQ be developed that member's consider adding safeguard language to their engagement letters to make it clear the client has the sole responsibility for maintaining their books and records.</p>	<p>The task force does not believe the interpretation should address the impact hosting an attest client's records has on independence. However, the task force suggests PEEC discuss whether adding a cross reference to the Hosting Services interpretation would be helpful or whether it would just further confuse the two issues. A possible cross reference could read:</p> <p><i>If attest services are provided to the client or any of the parties in paragraphs .02 or .03, refer to the "Hosting Services" interpretation [1.295.143] of the "Independence Rule" [1.200.001] for guidance on how independence is impacted when hosting services are provided.</i></p>

Comment letter	Feedback highlights	Task force response
	<p data-bbox="520 688 730 716">Cross reference</p> <p data-bbox="520 753 1394 883">CL 8 does not believe it is clear why paragraph .08a references paragraphs .03-.04 as opposed to paragraphs .06-.07. As such, CL 8 recommends PEEC confirm that this reference is correct or consider removing the reference.</p>	<p data-bbox="1425 363 1824 623">The task force agrees that the cross reference seems off and so eliminated the reference to paragraphs .03-.04 and instead added a reference to paragraphs .02 through .07 to the lead in of paragraph .08.</p>
<p data-bbox="226 989 485 1118">CL 9 <u>Montana Board of Public Accountants</u></p> <p data-bbox="302 1218 417 1245">Support</p>		

Comment letter	Feedback highlights	Task force response
<p>CL 10 <u>AICPA TPPC</u></p> <p>Support with Recommendations</p>	<p><i>Category 1: Client-provided records previously made available to a client</i></p> <p>Clarify the kind of client-provided records</p> <p>CL 10 recommends the interpretation be clarified that the member only has to provide client-provided records to the extent that the client does not already have the original records in their possession. This commenter believes that without the clarification, the requirement would seem to be at odds with the hosting provision where a CPA cannot be the sole repository of a client's records and would be at odds with the relief in paragraph .08a.</p> <p><i>Category 3: Making records available to the client</i></p> <p>Add examples and ensure accessibility</p> <p>CL 10 recommends clarification on what the term "make available" means and provides examples of two situations to demonstrate where a diversity of practice could evolve. One situation would be where records are left for the client to come and pick up and the other would involve the member having to spend money to mail the records even when the client may not reimburse the member for the costs. CL 10 also questions why the references in paragraphs .08a</p>	<p>The task force believes that paragraph .06 is intended to apply to the initial request for client-provided records to be returned and proposes a revision to clarify this in Agenda Item 2B. The task force noted that the definition of client-provided records includes hardcopies and electronic reproductions and so does not believe further clarification is necessary.</p> <p>The task force recommends that a new definition be added to the Terminology section of the interpretation that explains that</p> <p><i>Making records available means providing the records in any format usable and accessible, whether electronic or otherwise, regardless of the format in which they were received.</i></p>

Comment letter	Feedback highlights	Task force response
	<p>and .09 to 'make available' is in parentheses where in all other places it has replaced "provided."</p>	<p>In order to provide as much flexibility as possible for practice to evolve, the task force believes that the interpretation should not specify the format that information be made available, rather, should focus on the fact that the records be in a format that is usable and accessible.</p>
<p>CL 11 <u>Hunter College Advanced Auditing Class</u></p> <p>Support with Recommendations</p>	<p>Category 2: Costs incurred by member to make the records available</p> <p>CL 11 does not believe the guidance related to shipping fees is clear. They believe the exposure draft should clarify whether shipping fees will be included with time and expense fees so that everything falls under one single cost or if there are circumstances in which the client will only be charged fees for time and expense but not shipping (such as when a client picks up the records in person or when the records are sent electronically).</p> <p>CL 11 also believes that if a member fails to update a client's address and mails the records to a previous address instead of the current address, that the client should not have to pay the shipping fees for the member's mistake.</p>	<p>The task force believes the proposal is sufficiently clear that the fees charged should be for only those expenses incurred. The task force does not recommend the interpretation address the shipping fees to prior addresses or whether the member should be required to reimburse all fees if the 45-day requirement is not met.</p>

Comment letter	Feedback highlights	Task force response
	<p>CL 11 further believes that while clients should have to pay for the time, expense and shipment of the records requested, paragraph .12 should elaborate what would happen if after the 45 days the client still hasn't received the records requested since the request has not been fulfilled and provided the following suggested revision in yellow highlight:</p> <p>.12 A member who is required to return or provide make records available to the client should comply with the client's request as soon as practicable but, absent extenuating circumstances, no later than 45 days after the request is made. After 45 days of the request made, if the client has not received records, the client should be reimbursed for all cost/ fees paid since the member did not comply with the client's request.</p> <p><i>Category 3: Making records available to the client</i></p> <p>Add examples and ensure accessibility</p> <p>CL 11 suggests that adding definitions and examples for both terms under paragraph .01 will help clarify and distinguish the minor intricacies between both types of deliveries (i.e., providing a document assures the delivery of such a document with responsibility placed on the member as opposed to <i>making</i> that document available where responsibility to retrieve the document is placed on the client). CL 11 notes that by providing a document a member would directly hand a client the document, whereas making the document available would resemble a situation where the member would upload the document and grant the client access</p>	<p>The task force recommends that a new definition be added to the Terminology section of the interpretation that explains that</p> <p><i>Making records available means providing the records in any format usable and accessible,</i></p>

Comment letter	Feedback highlights	Task force response
	<p>to that uploaded document via a specific software or form of communication.</p> <p>CL 11 is also concerned with the accessibility of records. They recommend the interpretation clarify the difference between making a record available to a client versus the client being able to access it since making a record available through a portal or another electronic format may not guarantee that the client will be able to retrieve the record. To demonstrate their concern, they present a scenario where certain clients may be incapable of using portals or any cloud based or internet-based alternative to receiving their records. Under those circumstances the availability of information, and thus the interpretation's requirement, would not be satisfied if a member made the client's records available through a portal, if they were knowledgeable of the fact that the client would not be able to access it.</p> <p>CL 11 suggests that for a member to be in compliance with the interpretation when making records available through a portal, they also have to make sure that the information can be accessed by the client. They do not believe a member should expect to just upload the records through the portal and think that they have completed the request. The record request may not be completed until the member has been reassured by the client that they have retrieved the information from the portal.</p> <p>The commenter provided the following suggested revisions in yellow highlight to help address this concern:</p>	<p><i>whether electronic or otherwise, regardless of the format in which they were received.</i></p> <p>In order to provide as much flexibility as possible for practice to evolve, the task force believes that the interpretation should not specify the format that information be made available, rather, should focus on the fact that the records be in a format that is usable and accessible.</p>

Comment letter	Feedback highlights	Task force response
	<p>.08 Once a member has complied with these requirements, he or she is under no ethical obligation to</p> <ul style="list-style-type: none"> a. comply with any subsequent requests to again provide make records or copies of records described in paragraphs .03–.04 available to the client. However, if subsequent to complying with a request, a client experiences a loss of records due to a natural disaster or an act of war, or a client is unable to access the records in the format provided by the member (electronically, through portals, etc.) the member should comply with an additional request to provide (or make available) such records. <p>.11 In fulfilling a request for client-provided records member-prepared records, or a member’s work products, or the member’s copy of client-provided records previously provided to the client (as referenced in paragraph .08), the member may</p> <ul style="list-style-type: none"> a. ... b. provide make the requested records available in any format usable and accessible by the client. However, the member is not required to convert records that are not in electronic format to electronic format. If the client requests records in a specific format and the records are available in such format within the member’s custody and control, the client’s request should be honored. In addition, the member is not required to provide make formulas available to 	

Comment letter	Feedback highlights	Task force response
	<p>the client with formulas, unless the formulas support the client's underlying accounting or other records or the member was engaged to provide make such formulas available as part of a completed work product.</p> <p>Security precautions</p> <p>CL 11 is also concerned with the security of records citing the pandemic as one reason why clients are leaning towards online resources such as emails or cloud databases to deliver records. This commenter indicates this change in practice, may increase the risk of potential hackers and unwanted individuals to steal that highly important client information. The commenter believes it is not enough to simply make such records available to the client, but members should be required to take additional precautions (use best practices) when making such electronic records available to their clients. For example, using a VPN or sending records to their clients through an encrypted email.</p> <p>Since changing “<i>provide</i>” to “<i>make available</i>” could further intensify the risk that records could be accessed by parties other than the client, CL 11 recommends adding to paragraph .14 a reference to the Confidential Client Information Rule reminding members of their obligation to ensure that the documents are made available to the correct individuals.</p>	<p>The task force believes the definition of client combined with paragraphs .02 through .04, provide enough of a reminder to whom the records should be made available. So instead of including a reminder to the <i>Confidential Client Information Rule</i> the task force recommends clarifying throughout the interpretation,</p>

Comment letter	Feedback highlights	Task force response
		<p>when parties other than the client might need to be considered.</p> <p>The task force also believes that eliminating references to “client” in some of the paragraphs that provide additional guidance related to how members can achieve compliance with the interpretation, will help with the readability of the interpretation. For example, the introduction sentence in new paragraph .10 clarifies that the guidance discussed in new paragraph .10 might also be applicable to a party identified in paragraph .02 (i.e., the person that gave the member the records). So instead of having to add this clarification to items a. through c. of this paragraph, the task force proposes the reference to “client” be removed from items a. through c. since the scope of parties is already clarified in the lead in sentence.</p>

Exposure Draft
Text of proposed revised interpretation “Records Requests”
(Additions appear in ***boldface italic*** and deletions in ~~strikethrough~~.)

1.400.200 Records Requests

Terminology

- .01 The following terms are defined here solely for use with this interpretation:
- a. A client includes current and former clients.
 - b. A member means the member or the *member's firm*.
 - c. Client-provided records are accounting or other records, including hardcopy and electronic reproductions of such records, belonging to the client that were provided to the member by, or on behalf of, the client.
 - d. Member-prepared records are accounting or other records that the member was not specifically engaged to prepare and that are not in the client's books and records or are otherwise not available to the client, thus rendering the client's financial information incomplete. Examples include adjusting, closing, combining, or consolidating journal entries (including computations supporting such entries) and supporting schedules and documents that the member proposed or prepared as part of an engagement (for example, an audit).
 - e. Member's work products are deliverables set forth in the terms of the engagement, such as tax returns.
 - f. Working papers are all other items prepared solely for purposes of the engagement and include items prepared by the
 - i. member, such as audit programs, analytical review schedules, and statistical sampling results and analyses.
 - ii. client at the request of the member and reflecting testing or other work done by the member.

Applicability

- .02 When a person or entity engages a member to perform professional services (engaging entity) with respect to or for the benefit of another person or entity, the *member* will be considered in compliance with the requirements of this interpretation related to client-provided records if the *member* returns these records to the person or entity that gave the records to the member.
- .03 When an engaging entity engages a member to perform professional services for the benefit of another person or entity (beneficiary), the *member* will be considered in compliance with the requirements of this interpretation related to ***member-prepared records and a member's work products*** if the *member* ~~provides~~ ***makes*** such ~~work products~~ ***records and work products available*** to the beneficiary. For example, if a company engages a *member* to perform personal tax services for the benefit of its executives, the *member* would be in compliance with the interpretation if the *member* ~~provided~~ ***made*** the tax returns ***available*** to the executives (see the [“Confidential Client Information Rule”](#) [1.700.001]).
- .04 When an engaging entity engages a member to perform professional services with respect to another entity that is not the beneficiary of the *professional services*, absent an agreement stating otherwise, the *member* would be in compliance with the requirements of this interpretation related to a *member's* work products if the *member* ~~provided~~ ***made*** such

work products **available** to the engaging entity. For example, if a company engaged a *member* to value the assets of another company for a possible acquisition, absent an agreement stating otherwise, the *member* would be in compliance with this interpretation if the *member* ~~provided~~ **made** the valuation report **available** only to the engaging entity.

Interpretation

- .05 Members must comply with the rules and regulations of authoritative regulatory bodies, such as the member's state board(s) of accountancy, when the member performs services for a client and is subject to the rules and regulations of such regulatory bodies. For example, a member's state board(s) of accountancy may not permit a member to withhold certain records, even though fees are due to the member for the work performed. Failure to comply with the more restrictive provisions of the applicable regulatory body's rules and regulations concerning the return of certain records would constitute a violation of this interpretation.
- .06 ~~The member should return client-provided records in the member's custody or control to the client at the client's request.~~ ***When a client makes a request for client-provided records, the member should return those records in the member's custody or control to the client. Such client-provided records cannot be withheld regardless of nonpayment of fees. Further, although the member may charge the client a reasonable fee for the time and expense incurred to retrieve, copy, and ship such records, the client-provided records may not be withheld or delayed due to non-payment of such fees.***
- .07 Unless a member and the client have agreed to the contrary, when a client makes a request for member-prepared records or a member's work products that are in the member's custody or control and that have not previously been provided to the client, the member should respond to the client's request as follows:
 - a. The member should ~~provide~~ **make available to the client** member-prepared records relating to a completed and issued work product ~~to the client~~, except that such records may be withheld if fees are due to the member for that specific work product.
 - b. Member's work products should be ~~provided~~ **made available** to the client, except that such work products may be withheld
 - i. if fees are due to the member for the specific work product;
 - ii. if the work product is incomplete;
 - iii. if for purposes of complying with professional standards (for example, withholding an audit report due to outstanding audit issues); or
 - iv. if threatened or outstanding litigation exists concerning the engagement or member's work.
- .08 Once a member has complied with these requirements, he or she is under no ethical obligation to
 - a. comply with any subsequent requests to again ~~provide~~ **make** records or copies of records described in [paragraphs .03–.04](#) **available to the client**. However, if subsequent to complying with a request, a client experiences a loss of records due to a natural disaster or an act of war, the member should comply with an additional request to provide **(or make available)** such records.
 - b. retain records for periods that exceed applicable professional standards, state and federal statutes and regulations, and contractual agreements relating to the service performed. [Prior reference: paragraph .02 of ET section 501]
- .09 A member who has provided **(or made available)** records to an individual designated or held out as the client's representative, such as the general partner, majority shareholder,

- or spouse, is not obligated to provide **or make** such records **available** to other individuals associated with the client. [Prior reference: paragraphs .377–.378 of ET section 591]
- .10 Working papers are the member's property, and the member is not required to ~~provide~~ **make** such information **available** to the client. However, state and federal statutes and regulations and contractual agreements may impose additional requirements on the member.
- .11 In fulfilling a request for ~~client-provided records~~ member-prepared records, or a member's work products, **or the member's copy of client-provided records previously provided to the client (as referenced in paragraph .08)**, the member may
- a. charge the client a reasonable fee for the time and expense incurred to retrieve and, copy **and ship** such records and require that the client pay the fee before the member ~~provides~~ **makes** the records **available** to the client.
 - b. ~~provide~~ **make** the requested records **available** in any format usable by the client. However, the member is not required to convert records that are not in electronic format to electronic format. If the client requests records in a specific format and the records are available in such format within the member's custody and control, the client's request should be honored. In addition, the member is not required to ~~provide~~ **make formulas available to** the client ~~with formulas~~, unless the formulas support the client's underlying accounting or other records or the member was engaged to ~~provide~~ **make** such formulas **available** as part of a completed work product.
 - c. make and retain copies of any records that the member returned or provided to the client.
- .12 A member who is required to return or ~~provide~~ **make** records **available** to the client should comply with the client's request as soon as practicable but, absent extenuating circumstances, no later than 45 days after the request is made.
- .13 The fact that the statutes of the state in which the member practices grant the member a lien on certain records in his or her custody or control does not relieve the member of his or her obligation to comply with this interpretation. [Prior reference: paragraph .02 of ET section 501]
- .14 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.

Strategy and Work Plan

Task force members

Brian Lynch (Chair), Kelly Hunter, Stephanie Saunders, Robert Denham, Lisa Snyder

AICPA Staff: Iryna Klepcha, Ellen Gorla, and Toni Lee-Andrews

Task force charge

The PEEC Planning Task Force is to develop PEEC's Strategy and Work Plan for 2021-2023.

Reason for agenda item

In November of 2019, PEEC approved exposure of a consultation paper, Strategy and Work Plan, so that AICPA members and other interested parties could review and comment. The comment period concluded in March 2020, and the task force considered the comment letters and developed the Strategy and Work Plan for 2021-2023. After Ms. Coffey provided the committee with a professional issues update during the August 2020 PEEC meeting, the task force decided not to seek the committee's approval for issuance. Instead, an update on the development of the plan was given and the committee was asked to submit additional feedback, thoughts, or ideas to the task force. The task force updated the Strategy and Work Plan for 2021-2023 to reflect the additional feedback received.

Action needed

The task force seeks the committee's approval to issue the AICPA Professional Ethics Division: Strategy and Work Plan for 2021-2023 found in **agenda item 3C**.

Materials Presented

- **Agenda item 3B:** Analysis of comments and the task force's recommendations
- **Agenda item 3C:** Strategy and Work Plan for 2021–2023

SWP comment letter analysis

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529 college savings plans

Highlights

- 6 out of 7 comment letters support.
- 1 out of 7 letters does not specify whether it supports the project.
- 2 letters recommend using an approach similar to the approach for mutual funds in section 1.240.030.
- 2 letters recommend treating certain 529 savings plans as indirect investments.
- 4 letters mention a challenge to monitor the underlying investments.

Planning Task Force Recommendation

The majority of commenters support the project. Additionally, four commenters mention a challenge to monitor the underlying investments. The Planning Task Force believes that this challenge creates difficulty in maintaining compliance with the AICPA Code of Professional Conduct. As such, formation of a task force is recommended to determine the treatment of different types of 529 plans (e.g., indirect interest vs direct interest) and develop additional guidance accordingly to address ethical implications.

Priority

There is no high degree of urgency to address this matter; therefore, the Planning Task Force recommends initiating the project in Q1 2022.

Consider the approach in the “Mutual Funds” interpretation (1.240.030)

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| 06. Ernst & Young LLP | Consider treating the underlying investments of 529 plan target date portfolios as indirect investments, similar to the approach for mutual funds in section 1.240.030. |
| 11. AICPA Private Companies Practice Section | Consider tying any guidance related to college savings plans back to the existing mutual fund guidance already in the Code of Professional Conduct |

Consider treating as indirect investment

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| 06. Ernst & Young LLP | Consider treating the underlying investments of 529 plan target date portfolios as indirect investments, similar to the approach for mutual funds in section 1.240.030. |
| 13. KPMG LLP | Consider revising the guidance for 529 savings plans to remove the specification that a covered member who is an account owner has a direct financial interest in the underlying investments of the plan. |

Challenges to monitoring the underlying investments

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| 13. KPMG LLP | It is challenging for account holders of a 529 savings plan to analyze changes in the underlying investments of their plan. Typically, the account holder selects a fund strategy rather than individual funds, which obstructs visibility into the underlying investments. Unlike publicly traded mutual funds, there are no common reference resources to learn of changes in the underlying investments of a given 529 plan. Additionally, automatic reallocation of funds in aged-based portfolios can be cumbersome to track. Finally, the scope and timing of communications from plan managers are inconsistent between fund administrators, and plan holders may not be notified of changes until after their investments have changed. All of these information gaps create challenges for firms to establish appropriate quality controls to prevent or detect breaches of independence requirements by covered members. |
|--------------|--|

06. Ernst & Young LLP	Monitoring of the certain 529 plans (i.e., types of investment options in which the owner only chooses an established target-date portfolio for which the owner has no control or influence over the selection of the portfolio's underlying securities) and potential impact on covered members is challenging because the underlying investments may only be identified based on historical information obtained from the states on a quarterly basis.
01. Office of the Washington State Auditor	Investing options in savings plans are not static and present challenges for monitoring underlying investments.
05. BDO USA, LLP	In many situations the account holder does not have any insight into what investments have been made by the plan. This disconnect between plan operation and the rule creates significant issues in practice.

Other challenges

04. The Ohio Society of CPAs	The committee did not find the challenges of 529 plans to be substantially different from determining significant holdings in any other type of indirect investment.
08. Deloitte LLP	Certain operational and practical challenges may exist in demonstrating and maintaining compliance with the code related to 529 college savings plans.

Threats to objectivity and independence are limited due to nature of programs

01. Office of the Washington State Auditor	Both types of plans are government-controlled savings programs provided in accordance with legislatively established legal requirements not subject to negotiation or modification for benefit of individuals. Further, some, if not all, of these programs are backed by the full faith and credit of the state, limiting the exposure of the account holder and therefore, the threat to objectivity and independence.
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Other recommendations

08. Deloitte LLP	If the PEEC chooses to pursue potential new rule-making or other guidance in this area, close coordination with other rule-making bodies (e.g., IESBA, SEC) is necessary considering existing rules and requirements of such other bodies.
13. KPMG LLP	This should a priority project on the SWP, as 529 savings plans seldom create significant threats to independence, while often resulting in a significant compliance burden.
06. Ernst & Young LLP	The AICPA code should be updated to differentiate between account owners who choose investment portfolio options that allow selection of securities and those that elect a target date portfolio in which the account owner does not have control over the underlying investment decisions.
05. BDO USA, LLP	The college savings plan project and the digital assets project could be combined into one project.
01. Office of the Washington State Auditor	Guidance should be harmonized with 1.255.010 Depository Accounts, 1.280.040 Member of a Credit Union and 1.255.020 Brokerage and Other Accounts, which all provide for threats to be at an acceptable level when services are provided under normal terms and assets at risk of loss are immaterial to the covered member's net worth.

Artificial intelligence

Highlights

- 2 out of 9 comment letters do not support.
- 7 out of 9 letters support.
- 2 letters recommend revisiting in the future (low priority). These letters are included in the support category.
- 2 letters noted that the matter should be first addressed by the Auditing Standards Board or there is a need for further guidance in the form of auditing standards.
- 4 letters noted threats related to reliance on artificial intelligence.
- 2 letters believe that there is sufficient existing guidance.
- Two individuals (not PEEC members) volunteered to be on this task force.

Planning Task Force Recommendation

The Planning Task Force believes that it would be premature to develop additional authoritative guidance to address any ethics implications. Undertaking a member enrichment project is recommended to create awareness of the various threats related to the use of artificial intelligence.

Priority

The use of artificial intelligence is not a prevalent issue in the profession; therefore, the Planning Task Force recommends initiating the project in Q3 2022.

Revisiting this topic in the future

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| 06. Ernst & Young LLP | Although we do not believe there is an immediate need for guidance on ethics issues unique to the use of artificial intelligence while providing professional services, we believe this topic should be kept in the current Strategy and Work Plan and addressed in the latter half of the three-year period. |
| 13. KPMG LLP | As the use of AI becomes more prevalent, the ethical challenges surrounding this matter may become more pronounced. Accordingly, we believe the subject of AI should be revisited in the future as AI applications begin to permeate business processes, including more subjective and judgmental applications. |

Audit standards are priority

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| 05. BDO USA, LLP | AI related guidance should first be addressed by standard-setters such as the Auditing Standards Board. Until the profession understands how AI can be utilized when providing professional services, we believe the ethics implications cannot be properly addressed. |
| 01. Office of the Washington State Auditor | Interested in further guidance in the form of audit standards rather than ethics rules. |

Concerns related to reliance on the use of the tool

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| 10. NYS Society of CPAs | The increasing reliance on the use of artificial intelligence (AI) presents an increased threat to member's compliance with the code. As CPAs rely more on AI, there is a risk that they will subordinate their professional judgment to the conclusions reached by the algorithms in the program, without having a sound comprehension of how those algorithms are created or on what they are based. |
| 01. Office of the Washington State Auditor | Expects the member to understand and monitor their reliance on the use of the tool in their professional activities and react accordingly, as they would with any other type of evidence, software tool or specialist. |
| 13. KPMG LLP | Over and uninformed reliance on sophisticated, judgmental AI could threaten a member's objectivity, as well as threaten compliance with the principle of due care and the confidential client ¹¹⁵ information rule. |

06. Ernst & Young LLP	Overreliance on artificial intelligence for decision making is a potential concern for both members in business and public practice.
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Sufficient existing guidance

05. BDO USA, LLP	The existing conceptual framework should be sufficient for evaluating any current ethical issues that might arise at the present time such as due care and competence.
01. Office of the Washington State Auditor	Does not see any ethical challenges beyond what is already covered by existing rules, since we would not expect a member's ultimate responsibility for their professional actions, judgments or conclusions to be transferred elsewhere based on the use of this tool.

