



**AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS
DIVISION OF PROFESSIONAL ETHICS
PROFESSIONAL ETHICS EXECUTIVE COMMITTEE
OPEN MEETING MINUTES
August 8, 2018**

The Professional Ethics Executive Committee (Committee) held a duly called meeting on August 8-9, 2018 at the AICPA offices in New York, NY. The meeting convened at 9:00 a.m. and concluded at 5:00 p.m. on August 8, 2018. The meeting reconvened at 8:30 a.m. on August 9, 2018 and concluded at 9:00 a.m. on August 9, 2018.

<p><u>Attendance:</u> Samuel L. Burke, Chair Coalter Baker Carlos Barrera Stanley Berman Chris Cahill Tom Campbell *Robert E. Denham Anna Dourdourekas Brian S. Lynch *Greg Guin *participated by phone</p>	<p>William Darrol Mann *Steven Reed James Smolinski *Shelly Van Dyne Lisa Snyder Kelly Hunter Stephanie Saunders <u>Not in attendance:</u> William McKeown Sharon Jensen Martin Levin</p>
<p><u>Staff:</u> James Brackens, VP - Ethics & Practice Quality Sue Coffey, EVP – Public Practice Toni Lee-Andrews, Director Ellen Gorla, Associate Director Brandon Mercer, Senior Manager *participated by phone</p>	<p>*April Sherman, Manager *Shannon Ziemba, Manager *James West, Manager *Michele Craig, Manager *Jennifer Kappler, Manager *Jennifer Clayton, Senior Manager *John Wiley, Manager *Melissa Powell, Manager *Henry Grzes, Lead Manager – Tax Practice & Ethics</p>
<p><u>Guests:</u> Jeff Lewis, Chair, Independence/Behavioral Standards Subcommittee Ian Benjamin, Chair, Technical Standards Subcommittee Nancy Miller, KPMG Kimberly Kuhl, KPMG Elaine Cahoon, KPMG Debra Hahn, Grant Thornton Lori West, Grant Thornton Jason Evans, BDO Kelly Hnatt, External Counsel Dan Dustin, NASBA</p>	

Catherine Allen, Audit Conduct

*David East, PwC

Sonia Araujo, PwC

Paula Tookey, Deloitte

*George Dietz, PwC

Jennifer Kary, Crowe Horwath

*Vassilios Karapanos, SEC

*Lynette Linder, Connecticut Society of CPAs

*Dan Nugent

*Leise Faircloth

*Brian Dayes, Michigan Institute of CPAs

*Lisa Brown, Ohio Society of CPAs

*Pam Hill, Missouri Society of CPAs

*Jessica Mytrohovich, Georgia Society of CPAs

Kari Hipsak

*Dennis Bushnell

*TeriAnn Kruse

*Flo Ostrum

*Sharon Elston

*Matt Ryan

*Laura Hyland

*Heather Acker

*Gary Zeune (Day 2 only)

*Participated via phone

1. **Welcome and Introductions**

Mr. Burke welcomed the Committee.

2. **Leases**

Ms. Snyder led the discussion of the Task Force's proposed draft for possible adoption. Ms., Snyder noted that she and staff held a call with a task force member after the agenda was distributed and suggested additional revisions, which were presented on screen for meeting participants. PEEC discussed the application of safeguards in paragraph .02, specifically; paragraph .02b stipulates that, when entering the lease, all amounts must be paid in compliance with the lease terms. However, Mr. Cahill noted that this safeguard would not be operational at lease entry, and the proposal is not sufficiently clear in that regard. The Committee revised paragraph .02 by deleting the safeguard from the lettered list of safeguards, and copying the language from paragraph .03 regarding payment compliance. In addition, the change would note that the safeguard applied after entering the lease and on an ongoing basis. This revision resolved the issue of clarity regarding when the payment safeguard applies. PEEC also agreed that the lead-in to paragraph .02 should continue to only reference a member who enters into a lease and not a member who has a lease. Paragraph .03 would contain a reference to a member who has a lease.

A second aspect to the revisions were made to paragraph .03, as PEEC ultimately agreed that paragraph .03 should address any leases that were in compliance with .02 at entry, but where there has been a change in the circumstances (e.g. the lease subsequently becomes material after being immaterial at entry) that creates threats to independence. PEEC's agreed by a straw poll of 17-1 that if a lease becomes material subsequent to entering the lease, that the Conceptual Framework should be applied to the lease, rather than being automatically impaired.

PEEC agreed that paragraph .04 did not add anything that was not already in the Conceptual Framework approach, and added confusion. As a result, PEEC agreed that paragraph .04 should be removed and that the interpretation should only specifically address leases of the specific covered members noted in paragraphs .02 and .03. The AICPA Code and application of the Independence Rule would require the member to use the Conceptual Framework in situations that are not specifically addressed in the Independence Rule and its interpretations, and would apply to all other leases without the interpretation specifically addressing them.

PEEC discussed the proposed paragraph regarding leases between covered members specified in .02 with affiliates of the attest client, and agreed with the approach that such leases should be allowed provided any threats are at an acceptable level, and that the covered member should use the Conceptual Framework if any threats are not at an acceptable level. Minor revisions to the Task Force's proposed language were made to accurately reflect this position.

