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Professional Ethics Executive Committee  
AICPA Professional Ethics Division  
American Institute of Certified Public Accountants  
1345 Avenue of the Americas, 27th Floor  
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Via email: [Ethics-Exposedraft@aicpa.org](mailto:Ethics-Exposedraft@aicpa.org)

**Re: Proposed interpretations and definition: Responding to Noncompliance With Laws and Regulations**

Dear Committee Members,

Ernst & Young LLP (EY, we or our) is pleased to provide comments on the American Institute of Certified Public Accountants (“AICPA”) Professional Ethics Executive Committee’s (PEEC) February 2021 Exposure Draft, *Responding to Noncompliance With Laws and Regulations* (NOCLAR).

In this letter, we have responded to the PEEC’s questions regarding the proposal and have provided observations and suggestions that we believe will either help clarify or further enhance the proposed interpretations and definition.

We would be pleased to discuss our comments with members of the PEEC at its convenience.

Yours sincerely,

*Ernst & Young LLP*

## A. Request for specific comments

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

**Response:**

We agree with the differentiation in requirements applicable to members in public practice providing services other than financial statement attest services.

However, we believe paragraph .39 of 1.170.010 should be revised to clarify that communication to the client's external auditor is not allowed unless the client's consent is obtained. Additionally, we believe it would be helpful to indicate that if the client does not consent, the member should remind the member(s) in business at the client of their responsibilities to be candid and not knowingly misrepresent facts or knowingly fail to disclose material facts to his or her employer's external accountant in accordance with "Obligation of a Member to His or Her Employer's External Accountant" interpretation [2.130.030] of the "Integrity and Objectivity Rule" [2.100.001].

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.*

**Response:**

We 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.

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

**Response:**

We agree with PEEC's proposed effective date that the interpretation be effective one-year after publication in the Journal of Accountancy to allow members time to implement the proposed revisions, if needed.

## B. Recommendations for other edits and improvements

### Credible information

In many instances, it may not be initially apparent whether information obtained by a member is credible. As a result, we believe further guidance is needed to understand the steps a member is expected to take to determine whether information obtained directly during the engagement or indirectly through other sources is credible. If it's not clear whether an allegation is credible, the member should perform additional procedures assuming the allegations are credible until they obtain sufficient evidence to conclude on their veracity one way or

another. Additionally, we believe clarification should be made to indicate that if a member determines information is not credible, whether any additional procedures (e.g., documentation) are required.

#### **Communication by successor to predecessor auditor**

We believe the revised interpretations clearly address communications of a predecessor auditor to a successor auditor regarding their knowledge of NOCLAR matters. However, we believe additional clarification is needed to address situations when the current auditor becomes aware of a NOCLAR that would affect a prior period report of the current auditor or a report issued by a predecessor auditor. We recommend revising paragraph .21(b)(iii) of 1.170.010 to add “for the current or prior engagements.” We also recommend expanding Paragraph .21(b)(iv) to include communicating a current client’s noncompliance to a predecessor auditor when the member becomes aware of information that leads them to believe the financial statements reported on by the predecessor auditor may require revision and referencing paragraph .21 of AU Section 315.

#### **Disclosing a NOCLAR to the external auditor**

We believe it is appropriate for paragraphs .20 and .33 of 2.170.010 applicable to members in business to include reference to the need for the member to disclose the matter to the employing organization’s external auditor. However, we believe the language used in each paragraph should be revised to conform with the language in “Obligation of a Member to His or Her Employer’s External Accountant” interpretation [2.130.030] of the “Integrity and Objectivity Rule” [2.100.001] as follows:

.20 In addition to responding to the matter in accordance with the provisions of this section, the member who is a senior professional accountant should disclose the matter to the employing organization’s external auditor, if any, if the member determines such disclosure is necessary ~~to enable the auditor to perform the audit~~ **pursuant to the member’s obligation to be candid and not knowingly misrepresent facts or knowingly fail to disclose material facts.**

.33 In addition to responding to the matter in accordance with the provisions of this section, the member should disclose the matter to the employing organization’s external auditor, if any, if the member determines such disclosure is necessary pursuant to the member’s obligation to ~~provide all information necessary to enable the auditor to perform the audit~~ **be candid and not knowingly misrepresent facts or knowingly fail to disclose material facts.**

#### **Ethical conflicts**

Paragraph .04 of the Ethical Conflicts Interpretation [1.000.020] could be read to limit the member’s responsibilities if he or she consults within the firm or organization that employs the member. We believe the member should also consider the additional consultation and documentation referenced in paragraph .05 even if the member decides to consult with appropriate persons internally. We recommend clarifying the member’s responsibilities subsequent to an internal consultation in paragraph .04.

#### **Reference to Those Charged with Governance**

We recommend that reference to not only management but also those charged with governance be included in the examples of circumstances that may cause a member to no longer have confidence provided in paragraphs

.28 and .42 of 1.170.010. We believe the addition to the examples would be consistent with the lead in for those paragraphs.