Other challenges

13. KPMG LLP	The reliance on technology may be for different purposes, but ethical considerations and challenges are largely similar for both members in business and members in public practice.
04. The Ohio Society of CPAs	<ul style="list-style-type: none"> • Data confidentiality, for example, when company information is shared on an outsourced network • Identifying how information is aggregated • Outsourcing conducting the analysis • Who is doing the programming? • Who is responsible for inaccuracies? • Auditing standards addressing what assertions need to be obtained, and what reliance is being placed on the data.
08. Deloitte LLP	<p>As part of any AI platform or framework, there are several ethical and operational factors to be considered, including:</p> <ul style="list-style-type: none"> • Governance over AI applications. • Data protection. • Secondary data usage. • Bias in existing data. <p>In addition, AI continues to challenge organizations in developing appropriate policy, governance, and monitoring over AI applications.</p>

Other recommendations

06. Ernst & Young LLP	Consider the ability of artificial intelligence technologies to automate decision making and potential safeguards needed for client management to fulfill its responsibilities.
06. Ernst & Young LLP	The ability of an artificial intelligence technology to make better and more complex considerations over time based on learning may raise ethical concerns as a result of both the potential error rate in the early period of use and potential overreliance on the tool as its capabilities evolve to more complex decision making. In establishing guidance, we encourage PEEC to consider the potential for unintended consequences from the use of artificial intelligence.
08. Deloitte LLP	The task force should coordinate its efforts with other relevant standard-setting bodies within the AICPA (e.g., Auditing Standards Board) to ensure a consistent approach in addressing this area.
11. AICPA Private Companies Practice Section	Use of this technology is constantly evolving and, therefore, PEEC should not address in the Code of Professional Conduct but, rather, consider issuing targeted Q&As or other non-authoritative guidance as specific issues arise.

Business relationships

Highlights

- 3 out of 9 comment letters do not support.
- 5 out of 9 letters support.
- 1 out of 9 letters does not specify whether it supports the project.
- 2 letters believe that there is sufficient existing guidance.
- 2 letters recommend considering SEC guidance.
- Comment letters provided various recommendations to consider if a task force is created.

Planning Task Force recommendation

There have been many changes in types of business relationships with attest clients since the current guidance was developed. The Planning Task Force believes it would be beneficial to expand the code to address various types of business relationships members have with their attest clients. Therefore, formation of a task force is recommended to determine the types of business relationships members have with attest clients, the nature of those relationships and additional safeguards that may be necessary to protect independence, integrity and objectivity.

Priority

There is no high degree of urgency to address this matter; therefore, the Planning Task Force recommends initiating the project in Q1 2022.

Sufficient existing guidance

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| 13. KPMG LLP | The Conceptual Framework for Independence, existing interpretations and the principles-based interpretation regarding business relationships are effective mechanisms to enable the identification and evaluation of threats to the auditor's independence, and thus we do not have any recommendations for additional guidance. |
| 08. Deloitte LLP | While the types of relationships may vary and change over time, we believe the extant code includes the relevant principles and guidance necessary for members to analyze and evaluate the potential independence implications related to such relationships. |

Consistency with SEC

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| 06. Ernst & Young LLP | In the recent release by the Securities and Exchange Commission ("SEC") on proposed changes to Rule 2-01 (Release No. 33-10738), the SEC noted that audit firms may contribute to multi-company arrangements through intellectual property or access to data using common technology platforms. The SEC requested comment on whether such arrangements present instances where an auditor's objectivity and impartiality would not be impaired. Development of a framework to evaluate multi-company arrangements would be beneficial for assessing threats to independence and objectivity. These matters are increasingly impacting professional practice and additional guidance will be extremely valuable to foster consistency of assessment. |
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11. AICPA Private Companies Practice Section Regulation S-X 201 (17 § CFR 201.2-01) defines a business relationship as follows:

“Business relationships. An accountant is not independent if, at any point during the audit and professional engagement period, the accounting firm or any covered person in the firm has any direct or material indirect business relationship with an audit client, or with persons associated with the audit client in a decision-making capacity, such as an audit client's officers, directors, or substantial stockholders. The relationships described in this paragraph do not include a relationship in which the accounting firm or covered person in the firm provides professional services to an audit client or is a consumer in the ordinary course of business. “

TIC prefers how the SEC specifically carves out relationships in which a firm or covered person is a consumer in the ordinary course of business and would prefer if the Code of Professional Conduct used similar terminology.

No broad application to most CPA firms (i.e., applicable to larger firms)

10. NYS Society of CPAs The recommended actions may be most applicable to larger firms that might enter into such cooperative arrangements with attest or non-attest clients, but we do not believe that this project has broader application to most CPA firms or members in public practice.

Types of relationships

04. The Ohio Society of CPAs Did not identify any additional specific types of relationships for consideration.

12. U.S. Government Accountability Office Bookkeeping; financial statement preparation; internal audit assistance; internal control evaluation; information technology services; appraisal, valuation, and actuarial services; and various management consulting services to their nonattest and attest clients.

13. KPMG LLP Firms may enter into contracting arrangements with clients to jointly provide services or products to third parties, to form alliances to capture new market opportunities, or to engage in supplier relationships for procurement of goods or services used internally or externally to deliver service or products.

Other recommendations

05. BDO USA, LLP Would be beneficial to determine the types of business relationships members have with attest clients, the nature of those relationships and additional safeguards that may be necessary to properly protect independence, integrity and objectivity. Consider referring to these relationships as “Business Relationships” in the code rather than “Cooperative Arrangements with Clients” (this is consistent with the terminology used in the rules of both the International Ethics Standards Board for Accountants and the Securities and Exchange Commission) and possible exceptions for business relationships with affiliates of a financial statement attest client.

06. Ernst & Young LLP The AICPA code should be updated to include a framework to assist members with determining whether specific interactions create a cooperative arrangement subject to paragraph 1.265.010.01. Such framework would be helpful in determining the potential impact to independence as the types of firm relationships continue to evolve.

06. Ernst & Young LLP Since 1.265.010 uses the term “member” rather than “covered member,” we believe clarification should be provided on whether the cooperative business arrangement interpretation applies to covered members or all professionals in a firm.

12. U.S. Government Accountability Office	<p>Consider expanding the code to identify common nonattest services that audit organizations provide would enhance and clarify the concept of “business relationships” to reflect current practice in the audit industry, which now includes an extensive array of vendor type or outsourced management services that audit organizations provide to their clients.</p> <p>In addition, we believe that more guidance would be helpful to address business relationships in which auditors are engaged to both provide a nonattest service, such as preparing an entity’s sustainability policy, and subsequently conduct a non-assertion-based attestation engagement on the same subject matter. We encourage PEEC to assess whether its existing guidance is sufficient in this area.</p>
06. Ernst & Young LLP	<p>Consider providing guidance on how materiality in the context of business relationships should be determined, including examples of material cooperative arrangements. In particular, we believe it would be beneficial to address the determination of materiality when working with small or newly formed entities that may not yet have, for example, a demonstrated revenue base.</p>
06. Ernst & Young LLP	<p>Consider further defining the term “cooperative arrangement” to address some of the more complicated types of relationships, and to provide examples of situations that would not be viewed as a cooperative arrangement. For example, we do not believe that two parties who are merely engaged directly by the same client to work together on the client’s project would be viewed as a cooperative arrangement.</p>
12. U.S. Government Accountability Office	<p>Additional guidance in the code would assist auditors in identifying potential threats to independence with respect to attest engagements that originate with the provision of nonattest services to the same client.</p>
09. Baker Tilly Virchow Krause, LLP	<p>Continually monitor the types of business relationships in which members are engaged, and where warranted, initiate projects to address any potential independence or other ethical concerns identified.</p>

Client affiliates

Highlights

- 2 out of 7 comment letters do not support.
- 5 out of 7 letters support.
- 3 letters recommend clarifying the definition (the commenters have different views on whether the client affiliates definition extends to an individual).
- 2 letters recommend coordination with other standard setters (SEC and FASB).
- 2 letters recommend issuing non-authoritative guidance instead of updating the code. These letters are included in the support category above.
- 2 letters believe that there is sufficient existing guidance.

Planning Task Force recommendation

The Planning Task Force recommends initiating the project since it appears that there is inconsistency in how current guidance is applied. Formation of a task force is recommended to determine if the guidance should also be applied to individuals and entities that they have control or significant influence over and if there are any other aspects of the client affiliate interpretation that need clarification.

Priority

Considering inconsistency in how the current guidance is applied, the Planning Task Force recommends initiating the project in Q3 2021.

Clarify the definition

08. Deloitte LLP	The current definition of affiliate in the extant code does not explicitly include common ownership by individuals. Consider clarifying the definition of affiliate to provide for consistent application of the code.
09. Baker Tilly Virchow Krause, LLP	Issue additional guidance (for example, in its FAQs) clarifying that the definition of “affiliate” extends to common ownership by entities, not to common ownership by individuals, we do not believe that the code needs to be updated to include guidance addressing common ownership by individuals.
11. AICPA Private Companies Practice Section	Supports clarification of owners that are individuals rather than entities are not affiliates as that was a common question received during implementation of the hosting standard.

Coordinate with other standard-setters

11. AICPA Private Companies Practice Section	Consider linking to the FASB guidance on common control since they already have developed some extensive guidance on what to consider when determining whether entities are under common control since any member well versed in U.S. GAAP already is familiar with that guidance.
08. Deloitte LLP	The SEC recently issued proposed amendments to its independence rules, including matters related to affiliates. If the PEEC chooses to pursue potential new rule-making or other guidance in this area, we suggest such activities be coordinated in connection with the SEC’s potential rule-making process.

Issue non-authoritative guidance

09. Baker Tilly Virchow Krause, LLP	Issue additional guidance (for example, in its FAQs) clarifying that the definition of “affiliate” extends to common ownership by entities, not to common ownership by individuals, we do not believe that the code needs to be updated to include guidance addressing common ownership by individuals.
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06. Ernst & Young LLP To the extent common ownership through an individual is a subject of frequent inquiry, PEEC should consider issuing non-authoritative guidance in the form of a frequently asked question (“FAQ”) to address the more common fact patterns. For example, companies controlled by an individual that do business together or have other interrelations may pose greater threats to independence than similar entities that have no interactions.

Sufficient existing guidance

13. KPMG LLP The Conceptual Framework for Independence is effective in identifying significant threats to independence when determining affiliates in a situation when entities are owned by the same individual.

06. Ernst & Young LLP The existing AICPA conceptual framework approach to assessing threats and safeguards is appropriate for addressing common ownership by individuals.

How the guidance is currently applied

04. The Ohio Society of CPAs While we continue to apply the guidance as currently written within our firms, the matter is not increasingly affecting the professional practice of our members.

13. KPMG LLP To determine affiliates in a situation when entities are owned by the same individual, firms apply the Conceptual Framework for Independence to evaluate threats associated with services and relationships with multiple entities owned by the same individual and apply safeguards.

08. Deloitte LLP We understand the current definition of affiliate in the extant code does not explicitly include common ownership by individuals. When we evaluate affiliates, we make no distinction between common ownership by an “entity” or by an “individual,” as we believe the relevant independence considerations and principles are applicable to both.

Other recommendations

11. AICPA Private Companies Practice Section Hosting is now specifically noted as a prohibited nonattest service, hosting services provided to certain affiliates are prohibited.

Identifying all of the affiliates of private entities that have complex organizational structures can be very challenging. TIC would recommend providing examples of how more complicated organizational structures would impact application of the hosting interpretation and independence. TIC recommends providing templates similar to those proposed for the recent SLG Affiliates Interpretation as TIC has found those to be helpful in adopting the Interpretation.

05. BDO USA, LLP Additional guidance related to application of the affiliate rule in situations where an individual, or a group of individuals, controls multiple entities that are otherwise unrelated to one another, would be beneficial.

Conflicts of interest

Highlights

- 2 out of 7 comment letters do not support.
- 5 out of 7 letters support.
- 4 letters believe that there is sufficient existing guidance (2 out of 4 letters believe that sufficient guidance exists; however, the SWP indicated an increased number of inquiries related to this topic, therefore, they support this project).
- 2 letters recommend alignment with IESBA.
- 2 letters recommend analyzing the increased number of inquiries.

Planning Task Force recommendation

Due to an increased number of inquiries related to this topic, the Planning Task Force recommends undertaking a member enrichment project to analyze the content of inquiries and determine what additional guidance, if any, is needed.

Priority

There is sufficient existing guidance and developing non-authoritative guidance is not a priority at this time. Therefore, the Planning Task Force recommends initiating the project in Q2 2022.

Sufficient existing guidance

12. U.S. Government Accountability Office	Extant code section 1.110 provides a reasonably comprehensive discussion of conflict of interest matters.
08. Deloitte LLP	The Conflicts of Interest for Members in Public Practice subtopic (1.110) provides sufficient guidance for members to analyze and evaluate potential conflicts of interest.
05. BDO USA, LLP	The current guidance is sufficient and given the wide variety of situations where conflicts of interest could arise, creation of guidance that will reduce the inquiries on the topic will be difficult and not a good use of AICPA resources.
13. KPMG LLP	We do not believe additional guidance is needed.

Alignment with IESBA

08. Deloitte LLP	<p>In the area of conflict consent and disclosure, we believe the PEEC should consider potential modifications to the code to further align with existing IESBA standards and provide for consistency in application of the code.</p> <p>The extant code states, in part: Disclosure of a Conflict of Interest and Consent</p> <p>.12 When a conflict of interest exists, the member should disclose the nature of the conflict of interest to clients and other appropriate parties affected by the conflict and obtain their consent to perform the professional services. The member should disclose the conflict of interest and obtain consent even if the member concludes that threats are at an acceptable level.</p> <p>Application of this guidance requires members to disclose a conflict of interest and obtain consent under ALL circumstances.</p>
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Conversely, the extant IESBA code states, in part: 310.9 A3 It is generally necessary [emphasis added]:

- a. To disclose the nature of the conflict of interest and how any threats created were addressed to clients affected by a conflict of interest; and
- b. To obtain consent of the affected clients to perform the professional services when safeguards are applied to address the threat.

In addition, the IESBA's Basis for Conclusion (issued March 2013) states, in part:

25. The IESBA took the view that consent is not a safeguard but did not wish to prevent a sophisticated client from providing consent if the professional accountant is able to conclude that the threat is already at an acceptable level and it would not, therefore, be necessary to obtain consent. Therefore, wording was introduced to clarify that consent is generally necessary "when safeguards are required to reduce the threat to an acceptable level."

27. The IESBA does not agree that disclosure is always necessary in a global code because there are many diverse situations making it impractical to mandate disclosure and consent in all cases. However, the intention is that the professional accountant should not avoid disclosure and consent when it is appropriate. An additional provision has been inserted requiring the professional accountant to determine when specific disclosure and explicit consent are necessary and recognizing that it is a matter of professional judgment when specific disclosure and explicit consent are appropriate.

06. Ernst & Young LLP

We recommend the PEEC establish a task force to further explore and consider The existing guidance in paragraph 1.110.010.08, which states, "If the firm is a member of a network, the member is not required to take specific steps to identify conflicts of interest of other network firms," is consistent with Section R310.7 of the IESBA code, which states, "If the firm is a member of a network, a professional accountant shall consider conflicts of interest that the accountant has reason to believe might exist or arise due to interests and relationships of the network firm."

Analyze content of hotline inquiries to determine enhancements needed

12. U.S. Government
Accountability Office

Suggests that PEEC consider performing a content analysis of the inquiries received to determine whether specific subsections need enhancement. For example, if PEEC's analysis identifies an increase in inquiries related to potential safeguards that address conflicts of interest, then adding material to section 1.110.010 paragraph .10 could be of most value to members in understanding and applying the code.

08. Deloitte LLP

As indicated in the consultation paper, there has been an increase in the number of member inquiries related to conflicts of interest. It would be helpful to understand the nature of such inquiries to determine what, if any, enrichment materials may be needed.

Other recommendations

10. NYS Society of CPAs

Any guidance concerning conflicts of interest should explain the risks that these conflicts present, such as loss of independence or threats to professional skepticism.

06. Ernst & Young LLP Further guidance may also be appropriate in paragraph 1.110.010.14 which states that “[t]he member should determine whether the nature and significance of the conflict of interest is such that specific disclosure and specific consent are necessary, as opposed to general disclosure and general consent.” We believe that specific consent is generally required for all cases except in competitive situations where it would violate confidentiality.
06. Ernst & Young LLP Consider enhancing the current conflicts of interest rules by providing more specificity around the definition of what constitutes “reasonable efforts” and “an effective conflict identification process” as used in paragraph 1.110.010.05 and .07.
07. National Association of State Boards of Accountancy Suggests the PEEC develop comprehensive guidance, including illustrative examples, to help members evaluate and address conflicts of interest that may arise when members provide tax services to a divorcing couple, including when spouses utilize a collaborative divorce.

Data security and breaches

Highlights

- 4 out of 6 comment letters do not support.
- 2 out of 6 letters support.
- 3 letters believe that new guidance will be confusing and hard to monitor due to rapidly changing laws and regulations.

Planning Task Force recommendation

Data security and breaches is a legal issue. The Planning Task Force does not recommend initiating the project due to rapid changes in related laws and regulations.

Priority

Not applicable

New guidance will be confusing

09. Baker Tilly Virchow Krause, LLP Due to the rapid pace of change in these laws and regulations, any enrichment materials issued by the AICPA would likely be out-of-date shortly after their issuance.
05. BDO USA, LLP There are numerous state and federal laws in existence that proscribe the responsibilities of business as it relates to data security and data privacy. These laws are widely varied in their application and the requirements imposed on impacted businesses. Because of the varied requirements within the existing regulations it would be impossible for AICPA to create guidance that is consistent with all of them.
10. NYS Society of CPAs States are currently enacting laws and regulations governing data security and breaches at a sharply increasing pace. We are not convinced that PEEC should spend significant time and effort trying to refine guidance in this area, when (a) it may conflict with state or Federal laws and regulations when guidance is issued, or (b) it may come into conflict with state or Federal laws and regulations subsequent to issuance. While PEEC is an important part of the AICPA, we are not sure that PEEC has sufficient resources to monitor the shifting landscape of this area.

Other recommendations

08. Deloitte LLP The task force should include subject matter experts familiar with current and/or proposed ethical guidelines being considered by various constituencies in order to effectively evaluate and develop potential member enrichment guidance in this area.
06. Ernst & Young LLP There is a lack of guidance on how to address breaches of client confidential information that do not involve personal information. We believe PEEC should consider issuing guidance in the form of a framework to help members determine how and under what circumstances the client should be informed of a confidentiality breach to foster consistency in approach.

De minimis fees

Highlights

- 5 out of 10 comment letters do not support.
- 5 out of 10 letters support.
- 2 letters noted that there might be potential challenges in defining de minimis fees.
- 3 letters recommend alignment with IESBA.
- 3 letters noted that trivial unpaid fees do not automatically impair independence.

Planning Task Force recommendation

Unpaid fees are currently seen as the equivalent of a loan, and therefore, any trivial unpaid fees automatically impair independence. Given the current situation related to COVID-19, formation of a task force is recommended to consider whether a bright line of one year is appropriate. The Planning Task Force believes that a framework should be developed to determine whether unpaid fees are in substance equivalent to a loan. While developing a framework, the formed task force will determine if there are concrete examples of potential legal implications and discuss them with the Office of General Counsel. The Planning Task Force also recommends the formed task force consider potential alignment with IESBA. Since the proposed project would not address only trivial fees, the Planning Task Force recommends changing the name of the project to “Unpaid Fees”.

Priority

Considering challenges related to the coronavirus pandemic, the Planning Task Force recommends initiating the project in Q2 2021.

Potential challenges with the definition of de minimis fee

07. National Association of State Boards of Accountancy	Consider that changing existing guidance may raise regulatory enforcement issues as to where the de minimis borderline should be set for outstanding fees for services provided more than one year prior to the date of the current-year report.
11. AICPA Private Companies Practice Section	It could get into tricky definition of what defines de minimis and as a result make the guidance more complex than it is today.

Alignment with IESBA

13. KPMG LLP	Consider aligning the AICPA code with the IESBA Fees – Overdue guidance in IESBA code R410.7 A1 to R410.8.
08. Deloitte LLP	Consider potential modifications to the code regarding unpaid fees to further align with existing IESBA standards and provide for consistency in application of the code.

As discussed in the consultation paper, the extant code does not include reference to or consideration of materiality. The code states, in part:

1.230.10.1 Unpaid Fees

.02 Threats to the covered member’s 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 if a covered member has unpaid fees [emphasis added] from an attest client for any previously rendered professional service provided more than one year prior to the date of the current-year report. Accordingly, independence would be

impaired. Unpaid fees include fees that are unbilled or a note receivable arising from such fees.

Conversely, the extant IESBA code states, in part:

Fees – Overdue

410.7 A1 A self-interest threat might be created if a significant part [emphasis added] of fees is not paid before the audit report for the following year is issued. It is generally expected that the firm will require payment of such fees before such audit report is issued.

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| 06. Ernst & Young LLP | Recommend that PEEC amend the provisions of section 1.230.010 to be consistent with the International Ethics Standards Board for Accountants International Code of Ethics for Professional Accountants (IESBA code), which considers the significance of the unpaid fees to be a factor in the evaluation of whether unpaid fees are in substance the equivalent of a loan to an attest client and an unacceptable threat to the covered member's independence. |
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Trivial matters do not automatically impair independence

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| 03. Kentucky Society of Certified Public Accountants | We urge the committee to take into consideration that a de minimis outstanding balance should not by itself create an independence issue for firms. There could be many reasons as to why a balance may still be due 12 months later. |
| 01. Office of the Washington State Auditor | It is always helpful to clarify that trivial matters do not create an independence impairment. |
| 06. Ernst & Young LLP | There are commercial circumstances when fees for a professional service may be unpaid for more than one year, and when such unpaid fees are immaterial to both the attest client and the covered member's firm, they do not affect the covered member's objectivity, in fact or appearance. |

Not a significant issue in practice

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| 09. Baker Tilly Virchow Krause, LLP | We do not believe that this is a significant issue in practice |
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Inconsistency with the loan rule

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| 05. BDO USA, LLP | The basis for unpaid fees being considered an independence impairing situation is because the unpaid fees are deemed to become a loan from the member to the client. Permitting immaterial unpaid fees would be inconsistent with guidance in the loan rule and we do not believe a change would be appropriate. |
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Sufficient existing guidance

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| 11. AICPA Private Companies Practice Section | The existing guidance is adequate. |
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Other recommendations

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| 01. Office of the Washington State Auditor | Encourage the Committee to consider using the term "clearly trivial" rather than an antiquated Latin phrase. |
| 04. The Ohio Society of CPAs | Encourages AICPA to retain the current guidance for protection of our member firms as support for terminating engagements as a good business practice. |
| 13. KPMG LLP | Consider changing the bright line one year test to a consideration of amounts outstanding for an extended period of time may be a better criteria in evaluating the significance of self-interest threats. |

13. KPMG LLP	Consider removing the bright line test with regard to Unpaid Fees (ET 1.230.010) where trivial and inconsequential amounts owed by the attest client to the firm impair independence. Such an approach would better align the interpretation to evaluating the significance of self-interest threats that may exist when considering unpaid fees.
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Definition of office

Highlights

- 3 out of 9 comment letters do not support.
- 6 out of 9 letters support.
- 7 letters refer to considering relevance of physical offices and virtual offices.
- 2 letters believe that there is sufficient existing guidance.
- 2 letters believe this is a high priority issue.

