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June 30, 2021

Professional Ethics Executive Committee
Professional Ethics Division
American Institute of Certified Public Accountants
1211 Avenue of the Americas, 19th Floor
New York, NY 10036

Via e-mail: Ethics-ExposureDraft@aicpa.org

Re: Comments on Exposure Draft, *Responding to Non-Compliance with Laws and Regulations*, AICPA Professional Ethics Division dated February 25, 2021

Dear Committee Members:

Crowe LLP appreciates the opportunity to comment on the American Institute of Certified Public Accountants ("AICPA") Professional Ethics Executive Committee's ("PEEC") February 2021 Exposure Draft, *Responding to Non-Compliance with Laws and Regulations* (Exposure Draft) which provides new interpretations to all members in regards to non-compliance with laws and regulations (NOCLAR).

We support the PEEC's efforts to provide guidance to members when non-compliance with laws and regulations is identified or suspected. We appreciate the PEEC's consideration of the comment letters received on the earlier March 2017 Exposure Draft and for evaluating those responses.

We agree the new interpretations will assist members in responding when NOCLAR is identified or suspected. Answers to the specific questions in the Exposure Draft are included in our response. We also have other observations on the new interpretations for the PEEC's consideration.

Other Observations

The observations below relate to the interpretation applicable to members in public practice unless otherwise noted.

We believe the reference to "substantial harm" in paragraph .09 is a new term which requires further clarification and encourage that it be defined. We recommend the PEEC provide further guidance, perhaps developing a framework, to assist members in identifying when substantial harm has occurred. In addition, we noted that the examples of substantial harm that were included in the earlier exposure draft have been removed from the interpretation for members in public practice (paragraph .09); whereas, the examples for members in business have been retained (paragraph .08). We believe the guidance should be consistent for both members in public practice and those in business and would recommend either including the examples for members in public practice or removing for members in business. However, as mentioned earlier, we believe more guidance is necessary in this area so we would suggest adding back to the members in public practice section. To the extent the PEEC decides to expand the guidance to clarify and define "substantial harm", we believe it is important for guidance to be added to the interpretations for members in public practice and those in business to be consistent.

We appreciate that the PEEC clarified in paragraph .13 that only credible information needs to be considered. We believe adding the word *credible* narrows the scope and source of information for the member to evaluate. However, members may find it difficult to determine whether information is credible since this term is not defined. The determination of whether information is credible requires professional judgment so members may benefit from further guidance, such as a framework or examples, to assist in their evaluation process.

According to the new interpretation, when a member identifies or suspects that noncompliance has occurred or is likely to occur when providing financial statement attest services, the member should discuss the matter with those charged with governance (TCWG) when appropriate. It is unclear to us when the member would conclude that discussions with TCWG are not appropriate. We believe the PEEC should consider whether it would always be appropriate for members to discuss with TCWG when providing financial statement attest services. We noted that this same requirement applies when providing services other than financial statement attest services; however, in those situations, it seems clearer why the member may conclude discussions with those charged with governance are not necessary given the nature of the services. Accordingly, we are not concerned about the inclusion of the phrase “when appropriate” in that section.

According to paragraphs .16 and .34, the member’s discussion with management or TCWG may prompt them to investigate the matter. We believe using the phrase, “may prompt”, implies management or TCWG have the option not to investigate. If management or TCWG choose not to investigate, we believe this may make it difficult for the member to fulfill their responsibilities to consider whether the NOCLAR has been adequately investigated and to evaluate the appropriateness of management’s response in determining whether to withdraw from the engagement (paragraphs .25 and .41). We recommend the PEEC consider whether there should be a requirement for the member to prompt management or TCWG to investigate.

The new interpretation requires members to determine whether withdrawal from the engagement is necessary. We agree with this requirement, but for services other than financial statement attest services that are primarily provided by non-auditors we have concerns those professionals may be challenged to address some of the factors included in paragraph .41. For example, they are required to obtain an understanding of the appropriateness of the response of management and where applicable, TCWG. Non-auditors may be challenged to evaluate the appropriateness of the response as they may not be equipped to perform this type assessment.

We agree with the exclusion of litigation or investigation services from the interpretation for members in public practice and recommend the PEEC consider whether this same exclusion should be provided for members in business. Members in business, such as internal auditors, may perform litigation or investigation services as part of their role within the organization.

Response to Request for Specific Comment

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

We agree with the differentiation in requirements applicable to members providing services other than financial statement attest services. Other than the observations outlined above, the requirements in the interpretation appear appropriate.

2. 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.

We agree these types of engagements should be excluded since the nature of those engagements are typically designed to address NOCLAR so evaluating and responding to NOCLAR under this interpretation would seem redundant.

We believe there are other engagements that may be designed to address NOCLAR that do not fall under the two proposed exclusions. For example, tax engagements where the member is being engaged to assess exposure related to failure to file tax returns may not be engagements pursuant to IRC Section 7525, yet these engagements are designed to address NOCLAR. In these situations, it would be redundant for the member to report and disclose the NOCLAR. We suggest that the PEEC consider whether all engagements designed to address NOCLAR should be excluded from the scope of the interpretation.

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

We believe a one-year delay allows sufficient time for firms to develop policies and provide training as necessary.

We believe members would benefit from additional guidance on these requirements and as such we suggest the PEEC consider developing and publishing a FAQ document to provide examples to assist members in applying these requirements.

Crowe LLP appreciates the PEEC's efforts in providing these new interpretations. We would be pleased to respond to any questions regarding our comments. Should you have any questions please contact Jennifer Kary at (574) 239-7886.

Cordially,


Crowe LLP