

June 2, 2017

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Via email: [lsnyder@aicpa.org](mailto:lsnyder@aicpa.org)

Re: Proposed Interpretations: Responding to Non-compliance with Laws and Regulations,  
issued March 10, 2017

The Forensic and Valuation Services (“FVS”) Section presents the following comments and observations regarding the potential impact these changes, if implemented, could have on our FVS members and non-FVS members that provide FVS services. FVS Section leadership believes that NOCLAR should not be applicable to any non-attest service (certainly in its current form), and additional consideration should be given to application to attest work.

Following discussions with members of PEEC, FVS leadership is providing the comments below related to an exception for FVS services. However, it should be noted and considered, that while an exception is helpful, it does not solve the challenge. As an example, a member that provides both FVS services and non-FVS services will have to comply with different ethical standards when performing different types of work. There are a number of problems with this, but at a minimum, it creates a poor public image for CPAs when the public (juries) hears there is some perceived lower standard when a member is compensated for testifying for one party to a dispute. This would create an adverse (effect?) to the guiding principles of public trust, objectivity and integrity.

Nonetheless, FVS leadership is providing the following for PEEC’s consideration in evaluating an exception for FVS services. It is neither reasonable nor practical to list every scenario or circumstance in which NOCLAR creates significant issues for all AICPA members and non-members that work at a member firm (“practitioners”). However, following are merely a few items to highlight challenges for practitioners that provide FVS services.

1. These requirements expand the responsibility and professional liability exposure for our practitioners performing non-attest engagements. Who is to pay the practitioner for the extra time required to investigate, document, report, and follow up on the suspected NOCLAR? The marketplace is unlikely to pay for this in non-attest engagements. Practitioners will face potential litigation for not making a proper assessment of an appropriate response by

management on a legal issue, or, alternatively, will face litigation if someone is fired for what appeared to be a NOCLAR to the practitioner but later was deemed a misunderstanding.

2. The requirements seem to ask CPAs/members to provide legal advice to clients and presumes that the CPA/member has the knowledge, expertise and proper licensure to understand how to properly remediate a legal violation.
3. Given the nature of the work performed by our practitioners, these requirements would require them to potentially violate court orders, confidentiality and non-disclosure agreements, and attorney work product privilege and doctrine.
4. Withdrawal from an engagement is not a realistic option for practitioners providing FVS services. Expert witnesses are still subject to discovery and litigation proceedings. Once an expert is disclosed, they can be targeted by opposing counsel. Further, resignation of an expert during a litigation could put the client into a situation in which it does not have an expert witness to present at trial. This creates significant litigation risk for practitioners, especially if the client loses at trial as a result of not having an expert witness present.
5. FVS believes the marketplace will react negatively to NOCLAR which will result in adverse consequences for FVS practitioners including:
  - a. Attorneys will cease to retain CPA FVS practitioners in an effort to avoid the risk of putting their clients in a position of potential exposure; thereby, resulting in practitioners relinquishing their CPA licenses and credentials in order to continue with their FVS practice;
  - b. Non-member non-CPAs at member firms will be required to follow NOCLAR, which will create motivation for these practitioners to leave member firms to continue providing FVS services (e.g. ex-FBI investigators, forensic IT specialists, valuation professionals with ASA or CFA, and others); and
  - c. Attorneys that also hold a CPA license will be faced with an ethical dilemma which may result in the need to relinquish the CPA license and associated AICPA membership.

In summary, due to the unique nature of services provided in an FVS setting, many of the bases upon which a practitioner is hired is in response to a claim of some alleged wrongdoing, whether it be in a civil, criminal, or an administrative venue. The proposed standard as it relates to the NOCLAR topic should include an exception for practitioners providing FVS services. The following language is offered as a “carve out” for members and non-members at member firms when providing FVS services:

Given its unique nature, practitioners providing forensic accounting, business valuation, and litigation support services are exempt from this standard. Specifically, the standard on "Responding to Non-Compliance with Laws and Regulations" (NOCLAR) is not applicable to engagements wherein a member provides services under VS section 100, *Valuation of a Business, Business Ownership Interest, Security, or*

*Intangible Asset*, is hired by an attorney, provides services falling under the definition of forensic accounting services established in the Code of Professional Conduct at ET sec. 1.295.140, *Forensic Accounting*, or provides Transaction Services as defined in paragraph .05 of CS Section 100, *Consulting Services: Definitions and Standards*.

We appreciate the opportunity to provide our comments and concerns as well as your consideration in providing this exception for our practitioners.

Forensic and Valuation Services Section  
Barbara Andrews, Director of Forensic Services