Planning Task Force recommendation

The current definition of office highlights that substance should govern the office classification, and personnel interactions and assigned reporting channels are more important than physical location. Instead of forming a task force for a new standard-setting project, the Planning Task Force believes it would be beneficial to undertake a member enrichment project to clarify the definition of office considering the relevance of physical and virtual offices.

Priority

Some letters identified this project as a high priority. The additional guidance is highly relevant due to the pandemic; therefore, the Planning Task Force recommends initiating the project in Q4 2020.

Relevance of physical office

13. KPMG LLP	We request that PEEC consider whether the existing definition of “office” remains relevant to today’s workplace, where engagement team mobility and information technology have brought about the use of virtual workplaces as a replacement to traditional work environments.
09. Baker Tilly Virchow Krause, LLP	We believe that the relationships between individuals / teams within public accounting firms should be used to determine which partners or partner equivalents are considered covered members, not the physical offices in which they reside.
05. BDO USA, LLP	Give consideration to the requirements in the audit standards for determining the appropriate engagement office to be included in the audit opinion signature and the impact that might have on the determination of the office for independence purposes.
10. NYS Society of CPAs	Basing independence decisions on proximity to another individual’s office should be reconsidered and the measuring standards revised to emphasize working relationships, career path influence, and reporting responsibilities rather than the concept of physical location.
07. National Association of State Boards of Accountancy	Consider how meaningful (or not) physical location is in the current environment and the disparate impact the current definition and rules impose on smaller, single office firms compared to larger, multi-office firms.
11. AICPA Private Companies Practice Section	A flowchart or some Q&As could be developed to address telecommuter or virtual employee arrangements to assist firms in understanding how these should be considered.
06. Ernst & Young LLP	Consider the increasingly virtual nature of offices and how individuals work, particularly in medium and large firms, in defining covered members who reside in the same office in which the lead attest engagement partner or partner equivalent primarily practices in connection with the attest engagement.

Sufficient existing guidance

04. The Ohio Society of CPAs We agree that technology has made it more difficult to determine when the definition of “office” has been met for determination of covered members in an independence consideration. However, committee members find the current guidance sufficient, and continue to support a principles-based definition relying upon reporting structures and ability to influence the attest engagement, rather than introducing more specific rules.
08. Deloitte LLP While the workplace environment has and will continue to evolve, we believe the extant code includes the relevant principles and guidance necessary for members to analyze and evaluate specific facts and circumstances, including those related to physical location and other workplace dynamics.

High priority

13. KPMG LLP As the determination of “office” and covered members is critical to maintaining independence, we recommend that this be a priority project on the SWP.
05. BDO USA, LLP Consider this to be a high priority project

Low priority

06. Ernst & Young LLP Does not believe the definition of “office” is a pressing issue.

Coordination with SEC and IESBA

08. Deloitte LLP If PEEC chooses to pursue potential new rule-making or other guidance in this area, close coordination with other rule-making bodies (e.g., International Ethics Standards Board for Accountants (IESBA), Securities and Exchange Commission (SEC) is necessary considering existing rules and requirements of such other bodies.

Digital assets

Highlights

- 1 out of 7 comment letters do not support.
- 6 out of 7 letters support.
- 4 letters refer to the “Financial interests” subtopic (1.240) and its potential application for certain digital assets.
- 2 commenters believe there are threats related to mining.

Planning Task Force Recommendation

There are various threats associated with digital assets and lack of direction may result in inconsistency in public practice. The Planning Task Force recommends forming a task force to develop guidance limited to how the ownership of digital assets should be treated under the financial interest rules.

Priority

Considering that no clear guidance currently exists, the Planning Task Force recommends initiating the project in Q3 2021.

Potential application of “Financial interests” subtopic (1.240)

06. Ernst & Young LLP	Consider issuing guidance to help practitioners understand whether digital assets (i.e., tokens and cryptocurrency) represent direct or indirect financial interests, for which existing guidance in section 1.240.010 can be applied.
05. BDO USA, LLP	Supports the inclusion of a project that would provide guidance limited to how the ownership of digital assets should be treated under the financial interest rules.
08. Deloitte LLP	The extant code does not provide explicit guidance related to ownership interests in digital assets. We consider digital assets a type of financial interest, as defined in the code, and therefore, apply the financial interest rules and guidance to such holdings.
13. KPMG LLP	<p>Ownership of a digital asset issued by the audit client may raise some of the same threats as those addressed in ET 1.240 Financial Interests. Additionally, when a covered member owns a digital asset that fluctuates in value, it creates increased threats to the member’s objectivity and impartiality.</p> <p>It would be helpful if the code included a framework for determining what characteristics of a digital asset trigger evaluation as a financial interest. Additionally, if the digital asset is not considered a financial interest, the framework should address any other considerations for evaluating independence associated with owning the digital asset.</p>

Threats related to mining

13. KPMG LLP	<p>Believes that the following threat exists:</p> <ul style="list-style-type: none">• When a public accounting firm is involved in mining of digital assets, and/or operating a node within a blockchain environment, it raises the threat of management participation, and potentially creates a self-review and adverse interest threat where attest clients of the firm are parties to the blockchain.
06. Ernst & Young LLP	While ownership of cryptocurrency as a personal investment is the area most frequently affecting professional practice, PEEC may wish to consider whether future guidance is needed to address potential concerns with professional services

related to digital assets. For example, whether mining (i.e., the process of adding a transaction record to a public ledger) of digital assets by members participating in the consensus mechanism of a blockchain could create a potential self-review threat if elements of a blockchain are considered as audit evidence. As with artificial intelligence, this is a developing area that may warrant further consideration as the uses of digital assets by enterprises increase with the adoption of blockchain.

Use of blockchain potentially leads to violation of hosting interpretation

11. AICPA Private Companies Practice Section Believes that firm's use of Blockchain could pose issues with regard to the hosting Interpretation. Some firms are starting to incorporate the use of Blockchain when performing services for their clients as a more secure way of storing and accessing information. TIC believes that these situations could result in a violation of independence under either the Hosting or IT Services Interpretations and, perhaps, PEEC should consider revisiting that guidance in light of this issue.

High priority

13. KPMG LLP While the criticality of this topic fluctuates with the perceived value of digital assets in the marketplace, it is important that additional guidance is published, as the lack of direction may result in divergence of practice across members in public practice.

Other recommendations

11. AICPA Private Companies Practice Section Could foresee situations where members are paid by their clients in cryptocurrency so, perhaps, some Q&As could be issued to address specific situations as they arise. The AICPA has an existing task force that has been addressing accounting and audit issues related to digital assets and perhaps PEEC can leverage some of those resources if they would like to embark on a similar project related to ethics implications.
04. The Ohio Society of CPAs Digital assets present several unique considerations, including custody, valuation, and determination of the market, that would benefit from a review of ethics implications from members with specialized expertise.

Operational enhancement to the code

Highlights

- 5 out of 5 comment letters support.
- 1 letter recommends eliminating a user's session time-out.
- 3 letters specifically mention that the visibility of FAQs should be enhanced.
- 1 letter recommends education about the investigation process. 1 letter recommends reducing the "AICPA Online Professional Library" banner in the online code. 1 letter recommends providing an online tutorial walking members through how to find certain guidance.
- 1 letter recommends displaying the subject of Professional Ethics on the www.aicpa.org homepage and maintaining a quick link path to the PEEC page.
- 1 letter recommends including links to Journal of Accountancy articles, podcasts, or ethical information when they apply to specific areas.
- 1 letter recommends providing the ability to customize user profiles that enable users to set and receive alerts.

Planning Task Force recommendations

Since this is an internal project, staff developed the recommendations below which were discussed with the Planning Task Force.

Completed

As it relates to the use of the code, a user's session duration has been extended to eight hours.

In progress

As it relates to enhancement of visibility to member enrichment content, staff recommends moving FAQs and certain other appropriate member enrichment content into the online platform. Staff also recommends adding FAQs to the AICPA publication "Technical Questions and Answers" and creating a link from the online platform to the member enrichment content that is not in the online platform. All internal approvals are in place to add member enrichment content to the online interface and staff anticipates having this accomplished by the end of Q3 2020.

As it relates to enforcement education, staff is identifying common violations involving employee benefit plans and government/non-for-profit audits. Staff is also planning an *Ethically Speaking* podcast series to highlight these matters as well as possible sanctions/remediation. Episode 5 of *Ethically Speaking* covers the investigative process and respondents are directed to this episode in the opening letter. Staff also recommends revising and promoting enforcement web pages.

To be initiated

Staff agrees that reduction of the "AICPA Online Professional Library" banner in the online code would help optimize space and recommends working with the development team to revise this.

A video tutorial currently exists on the aicpa.org page where the code is housed. However, this introduction and tutorial for the online code was created at the time the code revision went live, therefore, it is dated. Staff recommends scripting and creating a new tutorial and linking to it from within the online interface.

Does not recommend initiating

The Association is currently in the midst of a website redesign that is part of the RAVE (redesign the Association's value and experience) initiative. The new website will allow users to identify topics that are of interest to them with content served accordingly. The home page as it currently exists will be sunsetted. As such, staff does not recommend maintaining a quick link path to the PEEC page or displaying the subject of Professional Ethics on the AICPA homepage.

It is not feasible to include links to the *Journal of Accountancy* and similar types of information in the code or to provide the ability to customize user profiles that enable users to set and receive alerts. As such, staff does not recommend moving forward with these recommendations.

11. AICPA Private Companies Practice Section	As it relates to improving navigation and access to the code, TIC believes that better linkages between Q&As and practice aids to the interpretations and standards would be helpful. A recent good example is it took TIC members quite a bit of time to find some old Q&As that were referenced related to a new project. Most practitioners can use all the help they can get when navigating the code because, typically, smaller firm members are not looking in the code everyday like many of the PEEC members or Ethics staff.
13. KPMG LLP	Consider migrating the FAQs onto the dynamic online platform to allow bookmarking and searching, rather than maintaining them as a separate PDF document.
09. Baker Tilly Virchow Krause, LLP	Supports PEEC's current Enhanced Visibility of Non-Authoritative Guidance member enrichment project. As a part of that project, we recommend that PEEC add its FAQs and as much of its other interpretative guidance as possible to the code as application guidance.

Other recommendations

10. NYS Society of CPAs	Believes most practicing members do not study in depth the intricacies of the code – its rules and interpretations. We believe that members would benefit from clear, plain English guidance on the repercussions a member might face for violating various parts of the code. PEEC's history of enforcement could be analyzed for trends on code violations. A thorough description of the investigation process when an alleged violation of the code is brought to PEEC's attention could be appended to the code.
11. AICPA Private Companies Practice Section	Providing an online tutorial walking members through how to find certain guidance online would be helpful.
11. AICPA Private Companies Practice Section	PEEC should consider including links to Journal of Accountancy articles, podcasts, or ethical issues when they apply to specific areas. Practical, everyday information to assist and conserve the time of CPA's in locating articles or Q&A's would be very well received in the smaller firm arena.
13. KPMG LLP	Eliminate a user's session time-out, or extend the session duration period before time-out.
13. KPMG LLP	Consider displaying the subject of Professional Ethics on the www.aicpa.org homepage and maintain a quick link path to the PEEC page and the code to emphasize the importance of ethics to our profession. Currently, users must navigate to the code through the following path: www.aicpa.org > Topics > Explore all topics > Professional Ethics > Code of Professional Conduct > Online Code of Professional Conduct.
13. KPMG LLP	Reduce the size of the "AICPA Online Professional Library" banner at the top of the page in the online code.
13. KPMG LLP	Provide the ability to customize user profiles that enable users to set and receive alerts. For example, it would be beneficial to members if they could set a preference within their profile to automatically receive an alert to their inbox when an update is made to the code (i.e. a new FAQ added or an interpretation changed).

Reporting of an independence breach to an affiliate that is also an attest client

Highlights

- 6 out of 8 comment letters do not support.
- 2 out of 8 letters support.
- 5 letters believe that there is sufficient existing guidance. Staff noted that there are different opinions regarding whether reporting is required.
- 2 letters recommend clarifying when or if reporting is required.

Planning Task Force recommendation

Due to inconsistency in how existing guidance is interpreted, the Planning Task Force recommends forming a task force to clarify the code. The task force would determine whether this project should be undertaken as a member enrichment or standard-setting project.

Priority

There is no high degree of urgency to address this matter; therefore, the Planning Task Force recommends initiating the project in Q1 2022.

Sufficient existing guidance

09. Baker Tilly Virchow Krause, LLP
Firms are currently applying judgment to determine when or if independence breaches need to be communicated to sister and downstream affiliates that are also attest clients. We believe that the judgment currently being applied in practice is effective, therefore, we do not believe that PEEC should add this project to its standard-setting agenda.
08. Deloitte LLP
The Breach of an Independence Interpretation (1.298.010) and QC section 10, A Firm's System of Quality Control provide sufficient guidance for members to analyze and evaluate breach reporting requirements to those charged with governance. If a breach identified at an attest client is determined to be a breach at an affiliate that is also an attest client, we believe the reporting requirements apply to such affiliate.
10. NYS Society of CPAs
The project seems to suggest that those charged with governance would be expected to be different for the affiliate than it is for the principal entity. We are not convinced that this is the case in most instances. The Breach of an Independence interpretation is sufficient to cover the situation described in the project. If the two entities have common governance, then those charged with governance have been communicated with in accordance with the interpretation. If those charged with governance are not the same for each entity, the interpretation seems clear that a breach needs to be communicated to those charged with governance (in this case those charged with governance at each entity). It may be that those charged with governance agree to continue for one entity and not another. Each attest client needs to be considered separately regardless of the relationship between the entities.
11. AICPA Private Companies Practice Section
The existing guidance on how to handle these transactions is already clear in the existing guidance and there is no need to issue any new guidance unless there are specific scenarios that PEEC decides to address in targeted Q&As.
05. BDO USA, LLP
Believes that any reporting of such breaches would only be appropriate if the breach also impacts the affiliate. In such a situation, we believe current guidance is sufficient.

Clarify the requirements regarding when or if reporting is required

13. KPMG LLP

Providing guidance on the following would be helpful:

- determining when a breach extends to affiliate entities that are also financial statement attest clients of the firm; and
- evaluating reporting requirements, if any, for communications to those charged with governance at financial statement attest client affiliates of the audit client directly impacted by the breach.

It is particularly challenging to determine reporting requirements for large conglomerate structures or investment company complexes.

PEEC could clarify the requirements of the interpretation to allow a member to apply judgment in determining the need to communicate to sister and downstream affiliates. If a member determines that the breach has been communicated to those charged with governance for the directly impacted attest client and there is no impact on the independence for the audits at those other affiliates that are also financial statement attest clients, then the communication may not be necessary, unless specifically requested by the affiliate that is also a financial statement attest client.

06. Ernst & Young LLP

Examples of any situations where communication would not be required, as well as guidance on any potential efficiencies in communicating breaches would be helpful.

Simultaneous employment or association with an attest client

Highlights

- 1 out of 9 comment letters does not support.
- 8 out of 9 letters support.
- 2 letters noted that a principles-based approach (framework) should be developed.
- 4 letters agree with the exception for military services.
- 2 letters recommend limiting the interpretation to covered members.

Planning Task Force recommendation

Considering that the majority of the commenters support the project and four commenters support the exception for military services, the Planning Task Force recommends formation of a task force to determine whether there should be an exception for military personnel and whether there should be other exceptions to the subtopic “Current Employment or Association With an Attest Client” (1.275).

Priority

There is no high degree of urgency to address this matter; therefore, the Planning Task Force recommends initiating the project in Q1 2022.

Framework to evaluate if there is a threat and its significance

- | | |
|--|---|
| 06. Ernst & Young LLP | We believe that among the relevant factors to consider would be both the individual's level at the firm as well as the individual's role and responsibilities at the audit client. For example, an intern or lower level staff person who is not a covered member may be perceived to pose a lower threat to independence and objectivity. However, if such non-covered member performs a managerial or accounting role at the audit client, the threat to independence could be significant. We do not believe it is appropriate for any professional employee, regardless of level, to be employed by an audit client in a key position. We encourage PEEC to consider developing a framework to evaluate whether the facts and circumstances of a particular simultaneous employment situation create a significant threat to independence and whether such threat could be reduced to an acceptable level with adequate safeguards. |
| 11. AICPA Private Companies Practice Section | Consider providing exceptions to this rule as it relates to professors, military personnel (including the Army reserves as a more common example) and others using a principles-based approach. |

Exception for military service or public safety employment

- | | |
|--|---|
| 01. Office of the Washington State Auditor | It is always helpful to clarify that trivial matters do not create an independence issue. For example, service as a reservist in the Armed Forces or as an adjunct professor at a community college or university (that is, in a non-management or leadership position that is uninvolved in the subject matter of the audit) by a professional employee of the firm that is not involved in the audit should not represent an independence impairment. |
| 04. The Ohio Society of CPAs | Agrees with revisiting whether any additional exceptions should be appropriate and supports the exception for military service. |
| 12. U.S. Government Accountability Office | Agrees with the example PEEC cites in this section of the Strategy and Work Plan that pertains to the potential independence threats affecting auditors who are simultaneously engaged to audit U.S. military service branches and also serve as active duty or reserve force military personnel. |

13. KPMG LLP

There are circumstances where professionals uninvolved in the audit engagement have employment relationships with audit clients or affiliates of audit clients that do not create significant threats to independence. In these circumstances, the interpretation might be unnecessarily restrictive by scoping in all professional employees for the audit client and all affiliates. For instance, a non-audit associate who wants to participate in an armed forces reserve is generally not in a position to influence the audit engagement of the entity because this employment does not place the individual in a key position at the audit client, or in a position to influence the accounting records or financial reporting. The extant code is overly restrictive considering the benign nature of the relationship and the virtual absence of a threat the employment relationship creates to the audit.

Consider circumstances, such as military service or public safety employment that could be exceptions to this interpretation to encourage such public service.

Limiting the interpretation to covered members

09. Baker Tilly Virchow Krause, LLP Consider narrowing the scope of this interpretation so that it only applies to covered members.

06. Ernst & Young LLP Consider limiting this interpretation to covered members from its current application to all professionals and permit a conceptual framework approach for non-covered members, provided that the role is not a key position.

Other comments and recommendations

04. The Ohio Society of CPAs Challenges we have faced include simultaneous employment in non-accounting and non-decision making roles with attest clients that have multiple work locations across a wide geographic area (such as in a retail store environment,) which is difficult to police and presents no opportunity to influence the attest engagement.

05. BDO USA, LLP Firms inquired about a transitional period for a covered member to break off all ties. The current guidance is appropriate and any necessary exceptions, such as the current adjunct professor exception, should be addressed on an as needed basis.

08. Deloitte LLP Close coordination with other rule-making bodies (e.g., IESBA, SEC) is necessary considering existing rules and requirements of such other bodies.

12. U.S. Government Accountability Office Some government auditors may encounter independence impairments to their attest engagements when, for example, there are statutory requirements to serve in an official role, such as providing a voting member to an entity's management committee or board of directors.

09. Baker Tilly Virchow Krause, LLP Consider including exceptions in this section that pertain to (1) government auditors who are subject to statutory requirements related to serving as ex officio board members.

09. Baker Tilly Virchow Krause, LLP Consider adding a specific exemption for "inconsequential" employment (e.g. clerical positions, etc.).

Other matters

Highlights

- 2 comment letters do not recommend updating the code for infrequent situations
- 5 letters provide recommendations for projects related to other standard setter's rules (3 letters specifically refer to IESBA: 2 letters support convergence and 1 letter recommends that PEEC exercise caution when converging with IESBA)
- 2 letters provide recommendations for a current project "Enhanced visibility of non-authoritative guidance"
- 2 letters commented on the current project of PEEC "Responding to non-compliance with laws and regulations".
- 2 letters recommended developing additional guidance addressing potential ethical implications when members assist clients with implementing new accounting standards.

Planning Task Force recommendations

Convergence with IESBA

Convergence with IESBA is an ongoing project. The Planning Task Force recommends that this information be shared with PEEC's IFAC Convergence task force for their consideration.

Assisting clients with implementing accounting standards

As accounting standards continue to increase in complexity, it is challenging for middle market companies to keep up with the implementation issues of new standards. Therefore, these entities engage practitioners for assistance with implementation. The Planning Task Force believes it would be beneficial to develop additional guidance related to threats and safeguards associated with new accounting standards and recommends forming a task force to undertake a standard-setting project.

Priority

Convergence with IESBA

Not applicable.

Assisting clients with implementing accounting standards

FASB proposes delaying the effective dates of its standards on revenue recognition and lease accounting for certain entities because of challenges related to the coronavirus pandemic. Assisting clients with implementing accounting standards is a high priority project because it would benefit practitioners assisting their clients with the new standards on revenue recognition and lease accounting. The Planning Task Force recommends initiating the project in Q1 2021.

Infrequent situations

10. NYS Society of CPAs

In general, we would urge PEEC to address only those projects where broad reaching threats to members' compliance with the extant rules and interpretations of the Code of Professional Conduct are prevalent due to a significant shift in business practices, technology or other circumstances. Issuing new interpretations for matters that happen rarely or infrequently should be avoided, as they cause confusion and are often forgotten because they address situations that rarely arise. We believe the Conceptual Framework in conjunction with the Principles of Professional Conduct are strong enough for a member to address "one-off" situations appropriately.

11. AICPA Private Companies Practice Section

When narrow scope issues arise (for example, specific questions that come through the ethics hotline), TIC believes issuing Qs&As rather than issuing an interpretation is a more efficient approach. Hosting is a prime example of how issuing an overall interpretation creates confusion and then results in the issuance of Q&As to address very targeted and specific questions that come from the language used in the interpretations.