Given the number of revisions made during the meeting and time constraints, there was no motion made for adoption; the Task Force agreed that it would finalize the revisions suggested by PEEC and distribute before bringing a potential draft for adoption to the November 2018 PEEC meeting.

3. Disclosing Information in Connection with a Quality Review

Mr. Mercer updated the Committee on the status of the exposure draft, which had a comment deadline of August 20, 2018. Mr. Mercer noted that several comment letters had come in but more were expected before the upcoming deadline. Mr. Mercer noted that there were no significant issues raised in the comment letters received to date, and that a draft for possible adoption should be ready for the November PEEC meeting.

4. Minutes of May 2018 PEEC Open Meeting

It was moved, seconded and unanimously agreed to adopt the minutes from the May 2018 open meeting.

5. Staff Augmentation

Ms. Snyder presented the agenda item to the Committee. Ms. Snyder noted that the Task Force presented a draft proposal at the May 2018 PEEC meeting and held a conference call in July 2018 to consider the feedback received and make conforming revisions to the proposal. The Task Force requested that PEEC consider the revisions made by the Task Force and approve exposure of the proposal.

Paragraph .02

Ms. Snyder noted that in paragraph .02, the proposal applies the same standard for skill, knowledge, and experience that is applied to non-attest services under the Non-attest Services interpretation [1.295]. The Task Force agreed, but suggested adding the words “by the augmented staff” to parts of the passage to clarify that the member is under the supervision of the client. Additionally, the Task Force suggested clarifying that the services should be “not otherwise prohibited” rather than “otherwise permitted” under Section 1.295. PEEC agreed with the suggested revisions.

.02 Threats to compliance with the “Independence Rule” [1.200.001] would be at an acceptable level, and independence would not be impaired, provided that, in addition to the General Requirements of the “Nonattest Services” interpretation [1.295.000], all of the following safeguards are met:

- a. *The member is satisfied that client management designates an individual or individuals who possess suitable skill, knowledge, and experience, preferably within senior management, to be responsible for:*
 - i. *determining the nature and scope of the activities to be performed **provided by the individual performing the augmented staff services (the “augmented staff”);***
 - ii. *supervising and overseeing the activities performed **by the augmented staff;** and*
 - iii. *evaluating the adequacy of the activities performed **by the augmented staff** and the findings resulting from the activities.*
- b. *The activities do not result in the **augmented staff** member assuming management responsibilities as described in the Management Responsibilities” interpretation [1.295.030] of the “Independence Rule” [1.200.001];*
- c. *The augmented staff only performs activities that would **not** otherwise be ~~permitted~~ **prohibited** by the “Nonattest Services” interpretation [1.295.000] of the “Independence Rule” [1.200.001]; and*
- d. *The duration of the arrangement is temporary in nature.*

Ms. Snyder noted that item d. of paragraph .02 above requires that the arrangement be temporary in nature. The Task Force did not believe that the word “temporary” required defining, but acknowledged that a question could be included in the exposure draft asking if commenters believed the meaning of “temporary” is clear. Ms. Snyder noted that IESBA does not define the terms “temporary” or “short period of time” which are used in the IESBA provisions. Some PEEC members felt that “temporary” simply means “not permanent,” while others had concerns that bright lines and prescribed time frames may be problematic in such scenarios. The following additional comments / questions were noted:

- Consider use of the term “discrete projects” as an alternative.
- Do not necessarily need to define the term “temporary” before exposure, but have something close to defining it.
- Consider using a reasonableness test.

- Mr. Burke asked if frequency really the primary issue, given that firm quality controls are more geared around the project and activity itself, rather than the frequency of the activity.
- One member asked how this was any different from bookkeeping arrangements; Mr. Lynch noted that the issue of simultaneous employment, or the appearance of such, would still remain an issue even in the case of bookkeeping, if there was a staffing arrangement in place.

After discussion, PEEC agreed that the Task Force should further deliberate regarding suggestions for the use of the term temporary or alternatives, and bring recommendations to the November PEEC meeting for the Committee to consider.

Paragraph .03 – Appearance of Simultaneous Employment

Ms. Snyder noted that the Task Force suggests changing “member” to “augmented staff” in paragraph .03, to clarify that the augmented staff, rather than the member, is subject to the parameters in paragraph .03 regarding the appearance of simultaneous employment. For example, the augmented staff should not be listed as an employee of the attest client, whether or not that individual is a member. PEEC agreed with the recommended revision. While discussing paragraph .03 the question was raised as to whether the concept of duration of the arrangement (i.e. temporary) should be included in paragraph .03 as well as paragraph .02. One member believed duration should be a consideration, however others expressed concerns that attempting to define temporary would move the analysis further away from the use of professional judgment. PEEC suggested consulting the SEC language and consider whether a similar language should be included in paragraph .03 to address the duration of the arrangement.

Paragraph .04 – Examples of Safeguards

Ms. Snyder noted that paragraph .04 presents examples of safeguards that can be applied, which were based upon feedback received at the May 2018 PEEC meeting. PEEC agreed with the revisions presented by the Task Force.

