



# Exposure draft

Proposed revised interpretation

Records Requests

**AICPA Professional Ethics Division**  
**May 1, 2020**

**Comments are requested by September 30, 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](mailto:Ethics-ExposureDraft@aicpa-cima.com)

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May 1, 2020

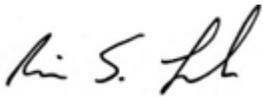
This exposure draft contains an important proposal for review and comment by the AICPA's membership and other interested parties regarding a pronouncement for possible adoption by the Professional Ethics Executive Committee (PEEC). The text and an explanation of the proposed pronouncement are included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

After the exposure period is concluded and PEEC has evaluated the comments, PEEC may decide to publish the revised interpretation.

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 September 30, 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](http://www.aicpa.org/peecprojects). PEEC will consider comments at its subsequent meetings.

Please email comments to [Ethics-ExposureDraft@aicpa.com](mailto: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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## Explanation of the proposed revisions

The Professional Ethics Executive Committee (PEEC) is exposing for comment revisions to the interpretation “Records Requests” (ET sec. 1.400.200)<sup>1</sup> under the “Acts Discreditable Rule” (ET sec. 1.400.001). PEEC believes the proposed revisions will help members better understand their ethical responsibilities with respect to requests for records.

### ***Proposed revisions***

The extant interpretation requires that client-provided records<sup>2</sup> in the member’s custody or control be returned to the client upon request (par. .06) but then permits withholding such records if the client does not pay for the time and expense the member charges to retrieve and copy client-provided records (par. .11).

Though PEEC continues to agree that withholding for payment of these fees should be permitted, the proposal clarifies that it was PEEC’s intent to permit it only with respect to copies of client-provided records a member previously provided to the client. Withholding is not permitted when responding to a client’s initial request for these records to be returned. The proposed revisions to clarify PEEC’s intent are reflected in paragraphs .06 and .11 of this exposure draft.

The extant interpretation is silent about whether a member can charge for shipping fees. PEEC believes the shipping fees should be treated similarly to copying and retrieval fees, as the shipping fees represent an additional cost of providing records to clients. Paragraphs .06 and .11a are revised to add shipping fees.

The extant interpretation requires members to return or to provide member-prepared records and work products in certain situations. Questions have arisen about whether members would be in compliance with the interpretation if they made this information *available* to the client (for example, picked up, portal). PEEC believes making this information (as well as the member’s copy of client-provided records previously provided to the client) *available* to the client would satisfy the member’s ethical responsibility under this interpretation even though this could result in placing some responsibility on the client. Paragraphs .03, .04, .07, .08, .09, .10, .11 and .12 of this exposure draft are revised to reflect this position.

The extant interpretation requires the provision of a member’s work products only to a beneficiary (paragraph .03). However, PEEC believes it inadvertently overlooked extending this requirement to member-prepared records and, as such, proposes adding member-prepared records to paragraph .03 to correct this oversight.

### ***NASBA***

Prior to PEEC’s proposal, the National Association of State Boards of Accountancy (NASBA) surveyed state boards of accountancy regarding the boards’ rules related to the treatment of copying, retrieval, and shipping fees incurred by licensees in complying with records requests. Responses were varied among those boards that have not adopted the AICPA Code of Professional Conduct. Accordingly, PEEC made no revisions based upon the responses, as paragraph .05 of the extant interpretation already alerts members to their responsibility to comply with the rules of their respective state boards of accountancy when such rules are more restrictive.

### ***Effective date***

PEEC believes that some members may need time to implement the proposed revisions. As such, PEEC recommends that the interpretation be effective 60 days after publication in the *Journal of Accountancy*.

### ***Request for comments***

PEEC welcomes comments on all aspects of the proposed revisions, including the proposed effective date.

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<sup>1</sup> All ET sections can be found in AICPA *Professional Standards*.

<sup>2</sup> 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.

## 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.