Comparison to other standard setter's rules (IESBA, SEC)

10. NYS Society of CPAs With respect to the plan to identify and document the areas where the code differs from the International Ethics Standards Board for Accountants (IESBA) code of Ethics for Professional Accountants (IESBA code), we believe that not only should the differences be identified, but also the effects of those differences on (a) members who provide attest and assurance services to entities that operate in multiple jurisdictions where some of the services are covered by the AICPA's code and other services are covered by the IESBA code; and (b) member firms that practice in multiple jurisdictions.
06. Ernst & Young LLP PEEC should continue to monitor and address changes made by regulators and other standard setters. In determining allocation of resources, we believe PEEC should consider the time commitment of resources needed for both influencing change and analyzing potential consequences of changes proposed by regulators and other standard setters. Providing input to IESBA on areas that PEEC is focused on, for example, can inform and enable future changes to the AICPA code and development of non-authoritative guidance. Understanding the IESBA Strategy and Workplan and active involvement in IESBA task forces and standard setting process could support the advancement of PEEC's projects on related topics and facilitate convergence. Further, we believe the PEEC should be proactively considering the International Auditing and Assurance Standards Board (IAASB) current projects that likely will be a focus at the US level over the next three years. The IAASB and IESBA have had increasing instances of projects that require input or feedback from the other board and have worked toward establishing more formalized coordination protocols. We recommend that PEEC work with US Auditing Standards Board to establish a similar arrangement.
- We support the PEEC's current project to compare the AICPA code to the IESBA code and believe a convergence matrix would assist members in understanding where the AICPA code is less restrictive than the IESBA code and where IESBA topics are addressed in non-authoritative guidance.
07. National Association of State Boards of Accountancy One additional project the PEEC may wish to initiate would be to evaluate the final revisions to the Securities and Exchange Commission (SEC) independence rules to determine whether PEEC should amend certain rules, e.g. loan provision, so they align with the amended SEC rules.
11. AICPA Private Companies Practice Section Similar to a recent comment letter that TIC submitted to the Auditing Standards Board (ASB) related to their proposed strategy and work plan, TIC believes that PEEC should exercise caution when converging with international standards under IESBA. TIC believes that even more so than convergence of auditing standards, ethics is something where litigation and the environment in the U.S. would create issues they do not have in other jurisdictions. The recent NOCLAR project is a good example of how certain standards would not work well in the United States. TIC also believes there are times where PEEC should take the lead on projects rather than waiting for IESBA to add a project to their agenda. The use of new and emerging technologies and the impact on independence is one area where TIC believes that PEEC should take the lead and begin outreach sooner rather than later.
10. NYS Society of CPAs The society believes that a project undertaken to compare the AICPA code to the rules of other standard setters would be very beneficial to members. Such a project should highlight the differences in the rules between standard setters and provide members with guidance on how to address the identified differences.

Recommendations for current project “Enhanced visibility of non-authoritative guidance”

11. AICPA Private Companies Practice Section Perhaps PEEC could consider working with PCPS on member surveys related to their understanding and application of the Code of Professional Conduct to further the development of additional tools and guidance in areas where there is confusion and diversity in practice.

The topics that are addressed on the ethics Hotline are great topics for PEEC to follow and try to address in some manner. However, there are a large group of practitioners that do not even realize that there is an ethical dilemma based on the conceptual framework, because there has not been a “grassroots effort” to reach the CPAs in the small towns across America that make up most of the AICPA membership. Perhaps PEEC should explore new ways of communicating with members to ensure that as many members as possible are receiving pertinent information as it relates to appropriately implementing the Code of Professional Conduct.

TIC also notes that there seems to be more of a root issue with some members not understanding some of “the basics” on independence and being able to apply the conceptual framework appropriately. This has recently arisen with regard to bookkeeping services and tax records and “making the client whole” as it relates to the hosting interpretation. Perhaps the ethics team can focus on doing more to get the word out by means of podcasts like the new ethically speaking podcast, sessions at various conferences, and by using the Center for Plain English Accounting (CPEA) as a means of distributing information to the members.

10. NYS Society of CPAs With respect to the plan to enhance the visibility of non-authoritative guidance, we strongly suggest PEEC resume issuance of the Ethically Speaking newsletter in addition to the podcasts of the same title. The podcasts are helpful, but they are not well advertised, and apparently most members are not opening the ethics page of the AICPA website on a regular basis to see if a new podcast is available. The newsletters were an effective way to get members actively thinking about ethics issues with more regularity.

Responding to non-compliance with laws and regulations

02. Pennsylvania Institute of Certified Public Accountants The committee believes continued efforts are needed to monitor the disparate and evolving state board requirements for communicating suspected noncompliance with laws and regulations to external authorities in the absence of explicit client permission to disclose such information and the implication of those evolving laws on the existing standards in the AICPA Code of Professional Conduct.

10. NYS Society of CPAs The Society recognizes that the Noncompliance with Laws and Regulations (NOCLAR) interpretation remains an open issue at PEEC. We believe that if and when this interpretation is released, it should be accompanied by significant guidance to help practitioners deal with the practicalities of the interpretation. Issues involving materiality, keeping client matters confidential and the need for reliance on the opinion of legal counsel, among other issues, should all be addressed.
- With respect to the NOCLAR task force, the Society recognizes that there are significant issues related to NOCLAR when considered in light of the particularly litigious environment in the United States of America. The NOCLAR interpretation has hung in limbo for almost three years. It is not clear to us why the PEEC is only now charging the NOCLAR task force with reviewing IESBA's standard as we presumed that would have been done prior to the issuance of the NOCLAR exposure draft. After three years, we suggest that PEEC commit to moving forward with NOCLAR, significantly rewrite and re-circulate a new, revised exposure draft to address issues raised in the comment letters or drop the NOCLAR effort entirely.

Assisting clients with implementation of new accounting standards

10. NYS Society of CPAs The Society fully supports PEEC's efforts with the Enhancing Audit Quality initiative, the Center for Plain English Accounting and the Accounting Standards teams to develop a webcast to discuss potential independence issues that exist when assisting clients with implementing new accounting standards. However, we do not believe that a single webcast is sufficient outreach to members. As accounting standards continue their increase in complexity, it is nearly impossible for middle market companies to keep up with the implementation issues of new standards, which forces these entities to increasingly rely on their trusted advisor for assistance. Therefore, with no foreseeable end to the high volume of standards issued each year or the complexity of the issues raised by the Financial Accounting Standards Board, we think the AICPA groups noted above need more rigorous and more proactive communication regarding the independence threats that a member and a member's firm face by being an entity's trusted advisor.
14. James J. Newhard, CPA While public companies are now in the ASC 842 reporting timeframe, the private company deferral of the lease standard suggests that the PEEC has time to create much more guidance related to ASC 842. For many private companies, ASC 842 will be an annual undertaking of new leases, extended leases, changes in related party leases, reassessment of leases, modified term/payments/conditions/etc. of leases, and the matter of enforceable rights remains a legal issue, outside the purview of CPA skill set (and legal authority).
- The commenter recommends forming a task force to develop resources, guides, FAQs, and other assistance to guide CPAs in performing the nonattest services of assisting attest client with ASC 842, especially in light of the tremendous number of related party involvements, and via the newly issued ASU 2018-17

Other comments

01. Office of the Washington State Auditor	<p>In addition to the projects described in the plan, we would encourage the Committee to consider clarifying independence guidance for situations when an auditor of a government has civic interactions with that government. For example:</p> <ul style="list-style-type: none">• Having citizenship with a government or benefiting from government services or programs that are comparable to and offered to all citizens - such as social services, social insurance programs or fire protection - would not be considered a financial interest in the government or a self-interest threat.• Voting and participation in public discourse would not be considered management participation in the government.• Paying taxes, fines or charges for services to a government that are comparable to those paid by all citizens would not be considered a self-interest threat. <p>Being the subject of or disputing a government enforcement action would not be considered an adverse interest threat so long as the matter is clearly trivial to the government and member. For example, receiving or disputing a traffic or parking ticket or property tax assessment on the member's home.</p>
02. Pennsylvania Institute of Certified Public Accountants	<p>Overall, the committee is supportive of the items included in the consultation paper, but noted the absence of any proposed activities related to peer review and audit quality other than a reference to enforcement in Appendix A. The committee notes the continuing practitioner difficulty with audit quality and supports efforts to identify and remediate firms found not to be complying with professional standards. The committee encourages greater peer reviewer outreach and education to ensure that reviewers are appropriately identifying nonconforming engagements. Furthermore, given the significant audit deficiency rate, the committee recommends that the AICPA undertake a project to ensure firms have access to the tools, training, and resources needed to successfully perform audits in a cost-effective manner.</p>
09. Baker Tilly Virchow Krause, LLP	<p>We believe that there are still certain unresolved issues related to PEEC's hosting services interpretation, therefore, we believe that PEEC should perform additional outreach to identify those unresolved issues and issue clarifying guidance where necessary.</p>
11. AICPA Private Companies Practice Section	<p>TIC would like to see more smaller firm representation on PEEC. Over the past year, we have seen that PEEC's primary voice is the larger firms, lawyers, and NASBA representatives and not many smaller firm representatives. From TIC's perspective, it would be positive to see some more TIC member-sized firms on PEEC.</p>

11. AICPA Private Companies Practice Section	<p>From the last PEEC meeting, it is TIC's understanding that the planned approach with regard to staff augmentation has changed, whereby this could become a prohibited service, regardless of the duration or type of engagement. TIC believes that, if PEEC follows an approach whereby there are no exceptions to staff augmentation, this could negatively impact smaller firms that, on occasion, provide these services to their clients in special (or "emergency") situations.</p> <p>TIC preferred the original direction of the project in that there could be situations where providing these services would not result in an independence violation. That included engagements that were very short in duration or where the client lost a resource very suddenly and quickly needed someone to step in and assist. While we acknowledge that these situations may not often occur at larger firms dealing with clients that have adequate accounting departments, the smaller firms work quite often with companies that may only have a few staff people in those roles and, therefore, losing even one staff person due to something like a sudden illness presents a real challenge.</p> <p>TIC would ask PEEC to strongly consider the views of smaller firms on this issue and, if major changes are made from the original proposal, that this guidance be re-exposed for public comment to ensure there are no unintended consequences.</p>
11. AICPA Private Companies Practice Section	<p>With increased traffic to the Ethics Hotline, PEEC very closely should monitor the ethics hotline usage and ensure there is adequate staff coverage to answer questions in a timely manner as the volume of inquiries grows.</p> <p>As PEEC continues to develop new guidance, the volume of inquiries likely will increase. The ethics hotline is written in many of the quality control documents of firms as the primary source of consultation on independence and ethics issues. The ethics hotline is how many smaller firms satisfy the answers they need within their practices to ensure they are in compliance with the Code of Professional Conduct for peer review purposes. Therefore, responses to these inquiries is integral to a firm's system of quality control.</p>
11. AICPA Private Companies Practice Section	<p>TIC members were recently asked to fill out a survey related to the recent proposal titled "Proposed Revision to the Code Addressing the Objectivity of Engagement Quality Reviewers." TIC appreciates the opportunity to provide feedback, especially as it relates to the smaller firm perspective. Since TIC does not respond directly to IESBA proposals, we would ask that feedback from TIC be solicited in a more informal manner, such as the recent survey that was sent related to this proposal related to quality reviewers.</p> <p>TIC would also be happy to have a member serve on PEEC Task Forces, similar to how we work with the Auditing Standards Board (ASB). This ensures that TIC views are heard and understood early on, many times when a project is still being contemplated by IESBA.</p>

Exhibit A – Projects timeline

Project/Stream	Type of Project	Expected Start	Status
Staff augmentation arrangements	Standard setting		in progress
Inducements	Member enrichment PEEC ¹		in progress
Responding to non-compliance with laws and regulations (NOCLAR) (Phase 1)	Standard setting		in progress
NOCLAR (Phase 2)	Standard setting	TBD	not started
Affiliates of a single audit financial statement attest client	Standard setting		in progress
Records requests	Standard setting		in progress
Statements on standards for tax services	Member enrichment PEEC		pending
Information system services	Member enrichment PEEC	Q3 2020	in progress
IESBA comparison	Member enrichment PEEC	Q3 2020	in progress
CGMA code updates	Member enrichment Staff ²	Q3 2020	not started
Statements on Standards for Attestation Engagements	Standard setting	Q4 2020	not started
Back to basics educational series	Member Enrichment Staff	Q4 2020	not started
Department of Labor reporting standard	Member Enrichment Staff	Q4 2020	not started
SEC exposure draft	Member Enrichment Staff	Q4 2020	pending
Hosting services (engagement letters)	Member Enrichment PEEC	Q4 2020	not started
Definition of office	Member Enrichment PEEC	Q4 2020	not started
Assisting clients with implementing accounting standards (other matters)	Standard Setting	Q1 2021	not started
Unpaid fees (de minimis fees)	Standard Setting	Q2 2021	not started

Project/Stream	Type of Project	Expected Start	Status
Digital assets	Standard setting	Q3 2021	not started
Client affiliates	Standard setting	Q3 2021	not started
529 college savings plans	Standard setting	Q1 2022	not started
Simultaneous employment or association with an attest client	Standard setting	Q1 2022	not started
Business relationships	Standard setting	Q1 2022	not started
Reporting of an independence breach to an affiliate that is also an attest client	Other project	Q1 2022	not started
Conflicts of interest	Member enrichment PEEC	Q2 2022	not started

¹ Member enrichment PEEC projects entail significant PEEC member involvement.

² Member enrichment staff projects entail insignificant PEEC member involvement.

Artificial intelligence	Member enrichment PEEC	Q3 2022	not started
Operational enhancement to the code	Member enrichment Staff	ongoing	in progress

AICPA Professional Ethics Division: Strategy and Work Plan for 2021-2023

TBD, 2020

Prepared by the AICPA Professional Ethics Executive Committee.

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New York, NY 10036-8775

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Introduction

This document sets out the Professional Ethics Division's strategy and work plan (SWP) for the years 2021 through 2023. The SWP outlines the standard-setting projects the Professional Ethics Executive Committee (PEEC) plans to begin and the member enrichment projects the Professional Ethics Division (division) staff will undertake.

Potential projects were identified through member enrichment activities, such as the ethics hotline, and outreach to PEEC members and other stakeholders. PEEC issued a formal consultation paper seeking feedback from members and other interested parties on identified potential projects as well as other ~~other~~ projects for PEEC's consideration. After the comments were analyzed, PEEC developed the SWP that follows.

The SWP is an accumulation of the feedback received taking into consideration:

- Prevalent issues in the profession
- Benefit to the public interest
- Technological change
- Changes in auditing and accounting standards
- Education and tools to assist members
- Degree of urgency in addressing matters
- Social and economic trends due to the pandemic
- Feasibility of undertaking a project due to its nature.

Standard-setting projects

Standard-setting projects involve promulgating new or revising existing interpretations. Since these projects can result in authoritative changes to the *Code of Professional Conduct (code)*, they follow a prescribed due process. This process includes, among other steps, discussion during PEEC's quarterly meeting sessions that are open to the public. Agenda materials and minutes related to these projects are available on the [division's website](#).

New or revised interpretations resulting from standard-setting projects must first be exposed for public comment in the form of an exposure draft. For an exposure draft to be issued, the proposal must be approved by a two-thirds majority of the voting PEEC members. Exposure drafts are available on the division's website and are publicized in AICPA publications such as *The Journal of Accountancy*. The typical comment period in which members and other interested parties may submit comments is ~~60~~sixty days.

After exposure, PEEC considers all comments received and a two-thirds majority of the voting PEEC members must agree to adopt the proposal.

Member enrichment projects

Member enrichment projects do not follow the same ~~strict due~~ process since the guidance issued is not authoritative. While PEEC may be consulted on some member enrichment projects, the results of these projects are staff documents designed to assist members and other interested parties with understanding and applying the code. Member enrichment projects include, among other things, the development of articles, podcasts, toolkits and frequently asked questions and answers.

New standard-setting projects

529 college savings plans

In 2005, PEEC developed guidance for 529 college savings plans. This guidance concluded that a covered member who is an account owner has a direct financial interest in the plan as well as in the underlying investments held by the plan because the account owner elects which sponsor's 529 college savings plan to invest in, and prior to making the investment decision, the covered member has access to information about the plan's investment options or funds.

The consultation paper indicated that PEEC was informed that the underlying securities are not always known by account owners when they invest in these plans and sought feedback related to challenges encountered by members and whether a project should be undertaken to re-evaluate the guidance.

Most of the commenters support this project due to the difficult nature of monitoring the underlying investments of these plans. A task force will be formed to understand the monitoring challenges and to determine how to address the independence concerns raised by investing/participating in 529 college savings plans.

Timing

The project ~~will~~ is scheduled to begin in the first quarter of 2022.

Simultaneous employment or association with an attest client

The "Simultaneous Employment or Association with an Attest Client" interpretation (1.275.005) prohibits all partners and professional employees of the firm from being employed by or associated with an attest client. The interpretation includes two very specific exceptions, one for adjunct faculty members of an educational institution and another for members in a government audit organization.

The consultation paper sought feedback on whether a project should be undertaken to determine if there should be other exceptions. One such exception suggested in the consultation paper was whether a partner or professional employee could be simultaneously employed or associated with the U.S. Army if the firm audited the U.S. Army.

Most of the commenters support this project, recommending a principles-based approach, limiting the interpretation to covered members or making an exception for military services. A task force will be formed to determine whether there should be an exception for military personnel and whether there should be other exceptions to the subtopic "Current Employment or Association with an Attest Client" (1.275).

Timing

The project is scheduled to ~~will~~ begin in the first quarter of 2022.

Business relationships

Business relationships have changed since the "Cooperative Arrangements with Attest Clients" interpretation (1.265.010) under the "Independence Rule" (1.200.001) was first adopted in 1993. In addition, firms are engaging in business relationships with nonattest clients (e.g., finance and

accounting outsourcing) that may create threats to compliance with the “Integrity and Objectivity Rule” (1.100.001).

The consultation paper sought feedback on what business relationships firms have with either nonattest or attest clients and whether the code should be updated to better reflect the types of business relationships in which members are currently involved.

Most of the commenters support this project and encourage PEEC to consider consistency with the U.S. Securities and Exchange Commission (SEC) when developing the guidance. A task force will be formed to determine the types of business relationships members have with attest clients, the nature of those relationships and additional safeguards that may be necessary to protect independence, integrity and objectivity.

Timing

The project ~~is scheduled to~~will begin in the first quarter of 2022.

Client affiliates

The definition of an “affiliate” currently extends to common ownership by entities and not common ownership by individuals.

The consultation paper indicated that there are frequent inquiries regarding whether entities that are owned by the same individual should be considered affiliates. The consultation paper sought feedback on how firms currently apply guidance related to the affiliate definition in a situation when entities are owned by the same individual and what additional guidance related to client affiliates, if any, would be helpful.

Most of the commenters support this project, recommending clarifying the definition of “affiliate”. Based on the analysis of the feedback provided, there is inconsistency in how current guidance is applied. A task force will be formed to determine if the guidance should be applied to individuals and if there are any other aspects of the client affiliate interpretation that need clarification.

Timing

The project ~~is scheduled to~~will begin in the third quarter of 2021.

Unpaid fees¹

The “Unpaid Fees” interpretation (1.230.010) concludes that independence is impaired when a covered member has unpaid fees, regardless of the amount, from an attest client for any previously rendered professional service provided more than one year prior to the date of the current-year report.

The consultation paper sought feedback on whether a project should be undertaken to determine whether there is a threshold where threats to independence from unpaid fees could be at an acceptable level.

The commenters are evenly split, recommending alignment with the International Ethics Standards Board for Accountants (IESBA) or highlighting potential challenges in defining trivial fees. A task force will be formed to develop a framework for members to determine whether unpaid fees are, in substance, equivalent to a loan. Further, given the current situation related to

¹ PEEC changed the name of the project from “De minimis fees” to “Unpaid Fees”.

the COVID-19 pandemic, the task force will consider whether a bright line of one year is appropriate.

Timing

The project is scheduled to~~will~~ begin in the second quarter of 2021.

Digital assets

The code does not provide any guidance specific to independence threats or other ethics issues when members own or mine digital assets such as cryptocurrencies.

The consultation paper sought feedback on whether a project should be undertaken to understand independence and ethics issues unique to the digital asset ecosystem.

Most of the commenters support this project and recommend PEEC determine whether ownership of digital assets should be addressed under the “Financial Interests” subtopic (1.240). A task force will be formed to develop guidance regarding how the ownership of digital assets should be treated.

Timing

The project is scheduled to~~will~~ begin in the third quarter of 2021.

Assisting clients with implementing accounting standards (other matters)

When practitioners provide nonattest services to their attest clients, they should refer to the “Nonattest Services” subtopic (1.295). However, there is no interpretation that specifically addresses assisting clients with implementing accounting standards.

In addition to seeking feedback on specific projects, the consultation paper sought comments on other matters. Two commenters recommend considering whether enough guidance exists around the ethical implications when members assist their attest clients with the implementation of new accounting standards.

As accounting standards continue to increase in complexity, it is challenging for middle market companies to keep up with the implementation issues of new standards. Therefore, these entities engage practitioners for assistance with implementation. A task force will be formed to develop additional guidance related to threats and safeguards associated with assisting clients with implementing new accounting standards.

Timing

The project is scheduled to~~will~~ begin in the first quarter of 2021.

New member enrichment projects

Definition of “office”

In 2001, PEEC revised the definition of “office”, which identifies which individuals need to remain independent of attest clients. The current definition of “office” highlights that substance should govern the office classification, and personnel interactions and assigned reporting channels are more important than physical location.

Since 2001, there have been many changes to how accounting firms practice, which may require changes in how offices are viewed. The consultation paper sought feedback on whether a project should be undertaken to update the definition of “office” to better reflect these changes in practice.

Most of the commenters support the project, recommending considering relevance of physical offices and virtual offices.

Since the office definition stipulates that substance over form should govern classification, a member enrichment project will be undertaken to provide ~~some~~ non-authoritative guidance given the relevance of physical and virtual offices.

Timing

The project is scheduled to~~will~~ begin in the fourth quarter of 2020.

Artificial intelligence

Artificial intelligence (AI) is technology that performs decision-based tasks previously performed by humans. AI presents a huge opportunity for CPAs, but reliance on new technology could create threats to compliance with the code. The code does not provide any guidance specific to independence threats or other ethics issues when members utilize artificial intelligence to provide professional services.

The consultation paper sought feedback on whether a project should be undertaken to understand ethics issues unique to the use of AI while providing professional services and whether guidance should be developed to address those unique challenges.

Most of the commenters support the project and provide examples of threats related to reliance on artificial intelligence (e.g., uninformed reliance on AI could threaten a member’s objectivity). Some commenters believe it may be premature to develop authoritative guidance to address any ethics implications or that the matter should be first addressed by the Auditing Standards Board. A member enrichment project will be undertaken to create awareness of the various threats related to the use of AI.

Timing

The project is scheduled to~~will~~ begin in the third quarter of 2022.

Conflicts of interest

The “Conflicts of Interest” subtopic (1.110) indicates that a member should use professional judgement to determine whether a professional service, relationship or matter would result in a conflict of interest.

The consultation paper indicated that there ~~is~~are an increased number of inquiries regarding conflicts of interest and sought feedback on what additional guidance would be helpful to assist members with better understanding and applying the conflicts of interest interpretations.

Most of the commenters indicate that they believe there is enough existing guidance, but they support the project due to the increased number of inquiries.

The content of the inquiries will be analyzed and member enrichment materials will be developed to raise awareness of conflicts of interest.

Timing

The project ~~is scheduled to will~~begin in the second quarter of 2022.

Operational enhancements to the code

The consultation paper sought feedback on what operational enhancements should be made to the code to make it more user-friendly.

All commenters support the project, making various recommendations such as enhanced visibility of member enrichment content, streamlining the landing page for the online code and providing updated on-demand training on how to use the online code.

Following is a summary of the member enrichment projects to address these recommendations:

Enhanced Visibility of Member Enrichment Materials: FAQs and certain other appropriate member enrichment content will be moved to the online platform. For member enrichment content that can’t be moved to the online platform, a link will be created from the platform to the content. The FAQs will be added to the AICPA publication “Technical Questions and Answers”. Completion is estimated by the end of the fourth quarter of 2020.

Streamlining of Online Code Landing Page: Division staff will work with the development team to reduce the “AICPA Online Professional Library” banner in the online code to optimize space. The timing of this project has not yet been finalized.

Updated on-demand training on how to use the online code: An updated video tutorial will be developed on how to use the code and the online interface will be linked to the video. The timing of this project has not yet been finalized.

Protecting client confidentiality and data security

The primary focus of information security is the balanced protection of the confidentiality, integrity, and availability of data while maintaining efficient policy implementation and without disrupting organizational productivity.

