



December 10, 2021

Professional Ethics Executive Committee
Professional Ethics Division
American Institute of Certified Public Accountants
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Via email to Ethics-ExposureDraft@aicpa.org

Re: Exposure Draft, *Proposed Revised Interpretation: Unpaid Fees*, AICPA Professional Ethics Division – September 20, 2021

RSM US LLP (RSM) appreciates the opportunity to comment on the American Institute of Certified Public Accountants (AICPA) Professional Ethics Executive Committee's (PEEC) September 20, 2021 Exposure Draft, *Proposed Revised Interpretation, Unpaid Fees* (the Proposed Revised Interpretation). RSM is a leading provider of audit, tax and consulting services focused on the middle market.

Auditor independence is often referred to as the cornerstone of our profession because it is the foundation for the public's trust in assurance services. It is what sets the audit profession apart from other professions. High-quality independent audits and other attest services performed by our profession are critical to our clients' ability to obtain the equity capital and debt financing necessary to fund their operations.

We offer the following overall comments on the Exposure Draft and specific comments on the Proposed Revised Interpretation.

Overall Comments on the Exposure Draft

The Exposure Draft indicates PEEC undertook this project, in part to converge with other standard-setters such as the IESBA and SEC and determine whether the current bright-line one-year approach continues to be appropriate. However, the Proposed Revised Interpretation does not appear to converge with the SEC guidance on this topic as set forth in FRR 602.02.b.iv or in Question A.2. of the Office of the Chief Accountant's FAQs on the Application of the Commission's Rules on Auditor Independence. It also does not appear to be consistent with Section 410.7 A 1 of IESBA's International Code of Ethics for Professional Accountants (the IESBA Code), both of which indicate that it is generally expected that the firm will require payment of overdue fees before issuing an audit report. Section R410.8 of the IESBA Code also states, "When a significant part of fees due from an audit client remains unpaid for a long time, the firm shall determine whether the overdue fees might be equivalent to a loan to the client."

As for whether the current bright-line one-year approach continues to be appropriate, PEEC has apparently concluded it does not. However, the Exposure Draft does not set forth any rationale for that conclusion, including why unbilled or unpaid fees that have been outstanding for a significant period of time (e.g., more than one year prior to the issuance date of the current year attest report) would not be equivalent to a loan to the attest client that would impair independence under Section 1.260.010 of the AICPA's Code of Professional Conduct.

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It has been our experience that unpaid fees from clients generally arise either from disputes over the amounts of the fees or the client's inability or unwillingness to pay them. In the case of disputes over the amounts of the fees, one year should clearly be sufficient time to settle the dispute. In the case of the client's inability or unwillingness to pay the fees, we are concerned that a reasonable and informed third party would question whether the covered member would be able to exercise objectivity in the performance of the attest service and issuance of the attest report.

Comments on the Proposed Revised Interpretation

Another objective of this project was to develop a principles-based framework for members to use in determining whether unpaid fees impair independence. The Proposed Revised Interpretation, however, simply requires members to use a threats and safeguards analysis and indicates:

1. Threats are at an acceptable level when unpaid fees are both clearly insignificant to the covered member and relate to professional services provided less than one year prior to the issuance date of the current-year attest report.
2. Threats would not be at an acceptable level when unpaid fees are both significant to the covered member and relate to professional services provided more than one year prior to the issuance date of the current-year attest report.
3. Other situations require judgment to assess the threats to the covered member's compliance with the "Independence Rule."

We agree with the conclusions in items 1 and 2 above but are concerned that applying judgment to assess the threats to the covered member's compliance with the "Independence Rule" (item 3 above) and, by implication, the effectiveness of safeguards that could be applied to eliminate the threats or reduce them to an acceptable level, are incapable of consistent application and, therefore, the Proposed Revised Interpretation does not meet the objective of developing a principles-based framework.

The Proposed Revised Interpretation identifies the following factors to consider when evaluating whether threats are at an acceptable level:

1. The significance of the unpaid fees to the covered member.
2. The length of time the fees have been due from the attest client.
3. The covered member's assessment of factors affecting the ability and willingness of the attest client to pay the fees.

We are particularly concerned with how the covered member would assess threats arising from the attest client's inability or unwillingness to pay the fees owed and how the example safeguards could be applied to eliminate those threats or reduce them to an acceptable level. We also do not believe the significance of the threats to the covered member is operational as the "covered member" could be the firm, the audit engagement partner, the office managing partner or any other person whose performance rating or compensation might be affected by the inability to collect the unpaid fees. We believe a more appropriate materiality assessment, consistent with the SEC's guidance on the topic, would be to base the assessment on the relationship of the unpaid fees to the current period audit fee.

In addition, we do not believe it is clear in paragraph .04f that communication with those charged with governance is not in and of itself a sufficient safeguard. Accordingly, if PEEC concludes that safeguards could reduce the threats to the covered member's compliance with the "Independence Rule" to an

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acceptable level, we suggest it require communication with those charged with governance regarding the unpaid fees *and* the application of one or more additional effective safeguards.

We appreciate this opportunity to provide feedback on the Exposure Draft and would be pleased to respond to any questions you may have about our comments. Please direct any questions regarding this letter to Claire Blanton, National Director of Independence, Compliance and Ethics, at 704.206.7271.

Sincerely,

RSM US LLP

RSM US LLP