

January 16, 2018

Mr. Samuel L. Burke  
Chair, Professional Ethics Executive Committee  
American Institute of Certified Public Accountants  
New York, NY 10036-8775

Mail to: [Ethics-ExposureDraft@aicpa-cima.com](mailto:Ethics-ExposureDraft@aicpa-cima.com)

**Re: Proposed Revisions to AICPA Code of Professional Conduct – Leases Interpretation (ET Section 1.260.040) Exposure Draft**

Dear Mr. Burke:

Deloitte LLP is pleased to respond to the exposure draft prepared by the Professional Ethics Executive Committee (PEEC) of the American Institute of Certified Public Accountants' (the "AICPA") of Proposed Revisions to the AICPA Leasing Interpretation (ET Section 1.260.040) of the AICPA Code of Professional Conduct issued on October 20, 2017 (the "Proposed Interpretation").

We appreciate the opportunity to comment on the Proposed Interpretation and commend the AICPA for its continued efforts to re-examine and improve professional standards and guidance.

We have included comments and recommendations on specific requested matters as well as on other matters that we believe warrant consideration by the PEEC.

**Request for Specific Comments**

The Exposure Draft requested specific feedback related to a number of topics. We ask PEEC to consider the following with respect to certain of those matters:

***Q2. Are there are other situations or circumstances that should be grandfathered which are not grandfathered in the proposal?***

Paragraph .04 of the Proposed Interpretation does not address the circumstances whereby a member enters into a lease with a counterparty for which independence is not required, and such lease is subsequently sold / transferred to a counterparty for which independence is required. In our view, the interpretation should allow for grandfathering of such leases similar to the grandfathering provisions applicable for mortgages and immaterial unsecured loans described in Interpretation 1.260.020.02(b)(ii), *Loans and Leases With Lending Institutions*.

***Q3. Do you agree with the application of the materiality safeguard in paragraph .02? Specifically, do you agree that there are no safeguards available when a covered member specified in paragraph .02 has a lease with the attest client that is material to that covered member?***

We agree with the application of the materiality safeguard in paragraph .02, and that there are no safeguards available when a covered member specified in such paragraph has a lease with the attest client that is material to that covered member.

***Q5. Do you agree that the requirements of the proposal should extend to immediate family, as proposed?***

In our view, it is reasonable to expect that rules on leases applicable to covered members should also apply to the immediate family of those individuals. We note, however, that while the *Explanation of the Proposed Revision* section of the Exposure Draft (see “Applicability”) indicates that “*the requirements of the proposed revision extend to the immediate family of the covered member and to affiliates of a financial statement attest client,*” the Proposed Interpretation does not explicitly include such language. This appears inconsistent with other areas of the AICPA Code where the rules and interpretations intended to apply to the immediate family member of covered members are explicitly stated in the rule/interpretation. PEEC should consider including such language in the body of the proposal to avoid any ambiguity or confusion in applying the standard.

**Q6. What do you foresee as major obstacles to implementation or hardships? Do you expect significant changes in quality controls, procedures, tools, or technology to monitor leases?**

In our view, the Proposed Interpretation as written may require significant consideration of and potential revisions to a member’s existing controls, processes, procedures, systems and human resources in order to appropriately identify and effectively monitor its professionals’ leasing arrangements. This view is based in part on the notion that under the Proposed Interpretation, a significant population of operating leases, which are currently “scoped out” under the extant code, will need to be identified, monitored and evaluated.

We ask PEEC to consider the following:

- We believe the Proposed Interpretation covers all leasing arrangements, regardless of the substance or length of the arrangements. Lease arrangements may include, for example, (a) short-term auto leasing arrangements (also known as “buy-back” or “purchase-repurchase” arrangements that are popular for extended vacations and which technically qualify as a lease rather than a rental), (b) short-term lodging arrangements on vacation and apartment rentals such as those offered by Airbnb or VRBO and (c) personal leases for appliances, home furnishings, and computers. We ask PEEC to evaluate the potential threats to independence arising from these type of lease arrangements and consider whether excluding such arrangements from the scope of the Proposed Interpretation would be appropriate based on the potential threats. We recognize the likelihood of such leases being material to the firm, its professionals or to the attest client may be very low, and thus, will likely not violate the Proposed Interpretation. However, absent specific exclusion of such arrangements, members will be responsible for gathering necessary information (likely a very significant volume of information for many firms) to be able to evaluate such arrangements and make a determination on compliance with the Proposed Interpretation.
- Paragraph .02 includes certain “bright-line” conditions and considerations for evaluating leasing arrangements. We agree that such bright-line conditions and related safeguards are responsive in addressing the most significant threats to independence arising from leasing arrangements. Additionally, paragraph .03 of the Proposed Interpretation establishes a requirement for further analysis to be performed on lease arrangements that have already met the safeguards in paragraph .02. While this additional analysis of threats to independence may have precedent in the rules and interpretations of the AICPA Code, we ask the PEEC to consider that the requirement for additional analysis be limited to circumstances whereby the covered member “knows or has reason to believe” that certain factors may be present. Such an approach has been adopted in other sections of the Code, including Interpretation 1.224.010 *Client Affiliates* related to certain lending relationships and acquisitions; and Interpretation 1.270.100 *Close Relatives*, with respect to financial interests of close relatives. We believe that the additional analysis that may be necessary under this approach, coupled with the bright line conditions and safeguards included in paragraph .02, should serve to adequately address the most significant threats to independence arising from leasing arrangements.