The consultation paper sought feedback on whether a standard-setting project should be undertaken to assist members with understanding their ethical responsibilities in the area of data security and breaches.

Most of the commenters did not support this project, noting that new guidance will be hard to monitor due to rapidly changing laws and regulations. There has been a change of circumstances since the comments were received. Due to the COVID-19 pandemic, the requirement to quarantine forced many accounting firms and their clients to work remotely. As firms continue adapting to the new way of working, it is important for them to review the steps they take to protect the confidentiality of data. A member enrichment project will be undertaken to provide non-authoritative guidance to increase data security awareness due to increased risks of intentional or unintentional disclosure of confidential information.

Timing

The project is scheduled to begin in the fourth quarter of 2020.

Gig employment

Professional employees of a firm should comply with certain interpretations of the code (e.g., the “Considering or Subsequent Employment or Association with an Attest Client” subtopic (1.279)). However, there is no guidance that specifically addresses whether gig workers are considered to be professional employees.

The gig economy is based on flexible or temporary jobs where a gig worker is engaged to perform an agreed-upon task. As the gig economy continues to grow, its impact on the world of business is also increasing.

A member enrichment project will be undertaken to assist members in determining whether ~~the~~ gig workers are considered to be professional employees, and therefore, should comply with the applicable interpretations of the code.

Timing

The project is scheduled to begin in the first quarter of 2023.

New services

Modern companies may outsource a key component of their business model to a third party, and that organization’s third-party relationships may pose various risks. Companies must evaluate the risks to ensure consistent and thorough protection of sensitive information. In relation to this trend, CPAs are being asked to perform new types of services. For example,

CPAs may be asked to perform third-party assessments, or CPAs may design and develop a financial information system and then sell the system to a third party who in turn leases or sells the system to others, including an audit client of the firm that designed and developed the system.

A member enrichment project will be undertaken to evaluate what provisions of the code apply when certain services are rendered and whether any rules and interpretations should be updated to- ensure the code is fit for purpose to be able to support the professional performing these services in a manner that protects the public interest.

Timing

The project is scheduled to begin in the first quarter of 2023.

Other project

Reporting of an independence breach to an affiliate that is also an attest client

The “Breach of an Independence Interpretation” interpretation (1.298.010) requires the responsible individual to inform those charged with governance as soon as practicable if the responsible individual determines that action cannot be taken to satisfactorily address the consequences of the breach.

The consultation paper sought feedback on whether a project should be undertaken to determine whether members can use judgement about when or if they need to communicate a breach to sister and downstream affiliates that are also attest clients.

Most of the commenters do not support the project, indicating that there is enough existing guidance. However, they express different opinions regarding whether reporting of an independence breach to an affiliate that is also an attest client is required.

Due to inconsistency in how existing guidance is applied, a task force will be formed to develop guidance to assist members in determining when a breach extends to affiliate entities that are also attest clients of the firm. The task force will determine whether this project should be undertaken as a member enrichment or standard-setting project.

Timing

The project is scheduled to ~~will~~ begin in the first quarter of 2022.

Exhibit A — Current projects

Standard-setting projects

Records requests

On May 1, 2020 an [exposure draft](#) was issued wherein PEEC proposed revisions to the “Records Requests” interpretation (1.400.200) regarding charging clients fees for copying, shipping, and retrieval information.

Timing

Comments ~~are~~were due September 30, 2020 and projected project completion is the first quarter of 2021.

Staff augmentation arrangements

PEEC’s staff augmentation arrangements task force is determining whether the code should address loaned staff arrangements.

Timing

~~Comments are due December 8, 2020 and projected project completion is~~ This project is underway with estimated completion during the second quarter of 2021.

Responding to non-compliance with laws and regulations (NOCLAR)

PEEC’s NOCLAR task force is reviewing the IESBA’s standard *Responding to Non-Compliance with Laws and Regulations* and will be recommending revisions to the code for purposes of convergence.

Timing

This project is underway. The estimated completion date is undetermined.

Affiliates of a single audit financial statement attest client

This task force will determine whether and if so, how the “State and Local Government Client Affiliates” interpretation (1.224.020) adopted in 2019 should be extended to the single audit environment. The task force will consider situations where the auditor is only engaged to perform the single audit for a financial statement attest client (and not the financial statement audit), and also consider whether there are situations when an affiliate of a financial statement attest client would not require the auditor’s independence as part of the single audit, which may occur when the auditor only performs a portion of the single audit. The task force will consider whether its recommendations are best conveyed in the code or as member enrichment materials.

Timing

This project is underway with estimated completion during the fourth quarter of 2021.

Statements on standards for attestation engagements (SSAE)

This task force will determine whether the modifications to the independence rule should be applied when the SSAE report is not restricted in use. The task force will also identify what independence interpretations use financial statement factors and determine how that guidance

should be applied when the attest engagement is not a financial statement attest engagement. The task force will coordinate with Auditing Standards Board staff regarding the adequacy of the code's definition of "client" and "attest client" for members who are applying the SSAEs, since the SSAEs do not define "client".

Timing

This project is scheduled to begin in 2020 with estimated completion during the fourth quarter of 2021.

For Discussion Purposes Only

Member enrichment projects

Inducements

The project team is developing a practice aid to assist members with understanding actions that could influence behavior that may compromise professional integrity and objectivity.

Timing

This project is underway with estimated completion during the first quarter of 2021.

Information system services

The project team is developing guidance to assist members with implementing the “Information System Services” interpretation (1.295.145).

Timing

This project is underway ~~and is scheduled to be completed by~~ with estimated completion during the second quarter of 2021.

“Back to Basics” educational podcast series

This podcast series will focus on educating members about their ethical responsibilities. Episodes will include, among other topics, re-evaluating independence when accepting or continuing an engagement and raising awareness of resources available on engagement acceptance and continuance, internal control, including test of controls over compliance, and risk assessment and response.

Timing

This project is scheduled to begin in 2020 with estimated completion during the second quarter of 2021.

IESBA comparison

Given the restructure of the IESBA Code of Ethics for Professional Accountants (IESBA code), the project team will compare the AICPA code to the IESBA code and identify where the AICPA code is less restrictive than the IESBA code. Consideration will be given to including a convergence matrix within this document to assist members in understanding where the AICPA addresses the IESBA topics more robustly in non-authoritative guidance. The International Federation of Accountants (IFAC) Convergence and Monitoring Task Force will work closely with the project team to identify areas where it believes standard-setting may be necessary for convergence.

Timing

This project is scheduled to begin in 2020 with estimated completion during the fourth quarter of 2021.

Hosting services

Publications and teams that develop engagement letter templates will be identified and the project team will seek opportunities to incorporate additional information highlighting nonattest services requirements, including an acknowledgement that the firm is not responsible for hosting the clients’ data or records.

Timing

This project is scheduled to begin in 2020 with estimated completion during the fourth quarter of 2021.

Department of Labor reporting standard

Content or communications will be developed to raise awareness of the change in reporting.

Timing

This project is scheduled to begin in 2020 and the completion date is undetermined.

Chartered Global Management Accountant (CGMA) code updates

The project team will determine what revisions need to be made to the CGMA code for alignment with the Chartered Institute of Management Accountants (CIMA) and AICPA codes.

Timing

This project is scheduled to begin in 2020 with estimated completion during the second quarter of 2021.

SEC exposure draft

In January 2020, the SEC published its proposal to update auditor independence rules (Rule 2-01) in the Federal Register. Division staff developed an impact analysis to assist PEEC with drafting a comment letter to the SEC proposal. Based upon the final revised SEC rules, the impact analysis will be updated and the project team will determine what, if any, changes should be made to the AICPA code, especially in areas that the AICPA code appears more restrictive.

Timing

The timing of this project is subject to the SEC's issuance of the final rules.

Statements on standards for tax services (SSTS)

The tax team's project to revise the SSTS is being monitored. Once the standards are revised, the project team will determine if any member enrichment materials would be helpful.

Timing

The timing of this project is subject to the issuance of the final revised SSTS.

Inducements Task Force

Task force members

Anna Dourdourekas (Chair), Tom Campbell, Sharon Jensen, Peggy Ullmann, and Jennifer Kary, **AICPA Staff:** Michele Craig and Ellen Goria

Task force charge

The task force's charge is to consider the revisions made by the International Federation of Accountants' (IFAC) International Ethics Standards Board for Accountants (IESBA) to the IESBA Code of Ethics for Professional Accountants (the IESBA code) pertaining to the offering and accepting of inducements and recommend to the committee the appropriate actions for convergence purposes.

Reason for agenda item

To request the committee's guidance on the draft practice aid before issuance.

Nonauthoritative guidance (practice aid)

At the August 2020 committee meeting, the task force provided the committee with an update on the task force's progress with revisions to the practice aid, which included (see **agenda item 4B**):

- Clarifying that
 - the purpose of the practice aid is to provide guidance on integrity and objectivity for all professional services.
 - the practice aid does not include guidance on independence.
 - members should use the conceptual framework when addressing circumstances other than accepting or offering gifts or entertainment.
 - if a threat is reasonable in the circumstances it would also be at an acceptable level.
- Changing the frequently asked questions to potential scenarios with questions that members may consider using when applying the threats and safeguard approach.
- Increasing the use of the conceptual framework throughout the practice aid with a focus on the first three steps of the conceptual framework approach.
- Adding, the "timing of the action" as a factor that members may consider when determining what is reasonable in the circumstances.
- Changing the phrase "be intended or appear to be intended to influence the outcome or behavior" to "unduly influence an outcome or behavior" that is more in line with the AICPA code.
- Adding general guidance to the examples of practices that members may consider in order to eliminate or reduce significant threats to their integrity and objectivity.

Action needed

Staff requests that the committee provides its guidance on the draft practice aid (**agenda item 4B**) before issuance.

Materials presented

- **Agenda Item 4B:** Draft Nonauthoritative Guidance for Inducements

Practice aid:

Understanding circumstances that may compromise your integrity and objectivity

As of XXX, 2020

The practice aid: What's it all about?

The AICPA Code of Professional Conduct (code) currently provides guidance to members on evaluating threats to the members' compliance with the "Integrity and Objectivity Rule" (ET sec. 1.100.001 and ET sec. 2.100.001)¹ regarding the offering or accepting of gifts or entertainment. But what about other circumstances that may create threats to our integrity and objectivity? In such circumstances, the Conceptual Framework for Members in Public Practice (ET sec. 1.000.010) or the Conceptual Framework for Members in Business (ET sec. 2.000.010) should be applied.

The FAQs and case studies in this practice aid focus on other circumstances that may influence a member's behavior with respect to compliance with the "Integrity and Objectivity Rule" (ET sec. 1.100.001 and ET sec. 2.100.001) only (that is, independence matters *are not* specifically addressed in this practice aid.²) This practice aid applies to all professional services that a member provides to clients or employers.

The code is the only authoritative source of AICPA ethics rules and interpretations. With guidance from the Professional Ethics Executive Committee, the staff of the Professional Ethics Division developed the nonauthoritative content of this practice aid from hotline inquiries to assist members and others in their application of the code.

The guidance in this practice aid does not address the requirements of other standard-setters or regulatory bodies, such as the state boards of accountancy, the SEC, and the U.S. GAO, whose positions may differ from the AICPA.

Terms that are defined in the code are italicized. The first instance of a defined term or code citation links to the code.

¹ All ET sections are located in AICPA Professional Standards

² See "[Offering or Accepting Gifts or Entertainment](#)" interpretation (1.285.010) for independence guidance.

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What circumstances other than gifts and entertainment may threaten your integrity or objectivity?

The AICPA Code of Professional Conduct (code) specifically addresses members receiving and giving gifts or entertainment and how this might create threats to compliance with the “Integrity and Objectivity Rule” (ET secs. 1.100.001 and 2.100.001). But are there other circumstances that could threaten your integrity and objectivity? Of course, there are. The following are some examples of such circumstances:

- Making political or charitable contributions³
- Offering or receiving preferential treatment, rights, or privileges
- Providing or receiving hospitality
- Accepting employment or other commercial opportunities
- Making a mutual recommendation or promotion of a business interest, product, or service
- Entering into activities that result in a relationship between a family member and a client

It is important to understand that not all circumstances you encounter will create threats to your integrity and objectivity; even when they do, you may be able to eliminate or reduce such threats with safeguards so that your integrity and objectivity is not compromised.

Use of the Conceptual Framework for Members in Public Practice (ET sec. 1.000.010) or the Conceptual Framework for Members in Business (ET sec. 2.000.010) will help you determine the effect the circumstances have on your integrity and objectivity. This practice aid focuses on the first three steps of the conceptual framework. The fourth step, documentation, is covered in toolkits⁴ developed by staff to assist you with applying the steps of the conceptual framework. The worksheets within the toolkits can also be used to satisfy the documentation requirement.



Using the conceptual framework to identify and evaluate threats to integrity and objectivity

Circumstances that may compromise your integrity or objectivity can create self-interest, undue influence, and familiarity threats.

³Charitable contributions are included in this document as “other actions” since they are not considered gifts. See paragraph 10 of the [AICPA's Basis for Conclusion Document for Gifts and Entertainment](#).

⁴ For additional guidance on the application of the conceptual framework see the [Members in Public Practice](#) and [Members in Business](#) Conceptual Framework Toolkits.

This means under **Step 1: Identify threats**, you will need to determine if the circumstance you have encountered could allow you to

- benefit, financially or otherwise, from an interest in, or relationship with, a *client*, an *employing organization* or persons associated with the *client* or *employing organization* (self-interest threat).
- subordinate your judgment to an individual associated with a *client*, an individual associated with the *employing organization* or any relevant third party due to that individual's reputation or expertise, aggressive or dominant personality, or attempts to coerce or exercise excessive influence over you (undue influence threat).
- become too sympathetic to a *client's*, a person's or employing organization's interests or too accepting of their work, product or service due to a long or close relationship with them (familiarity threat).



Then under **Step 2: Evaluate the significance of the threat**, you will need to determine if the threat is reasonable in the circumstances. To do this you will need to use your professional judgment to evaluate, whether a reasonable and informed third party would conclude that the circumstances would impair your integrity or objectivity.

If you conclude that the reasonable and informed third party would not conclude the circumstances would impair your integrity or objectivity, then the threat is reasonable in the circumstances and is at an acceptable level. However, if you conclude that a reasonable and informed third party would conclude that the circumstances would potentially impair your integrity or objectivity then you need to try to implement safeguards to reduce the threat created by the circumstances to an acceptable level or change or eliminate the circumstances.

What factors may help you determine what's "reasonable in the circumstances"?

When evaluating the circumstances under step 2 to determine if they are reasonable in the circumstances, you may find the following factors helpful with your assessment. Of course, it may be necessary to consider a combination of factors to determine what's reasonable in the circumstances:

- Nature and timing of the action
- Occasion or reason giving rise to the action
- Cost or value
- Frequency
- Whether the action was associated with the conduct of business

- Extent of participation by others
- Whether the intent of the individual is, or appears to be, to unduly influence an outcome or behavior

What are some examples of practices that may minimize significant threats to integrity or objectivity?

Appearance is an important consideration to the determination of whether there are threats to your integrity and objectivity. How will circumstances be regarded by a reasonable and informed third party with knowledge of all the facts and circumstances? The following are examples of some practices you may consider to eliminate or reduce a significant threat to your integrity and objectivity:

- Formalizing the organization's approval policy for contributions and sponsorships.
- Having a policy of participating only at or below a certain level of donorship (for example, avoid being the platinum sponsor of an event).
- Having a policy of rotating support for charitable causes from year to year.
- Providing guidance to your team for evaluating what is reasonable in the circumstances. Have them consider things like nature, occasion, frequency, value.
- Monitoring the client or vendor relationship if you are regularly sponsoring, making contributions, or providing or receiving hospitality.
- Limiting the amount and frequency of the contribution to a level that is reasonable in the circumstances to either the organization (donor) or the client (recipient).
- Considering the level of contribution the member provides to others and what other donors provide to this recipient.
- Identifying guidelines for client interactions.
- Disclosing any safeguards that have been taken by the organization.

Despite the practices you may have in place, sometimes threats to integrity and objectivity may not be considered reasonable in the circumstances. When this occurs, it is necessary that you implement additional safeguards to reduce these threats to an acceptable level so that they will be considered reasonable in the circumstances. If you find yourself in this situation, following are examples of some safeguards that you may find helpful:

- Having a member of the firm who is not on the engagement team review the proposed contribution
- Removing from the engagement team any member who is volunteering in a political campaign of a client or whose interaction with the client created a significant threat(s)
- Adding a reviewer to any engagements your organization is currently working on for the client that is also receiving a political or charitable contribution or where an interaction with the client created a significant threat(s)

Members in public practice: Possible scenarios and considerations

Political campaign contributions

Scenario:

A political candidate is associated with a potential client. The potential client issued a request for proposal for consulting services and when preparing its proposal for services, a member identifies that an individual in the firm contributed to the political candidate's campaign.

Considerations:

Questions the member might consider when determining whether the contribution made is reasonable in the circumstances may include:

- What is the political candidate's relationship with the client and what level of influence does this relationship give the candidate over the client?
- Is the contribution in compliance with relevant laws and regulations?
- Is the contribution intended to unduly influence the potential client to select the firm as its service provider?
- Could the contribution be perceived by a reasonable and informed third party to unduly influence the client to select the firm as its service provider?

Charitable donations

Scenario:

A consulting client is requesting that a member join the client's running team for a marathon benefiting a not-for-profit entity. To join the team, the member needs to pledge or obtain pledges to raise funds for the not-for-profit.

Considerations:

Questions the member might consider relevant when determining whether the member's participation in a client's fundraising efforts, impairs, or appears to impair, the member's integrity and objectivity may include:

- Are there others participating in this event and what is their level of participation?
- Is the member's level of participation more than others participating on the running team so as to create a significant *familiarity* threat?
- If the threat is significant, can the member apply safeguards to eliminate the threat or reduce it to an acceptable level.

Sponsorship

Basic sponsorship of a charitable event

Scenario:

A charitable organization is having a fundraising gala event. An officer of one of the firm's consulting clients is on the organization's governing board and will be honored at the fundraising gala. The lead engagement partner requests that his firm sponsor a table at the gala and make a contribution to the charity.

Considerations:

Questions the member might consider when determining whether the charitable contribution is reasonable in the circumstances may include:

- What is the timing and relation to new opportunities or contract renewal for professional services?
- What is the level of sponsorship and how does it align with other sponsors' contributions?
- Does the contribution appear to unduly influence the client's behavior, such as, to retain the member for continued or additional services?

Premier or sole sponsorship of a charitable event

Scenario:

A not-for-profit consulting client is holding a golf outing to raise funds. The client asks the engagement partner if the firm will be one of the premier sponsors of the golf outing and whether the firm will also sponsor the "hole in one" prize.

Considerations:

Questions the member might consider when determining whether being a premier sponsor of a client's charitable event is reasonable in the circumstances may include:

- Is the accounting firm becoming closely identified with the client?
- What is the level of sponsorship and donation to the not-for-profit client compared to other sponsors?
- Would applying safeguards, such as adding a reviewer, reduce the threats to an acceptable level?

Hospitality

Scenario 1:

A member receives an invitation from the CEO of a consulting client requesting the member's presence at her home this weekend for dinner.

Considerations:

Questions the member might consider when determining whether the client's hospitality would compromise the member's integrity and objectivity may include:

- Is there a reason to believe that the CEO's intent is to build a relationship to unduly influence the member's behavior?
- How often does the member attend dinners at the CEO's home?
- Who else from the member's firm and the CEO's company will be attending?

Scenario 2:

What if the invitation in scenario 1 was to the CEO's annual "pig roast" that is a big event held in her backyard? The guest list includes other vendors, the client's customers, and individuals of influence such as, a congressperson that the client supports.

Considerations:

These are questions the member might consider when determining whether the client's hospitality in this scenario impairs or appears to impair the member's integrity and objectivity:

- Does the fact that this event is not limited to only the member enough to reduce threats to an acceptable level?
- What is the nature of the other participants in the event?

Members in business: Possible scenario and considerations

Vendor relationship

Scenario:

A controller of a company has a daughter who recently obtained employment with the company's current accounting software vendor. The controller has been vetting other accounting software vendors because the contract with this current vendor is up for renewal. The company's internal audit has raised a red flag regarding the invoices from the current vendor, such as billing for services not included in the contract. The controller is aware of this issue.

Considerations:

Questions the controller might consider relevant when determining whether continuing vendor relationship, impairs, or appears to impair, the member's integrity and objectivity may include:

- Could it be perceived by a reasonable and informed third party that the daughter's employment influenced the controller's behavior to use that particular vendor rather than thoroughly vetting all vendors and selecting the best one for the company?
- Is there a direct impact on the daughter's employment if the accounting software company does not renew this contract?
- What is the level of severity of the red flag raised by the internal audit team?
- Does the vendor selection process include others in the organization such that the decision does not solely reside with the controller?

Case studies

Case study 1: Volunteer services to a political campaign

The situation

You are part of an engagement team in a firm that provides consulting services to a law firm. The managing partner of the law firm tells you that he will be running in a local election if he gets enough support.

Your firm has a significant portion of its business in the city where the election will take place, so the candidate asks you to volunteer as his campaign treasurer and allow firm staff to volunteer to campaign for him.

You know that taking on the role of campaign treasurer or allowing firm staff to volunteer could create threats to your integrity and objectivity in providing the consulting services.

The applicable guidance

When evaluating this situation you would apply the conceptual framework approach outlined in paragraph.07 of the “Conceptual Framework for Members in Public Practice” (ET sec. [1.000.010](#)) to determine whether there will be any effects on your integrity or objectivity.

Analysis

What threats does this situation present?

Using the conceptual framework, you identify the **familiarity** threat as a possible threat in this situation.

This threat may be present if you or other firm staff who volunteer for the campaign also participate on the consulting engagement. What if a close relationship develops with the candidate as a result of volunteering on the campaign?

How significant is this threat?

Now that you’ve identified the threat that may exist, it’s time to evaluate its significance. In doing so, you consider the appearance and what a reasonable and informed third party would conclude in this situation. Is the threat at an acceptable level? As part of your evaluation you consider whether your client requested similar participation from other vendors and service providers.

What safeguards can you apply?

If you conclude that the threat to compliance with the code is significant, you may consider one or more of the following safeguards:

- Have the work reviewed by someone who is not associated with the consulting engagement. This person can be either inside or outside your firm.
- If you do volunteer as campaign treasurer, stop participating on the consulting engagement.
- Limit participation to only certain individuals.

What does it all come down to?

As with most ethical questions, safeguards are key to compliance. If you already have sufficient safeguards in place or apply the safeguards you identify, such as those in the previous list, then threats to compliance with the “Integrity and Objectivity Rule” (ET sec. 1.100.001) may be at an acceptable level and your firm may continue with the engagement.

In some situations, threats to compliance with the rule may be so significant that no safeguards can reduce or eliminate a threat to an acceptable level. In this case you and your firm may need to terminate the relationship or decline the opportunity to help with the campaign. An example of a threat this significant would be if you or your firm volunteered services to the political campaign with the intent, or the appearance of an intent, to unduly influence your client’s behavior once your client is elected.

Case study 2: Preferential treatment of immediate family member or close relative

The situation

Company B is suing Company A for patent infringement and Company A engages you to provide litigation support. The deadline for you to submit your final analysis of the matter to Company A's CEO and legal counsel is Friday.

The CEO's son and your son play on the same little league team. The CEO is the coach of the team and he decides on the positions and amount of time each child plays during a game. Your son really wants to play 3rd base which he has communicated to his coach, but until now the CEO has refused to play your son in this position and instead has played him in the catcher's position for every game.

