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# **EXPOSURE DRAFT**

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## **AFFILIATE**

### **PROPOSED REVISED DEFINITION**

#### **AICPA PROFESSIONAL ETHICS DIVISION**

**April 16, 2015**

**Comments are requested by May 18, 2015**

**Prepared by the AICPA Professional Ethics Executive Committee for comments from persons interested in independence, behavioral, and technical standards matters.**

**Comments should be addressed to Lisa A. Snyder, Director of the Professional Ethics Division, at [lsnyder@aicpa.org](mailto:lsnyder@aicpa.org)**

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April 16, 2015

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

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

Your comments are an important part of the standard-setting process; please take this opportunity to comment. Responses must be received at the AICPA by May 18, 2015. All written replies to this exposure draft will become part of the public record of the AICPA and will be available at <http://aicpa.org/InterestAreas/ProfessionalEthics/Community/ExposureDrafts/Pages/CommentLettersforthe2015April16PEECExposureDraft.aspx>. Comments received will be considered by the PEEC at its July 20-21, 2015 meeting.

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

Sincerely,

Samuel L. Burke, *Chair*  
*AICPA Professional Ethics Executive Committee*

Lisa A. Snyder, *Director*  
*AICPA Professional Ethics Division*

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**CONTENTS**

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	<b>Page</b>
<b>Explanation for the Proposed Revised “Affiliate” Definition .....</b>	<b>6</b>
<b>Text of Proposed Revised “Affiliate” Definition.....</b>	<b>8</b>

## **Explanation for the Proposed Revised “Affiliate” Definition**

The PEEC is exposing for comment revisions to the definition of “Affiliate” [AICPA, *Professional Standards*, ET sec. 0.400.02]. The proposal provides guidance on how to treat multiemployer employee benefit plans under this definition.

### *Board of Trustees of Multiemployer Employee Benefit Plan*

The PEEC received feedback concerning the propriety of including all multiple employer and multiemployer plans as affiliates of participating employers that sponsor these plans. Although the PEEC continues to believe that all multiple employer plans should be considered affiliates of the participating employer that sponsors the plan, it does not believe the same should apply for multiemployer plans. When the PEEC consulted the Department of Labor (DOL) and IRS rules, it determined that participating employers of multiemployer plans are not considered the plan sponsor. Rather, the DOL and IRS identify only the plan’s board of trustees as the governing entity and sponsor [ERISA Section 3(16) (B) (iii) and Instructions to Form 5500, Line 2a].

In an effort to understand the board of trustees’ role and responsibilities, PEEC consulted the Labor Management Relations Act of 1947, commonly known as the Taft-Hartley Act. This act requires the establishment of a joint board of trustees with equal representation from labor and management. Accordingly, representatives appointed by the union will fill half of the seats on the board while representatives of the participating employers, or a group association of employers, will fill the remaining seats on the board. Unlike the participating employers of a multiple employer plan who can govern all aspects of their plan (for example, terminate the plan and change the structure of the plan), the board of trustees governs all aspects of the multiemployer plan.

Given this clarification, the PEEC believes that a change in position is appropriate. Specifically, the PEEC believes that only those entities that participate in the board of trustees of a multiemployer plan could potentially have significant influence over the plan. To have significant influence, the entity would need to have 20 percent or more of the voting rights on the board of trustees or, if it has less than 20 percent of the voting rights, some other factor, such as the following, would have to give the entity significant influence:

- The ability to otherwise participate in the plan’s policy-making processes
- The existence of material intra-entity transactions with the plan (such as when the entity employs a significant percentage of current plan participants and, as such, becomes the source of significant plan contributions)
- Overlap of managerial personnel between the board of trustees and the union or participating employer
- Technological dependency (such as when a plan is reliant upon the union or participating employer’s financial reporting system)

When significant influence is used elsewhere in the affiliate definition, materiality is also a factor to consider. For consistency purposes, the PEEC recommends the incorporation of materiality as well.

