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### Proposed Interpretations Responding to Non-compliance with Laws and Regulations

The Accounting Principles and Assurance Services Committee and the Professional Conduct Committee (the “Committees”) of the California Society of Certified Public Accountants (“CalCPA”) respectfully submit their comments on the referenced proposal. The Committees are the senior technical committees of CalCPA. CalCPA has approximately 43,500 members. The Committees consists of 65 members, of whom 45 percent are from local or regional firms, 32 percent are from large multi-office CPA firms, 12 percent are sole practitioners in public practice, 6 percent are in academia and 5 percent are in international firms. Members of the Committees are with CPA firms serving a large number of public and nonpublic business entities, as well as many non-business entities such as not-for-profits, pension plans, and governmental organizations.

While the Committees believe that it is neither the intention of PEEC to increase the CPA’s responsibilities for the detection of NOCLARs, nor for the expansion of procedures to be performed by the CPA for the purpose of detecting NOCLARs in professional engagements, certain provisions in the proposed interpretations: Responding to Non-Compliance with Laws and Regulations exposed on March 10, 2017, may lead clients and other users of financial information that is the subject of professional engagements performed by a CPA to conclude otherwise. The Committees also believe that the proposed interpretations have the potential to increase litigation against CPAs, and ultimately the liability of CPAs, when NOCLARs that were not detected during the course of a professional engagement are subsequently discovered.

The Professional Conduct Committee is concerned by PEEC’s decision to expand the scope of the IESBA standards to include non-attest engagements. Given the disparate nature and scope of many nonattest services (*e.g.*, software implementation consulting, internal control design consulting, other limited scope consulting, etc.) the Professional Conduct Committee questions whether members performing such services will have the information necessary to make an informed decision about whether a NOCLAR is present or material to a client’s financial statements or fundamental to the operating aspects of the client’s business. The Professional Conduct Committee is also concerned about the implementation of the proposed interpretations as they apply to members or member firms providing forensic accounting and litigation services. In such instances, a

member's service may be premised on a suspected wrongdoing by one party. The Professional Conduct Committee questions how a member retained to examine/investigate and possibly testify about their findings can be subject to the proposed NOCLAR interpretations. As written, members could potentially violate or jeopardize confidentiality, client privilege and/or protective orders commonly in place in litigation engagements (*e.g.*, documentation of NOCLARs subject to discovery, etc.). Additionally, the member may not be in a position to recommend remediation to the client or assess how well the client remediated the NOCLAR. The Professional Conduct Committee believes that PEEC should consider excluding nonattest services from the scope of these proposed interpretations or directly clarify how members might comply with such provisions in the aforementioned circumstances.

Additional specific issues that both Committees believe should be addressed include the following:

1. In response to Question 1 of the proposal, other than those documentation requirements already included in applicable professional standards, the Committees believe that the documentation of potential NOCLARs, for both attest and nonattest services, should be encouraged but not required. The Committees believe this will better align the responsibilities of AICPA members with international standards and reduce threats to members in the event of subsequent litigation. To the extent that PEEC ultimately disagrees with this suggestion, and unless otherwise required by law, the Committees believe that there should be no required documentation beyond: (1) that the potential NOCLAR was brought to the attention of management (and where applicable, those charged with governance), and (2) any documentation required under other professional standards applicable to the member's specific engagement.
2. In response to Question 2, the Committees believe that a one-year transition period is reasonable.
3. The proposal would require a member in public practice to "obtain an understanding" of a potential NOCLAR, even one that may not be relevant to the engagement, and then document it. This may lead clients and other users of financial information to improperly conclude that the interpretations impose upon members in public practice additional procedures designed to detect NOCLARs. Accordingly, the Committees believe that there should be explicit language specifying that, while CPAs are expected to comply with the specific requirements designated by the professional standards applicable to the service being provided, members are neither required, nor expected to perform additional procedures designed to detect NOCLARs.
4. The Committees believe that the phrase "non-compliance or suspected non-compliance" used throughout the proposed interpretations is unclear and vague and could lead to a broader view of what is expected than intended. The

Committees believe that this phrase should be replaced with: “specific information indicating the possibility of non-compliance”.

5. The Committees believe that language similar to that used in paragraph .04 of the PCAOB’s AS 2405, *Illegal Acts by Clients*, should be inserted within the proposed interpretations, which states:

*Illegal acts vary considerably in their relation to the financial statements. Generally, the further removed an illegal act is from the events and transactions ordinarily reflected in financial statements, the less likely the auditor is to become aware of the act or to recognize its possible illegality.*

6. The Committees believe that the extent to which a member who is a senior professional accountant in business must understand the application of relevant laws and regulations to the circumstances relevant to the member’s employing organization should be clarified. If, as indicated in paragraph 16, the member is not expected to have a level of understanding of laws and regulations beyond that required for the member’s role in the employing organization, such an understanding may not be sufficient to enable the member to understand the application of the relevant laws and their consequences.

We thank you for the opportunity to comment on this matter. We would be glad to discuss our opinions with you further should you have any question or require additional information.

Sincerely,



Matthew J. Lombardi, Chair  
Accounting Principles and Assurance Services Committee  
California Society of Certified Public Accountants



Annette Stalker, Chair  
Professional Conduct Committee  
California Society of Certified Public Accountants