

June 30, 2021

Brian S. Lynch, Chair
Professional Ethics Executive Committee
Toni Lee-Andrews, Director, CPA, PFS, CGMA
Professional Ethics Division
American Institute of Certified Public Accountants, Inc.
1211 Avenue of the Americas
New York, NY 10036-8775

Via Email: Ethics-ExposureDraft@aicpa.com

Re: Proposed interpretations and definition — Responding to Noncompliance With Laws and Regulations (NOCLAR)

Dear Mr. Lynch and Ms. Lee-Andrews:

As the nation's largest CPA-directed program of professional liability insurance for the accounting profession, CAMICO serves and advises over 8,000 CPA firms. As such and given its 35 years of experience and research regarding the general public's views of CPAs' work and the legal implications of that work, CAMICO offers a unique perspective.

We appreciate the opportunity to express our comments regarding the Proposed Ethics Interpretations, which, if adopted, would make landmark changes to the accounting profession.

The responses below reference and address the Exposure Draft's "Requests for Comments."

Specific Request a

Do you agree with the differentiation in requirements applicable to members in public practice providing services other than financial statement attest services?

No. We do not agree.

If a differentiation is to be made regarding a member in public accounting's NOCLAR responsibilities, the distinguishment should **not** be based on whether the service is an *attest* service but rather on whether *assurance* is provided.

Also, we believe the proposed definition of *financial statement attest service* is an unnecessary definition and artificially inflates the status of compilation services.

The PEEC's previous NOCLAR exposure draft used the phrase *audit or review service*. We believe substituting *financial statement attest service* for *audit or review service* is inadvisable. Use of the

proposed *financial statement attest service* definition would expand the previous scope to include and heighten responsibilities for some compilation services — services for which no assurance is provided.

We support the extant definition of an *attest engagement* which defines an *attest engagement* as “[a]n engagement that requires *independence*, as set forth in the AICPA Statements on Auditing Standards (SASs), Statements on Standards for Accounting and Review Services (SSARSs), and Statements on Standards for Attestation Engagements (SSAEs).”

We do not support the proposed definition which would define *financial statement attest services* as “Services in which a member performs a financial statement audit or review, or a compilation for which the member’s report does not disclose a lack of independence,” nor do we support substituting this language in the proposed standard as we believe any difference in a member in public practice’s NOCLAR responsibilities should be based upon whether, not how much, assurance is provided.

CPAs are **not** required to be independent to perform compilation engagements, but merely to indicate their lack of independence in their compilation reports (and engagement letters when their lack of independence is known when engaging). So, compilations do **not** fall within the definition of an attest engagement. The AICPA historically has chosen not to consider risk exposure when promulgating standards, but we believe the PEEC’s development of these interpretations should recognize and appreciate the public’s understanding of “attest” is more in line with the Merriam-Webster Dictionary definitions of (1) *to affirm to be true or genuine*, (2) *to authenticate officially*, (3) *to be proof of*, (4) *to put on oath*, and with its synonyms: (1) *authenticate*, (2) *avouch*, (3) *certify*, (4) *testify (to)*, (5) *vouch (for)* and (6) *witness*. An ingredient of each definition and synonym is *assurance*.

Audits and reviews provide assurance (*reasonable* and *limited*, respectively) and compilations do not. Including compilations within the definition of *financial statement attest services* conflates compilation engagements with audits and reviews, elevating the perceived value of the compilation engagement beyond that of the service it most closely resembles — the preparation engagement.

Additionally, we do not perceive a justification for distinguishing between the member’s responsibility for NOCLAR on preparation and compilation engagements merely because the member discloses a lack of independence. If such a distinguishment were appropriate, the AICPA would presumably need to expand the definition of *financial statement attest services* or the scope of the proposed interpretations to distinguish between other financial statement services and preparation engagements when members disclose a lack of independence. While members are not required to *consider* independence when performing preparation engagements, members need to consider their independence when they may wish to perform attest services for their clients. Those that consider independence because they wish to be able to perform attest services for the clients for which they perform preparation of financial statement engagements may wish (despite the inadvisable risk management implications of doing so) to disclose they are independent.

Specific Request b

Do you agree that a litigation or investigation engagement as defined in, and subject to, SSFS No. 1, and an engagement to which the protections set forth in IRC Section 7525 apply, should be excluded from the proposed interpretation for members in public practice?

Yes, litigation and investigation engagements defined in SSFS No. 1 and engagements to which the protections of IRC Section 7525 are applicable should be excluded from the proposed interpretation for members in public practice.

Specific Request c

Is a one-year transition period for the effective date appropriate?