Therefore, the PEEC proposes the following:

- When the financial statement attest client is a multiemployer plan, entities such as the union, participating employers, and group associations will be considered an affiliate of the plan when (1) the plan is material to that entity, and (2) that entity has significant influence over the plan through its participation in the plan's governing board.
- When the financial statement attest client is a participating employer, multiemployer plans in which its employees participate will be considered an affiliate of the participating employer if (1) the plan is material to the participating employer, and (2) the participating employer has significant influence over the plan through its participation in the plan's governing board.

This revised position is reflected in items "h." and "j." (extant item "i.") of the "affiliate" definition.

#### *Group Association of Employers*

The PEEC also considered the fact that, sometimes, instead of participating employers having representation on the board of trustees, the seats may be held by members of a group association. A group association of employers is typically a trade association established for the promotion of a particular industry as well as the cooperation and collaboration between companies in that industry. The PEEC believes that it would be appropriate to add group associations to item "h." of the affiliate definition so that any employers that have significant influence over the plan, directly or indirectly through a group association, would need to include the plan as an affiliate when the plan is material to the employer.

#### *Plan Administrator of Multiple Employer Plan*

The extant item "h." of the affiliate definition considers participating employers that have significant influence over the multiple employer plan to be an affiliate of the plan. Upon further discussion, it was agreed that only the participating employer that is selected to act as the administrator of the plan (that is, has the ultimate responsibility for preparing the plan's financial statements or hiring the auditor) should be considered an affiliate of the plan. Therefore, instead of requiring the member to determine if the participating employer has significant influence over the plan, the definition is being revised and new content in item "i." is being added. Item *i.* now provides that the participating employer that is chosen to act as the plan administrator of the multiple employer plan would be considered an affiliate of the plan.

### **Effective Date**

PEEC does not believe that a delayed effective date for transition purposes is necessary. Accordingly, PEEC proposes that the interpretation be effective the last day of the month in which the interpretation is published in the *Journal of Accountancy*.

## Text of Proposed Revised “Affiliate” Definition

[Additions appear in ***bold italic*** and deletions in strikethrough. Terms in italic only are defined terms]

Effective Date

02. **Affiliate.** The following entities are affiliates of a *financial statement attest client*:

- a. An entity (for example, subsidiary, partnership, or limited liability company [LLC]) that a *financial statement attest client* can *control*.
- b. An entity in which a *financial statement attest client* or an entity *controlled* by the *financial statement attest client* has a *direct financial interest* that gives the *financial statement attest client* *significant influence* over such entity and that is material to the *financial statement attest client*.
- c. An entity (for example, parent, partnership, or LLC) that *controls* a *financial statement attest client* when the *financial statement attest client* is material to such entity.
- d. An entity with a *direct financial interest* in the *financial statement attest client* when that entity has *significant influence* over the *financial statement attest client*, and the interest in the *financial statement attest client* is material to such entity.
- e. A sister entity of a *financial statement attest client* if the *financial statement attest client* and sister entity are each material to the entity that *controls* both.
- f. A trustee that is deemed to *control* a trust *financial statement attest client* that is not an investment company.
- g. The sponsor of a single employer employee benefit plan *financial statement attest client*.
- h. Any ***entity, such as a union, ~~or~~ participating employer, or a group association of employers,*** that has *significant influence* over a ~~multiple~~ ~~or~~ multiemployer employee benefit plan *financial statement attest client* ***and the plan is material to such entity.***
- i. ***The participating employer that is the plan administrator of a multiple employer employee benefit plan financial statement attest client.***
- ~~i~~.j. An employee benefit plan sponsored by either a *financial statement attest client* or an entity *controlled* by the *financial statement attest client*. A *financial statement attest client* that sponsors an employee benefit plan includes, but is not limited to, ~~a union whose members participate in the plan and~~ ***all*** participating employers of a multiple ***employer*** ~~or~~ multiemployer plan.
- ~~j~~.k. A multiemployer plan when a *financial statement attest client* or entity *controlled* by the *financial statement attest client* has *significant influence* over the plan and the plan is material to the *financial statement attest client*.
- ~~k~~.l. An investment adviser, a general partner, or a trustee of an investment company *financial statement attest client* (fund) if the fund is material to the investment adviser, general partner, or trustee that is deemed to have either *control* or *significant influence* over the

fund. When considering materiality, *members* should consider investments in, and fees received from, the fund.