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Professional Ethics Executive Committee
American Institute of Certified Public Accountants (AICPA)
220 Leigh Farm Road
Durham, NC 27707

Via email: Ethics-ExposureDraft@aicpa.org

Re: Comments on Exposure Draft, Proposed Interpretations and Definition, “Responding to Noncompliance With Laws and Regulations,” AICPA Professional Ethics Division, February 25, 2021

Dear Committee Members:

CliftonLarsonAllen LLP (CLA) appreciates the opportunity to comment on the February 25, 2021, AICPA Professional Ethics Executive Committee (PEEC) Exposure Draft (ED), which proposes two Ethics Interpretations (ET), “Responding to Noncompliance With Laws and Regulations” (ET section 1.170.010 and ET section 2.170.010), and a definition for “Financial Statement Attest Services.” We recognize that the ED’s purpose is to converge with the standards of the International Ethics Standards Board for Accountants, specifically sections 260 and 360, *Responding to Non-Compliance with Laws and Regulations*.

General Comments

Location of Guidance

We believe the *noncompliance with laws and regulations* (NOCLAR) requirements for financial statement attest services described in this proposed ET should only be covered under the applicable professional standard instead of being included in an ET. The requirements that exist today for audit, review, and attestation engagements are sufficient and are designed to be appropriate for the service provided. Duplication is unnecessary and confusing when members seek to comply with two sets of standards. If there are additional requirements necessary for financial statement attest services, we believe those requirements should be made in the standards that apply to the service performed. The proposal already excludes compilation engagements when not independent. Given the nature of the service, we recommend all compilation and preparation engagements be excluded from this ET or the Accounting and Review Services Committee begin a project to modify the Statements on Standards for Accounting and Review Service to address NOCLAR.



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Knowledge, Professional Judgment, and Expertise

If the PEEC proceeds with issuance of this proposed ET, CLA recommends that the PEEC clarify the depth of knowledge of laws and regulations expected by para. 1.170.010.14. The paragraph states that a member “is not expected to have a level of knowledge of laws and regulations greater than that required to undertake the engagement,” but there may not be clear standards as to what level of knowledge of laws and regulations is required to undertake a particular engagement. Two members who are competent to perform the same engagement may have different levels of knowledge regarding the laws and regulations applicable to the engagement. We noted that para 1.170.010.07 limits the member’s responsibility to NOCLAR that has a direct effect on the financial statements or areas that are fundamental to a client’s operations. Noncompliance with the example laws and regulations listed in paragraph 1.170.010.08 certainly could impact operations (e.g., data protection). Expecting a member to know all of those laws and regulations is beyond the scope of the services provided.

Recommended Definitions

Because there are standards other than AICPA standards, CLA believes “professional standards” should be defined to identify which services would allow for the sharing of confidential information as contemplated by para 1.170.010.03. A definition is necessary to prevent a member from being wrongly accused of violating the AICPA *Code of Professional Conduct* (Code) due to failure to comply with standards (especially non-AICPA standards) that are not commonly known/used and that the PEEC may not even recognize.

CLA also believes the phrase “suspected noncompliance” should be defined. We understand that a member may not “know” at the time of discovery whether what appears to be noncompliance with laws is “actual” noncompliance because the potential noncompliance would not yet have been adjudicated by a court of law. However, in the absence of a definition, the phrase “suspected noncompliance” can be read to encompass anything from a reasonable assessment of “known facts” to intuition-based speculation. What is sufficient to constitute “suspected noncompliance” should be defined in order to allow for consistent measurement of noncompliance. Failure to have a definition could lead to disparity in application between different entities, to an entity being wrongly accused of noncompliance, or to a member being wrongly accused of violating the Code. We recommend that the definition include the existing requirement that “noncompliance” be based on credible information and include an element of known facts.

Request for Specific Comments

If the PEEC proceeds with the proposed interpretation, we offer the following responses to the request for specific comments in the ED:

Request for Comment a

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

Response: CLA believes that the requirements applicable to members in public practice providing services other than financial statement attest services should be different than the requirements applicable to members in public practice who are providing financial statement attest services. Many of the differences in the respective requirements applicable to the two separate groups are due to the nature of the services provided.

While we believe that NOCLAR standards should reside in the professional standards that correspond to the services provided, we recognize that there are no explicit requirements that apply to nonattest services. Therefore, if PEEC proceeds with the issuance of the proposed interpretation, we are supportive of an interpretation that only addresses services for which standards regarding NOCLAR are currently non-existent.

For those services that will be addressed by this proposed ET, CLA believes that the interpretation should utilize more of a risk-based approach to address NOCLAR rather than a detailed, prescribed process for all firms to follow. Having detailed requirements increases the risk that a firm will fail to meet the standard even though the NOCLAR was otherwise effectively addressed by the firm. There is also much room for misinterpretation, allowing the standard to be used to support legal actions against firms — particularly the language that encourages documentation of certain items.

We are supportive of the section labeled “Communicating the Matter to the Client’s Auditor,” but we recommend this be retitled to “Communicating the Matter to the Client’s Financial Statement Attest Services Provider” to address the other levels of attest service that could be provided.

Request for Comment 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? If not, why? Are there other nonattest services that should be excluded from the proposed interpretation? If yes, please identify which services and explain why.

Response: CLA agrees that litigation and investigation engagements as defined in and subject to Standards for Forensic Services (SSFS) No.1 and services protected by IRC Section 7525 should be excluded. We also believe that there should be an exclusion for services provided where the nature of the service is such that compliance with this provision is a violation of law, regulation, or contractual agreement.

Request for Comment c

Is a one-year transition period for the effective date appropriate? If not, why?

Response: CLA believes that the transition period is appropriate.

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CLA appreciates the opportunity to review and offer our comments on the proposed interpretations. We would be pleased to discuss any questions that you or your staff may have regarding our comments.

Respectfully submitted,

A handwritten signature in black ink that reads "CliftonLarsonAllen LLP". The signature is written in a cursive, flowing style.

CliftonLarsonAllen LLP