Yes, one year after notice of publication in the *Journal of Accountancy* is an appropriate effective date.

Requests for comments on other aspects of the proposed revisions

General comments

We support the proposed interpretations responding to NOCLAR being distinguished by whether the members are in public practice or in industry.

We agree that the general objective of members who encounter a NOCLAR should be to alert appropriate parties to enable clients' or employing organizations' management and those charged with governance to rectify the NOCLAR, mitigate the effects of the NOCLAR, or deter the commission of the NOCLAR.

We support the proposed interpretations' scope considering NOCLAR to comprise acts of omission and commission whether intentional or unintentional.

We agree the scope of the laws generally recognized to be NOCLAR by the interpretations should be only those with a direct effect on the determination of material amounts and disclosures in the financial statements.

We support the interpretations' scope excluding personal misconduct unrelated to business activities of the client or employing organization.

We support the interpretations not altering the level of knowledge and understanding of laws and regulations that members are expected to possess to have the professional competence to perform the professional service for which members are engaged or are employed to perform.

Matrix to enhance clarity and understanding

The proposed interpretations' NOCLAR responsibilities for members providing financial statement attest services differs from those **not** providing financial statement attest services. While all members would be required to communicate the NOCLAR to the appropriate level of

management and those charged with governance (when accessible), members not providing financial statement attest services would **not be required** to “advise management to take specified appropriate and timely actions” when addressing NOCLAR. This difference in requirements exposes members to falling below the public’s expectation that CPAs should advise of opportunities and warn of risks.

This is but one example of the differences in proposed NOCLAR requirements based upon the type of service.

We believe the clarity and understanding of the interpretations would be greatly enhanced were a matrix to accompany the interpretation detailing the types of services, the NOCLAR responsibilities associated with each, and possibly the justification/motives for those differences.

Confidential consultations

The interpretations indicate members in public practice “... may consult on a confidential basis with others within their firm, a network firm or a professional body, or with legal counsel.” This guidance has the benefit of being consistent with extant professional standards but deserves to be expanded for the reality that many (if not most) firms will (or should) consult with a risk management advisor such as their professional liability carrier on these matters. We recommend this language be changed to read, “Depending on the nature and significance of the matter, the member may consult on a confidential basis with others within the firm, a network firm or a professional body, ~~or~~ with legal counsel, *or a risk management advisor.*” [Deletions are stricken, while additions are *bold italic.*]

Predecessor accountant communications

We acknowledge and support the extant [Confidential Client Information Rule](#) and the subservience embedded within the Rule which indicates “[t]his rule shall not be construed ... to relieve a member of his or her professional obligations of the “Compliance With Standards Rule” [1.310.001]” CAMICO believes the Auditing Standards Board and Accounting and Review Services Committee should require predecessor auditors and reviewers, respectively, when requested by a proposed successor, to provide all information concerning NOCLAR that the predecessor auditor or reviewer believes the proposed successor auditor or reviewer should be aware of before deciding whether to accept their contemplated engagement. Some states currently prohibit such communications without first obtaining client consent, but we are confident this change will be welcome and prompt these states to change their regulations to permit NOCLAR communications by these predecessors without first obtaining client consent.

Prior to the Code of Professional Conduct being added to the AICPA’s Online Professional Liability, the Code included a placeholder for “Responsibilities to Colleagues.” This placeholder was presumably intended to clarify the responsibilities envisioned by the Code’s Preamble which recognizes the profession’s responsibilities as being “to the public, to clients, and to colleagues.” In lieu of an interpretation specifically addressing responsibilities to colleagues, we encourage CPAs to adopt “treat the predecessor/successor the way you would wish to be treated” as being their responsibilities to colleagues. We believe this guidance would meet that aspirational principle.

Proposed revision to interpretation “Ethical Conflicts”

The proposed interpretation would delete the text from Ethical Conflicts [ET 1.000.020] which currently reads, “*For example, a member suspects a fraud may have occurred, but reporting the suspected fraud would violate the member’s responsibility to maintain client confidentiality.*” Striking this language is premature. We believe the ethical conflict should remain unless and until all standard setting bodies authorize such communications.

We appreciate this opportunity to comment on this proposal and would welcome any opportunities to be a resource for you. Questions about these comments may be addressed to me at dwill@camico.com or by telephone at (800) 652-1772.

Sincerely,



Duncan Will, CPA/ABV/CFF, CFE
Loss Prevention Manager and Accounting & Auditing Loss Prevention Specialist
CAMICO

cc: Suzanne Holl, CPA
Senior Vice President of Loss Prevention
CAMICO