You share an initial draft of your analysis with the CEO on the Monday before your Friday deadline. The CEO tells you that he expected a different analysis and doesn't believe your analysis is accurate, nor will it be strong enough to win the case.

Based on the facts and prior conversations with the CEO, you believe the information in the initial draft to be accurate. In addition, you and Company A's legal counsel warned Company A's board of directors and the CEO that it would be difficult to win this case based on the facts and complexity of the matter.

The next day, Tuesday, the CEO provides you with new facts and tells you he expects a new analysis based on these facts. The CEO stresses that if Company A doesn't win this case, they may need to file bankruptcy. You tell the CEO that you will review the updated analysis. Later that evening, your son informs you that the coach just assigned him to 3rd base.

The applicable guidance

You decide to analyze this situation using the "Conceptual Framework for Members in Public Practice" (ET sec. [1.000.010](#)) to determine whether there are threats to your integrity or objectivity because the "Offering or Accepting Gifts or Entertainment" interpretation (ET sec. 1.120.010) is not applicable to the CEO's last-minute decision to change the position your son will be playing in the next game.

Analysis

What threats does this situation present?

Application of the conceptual framework helps you identify the following threats.

If you don't change your analysis and Company A loses their case, Company A may not allow your firm to continue with the litigation engagement or other potential engagements. Additionally, the CEO may not permit your son to play his favorite position during the little league games. This could mean the **undue influence** and the **self-interest** threats may be present.

Because your son and the CEO's son play on the same team, it's possible you may approach the CEO's new facts with less skepticism and more leniency. This indicates the **familiarity threat** may also be present.

How significant are these threats?

Now that you have identified the threats, it's time to consider their significance. Here are some things to think about:

- How would the CEO offering your son the 3rd base position appear to a reasonable and informed third party aware of all the facts and circumstances?
- Is the CEO known to unduly influence others' behavior?
- What is your relationship with the CEO outside of the engagement that could increase threats to your integrity and objectivity?

What safeguards can you apply?

If you conclude that threats to compliance with the code are significant, here are some examples of safeguards you may consider:

- Have Company A's legal counsel and board of directors verify the new facts.
- Get representation from Company A's management (other than the CEO) on all information for the case.
- Have the work reviewed by someone who is not associated with the litigation engagement. This could be someone inside or outside of your firm.

What does it all come down to?

If you have the appropriate safeguards in place or apply additional safeguards you identify, such as those in the previous list, then threats to compliance with the "Integrity and Objectivity Rule" (ET sec. 1.100.001) may be at an acceptable level and you may continue with the engagement.

In some situations, when it appears the intent of preferential treatment is to unduly influence your behavior, threats to compliance with the "Integrity and Objectivity Rule" (ET sec. 1.100.001) may not be at an acceptable level and there may be no safeguards that can eliminate the threats or reduce them to an acceptable level. This is true even if the preferential treatment is not for you but is for an immediate family member or close relative and even if the action is clearly insignificant.

Appendix 1-Conceptual framework example

The following example was used to complete the conceptual framework worksheet:

You are part of an engagement team in a firm that provides consulting services to a law firm. The managing partner of the law firm tells you that he will be running in a local election if he gets enough support.

Your firm has a significant portion of its business in the city where the election will take place, so the candidate asks you to volunteer as his campaign treasurer and allow firm staff to volunteer to campaign for him.

You know that taking on the role of campaign treasurer or allowing firm staff to volunteer could create threats to your integrity and objectivity in providing the consulting services.

When evaluating this situation you would apply the conceptual framework approach outlined in paragraph.07 of the “Conceptual Framework for Members in Public Practice” (ET sec. [1.000.010](#)) to determine whether there will be any effects on your integrity or objectivity and consider what a reasonable and informed third party that is aware of the circumstances would conclude.

Summary of the relationship or circumstances	Step 1 Identify threats	Step 2 Evaluate the significance of threat	Step 3 Identify and apply safeguards	Step 4 Evaluate the effectiveness of safeguards
An owner of your client asked that you volunteer as his campaign treasurer for his campaign.	<i>Familiarity threat:</i> What if a close relationship develops with the candidate as a result of volunteering on the campaign?	Has your client requested similar participation from other vendors and service providers?	Have the work reviewed by someone who is not associated with the consulting engagement. This person can be either inside or outside your firm. If you do volunteer as campaign treasurer, stop participating on the consulting engagement.	Examples of safeguards identified in step 3 may reduce the threat to an acceptable level.
An owner of your client asked that you allow firm staff to volunteer and campaign for	<i>Familiarity threat:</i> What if a close relationship develops	Has your client requested similar participation from other	Limit participation to only certain individuals.	Examples of safeguards identified in step 3 may reduce the threat to an

Summary of the relationship or circumstances	Step 1 Identify threats	Step 2 Evaluate the significance of threat	Step 3 Identify and apply safeguards	Step 4 Evaluate the effectiveness of safeguards
him.	with the candidate as a result of volunteering on the campaign?	vendors and service providers?		acceptable level.
Conclusion	<p>As with most ethical questions, safeguards are key to compliance. If you already have sufficient safeguards in place or apply the safeguards you identify, such as those listed in this table, then threats to compliance with the “Integrity and Objectivity Rule” (ET sec. 1.100.001) may be at an acceptable level and your firm may continue with the engagement.</p> <p>In some situations, threats to compliance with the rule may be so significant that no safeguards can reduce or eliminate a threat to an acceptable level. In this case you and your firm may need to terminate the relationship or decline the opportunity to help with the campaign. An example of a threat this significant would be if you or your firm participate in the political campaign with the intent to influence your client’s behavior once your client is elected.</p>			

Pooled employee plans

Working group

Brian Lynch, Anna Dourdourekas

AICPA Staff: Ellen Goria, Ian MacKay, Sue Hicks, and Melinda Nolen

Observer: Judy Goldberg

Reason for agenda item

The task force seeks the committee's input into staff's proposed frequently asked questions (FAQs) and whether a standard setting project should be undertaken to authoritatively address these matters.

Background

The working group is focused on gaining an understanding of the structure of "pooled employer plans" (PEPs), a new type of 401(k) multiple employer plan (MEP) created by Congress in the SECURE Act in which unrelated employers may participate and which is established by a "pooled plan provider." Plans that satisfy the PEP requirements are characterized as open multiple employer plans and are treated as a single plan for purposes of satisfying the requirements of the Employee Retirement Income Security Act (ERISA).

The pooled plan provider⁵ is responsible for the fiduciary and administrative duties related to the PEP according to [section 101\(a\)\(3\)\(A\)\(i\)](#) of the [SECURE Act](#).⁶ In addition, each participating employer of a PEP is treated as the plan sponsor with respect to the portion of the plan attributable to the employees of such employer (or beneficiaries of such employees).

The Department of Labor estimates that over 3,200 PEPs may be initially created by recordkeepers and administrators of existing defined contribution plans, registered investment advisors, professional employer organizations (PEOs), chambers of commerce, certain insurance companies, and large broker dealers.

Some entities are planning to launch PEPs as early as January 1, 2021 and currently are asking CPA firms to submit proposals to provide audit services to the PEP. Unless the PEP fits within

⁵ Although the pooled plan provider is often referred to as the "PPP", that acronym is not used in this paper because at the time this paper was developed the "Paycheck Protection Program" under the CARES Act is being referred to as the "PPP" and we do not want readers to confuse the two.

⁶ "(A) IN GENERAL.—For purposes of this subsection, the term 'pooled plan provider' means, with respect to any plan, a person who—

"(i) is designated by the terms of the plan as named fiduciary (within the meaning of section 402(a)(2) of the Employee Retirement Income Security Act of 1974), as the plan administrator, and as the person responsible to perform all administrative duties (including conducting proper testing with respect to the plan and the employees of each employer in the plan) which are reasonably necessary to ensure that—

the audit exemption rules (no more than 1,000 participants and no employer with more than 100), then the PEP is subject to an audit.

The auditor independence requirements are critical in determining whether the audit firm can accept the engagement. Staff is considering issuing non-authoritative affiliate guidance so firms will understand at which entities independence needs to be maintained.

The SECURE Act calls for the Secretary of the Treasury to issue guidance on the administrative duties and other actions required to be performed by a pooled plan provider and publish model plan language, but that guidance is still pending.

Summary of issues

These are the two main questions that staff has received:

1. When auditing the PEP, does the member need to be independent of the PPP?
2. When auditing the PPP, does the member have to be independent of the PEP?

Financial statement attest client is a pooled employer plan

The first question asked of the division (whether the member would need to be independent of the pooled plan provider when auditing the PEP) was posed because under item (i) of the affiliate definition, the code considers a participating employer an affiliate only when the employer is the plan administrator:

- i. The participating employer that is the plan administrator of a multiple employer employee benefit plan financial statement attest client.

Because the pooled plan provider will usually not be a participating employer, members were curious whether they should evaluate the situation using the conceptual framework or if they should conclude that the pooled plan provider was an affiliate since it is the plan administrator of the PEP.

In researching the question, staff looked the division's existing [FAQs: Application of the independence rules to affiliates of employee benefit plans](#). One of those FAQs explains that when it comes to a MEP, the participating sponsor that has overall responsibility for plan governance is the party that should be considered an affiliate of the plan. This is the party who oversees the day to day operations of the plan, whether directly or by outsourcing,

Staff believes that since PEP's are a type of MEP, the pooled plan provider should be considered the affiliate of the PEP since under [section 101\(a\)\(3\)\(A\)\(i\)](#) of the [SECURE Act](#) the pooled plan provider is the plan administrator as well as a named fiduciary and is responsible for performing all administrative duties. Given this, staff believes that members should consider the pooled plan provider as the affiliate under item (i) as opposed to evaluating under the conceptual framework.

Item (i) in the definition of an affiliate could be revised and exposed as follows to achieve this:

At this point, staff is recommending an FAQ be issued instead of revising the interpretation. This is because the Secretary of the Treasury has not yet issued the model plan language or guidance on the administrative duties and other actions required to be performed by a pooled plan provider. After that guidance is issued and evaluated, then staff can update the committee and potentially seek approval to issue an exposure draft.

Following are the FAQs staff would like the committee's input on. The first FAQ is specific to PEPs whereas the second FAQ is applicable to MEPs including a PEP.

Pooled plan provider is plan administrator and not a participating employer

Question: When a member is auditing a pooled employer plan, should the pooled plan provider be considered the affiliate under item (i) of the affiliate definition even when the pooled plan provider is not a participating employer of the pooled employer plan?

Answer: Yes, the pooled plan provider should be considered the affiliate of the pooled employer plan under item (i) of the affiliate definition since under [section 101\(a\)\(3\)\(A\)\(i\) of the SECURE Act](#) the pooled plan provider is the plan administrator as well as a named fiduciary within the meaning of section 402(a)(2) of the Employee Retirement Income Security Act of 1974 (ERISA) and is responsible for performing all administrative duties.

At the time this FAQ was issued, the Secretary of the Treasury had not issued the model plan language or guidance on the administrative duties and other actions required to be performed by a pooled plan provider. When the guidance is issued, the ethics division will review and determine whether this answer is affected.

Participating employers that are not the plan administrator of a multiple employer plan

Question: When a multiple employer plan is a financial statement attest client, are participating employers that are not the plan administrator affiliates of the plan?

Answer: No. Although the participating employers that are not the plan administrator are not de-facto affiliates under item (i) of the affiliate definition, members should be alert to relationships or circumstances they have with these entities where the appearance of independence might be questioned and apply the [Conceptual Framework for Independence](#) to determine the best course of action.

Financial statement attest client is a pooled plan provider, or an entity controlling the pooled plan provider, but not a participating employer

The other question the division received is when a member's financial statement attest client is the pooled plan provider (or an entity controlling the pooled plan provider), whether the member would need to be independent of the PEP.

This question was asked because item (j) of the affiliate definition concludes that when a MEP is sponsored by a financial statement attest client (or an entity controlled by the financial statement attest client) the MEP is an affiliate. So, members questioned whether the pooled plan provider, when not a participating employer, should be considered a sponsor and as such an affiliate under item (j) or if they should evaluate the relationship using the conceptual framework.

Staff believes that for purposes of item (j) of the affiliate definition, the pooled plan provider should be considered a sponsor and consequently an affiliate as opposed to evaluating the relationship using the conceptual framework. In developing this conclusion staff looked again to the division's existing [FAQs: Application of the independence rules to affiliates of employee benefit plans](#) and to [section 101\(a\)\(3\)\(A\)\(i\)](#) of the [SECURE Act](#).

The FAQ that explains what a MEP is, equates the plan sponsor to the participating employer that is the plan administrator. This FAQ goes on to explain that the plan administrator is the entity that has overall responsibility for plan governance and who oversees the day to day operations of the plan, whether directly or by outsourcing.

Because [section 101\(a\)\(3\)\(A\)\(i\)](#) of the [SECURE Act](#) considers the pooled plan provider the plan administrator as well as a named fiduciary and is responsible for performing all administrative duties, staff believes the pooled plan provider should be considered a sponsor in addition to the participating employers and therefore the PEP would be an affiliate of the pooled plan provider under item (j) of the affiliate definition.

Staff believes its conclusion is further supported by the definition of plan sponsor³ in the ERISA which states in part that a plan sponsor includes the entity that "...maintains the plan". Staff believes and the plan governance discussion in paragraph .32 of the AICPA Guide *Employee Benefit Plans* further supports staff's conclusion that the pooled plan provider should be considered a sponsor:

.32 The named fiduciary is responsible for the operation and administration of a plan, including the identification of a plan administrator. This individual is usually an officer or other employee of the plan sponsor and typically reports to the plan sponsor's board of directors or management. The named fiduciary has continuing responsibility for operation of the plan in accordance with the terms of the plan instrument, any trust instrument or insurance contract, and government laws and regulations. Generally, the

³ The term "plan sponsor" means (i) the [employer](#) in the case of an [employee benefit plan](#) established or maintained by a single [employer](#), (ii) the [employee organization](#) in the case of a [plan](#) established or maintained by an [employee organization](#), or (iii) in the case of a [plan](#) established or maintained by two or more [employers](#) or jointly by one or more [employers](#) and one or more [employee organizations](#), the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or *maintain the plan*. (emphasis added and source is <https://www.law.cornell.edu/uscode/text/29/1002>).

plan provisions, determination of the rights of participants under the plan, management of investments, and delegation of operational and administrative duties.

Item (j) in the definition of an affiliate could be revised and exposed as follows to achieve this:

A single or multiple employer employee benefit plan sponsored by either a financial statement attest client or an entity controlled by the financial statement attest client. All participating employers **and the plan administrator if not a participating employer** of a multiple employer employee benefit plan are considered sponsors of the plan.

Staff is recommending an FAQ be issued instead. This is because the Secretary of the Treasury has not yet issued the model plan language or guidance on the administrative duties and other actions required to be performed by a pooled plan provider. After that guidance is issued and evaluated, then staff can update the committee and potentially seek approval to issue an exposure draft.

Following is the FAQ staff would like the committee's input on:

Sponsor includes a pooled plan provider

Question: When an entity acts as a pooled plan provider for pooled employer plans, are those plans considered affiliates of the pooled plan provider, or entities controlling the pooled plan provider, under item (j) of the affiliate definition?

Answer: Yes, for purposes of applying the code, pooled employer plans should be considered affiliates of a pooled plan provider, or of an entity controlling the pooled plan provider, under item (j) of the affiliate definition. Under the SECURE Act the pooled plan provider is considered a named fiduciary and plan administrator and is responsible for performing all administrative duties. Given this, it seems appropriate to also consider the pooled plan provider a sponsor.

At the time this FAQ was issued, the Secretary of the Treasury had not issued the model plan language or guidance on the administrative duties and other actions required to be performed by a pooled plan provider. When the guidance is issued, the ethics division will review and determine whether this answer is affected.

Action needed

Staff is asking the committee to provide input on the draft FAQs and on whether a standard-setting project should be undertaken once the Secretary of the Treasury issues its guidance.

Communications plan

Ms. Mullins will work with staff to develop an appropriate communication plan.

IESBA update

Reason for agenda item

To supplement the quarterly verbal update provided to the committee on the IESBA's activities, Ms. Gorla prepared project summaries for some of the IESBA's projects.

Questions for the committee

1. Do committee members find these summaries helpful?
2. If so, what enhancements would be helpful?
3. What other IESBA projects would the committee like to see summarized on future agendas?

Materials presented

- **Agenda item 6B:** Nonassurance services
- **Agenda item 6C:** Definitions of listed entity and public interest entity
- **Agenda item 6D:** Engagement team

Nonassurance services

Project description

Key changes proposed to the nonassurance services (NAS) [exposure draft](#):

- A prohibition on providing NAS to an audit client that is a public interest entity (PIE) if a self-review threat (SRT) to independence will be created.
- Further tightening of the circumstances in which materiality may be considered in determining the permissibility of a NAS. The concept of materiality is retained as an example of a factor that a firm considers in evaluating the level of an identified threat. However, in the case of audit clients that are PIEs, firms and network firms will no longer be permitted to provide a NAS to an audit client on the grounds that the outcome or the result of the NAS will not be material to the financial statements (i.e., the materiality qualifier is withdrawn). In a few instances, the materiality qualifier is withdrawn for audit clients that are non-PIEs.
- Strengthened provisions for identifying and evaluating threats, including those that are created by the provision of multiple NAS to the same audit client.
- Strengthened provisions regarding auditor communications with those charged with governance (TCWG), including, for PIEs, a requirement for NAS pre-approval by TCWG.
- Stricter requirements regarding the provision of some NAS, including certain tax and corporate finance advice.
- The NAS exposure draft also includes enhanced guidance to assist firms in evaluating the level of threats to independence when providing NAS to audit clients. This includes more robust provisions to address threats, including new application material to emphasize how a firm might deal with situations when a safeguard is not available.

PEEC input on the project

PEEC submitted a [comment letter](#) that requested the IESBA implement a procedure that will allow for commenters to provide additional input on the NAS proposal once the PIE project is finalized since the NAS proposal significantly expands the prohibition of NAS that professional accountants can provide to their PIE audit clients. In addition to this global comment, PEEC's comments explained that it believes:

- The proposal supports the enhanced prohibitions for PIEs because of the heightened expectations of stakeholders but ***does not provide adequate evidence to support the conclusion that safeguards cannot be applied when the SRT is identified.***
- Paragraph 600.11 A2⁸ could be interpreted to mean that the ***SRT would be created***

⁸ Paragraph 600.11 A2: Identifying whether the provision of a non-assurance service to an audit client will create a self-review threat involves determining whether there is a risk that: (a.)The results of the service will affect the accounting records, internal controls over financial reporting, or the financial statements on which the firm will express an opinion; (b.)In the course of the audit of those financial statements, the results of the service will be subject to audit procedures; and (c.) When making an audit judgment, the audit team

even if there is a remote possibly of the criteria existing. To address this concern, PEEC recommend the phrase “there is a risk that” be deleted so that the professional accountant can factor in the probability of the criteria existing. If, however, the IESBA prefers to retain a qualifier, we recommend a qualifier that is more closely aligned to the phrase “will create a self-review threat” be used.

- Paragraph 600.12 A1⁹ that describes ***advice and recommendations*** is unclear and could be interpreted as prohibiting a professional accountant from providing *any* advice or recommendations.
- The example in the ***accounting and bookkeeping services*** section that discusses “Providing technical advice on accounting issues, including the conversion of existing financial statements from one financial reporting framework to another” should be deleted or clarified because it could be read to mean that typical communications between a firm and an audit client related to technical accounting matters that take place as part of the audit process could result in the performance of a NAS that creates a SRT. We would support the threshold used in paragraph R604.4, “have a basis in tax law that is likely to prevail” provided it is not intended to be higher than the U.S. threshold “***more likely than not.***”¹⁰
- The materiality qualifier for non-PIEs should not be deleted for ***tax advisory or tax planning services***. That is, auditors of non-PIES should be permitted to continue to provide tax advisory or tax planning services to a non-PIE audit client if the outcome or consequences of the tax advice will *not* have a material effect on a non-PIE's financial statements on which the firm will express an opinion.
- An example of a permitted ***litigation support service*** should be added and recommended the example added be internal investigations, such as investigations directed by TCWG. We believe internal investigations are consistent with the role of an independent professional accountant and could improve audit quality.
- An additional exception should be added to ***expert witness services*** that is consistent with the exception in the AICPA code related to expert witness services that are provided to a large group of plaintiffs or defendants that includes one or more audit

will evaluate or rely on any judgments made or activities performed by the firm or network firm in the course of providing the service.

⁹ Paragraph 600.12 A1: Providing advice and recommendations might create a self-review threat. Whether providing advice and recommendations creates a self-review threat involves making the determination set out in 600.11 A2. This includes considering the nature of the advice and recommendations and how such advice and recommendations might be implemented by the audit client. If a self-review threat is identified, application of the conceptual framework requires the firm to address the threat where the audit client is not a public interest entity. If the audit client is a public interest entity, paragraph R600.14 applies.

¹⁰ The threshold “more likely than not” is used in PCAOB Rule 3522(b) *Tax Transactions*; Internal Revenue Code (IRC) Regulation Sec. 1.6662-4(d) *Substantial understatement of income tax. – Substantial authority*; IRC section 6694 - *Understatement of taxpayer's liability by tax return preparer* and Treasury Department Circular 230, Regulations Governing Practice before the Internal Revenue Service- § 10.34 - *Standards with respect to tax returns and documents, affidavits and other papers.*

clients of the firm, provided that at the outset of the engagement certain conditions are met.

- The example “Performing due diligence in relation to potential acquisitions and disposals” in the **corporate finance service** discussion should be removed since it is not a corporate finance service.

Status

The comment period for the [exposure draft](#) closed on May 4, 2020. During the September 2020 meeting the IESBA was informed that the overall feedback fell into the following general categories:

- Project should be delayed given PIE project, COVID-19 and concerns of scale and pace of change.
- Objections to removal of materiality since it moved away from the principle-based approach.
- Some disagreement with the prohibition of NAS for PIE audit clients where there is a SRT.
- Concern that application material regarding advice and recommendations might suggest that the SRT prohibition extends to audit procedures.
- Divergent views on whether provisions relating to related entities should be limited to controlled downstream entities or include parent entities of PIEs.
- Use of professionals from the same firm is not a sufficient safeguard.
- Align the code with stricter national laws/regulations in some jurisdictions.
- Impact on non-PIEs or small PIEs.
- Concerns that drafting will result in inconsistent application, e.g. “...whether there is a risk that...”.

IESBA considered the comments received on the exposure draft and provided input and direction to the task force.

Staff believes the following topic is important to highlight since it would result in a more restrictive standard for non-PIEs.

R604.4 and use of “likely to prevail”

R604.4 was exposed as a *new provision* and the exposure draft explained on page 33 that it would be applicable to all audit clients and was adapted from U.S. PCAOB Rule 3522. However,

instead of using the “at least more likely than not” threshold used by the PCAOB¹¹, the proposal used a “likely to prevail” threshold. The proposed language was:

A firm or a network firm shall not provide a tax service or recommend a transaction to an audit client if the service or transaction relates to marketing, planning, or opining in favor of a tax treatment that was initially recommended, directly or indirectly, by the firm or network firm, and a significant purpose of the tax treatment or transaction is tax avoidance, unless that treatment has a basis in applicable tax law and regulation that is likely to prevail.