**Q.7 Do you agree that it is appropriate to grandfather primary residence leases in a similar manner to home mortgages, as proposed?**

We agree. Also see Item B in the Additional Comments and Feedback section of this document.

**Q.9 Do you agree that an effective date consistent with the FASB Update effective date for private companies is appropriate (December 15, 2019)? If not, what is a more appropriate effective date?**

Given the nature of the potential operational and procedural changes that may be necessary to comply with the Proposed Interpretation, members will need to perform a comprehensive review of their existing processes. While we believe that the proposed December 15, 2019 effective date should provide sufficient time to allow firms and practitioners to update their controls, procedures, tools or technology to effectively implement the provisions of the interpretation, such determination will be contingent upon its final scope and requirements.

**Additional Comments and Feedback**

In addition to the specific requested feedback provided above, we are including the following additional comments for PEEC's consideration:

A. Paragraph .02 – Materiality Considerations for multiple leases

Paragraph .02 (c) describes materiality safeguards for the firm, individuals participating on the attest engagement team, individuals in a position to influence the attest engagement, and the attest client that must be met to be able to conclude that threats to compliance with the Independence Rule (1.200.001) are or can be reduced to an acceptable level to avoid an independence impairment. However, there is no specific guidance in paragraph .02 related to the materiality considerations for multiple leases. We request the PEEC consider clarifying whether it is necessary to consider aggregate materiality for purposes of applying the paragraph .02(c) safeguards in cases where multiple leases exist between the covered member and the attest client.

B. Paragraph .04 – Grandfathered Leases

We request the PEEC consider clarification to Paragraph .04(c) which states, "The *attest client* entered into the lease with a counterparty which was not required to be independent of the *attest client*, and that counterparty to the lease later acquires or is acquired by the *covered member*." The current wording is not clear. We believe the intent of this paragraph is to address situations whereby an existing attest client is party to a lease, and the counterparty to such lease, at inception, was not associated with the covered member. However, such counterparty is subsequently acquired by, or acquires the covered member (i.e., the counterparty becomes associated with the covered member, in which case the independence rules would then be applicable to that counterparty). Please clarify PEEC's intent.

In addition, the final sentence in paragraph .04 of the Proposed Interpretation states that "Automatic renewals provided for in the original lease are not considered changes in terms for purposes of this Interpretation." We believe that addressing only this narrow aspect of a lease in the Interpretation could be read to imply that the application of other common lease terms (e.g., an election to extend a lease on a month-to-month basis at the end of its primary lease term) would be a change in terms for purposes of the Interpretation. We request that the PEEC consider broadening the scope of this sentence to indicate that the application of any provision of an original lease agreement is not considered a change in terms for purposes of this Interpretation.

C. Paragraph .05 - Covered Member Leases Primary Residence from Attest Client

In our view, paragraph .05 of the Proposed Interpretation does not provide any special exception for leases related to primary residences. Rather, it appears to serve as a reinforcement of the grandfathering provisions already included in paragraph .04 that are available for any leasing arrangement and therefore may be superfluous/unnecessary. If our understanding is correct, PEEC should consider omitting the paragraph if it does not intend to provide any specific exception for primary residence leases. As an alternative, PEEC could consider including an explicit reference to leases on primary residences as an example of leases that can be grandfathered under the provisions of paragraph .04.

D. Decision Tree

We request the PEEC consider creating a decision tree to assist practitioners in understanding the new requirements under the interpretation. Given the complexity and analysis that may be required for implementation, a decision tree would provide greater clarity and guidance to members in applying the interpretation.

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Again, we appreciate the opportunity to comment on the Interpretation. If you have any questions concerning our comments, please contact Christopher Cahill at (212) 436-4842 or [ccahill@deloitte.com](mailto:ccahill@deloitte.com); Vincent A. DiBlanda at (203) 761-3215 or [vdiblanda@deloitte.com](mailto:vdiblanda@deloitte.com); or Paula Tookey at (202) 378-5098 or [ptookey@deloitte.com](mailto:ptookey@deloitte.com).

Sincerely,



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Deloitte LLP