



June 2, 2021

Brian S. Lynch, Chair
AICPA Professional Ethics Executive Committee
AICPA Professional Ethics Division
New York, NY 10036
ethics-exposedraft@aicpa.org

Re: Noncompliance with Laws and Regulations

Dear Mr. Lynch:

The Professional Ethics Committee (the committee) of the Pennsylvania Institute of Certified Public Accountants (PICPA) appreciates the opportunity to provide its comments to the AICPA Professional Ethics Executive Committee (PEEC) regarding the proposed interpretations and definitions in *Responding to Noncompliance with Laws and Regulations* (NOCLAR). The PICPA is an association of more than 18,000 members working to improve the profession and better serve the public interest. Founded in 1897, the PICPA is the second-oldest CPA organization in the United States. Membership includes practitioners in public accounting, education, government, and industry. The committee is a cross-section of our membership, with practitioners from large, regional, and small public accounting firms, members serving in business and industry, and accounting educators.

The committee's specific comments are included below.

1. The proposed standard in paragraph 19 requires the member to "advise" the client to take the following appropriate and timely actions, if they have not already done so:
 - a. Rectify, remediate, or mitigate the consequences of the noncompliance.
 - b. Deter the commission of the noncompliance if it has not yet occurred.
 - c. Disclose the matter to an appropriate authority where required by law or regulation or when considered necessary in the public interest.

The committee does not believe that the auditor is appropriately qualified to advise the client on its response to suspected illegal acts. Advice on responding to noncompliance with laws and regulations should come from the client's legal counsel. Per the audit standards at AU-C 250 paragraph A5, "Whether an act constitutes noncompliance with laws and regulations is a matter for legal determination, which ordinarily is beyond the auditor's professional competence to determine." The audit standards currently require the auditor to communicate

the suspected NOCLAR to the appropriate individuals (e.g., those charged with governance, outside regulatory authorities as required, etc.) and to evaluate the ramifications of the NOCLAR or suspected NOCLAR on the audit, the financial statement presentation and disclosures, the auditors' report, the implications of the client's response on engagement continuance. The committee supports the existing requirements within the audit standards, and suggests asking the AICPA Auditing Standards Board to consider adding these steps as points for the auditor to consider when evaluating the appropriateness of the client's response. The committee does not support adding auditor performance requirements in the AICPA Code of Professional Conduct that are not included within the audit standards.

2. Paragraph 20 requires the member to consider the client's understanding regarding their legal or regulatory responsibilities with respect to the noncompliance or suspected noncompliance, and to suggest appropriate sources of information or recommend that they obtain legal advice. Similar to the previous comment, this role seems more appropriately placed with the client's legal counsel.
3. The committee notes that the required communications for practitioners performing nonattest services differ, depending on whether the practitioner is associated with the firm that is performing the attest engagement. While the practitioner who is not associated with the firm performing the attest work is bound by the confidentiality requirements and laws and regulations, the committee believes that these practitioners should be required to communicate to their client a summary of issues which may be of interest to the auditor.
4. The committee questions how the term "substantial harm," included in proposed paragraph .09, fits into the scope of the proposed interpretation. Is "substantial harm" included in the scope defined in paragraph .07? Are members responsible for looking for "substantial harm" or items covered by paragraph 07? Is this threshold used anywhere else in the proposed interpretation or in the audit standards?
 - .09 Noncompliance may result in fines, litigation, or other consequences for the client that may have a material effect on its financial statements. Importantly, such noncompliance may have wider public interest implications in terms of potentially substantial harm to investors, creditors, employees, or the general public. "For the purposes of this interpretation, an act that causes substantial harm is one that results in serious adverse consequences to any of these parties in financial or nonfinancial terms."



We appreciate your consideration of our comments. We are available to discuss them with you at your convenience.

Sincerely,

A handwritten signature in black ink that reads "David Torrillo". The signature is fluid and cursive, with a prominent loop at the end of the last name.

David Torrillo, CPA/ABV
Chair, PICPA Professional Ethics Committee

cc: Allison Henry, CPA, PICPA Staff Liaison