PEEC’s comment letter supported the threshold “have a basis in tax law that is likely to prevail” provided it was not intended to be higher than the U.S. threshold “**more likely than not**.” With respect to the use of the phrase “likely to prevail” it was reported to the board at the September meeting that “Respondents generally supported¹² or provided conditional support¹³ for the application material relating to the provision of tax planning and advisory services that will create a self-review threat in paragraph ED-604.12 A2.¹⁴ Many questioned the use of the term “likely to prevail”.¹⁵ Respondents^[000] also questioned the use of the same term in ED-R604.4 and they described it as being “subjective” and lacking clarity.”

It was also reported to the board at the September 2020 meeting that substantive comments and suggestions include:

- The term “more likely than not” should be used in place of “likely to prevail” because it is more prevalent in accounting literature (e.g., the analogous PCAOB Rule 3522). It was suggested that the IESBA consider making it clear that the phrases “more likely than not” and “likely to prevail” are equivalent.¹⁶
- The threshold of what is “likely to prevail” should be prescribed, for example, under U.S. federal tax practice where more likely than not is better than 50 percent likelihood that the tax authority will accept a tax position. Additionally, it was not clear how these thresholds would link to the proposals.¹⁷
- A respondent¹⁸ interpreted the term “likely to prevail” as meaning that tax services

¹¹ The threshold “more likely than not” is used in PCAOB Rule 3522(b) *Tax Transactions*; Internal Revenue Code (IRC) Regulation Sec. 1.6662-4(d) *Substantial understatement of income tax. – Substantial authority*; IRC section 6694 - *Understatement of taxpayer’s liability by tax return preparer* and Treasury Department Circular 230, *Regulations Governing Practice before the Internal Revenue Service- § 10.34 - Standards with respect to tax returns and documents, affidavits and other papers*.

¹² **Regulators/ MG:** IRBA, MAOB, NASBA, UKFRC; **Public Sector Organizations:** AGNZ, AGSA, GAO; **Independent NSS:** APSES, XRB; **PAOs/ NSS:** BICA, EFAB, IAA, ICAB, ICAG, ICAI, ICAS, ICPAR, ICPAU, IMCP, IPA, JICPA, NBAAT, SAICA, SAIPA, ZICA; **Firms:** BDO, Crowe, DTTL, EY, GTIL, Mazars, Moore, RSM; **Others:** CAQ

¹³ **PAOs/ NSS:** ACCA/CAANZ, AE, AICPA, CNCC, CPAC, ICAEW, MICPA; **Firms:** KPMG, PwC

¹⁴ **Regulators/ MG:** MAOB, NASBA; **Independent NSS:** APESB; **PAOs/ NSS:** ACCA-CAANZ, BICA, CPAC, EFAB; **Firms:** Crowe, DTTL, GTIL, Moore, Nexia

¹⁵ **Regulators/ MG:** IRBA, NASBA, UKFRC; **Independent NSS:** APESB, **PAOs/ NSS:** AICPA, CAI, CNCC, CPAC, EFAB; **Firms:** BDO, BKT, DTTL, KPMG, Mazars, Nexia; **Others:** SMPC

¹⁶ **Firms:** DTTL

¹⁷ **Regulators/ MG:** NASBA

¹⁸ **PAOs/ NSS:** EFAB

are permissible whenever national or tax law allows.

- One respondent¹⁹ suggested the IESBA consider deleting the term “likely to prevail” from the code, citing the concerns about its subjective nature.

During the September 2020 board meeting, the threshold was discussed, and a straw poll taken regarding preference of the thresholds. By staff’s count, 7 board members preferred the “more likely than not” threshold, 2 (1 board member and 1 PIOB member) preferred a higher standard that implied a clear probability that the advice will prevail and 2 board members believed that translating the “more likely than not” threshold would be difficult for their jurisdictions.

The task force took the feedback from the September 2020 board meeting and developed a revised draft. The revised draft sent to the board and technical advisors on October 21, 2020 called for the firm to have confidence that the proposed treatment has a basis in applicable tax law and regulation that is likely to prevail and reads as follows:

A firm or a network firm shall not provide a tax service or recommend a transaction to an audit client if the service or transaction relates to marketing, planning, or opinion in favor of a tax treatment that was initially recommended, directly or indirectly, the firm or a network firm, and a significant purpose of the tax treatment or transaction is tax avoidance, unless **the firm has confidence that the proposed** treatment has a basis in applicable tax law and regulation that is likely to prevail.

The explanation that accompanied this revision explained that “The task force believes that the circumstances being addressed in §R604.4 and §604.12 A2 require a threshold that is a greater than just over 50% (i.e. 50.1% would **not** be acceptable). The task force’s reasons are as follows: (i) In both paragraphs, the code is concerned with situations where a firm will be expected to provide assurance on the output of work/advice that that firm has provided. (ii) The test in accounting and other standards is not appropriate because the circumstances contemplated such standards apply to accountants in the general course of practice - and not where a firm is expected to provide an assurance opinion; (iii) In the two situations where the test is used, the objective is to set a threshold that eliminates or substantially reduces risk - (a) §R604.4 addresses the situation where an audit firm has recommended a tax treatment or transaction for the purpose of tax avoidance; (b) §604.12 A2 establishes the circumstances in which the provision of tax advice and tax planning services **will not create** a SRT. **The level of confidence required to warrant the conclusion that no SRT will be created must, in the task force’s view, be high. The task force’s views were explained to the Forum of Firms. While there was support for ‘more likely than not to prevail’ (primarily because it was established terminology), there was greater support for ‘plain English’ rather than language that has a technical meaning. The task force has also had concerns that the subtleties of some formulations would not be able to be translated.**

Because it appears the scope of services covered by R604.4 is significantly more robust than initially understood; is an outright prohibition; and, applies to both PIEs and non-PIEs, staff recommended that the scope of R604.4 be adjusted to align with PCAOB Rule 3522 to cover *only* aggressive tax position transactions. Staff recommended as a follow

¹⁹

Regulators/ MG: IRBA

up step, that the IESBA request the Tax Planning and Related Services Working Group, add to its terms of reference, fact finding as to what other services should be covered by R604.4. This will allow for a transparent discussion of the threats to independence; clear understanding of the services covered and greater compliance/less noncompliance. However, if the task force did not agree with staff's recommendation, then staff recommended the task force provide robust application guidance that will provide the necessary clarity so firms will understand what services are prohibited. Examples of clarity include what services are covered and what is meant by "a significant purpose" and "likely to prevail". Staff also suggested the task force consider not extending the prohibition to entities that are not PIEs.

Convergence considerations

Staff has not performed a complete impact analysis yet but has noted the following topics, in addition to the discussion above related to tax shelters, will likely need to be discussed by the IFAC Convergence and Monitoring task force to determine whether the differences between the two codes require standard setting.

- Before accepting an engagement to provide a non-attest service, should members have to evaluate the non-attest service using the conceptual framework to identify, evaluate and address threats as called for in R600.8.
- Tax services - The IESBA code addresses more tax services than the AICPA code. In addition, one component of the tax services discussion (R604.4), if adopted seems to indicate that the AICPA code would need to be revised to conclude that a member's independence will be impaired if they recommend a tax shelter to their audit or review client unless the member is virtually certain that the tax shelter will be accepted by the IRS.
- Legal advice - Should any guidance be added on this topic in the code or should we remain more restrictive by not permitting anything.
- Corporate finance advice - The prohibited services seem to capture some things that should be permitted.

Definitions of listed entity and public interest entity

Project description

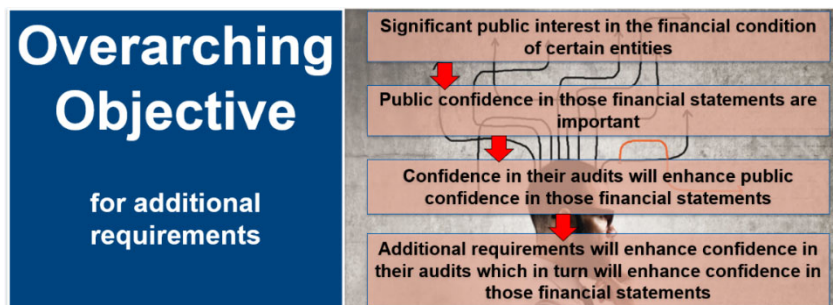
To review, in coordination with the IAASB, the definitions of the terms *listed entity* and *public interest entity* (PIE) in the code with a view to revising them as necessary so that they remain relevant and fit for purpose. This will involve establishing agreement between the IESBA and the IAASB on a common revised definition of the term “listed entity” that would be operable for both boards’ standards and a pathway that would achieve convergence between the concepts underpinning the definition of a PIE in the code and the description of an “entity of significant public interest” (ESPI) in the IAASB standards to the greatest extent possible. The project is focused on audits of financial statements and auditor independence.

PEEC input on the project

Staff welcomes the committee’s comments on the project including any concerns it believes should be monitored. Staff would appreciate input related to how the code would be revised given the expectation that local bodies will refine the definition. Staff would also find it helpful to understand whether the committee believes the changes proposed so far would pull in entities that are not regulated by other domestic standard-setters (e.g., the SEC). If so, would the AICPA code need to incorporate the more restrictive PIE standards, such as those that are applicable when providing nonassurance services.

Status

The IESBA was supportive of the task force’s overarching objective as outlined in this visual.



During the September 2020 meeting, the task force presented its [draft language](#), preliminary rational and sought feedback from the IESBA. The key recommendations presented were:

- Although the list of entities considered PIEs is longer, it is also a broader list of high-level categories of entities as PIEs.
- This list of high-level categories of PIEs should be refined by national bodies by tightening definitions, setting size criteria and adding or exempting particular types of entities.
- Firms should determine if any additional entities should be considered PIEs.

The board was generally supportive of the task force's revisions to the overarching objective and the list of factors set out in proposed paragraphs 400.8 and 400.9. These are some of the highlights from the September 2020 IESBA discussion:

- It was agreed the task force would consider adding new application material to reference the connection between the overarching objective in paragraph 400.9 and independence of auditors and firms.
- With regards to the new factor in the second bullet of paragraph 400.8 that relates to regulatory supervision, a few IESBA members queried its relevance in light of bullets 1 and 6 unless it references prudential regulation. One IESBA member on the other hand supported the draft wordings, noting that prudential regulation is not necessarily restricted to the financial market. In addition, the task force chair clarified that if an entity is subject to regulatory supervision that includes meeting its financial obligation, then there may be significant public interest in that entity's financial condition and its audits may be required to be subject to more independence and audit quality related requirements.
- One IESBA member asked the task force to consider if the list of factors in paragraph 400.8 covers entities that hold large volumes of sensitive data given that misuse of such data may lead to a significant impact on public interest. In response, the task force chair noted that while there is public interest in the use of data by some entities, it is unclear if there is the same level of public interest in those entities' financial condition which underpins the objective of defining a PIE.

The task force agreed to continue working with the IAASB to determine whether adding a requirement in the ISAs for auditor's reports to disclose whether the particular entity was treated as a PIE. It also agreed that since it is considering dropping the term "listed entity", it will consider whether the universe of related entities for an audit client that is a listed entity in paragraph R400.20 should be the same for all PIE audit clients.

IESBA will consider revised proposals at its December 2020 meeting with a view to approving an exposure draft.

Convergence considerations

Staff has not evaluated the convergence efforts yet. Currently, the AICPA code's references to PIEs are limited to a definition and mention that a PIE is a factor to consider when determining whether a particular safeguard is effective.

Engagement team

Project description

The IAASB changed the definition of engagement team in ISA 220 for quality management purposes to include component auditors that are not part of the network firm and service providers. This revision raised several questions with respect to compliance of these individuals with the International Independence Standards (IIS) in the context of a group audit.

This project is to ensure that the IIS provide clear and consistent guidance with respect to independence for (1) component auditors who are performing audit procedures and who are outside of the audit firm's network (i.e., individual independence requirements) and (2) the firms that these component auditor are in (i.e., firm independence requirements).

This is because proposed ISA 600 (Revised), like the extant ISA 600, establishes a requirement for the group engagement partner to take responsibility for obtaining a confirmation from component auditors that ethical requirements that are relevant to the group audit engagement, including those related to independence, have been fulfilled.²⁰ If the component auditor does not meet the independence requirements that are relevant to the group audit, proposed ISA 600 (Revised) requires the group engagement team to obtain sufficient appropriate audit evidence relating to the work performed at the component without involving that component auditor.²¹

It is generally the case under the extant IESBA code that if a component auditor is from the same network as the group auditor, it will apply the same independence requirements applicable to the group engagement team when auditing a component. So, for example, if the parent entity is a public interest entity (PIE),²² all network firms are required to comply with the provisions on non-assurance services (NAS) that apply to the PIE and its related entities (applying the related entity principle in paragraph R400.20).²³

In contrast, the IESBA code is effectively silent on the principles that should apply to a component auditor outside the group auditor's network. Accordingly, subject to a different agreement between the group auditor and the component auditor, the component auditor will generally apply the independence requirements in the IESBA code relevant to its audit client

²⁰ [Exposure Draft of Proposed ISA 600 \(Revised\)](#) (ED-ISA 600), *Special Considerations—Audits of Group Financial Statements (Including the Work of Component Auditors)*, paragraph 20(c)

²¹ ED-ISA 600, paragraph 22

²² The Code defines a "public interest entity" as:

- (a) A Listed Entity; or
- (b) An entity:
 - (i) Defined by regulation or legislation as a public interest entity; or
 - (ii) For which the audit is required by regulation or legislation to be conducted in compliance with the same independence requirements that apply to the audit of listed entities. Such regulation might be promulgated by any relevant regulator, including an audit regulator.

²³ Paragraph R400.20 states the following:

As defined, an audit client that is a listed entity includes all of its related entities. For all other entities, references to an audit client in this Part include related entities over which the client has direct or indirect control. When the audit team knows, or has reason to believe, that a relationship or circumstance involving any other related entity of the client is relevant to the evaluation of the firm's independence from the client, the audit team shall include that related entity when identifying, evaluating and addressing threats to independence.

(i.e., the component). This would be the PIE provisions, where the component is a PIE, or more frequently, the non-PIE provisions if the component is not a PIE in its own right.

PEEC input on the project

This is the first update provided to PEEC, so no feedback has been provided. Staff welcomes PEEC's comments on the project including any concerns it believes should be monitored.

Status

Following are the [preliminary recommendations](#) presented at the October 2020 meeting.

Individual independence

It was recommended that the same independence considerations that apply to individuals from component auditor firms within the network should be applied to component auditors outside of the group auditor's network. This is because the work of the individuals from the non-network firms contributes to the audit opinion on the group financial statements just as much as the work performed by individuals from component auditor firms within the network. It is believed that taking a consistent approach to personal independence, whether an individual is from a network firm or non-network firm, will eliminate any perception that the independence of component auditors on the engagement team outside the network is less important than that of component auditors on the engagement team within the network. In addition, since the concept of a *component*²⁴ under ED-ISA 600 is no longer limited to a corporate entity, the view that the IIS should also require independence of the individuals involved in the group audit engagement of any components that are not related entities.

Firm independence

The task force believes that no new principles are required for component auditors within the group auditor's network because the IESBA code already requires network firms to be independent. Accordingly, the focus of the discussion was on firms that are outside of group auditor's network. The general rule proposed is that a firm (and any of its network firms) that is outside of the group auditor's network, should

- be independent of the component it is auditing as well as any related entities that the component can control using the PIE or non-PIE standard that is applicable to the group audit client.
- apply the conceptual framework with respect to all other related entities of the component.

In addition, the task force believes the component firm should not have a financial interest in the group audit client when the group audit client is a PIE and does not believe that the level of the threats to independence would warrant going upstream of the group audit client, if the group

²⁴ ED-ISA 600 (Revised) defines a "component" as follows:

A location, function or activity (or combination of locations, functions or activities) determined by the group engagement team for purposes of planning and performing audit procedures in a group audit.

Paragraph A4 of ED-600 notes that "the group engagement team uses professional judgment in determining the components for which audit procedures will be performed (by the group engagement team or component auditors on its behalf). The manner in which components are viewed for purposes of planning and performing a group audit may be influenced by the group structure, but may or may not be aligned with the way in which the group is organized, which could be, for example, by legal entities, geographic locations, or lines of business."

audit client itself were not the ultimate holding entity, given the further degree of separation. This prohibition, however, would not extend to the component firm's network firms.

Convergence considerations

Staff's preliminary assessment is that the AICPA Code does not have clear guidance on what the ethical requirements are for component auditors that are outside of the group auditor's network and so convergence would need to be addressed. **Exhibit 1** includes staff's preliminary assessment of some of the key terms that will need to be monitored throughout the project.

Exhibit 1

Extant AICPA code	Extant IESBA code	ISA 220 (Revised) (Approved September 2020)	ISQM 1 (Approved September 2020)
<p>Attest engagement team. Those individuals participating in the <i>attest engagement</i>, including those who perform concurring and engagement quality reviews. The attest engagement team includes all employees and contractors retained by the <i>firm</i> who participate in the <i>attest engagement</i>, regardless of their functional classification (for example, audit, tax, or management consulting services). The attest engagement team excludes specialists, as discussed in AU-C section 620, <i>Using the Work of an Auditor's Specialist</i> (AICPA, <i>Professional Standards</i>), and individuals who perform only routine clerical functions, such as word processing and photocopying.</p> <p>1.220.030 .02 However, the <i>firm</i> may use the work of such individuals in a manner similar to internal auditors, provided that the <i>firm</i> complies with AU-C section 610, <i>Using the Work of Internal Auditors</i>.</p> <p>Third-party service provider. All of the following:</p>	<p>All partners and staff performing the engagement, and any individuals engaged by the firm or a network firm who perform assurance procedures on the engagement. This excludes external experts engaged by the firm or by a network firm.</p> <p>The term “engagement team” also excludes individuals within the client’s internal audit function who provide direct assistance on an audit engagement when the external auditor complies with the requirements of ISA 610 (Revised 2013), <i>Using the Work of Internal Auditors</i>.</p>	<p>ISA 220: All partners and staff performing the audit engagement, and any other individuals who perform audit procedures on the engagement, excluding an auditor’s external expert and internal auditors who provide direct assistance on an engagement.</p> <p>A17. Engagement teams include personnel and may also include other individuals who perform audit procedures who are from:</p> <ul style="list-style-type: none"> a) A network firm b) A firm that is not a network firm, or another service provider <p>For example, an individual from another firm may perform audit procedures on the financial information of a component in a group audit engagement, attend a physical inventory count or inspect physical fixed assets at a remote location.</p> <p>Definition of component auditor</p> <p>An auditor who, at the request of the group engagement team, performs audit procedures related to a component for purposes of the group audit. A component auditor is a part of the engagement team. (Ref: Para. A13–A14)</p> <p>A13. References in this ISA to the engagement team include members of the group engagement team and component auditors. The engagement team includes individuals from the group</p>	<p>16. An individual or organization external to the firm that provides a resource that is used in the system of quality management or in the performance of engagements. Service providers exclude the firm’s network, other network firms or other structures or organizations in the network.</p> <p>Paragraph A105 of ISQM 1 provides the following guidance to the definition of “service provider:</p> <p>A105. In some circumstances, the firm may use resources that are provided by a service provider, particularly in circumstances when the firm does not have access to the appropriate resources internally. Notwithstanding that a firm may use resources from a service provider, the firm remains responsible for its system of quality management.</p> <p>Examples of resources from a service provider</p> <ul style="list-style-type: none"> • Individuals engaged to perform the firm’s monitoring activities or engagement

<p>a. An entity that the <i>member</i> does not <i>control</i>, individually or collectively with his or her <i>firm</i> or with <i>members</i> of his or her <i>firm</i>.</p> <p>b. An individual not employed by the <i>member</i> who assists the <i>member</i> in providing <i>professional services</i> to <i>clients</i> (for example, bookkeeping, tax return preparation, consulting, or attest services, including related clerical and data entry functions).</p>		<p>engagement team's firm and may include individuals from a <u>network firm, a firm that is not a network firm, or an external service provider</u>.</p> <p>A14. In some circumstances, the group engagement team may perform centralized testing on classes of transactions, account balances or disclosures, or may perform audit procedures related to a component. In these circumstances, the group engagement team is not considered a component auditor for purposes of this ISA.</p> <p>A4. ...For this purpose, the group engagement team uses professional judgment in determining the components for which audit procedures will be performed (by the group engagement team or component auditors on its behalf). The manner in which components are viewed for purposes of planning and performing a group audit may be influenced by the group structure, but may or may not be aligned with the way in which the group is organized, which could be, for example, by legal entities, geographic locations, or lines of business.</p> <p>A5. For example, for a group comprised of 15 legal entities that are required to be consolidated under the provisions of the applicable financial reporting framework (i.e., group financial statements), the auditor may plan and perform the group audit by combining these 15 entities into three components based on the commonality of information systems and systems of internal control.</p>	<p>quality reviews, or to provide consultation on technical matters.</p> <ul style="list-style-type: none"> • A commercial IT application used to perform audit engagements. • Individuals performing procedures on the firm's engagements, for example, component auditors from other firms not within the firm's network or individuals engaged to attend a physical inventory count at a remote location. • An auditor's external expert used by the firm to assist the engagement team in obtaining audit evidence.
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**American Institute of Certified Public Accountants
Professional Ethics Division
Professional Ethics Executive Committee
Open meeting minutes
August 11, 2020**

The Professional Ethics Executive Committee (PEEC or committee) held a duly called meeting on August 11, 2020. The virtual meeting convened at 10:00 a.m. and adjourned at 2:25 p.m.

Attendance

Members

Brian Lynch, Chair

Cathy Allen

Chris Cahill

Tom Campbell

Robert Denham

Anna Dourdourekas

Anika Heard

Kelly Hunter

Sharon Jensen

Jennifer Kary

Jeff Lewis

Alan Long

William McKeown

James Newhard

Stephanie Saunders

Lewis Sharpstone

Lisa Snyder

Peggy Ullmann

Douglas Warren

Lawrence Wojcik

AICPA Staff

Susan Coffey, Executive Vice President –
Public Practice

James Brackens, Vice President – Ethics and
Practice Quality

Toni Lee-Andrews, Director – Professional
Ethics Division

Ellen Gorla, Associate Director

Jennifer Clayton, Senior Manager

Michele Craig, Lead Manager

Summer Young, Lead Manager

Shannon Ziemba, Manager

Michael Schertzinger, Manager

John Wiley, Manager

Shannon Ziemba, Manager

Elaine Bagley, Specialist – Support Services

Karen Puntch, Case Investigator

Henry Grzes, Lead Manager – Tax Practice
and Ethics

Kristy Illuzzi, Technical Issues Committee
(TIC) Staff Liaison

Kelly Mullins, Manager – Support Services and Communications

Sarah, Brack, Manager

Liese Faircloth, Manager

Jennifer Kappler, Manager

Iryna Klepcha, Manager

Melissa Powell, Manager

Megan Kueck, Lead Manager – State Regulation and Legislation

Elena Redko, Manager – Content Development and Management – MA

Barbara Andrews, Director – Forensics, Technology and Management Consulting

Guests

Ellen Adkins, Enforcement Subcommittee

Sonia Araujo, PwC

Coalter Baker, Baker & Cockburn, PLLC

Ian Benjamin, Chair, Enforcement Subcommittee

Grace Berger, Montana State Board of Public Accountancy

Claire Blanton, RSM US LLP

Bob Brooks, North Carolina State Board of CPA Examiners

Lisa Brown, Ohio Society of CPAs

D. Boyd Busby, Alabama State Board of Public Accountancy

Gilbert Codrington, Thomson Reuters

Allan Cohen, RSM US LLP

Debbie Cutler, Debra A. Cutler CPA PC

James Dalkin, Government Accountability Office

George Dietz, PwC

Megan Donnellon, Deloitte

Dan Dustin, NASBA

Horace Emery, Suttle & Stalnaker, PLLC

Jason Evans, BDO

Jeremy Farrah, Runyon Kersteen Ouellette, P.A.

Holly Love, Deloitte

Troy McGahee, Department of Energy

Nancy Miller, KPMG

Andy Mintzer, Hemming Morse, LLP

Angela Miratsky, BKD, LLP

Karen Moncrieff, EY

Christina Moser, Plante Moran

Brad Muniz, Sobel & Co., LLC

Jessica Mytrohovich, Georgia Society of CPAs

Donna Oklok, Accountancy Board of Ohio

Patsy Pehrson, Oak Ridge Associated Universities

Carolyn P. Peyton, Department of Energy

Christine Piche', CLA

Tori Pitkin, New York State Society of CPAs

Jacqueline M. Reardon, TPRC

Mark Reynolds, Creative Value Consulting

John Robinson, RSM US

Joseph Sanford, Enforcement Subcommittee

Stephanie Sauer-Watts, PwC

Roby Sawyers, NC State University

April Sherman, CLA

Byron Shinn, Carr, Riggs & Ingram, LLC CPAs

Sarah Ference, CNA Insurance	Susan Speirs, Utah Association of CPAs
Cathleen Finneran, PwC	Ivona Szady, Deloitte
Wendy Garvin, Tennessee State Board of Accountancy	John Szczomak, New Jersey Society of CPAs
Jo Ann Golden, New York State Society of CPAs	Joseph Tapajna, TPRC
Jennifer Gorman, Wyoming Board of Certified Public Accountants	Deborah Thomas, Department of Energy
Pamela Ives Hill, Missouri Society of CPAs	Jessica Tomc, EY
Michael Hillman, Fluor Idaho LLC	Paula Tookey, Deloitte
Kelly Hnatt, External Counsel	John Tucher, N3B
Becca Huber, New York State Society of CPAs	Stephen P. Valenti, CPA
Diane Jules, International Ethics Standards Board for Accountants	Shelly Van Dyne, BDO
Vassilios Karapano, Securities and Exchange Commission	Chantell Walters, Thomson Reuters
Beth Knipscheer, HoganTaylor LLP	Darrell Wates, Enforcement Subcommittee
Kimberly Kuhl, KPMG	Sharron Waugh, Tennessee State Board of Accountancy
	Jim West, BDO
	Les Williford, BDO
	Paula Young, EisnerAmper, LLP
	Gary Zeune, The Pros & The Cons
	Paul Ziga, Georgia State Board of Accountancy

1. *Welcome*

Mr. Lynch welcomed the committee and discussed administrative matters.

2. *Non-compliance with laws and regulations*

Mr. Denham provided an update on the NOCLAR task force activities since the May PEEC meeting. Mr. Denham reminded the committee that the task force had several pending issues that needed to be addressed such as: (1) clarification of the terms “*subject entity*” and “*engaging entity*” throughout the interpretation; (2) application of guidance for members providing attest services; and (3) other guidance that should be provided for members performing nonattest services. Mr. Denham explained the task force decisions on these pending issues.

Clarification of terms

Specifically, the task force decided that the guidance provided in the introduction of the proposed interpretation (as presented at the May PEEC meeting), sufficiently explained that the member’s responsibility applies to the engaging entity when the engaging entity and the subject entity are different. Accordingly, the task force did not believe clarification of the terms *subject entity* and *engaging entity* was necessary.

Guidance for members providing attest services

For the second pending issue related to members providing attest services, the task force concluded that the guidance in the proposed interpretation should apply to financial statement attest services. Accordingly, the task force decided to use the term *financial statement attest services* throughout the proposed interpretation except for the section related to group audits.

Guidance for members performing non-attest services

For the third pending issue, the task force decided to include additional guidance for nonattest services. For example, members providing services other than financial statement attest services would be required only to seek to obtain an understanding of the matter.

Addressing the matter would be limited to communicating the matter to the appropriate level of management and those charged with governance, if the member has access to them. Members providing financial statement attest services are also required to advise management to take certain appropriate and timely actions when addressing a NOCLAR or suspected NOCLAR. Additionally, members providing services other than financial statement attest services would be encouraged to document rather than required to document certain aspects of the NOCLAR or suspected NOCLAR.

Mr. Denham stated that one remaining issue that the task force will need to address is the exclusion of certain non-attest services from the proposed interpretation. At this point, the

task force has identified forensic accounting services as the principal area the interpretation should probably not apply, but the task force is also considering the exclusion of certain other non-attest services, particularly, engagements relating to tax controversies.

Recent revisions to the interpretations

Mr. Denham explained the additional revisions to the proposed NOCLAR interpretations since the May PEEC meeting. The task force decided to remove the language throughout the proposed interpretation for members in public practice specifically related to the member using his or her professional judgment to determine whether to withdraw from an engagement and documenting from a reasonable and informed third-party perspective. The task force believed that this could be viewed as a potential way to gain litigation advantage and claim that professional judgment was not appropriately used. For members in business the task force added factors that members would consider when determining disclosure to an appropriate authority.

Auditing Standards Board activities

Mr. Denham provided the committee with an update on the Auditing Standards Board's (ASB's) activities. The ASB NOCLAR task force expects the ASB to vote in October 2020 on exposure of their revised standards that addresses communication with the successor auditor.

Committee feedback

The committee provided feedback based on Mr. Denham's update. Mr. Cahill commented that using the term *financial statement attest services* may create confusion if this new terminology is added to the proposed interpretation. Mr. Campbell commented on the less restrictive documentation requirement (encouraged to document rather than a requirement to document) for members providing professional services other than financial statement attest services. Ms. Allen commented on the professional judgment language removed from the proposed interpretations and suggested that the task force revisit this matter as this would be useful for members that are placed in this position. Mr. Denham stated that the task force will consider the committee's comments at the next task force meeting.

The task force plans to request re-exposure of the proposed interpretations at the November 2020 PEEC meeting.

3. Staff augmentation

Removal of exception for affiliates

Ms. Snyder opened the discussion with a recap of the May PEEC meeting in which the committee agreed on the final changes for the proposed revised interpretation in preparation for exposure. One change included the removal of the exception for affiliates from the interpretation, and instead, inclusion of the following questions in the exposure draft:

- Should staff augmentation be permitted at all for attest clients?
- If so, should an exception be made for certain affiliates?

Exemption for certain affiliates

The committee supported the development of language for the explanation section of the exposure draft for those who believed that there should be an exemption for certain affiliates, as well as examples of the application of the rules, with the goal of helping practitioners who may not be familiar with the complexities of certain affiliate relationships.

Exception for agreed-upon procedures engagements

The committee also supported a question and example language for exposure regarding the proposed exception for staff augmentation arrangements when the only attest engagement a firm has with a client is an agreed upon procedures (AUP) engagement. Ms. Snyder explained that under the code, engagements subject to the Statements on Standards for Attestation Engagements (SSAEs), including AUPs, have modified independence requirements. AUP engagements do not have to comply with the general requirements provisions of non-attest services, such as providing management functions, as long as the underlying services do not apply to the subject matter of the AUP engagement.

The committee did not want to be overly restrictive if a firm was providing staff augmentation services to an AUP only client, therefore, it was agreed that the exposure draft should include a proposed revision to the AUP interpretation that would allow staff augmentation services to AUP only clients provided the underlying non-attest services provided by the augmented staff are not the subject of the AUP engagement.

PEEC review and comment on final draft

Ms. Snyder stated that after making the requested revisions, a complete draft of the exposure document was sent out to committee members for review and comment, and most of the comments were editorial in nature. One comment suggested clarification was needed regarding the requirement that augmented staff who provides services to a client would not be permitted to participate on the attest engagement team. Specifically, it was suggested that this requirement just apply to the period in which the staff augmentation services were provided, which would be consistent with the employment relationship rules currently in the code.

Changes discussed during the meeting

The committee discussed numerous comments regarding the fine-tuning of the language of the exposure draft. NASBA representatives on the committee suggested changes to clarify NASBA's position regarding staff augmentation in the exposure document as well as to

highlight their interactions with PEEC throughout this process.

The committee also addressed the language clarifying when augmented staff could not participate on the attest engagement and agreed on language that such staff could not participate or be in a position to influence the attest engagement within the financial statement period in which the staff augmentation services were performed. The intent was to be consistent with the subsequent employment provisions of the code such as when an individual employed by an attest client is subsequently employed by the firm, as this presents a self-review threat.

Another point of discussion was potential exposure of a question regarding what would be considered a recurring or non-recurring engagement, and the committee concluded no changes to the exposure draft were needed. Specifically, the committee agreed that the proposed interpretation already included the wording that staff augmentation engagements, by definition, were not expected to reoccur, noting that if an unexpected event happens again two years later, then it would still be considered to be unexpected, and therefore should be addressed again at that time.

One question was whether the phrase “if safeguards could not be applied, then the member should not enter into the staff augmentation arrangement” should be added to the proposed affiliate language included in the explanation section of the exposure document if certain affiliates were indeed afforded an exception for staff augmentation services. Other similar provisions of the code do not have this additional phrase. However some committee members felt it would be beneficial and other members wanted consistency with other provisions of the code and thought it should be left out. With no strong opinions from either side, the committee decided to include the phrase in the exposure draft and include a question to commenters about whether or not the proposed phrase should be included.

The committee also discussed a possible exception for staff augmentation arrangements with firms whose only attest engagements are under the SSAEs but are not AUPs. Certain committee members wanted to ensure staff augmentation arrangements would not be afforded an exception not available to other non-attest services. It was noted that key provisions of the proposed exception are that the staff augmentation arrangement would not violate the general requirements for non-attest services, specifically performing management functions, and not relate to the subject matter of the SSAE engagement. Therefore, it would be consistent with the treatment of other non-attest services for non-AUP SSAE engagements.

The committee agreed that including examples regarding potential exceptions for non-AUP SSAE clients in the exposure draft would be beneficial. The committee concluded that the exposure draft would also include proposed additional language for the existing

independence guidance for SSAEs.

The committee also discussed whether the exposure draft should include the question “should staff augmentation be viewed as simultaneous employment or as a non-attest service?” Some committee members supported adding the question, but others were concerned that some practitioners may have difficulty understanding the nuances, and that mentioning simultaneous employment could raise legal questions. Still others reiterated PEEC’s continuing work toward convergence with the International Ethics Standards Board for Accountants (IESBA) code that does not include loaned staff within its non-attest services section.

NASBA representatives noted their concerns regarding staff augmentation arrangements and the appearance of co-employment. The committee indicated that they have had many discussions regarding this topic before and already concluded on this issue. It was therefore decided not to ask this question in the exposure document.

Exposure period

The committee discussed the length of the exposure period and agreed that 90 days would be an appropriate period with the goal of receiving comments and having feedback ready for consideration at the February 2021 PEEC meeting.

The committee then voted unanimously to expose the text of proposed interpretation 1.275.007 “Staff Augmentation Arrangements” and the text of proposed revisions to interpretation 1.297.020 “Agreed Upon Procedure Engagements Performed in Accordance with SSAEs.”

Staff noted that they would make the final revisions to the exposure draft document, do a final recirculation among the committee members, and once approved, will work to get the exposure document issued for public comment as soon as possible.

4. *Inducements*

Feedback incorporated

Ms. Dourdourekas provided an update on the task force’s activities since the last committee meeting. The task force met several times since the May PEEC meeting and revised the practice aid to incorporate the feedback received from the committee and others. When revising the practice aid the task force decided to clarify that (1) the purpose of the practice aid is to provide guidance on integrity and objectivity for all professional services; (2) the practice aid does not include guidance on independence; and (3) members should use the conceptual framework when addressing circumstances other than accepting or offering gifts or entertainment.

Revised FAQs

Ms. Dourdourekas stated that the task force also revised the FAQs in the practice aid and removed the specific answers provided and changed the examples to potential scenarios with questions that members may consider using the threats and safeguard approach.

The task force increased the use of the conceptual framework throughout the practice aid focusing on the first three steps of the conceptual framework approach, identifying the threat, evaluating the significance of the threat, and identifying and applying safeguards. This revision will allow the member to (independently) conclude on evaluating the effectiveness of the safeguards identified and documenting the safeguards applied.

Reasonable in the circumstances

Ms. Dourdourekas reminded the committee that some of the feedback received at the May PEEC meeting addressed the phrase “*reasonable in the circumstances*” and the conceptual framework. To address what a reasonable third party may conclude and the appearance of the matter, the task force included clarifying language that if a threat is reasonable in the circumstances it would also be at an acceptable level. This concept is used throughout the practice aid as the member would need to evaluate the threat, apply a reasonable third-party evaluation, and apply safeguards if necessary, so that integrity and objectivity would not be impaired. The task force “fine-tuned” the factors for determining what is “*reasonable in the circumstances*” and included the “*timing of the action*” as a factor a member may consider.

Clarification of terms

Ms. Dourdourekas explained that another issue the task force addressed was the concept of “intent.” The task force concluded that it might be impossible to know the intent up front and initially decided on using the appearance of the action if not known and included the phrase “*be intended or appear to be intended to influence the outcome or behavior*” in the practice aid.

However, based on feedback received that the practice aid should not introduce language not currently defined in the code, the task force focused on the member’s integrity and objectivity throughout the practice aid rather than the intent to influence. Accordingly, the task force included “*unduly influence an outcome or behavior*,” as a factor that members may consider when determining what is reasonable in the circumstances. This is consistent with the language in the code.

Ms. Dourdourekas requested feedback from the committee on using the term “*unduly influence*” and the committee did not object to the task force’s revision.

Ms. Dourdourekas explained that the task force also revised the examples of practices that members may have in place to eliminate or reduce threats to integrity and objectivity and added general guidance as it relates to “*practices that might help a member’s integrity and objectivity.*” The committee was presented with a list of the examples and provided feedback suggesting that the task force should soften the language in the examples, such as changing the term “adopt a policy.”

The task force will continue to work on the practice aid and share a draft version with the committee at the November 2020 PEEC meeting.

5. *Strategy and work plan*

Mr. Lynch announced that instead of asking the committee to vote on issuance of the Strategy and Work Plan (SWP), an update would be provided about the development of the SWP.

History

Ms. Lee-Andrews reminded committee members that the consultation paper was published in November 2019 seeking feedback from members and other interested parties. After the fourteen comments letters were analyzed, the planning task force (PTF) developed the SWP. Ms. Lee-Andrews highlighted that the SWP is an accumulation of the feedback received taking into consideration prevalent issues in the profession, benefit to the public interest, technological change, changes in auditing and accounting standards, education and tools to assist members, degree of urgency in addressing matters, social and economic trends due to the pandemic, and the feasibility of undertaking a project due to its nature.

Recommendations

Ms. Klepcha provided a high-level overview of the PTF recommendations. Specifically, the PTF recommends initiating the following standard-setting projects: 529 college savings plans, business relationships, client affiliates, digital assets, simultaneous employment or association with an attest client, and unpaid fees. Most commenters supported the aforementioned projects, except for unpaid fees. The commenters were evenly split for this project.

New standard setting project

Ms. Lee-Andrews highlighted that in addition to specific projects, the consultation paper sought input regarding other matters. After the comment letters had been analyzed, an additional standard-setting project, assisting clients with implementing accounting standards, was added to the SWP.

Member enrichment projects

Ms. Klepcha stated that the PTF recommends initiating the following member enrichment projects: conflicts of interest, artificial intelligence, definition of office, and operational enhancements to the code.

Most commenters supported artificial intelligence, definition of office, and operational enhancements to the code. Artificial intelligence and definition of office were included in the published consultation paper as proposed new standard-setting projects. However, after the comment letters had been reviewed, the PTF recommended initiating member enrichment projects instead.

Ms. Klepcha also pointed out that most commenters did not support the reporting of an independence breach to an affiliate that is also an attest client project. However, commenters expressed different opinions regarding whether reporting of an independence breach to an affiliate that was also an attest client was required. Due to inconsistency, the PTF recommends initiating this project.

Ms. Klepcha reported that the PTF did not recommend initiating the data security and breaches project due to rapid changes in related laws and regulations.

Timeline

Ms. Lee-Andrews indicated that exhibit A provided an overview of the projects timeline. Mr. Lynch then highlighted that when the PTF developed the expected timeline for projects, they considered various factors, such as staff availability and ongoing current projects. The PTF also wanted to leave some flexibility for unplanned projects that the committee may need to undertake.

Mr. Cahill suggested staff look at the AICPA Code of Professional Conduct and think about whether the code addresses new types of services. Ms. Allen pointed out that attestation services may not necessarily involve financial statements, so we need to make sure that the code addresses this. Ms. Lee-Andrews mentioned that she had a discussion with Mr. Lynch regarding gig employment.

Mr. Lynch asked the committee to consider Ms. Coffey's professional issues update and provide any feedback regarding the SWP as well as to let the PTF know if any additional topics should be added to the plan.

6. *Association update*

COVID-19 activities

Ms. Coffey provided a professional issues update. As businesses are struggling during the pandemic and the economic downturn, the profession is on the frontlines to support those

businesses. The Association has had to re-examine our priorities and our investment around supporting the profession with resources to support their clients. A lot of work has gone into supporting practitioners with PPP loan applications and forgiveness through the town halls and development of calculators. Work has also been done by standard-setters, including PEEC, the Auditing Standards Board, and the Peer Review Board to ensure practitioners can continue to support clients with high standards of quality.

Strategic initiatives

Ms. Coffey shared the Association's strategic initiatives (promote competency globally, evolve auditing in the future, grow key markets, transform our organization, future-proof management and public accounting) and focused on evolving auditing in the future.

The enhancing audit quality initiative is an example of the work done under evolving auditing in the future. Developing practical tools for the profession that merge technology and methodology also falls under this initiative. Another part of the initiative is reskilling the profession to make sure professionals can be successful as business needs and technology change. CPA evolution also focuses on providing a new path for the CPA for entry level positions.

Ms. Coffey offered some suggestions for thinking about the Strategic Work Plan for PEEC, (1) implications of emerging technologies, (2) confidentiality of client information in an artificial intelligence environment, and (3) new service offerings.

7. *IESBA updates*

Exposure drafts

Mr. Mintzer and Ms. Gorla provided the committee with an update on the IESBA's activities. Mr. Mintzer reported that the Fees and Nonassurance Services (NAS) exposure drafts both received comments from diverse populations and overall respondents were supportive of the proposals.

One major comment was concern related to the timing of these projects since the public interest entity (PIE) and listed entity project had only begun. Commenters indicated that it was difficult to properly assess the proposals without understanding the scope of entities that the provisions would apply to. Mr. Mintzer confirmed that the PIE and listed entity project was in the early stages so time will tell how these three projects come together.

Emerging themes in tax planning and related services

Mr. Mintzer reported that the tax planning and related services project identified the following key emerging themes:

- There is no “one set” of ethical principles applicable to professional accountants (PAs) across jurisdictions.
- Tax Planning impacts ethical behaviors across all the fundamental principles (FPs).
- The concepts of “*fairness*” and “*transparency*” are expected and necessary elements.
- There is an increased focus on environmental, social and corporate governance (ESG) reporting.
- Professional development is critical for professional accountants to exercise professional judgment.
- Threats to compliance with the FPs do not seem to capture the complexity risk associated with the multi-faceted discipline of tax planning.

Mr. Mintzer explained that to address these concerns the task force is considering the need to develop content to be added to the code as well as enrichment materials that would exist outside of the code.

Role and mindset

Ms. Gorla reported that the revisions proposed under the role and mindset project were adopted and would be effective December 31, 2021 with early implementation allowed. The revisions include the following:

- A renewed emphasis on accountants’ responsibility to act in the public interest
- Enhancements to the descriptions of the fundamental principles of integrity, objectivity, professional behavior and professional competence and due care
- An introduction to a new requirement for accountants to have an inquiring mind when applying the code’s conceptual framework
- New application material to highlight the impact of bias in exercising professional judgment and applying the conceptual framework

Technology

Ms. Gorla also reported that the technology task force is focusing first on two of the seven recommendations outlined in the technology report. These two recommendations focus on complexity and independence.

Complexity

The complexity work stream is looking into revising the code to more effectively deal with the threats created by the complexity of the professional environment in which PAs perform their professional activities. The task force is considering adding a new category of threat for complexity or possibly revising an existing threat category. It is also looking to possibly highlight the complexity risk in the conceptual framework and add examples of complexity threats to the discussions in parts 2 and 3 of the code.

Independence

The independence work stream is looking at whether provisions such as the business relationships guidance should be revised to address the threats to independence created by the sale or licensing of technology applications to audit clients and the use of an audit client's technology tool in the delivery of NAS to another entity. It is also looking to revise the IT systems services guidance with respect to the provision of technology-related non-assurance services and will take in to account the work of the NAS services project that is currently in process.

New project under IAASB-IESBA

On the IAASB-IESBA coordination front, Ms. Gorla reported that a new project began to harmonize the definition of "*engagement team*" between ISA 220 and the IESBA code and that the feedback from the Engagement Quality Review (EQR) exposure draft was that the cooling off period for an engagement quality reviewer should remain principle-based in the code.

Benchmarking

The final project reported on by Ms. Gorla was a new benchmarking project. She explained that this project was undertaken to address concerns that the IESBA code's conceptual framework approach allows firms too much flexibility and judgment and that national laws and regulations are more robust and enforceable. The benchmarking project is viewed as a strategic exercise to promote awareness of International Independence Standards and the first phase will compare IESBA's International Independence Standards to the SEC and PCAOB independence standards.

8. *Monitoring group recommendations*

Ms. Gorla provided the committee with an overview of the monitoring group's report and recommendations to strengthen the international audit and ethics standard-setting system. The concerns the report addresses are (1) that the current standard-setting process does not give sufficient weight to the public interest; (2) that stakeholders' confidence in the standards is lacking because of the perception of influence that the accountancy profession has over the standard-setting process because of the funding and resources donated to support the process; (3) and concern that the speed in which standards are developed might not keep pace with how fast the audit and business environment is changing.

The report includes several recommendations to address these concerns such as compensating the board members for their time, adding additional technical staff, and changing the funding format so that the profession will eventually fund less than 50 percent of the standard-setting activities.

The paper calls for a transition plan to be in place by April 2021 and the implementation of these provisions to be in effect within three years from then.

9. *Statements on Standards for Tax Services*

Ms. Saunders gave a status update on the Statements on Standards for Tax Services (SSTS) revision project. The draft standards were shared with the committee at the May 2020 PEEC closed meeting for review and feedback. The SSTS revision task force met with the AICPA's Tax Executive Committee (TEC) at their June meeting and did a detailed review of the draft standards and received their feedback on the project. At the end of July, task force members met with the two new members of PEEC along with two new members of the AICPA's Tax Practice Responsibilities Committee (TPRC) to share a copy of the draft standards and bring them up to speed on the project.

Ms. Saunders noted that since the meetings in May and June, the individual subgroups of the task force, as well as the full task force itself, have met multiple times to evaluate comments received from PEEC, TEC and other sources, and have updated the draft standards. The latest updates will be discussed with TEC at their meeting on August 12, 2020.

Ms. Saunders stated that the task force is still actively seeking comments from committee members on the project, and that the task force suggested that PEEC members who have firm colleagues on TEC, TPRC, or the task force itself could meet with those individuals and share their thoughts on the project.

Ms. Saunders concluded that the task force expects to share the updated draft standards with the committee at the November 2020 closed meeting.

10. *Minutes of the PEEC open meetings*

With new members Ms. Allen and Mr. Long abstaining, it was moved, seconded, and agreed to approve the minutes from the May 2020 open meeting with no dissent.