Effective Date

Mr. Burke noted that the effective date should be longer to provide ample implementation time for small firms.

6. State & Local Government

Ms. Miller reminded the Committee that the reason for the proposed change was because (1) the commercial affiliate interpretation had been adopted and so the SLG interpretation needed to be evaluated to determine what changes were necessary in order to keep pace with the latest thinking regarding what related entities members should be independent of; and (2) the extant interpretation was adopted in 2001 and there had been changes to the GASB standards and in the SLG environment (e.g., some governmental entities function more like commercial entities). Ms. Miller also reminded the Committee that, during the February 2018 meeting, the Task Force’s sole request of the Committee was whether the project should proceed given that approximately one third of the commenters either didn’t believe the project should proceed because changes to the interpretation were not

necessary or believed that the proposal should be clarified or simplified. During this meeting the Committee agreed the project should proceed.

Ms. Miller went on to explain that the Task Force was seeking input on: (1) how far downstream members should look when determining whether investments should be considered affiliates; and (2) what the independence evaluation would entail when looking at upstream affiliates and other entities. For investments, there was general agreement that investments would be considered affiliates until one of the two criteria [1] was no longer met. The Committee did not agree on what the upstream evaluation would entail. Rather, the Task Force was asked to consider a number of possible ways the evaluation could be conducted including but not limited to, applying a pure conceptual framework approach to upstream entities or including upstream entities as affiliates. For other entities, the Task Force was asked to consider whether the reminder to apply the conceptual framework was needed or if this could be accomplished through the issuance of non-authoritative guidance such as a FAQ.

Ms. Miller noted that although the substantive changes to the exposure draft seem to make the proposal less restrictive the Committee may want to consider if a targeted re-exposure might be helpful to determine whether the re-write was clear enough that members will be success when implementing. The Task Force was asked to consider how it could provide the Committee with assurance that all matters raised by commenters were considered.

7. Information Technology Services

Ms. VanDyne reported that the Information System Services Exposure Draft had received a significant number of comment letters and that the Task Force planned to provide the Committee with a report at the November meeting. Ms. VanDyne also asked for input on several frequently-asked-questions (FAQs) drafted to address the previously-released Hosting Services interpretation. Staff has received numerous questions from smaller firm practitioners about the interpretation and concerns about meeting the September 1, 2018 effective date.

Mr. Brackens briefed the Committee about some concerns raised related to the hosting services interpretation. Mr. Brackens explained that the AICPA's Technical Issue Committee (TIC) believed that some vendors used by members to provide bookkeeping services to attest clients may need some additional time to modify their operational processes so that members would not be hosting an attest client's financial information system.

Mr. Brackens also noted that a member who teaches ethics CPE reached out to him seeking clarification regarding how the hosting services interpretation (specifically, FAQs 4, 5 and 6 of the FAQs included in the PEEC's agenda) would change how bookkeeping services are provided when a member wants to maintain their independence. Specifically, up until now when providing bookkeeping services, some members obtain the records from their attest clients and enter the approved information into a financial information system that resides on the member's server or on a vendor's server that the member has a contract with. As part of complying with the General Requirements interpretation members would provide their attest client with a copy of the trial balance or general ledger. However, under the hosting services interpretation it seems as though this practice would impair

independence and thus require a change in practice. This member also noted that this position seemed inconsistent with how the Hosting Services interpretation treats the preparation of depreciation and similar schedules since independence would not be impaired if the member provided the attest client with the schedule and calculation so that attest client's books and records are complete.

The Chair of the Committee suggested the Committee discuss delaying the effective date, primarily to give the market (software vendors) additional time to allow members to adhere to the current standard, but table the technical discussion. He noted that the standard went through due process so if members or others had issues with the proposal they should have stated so during that process. He also suggested tabling discussion of the FAQs (as a whole) to allow the Task Force to consider the questions raised. **The Committee unanimously agreed to extend the effective date for the interpretation to July 1, 2019.**

The Task Force was asked to consider whether the FAQs are consistent with the hosting services interpretation; whether the interpretation is consistent in terms of how it addresses working on the client's general ledger vs. depreciation schedules; what cutting off access to a portal means (i.e., document vs portal system) and if there are differing views within the Task Force, to share the differing views with the Committee.

8. NOCLAR

Mr. Denham reported on task force activity since the May PEEC meeting. The task force, including the UAA co-chairs observing, has been meeting monthly to discuss comment letters received. The task force thus far has discussed comments that would likely not be considered by the UAA committee and revised certain language based on those discussions. The task force has also discussed whether or not there should be distinctions made between audit and non-audit services for certain areas, but no specific conclusions have been reached as these matters will be discussed in a more broader sense after the UAA Committee has begun its meetings. Mr. Denham, Ms. Hnatt, Mr. Brackens, and Ms. Lee-Andrews will be attending a combined UAA meeting to discuss NOCLAR on September 12-13th. Stavros Thomadakis, IESBA Chairman will also be attending this meeting. Mr. Denham also indicated that several jurisdictions reported on NOCLAR at the National Standards Setters meeting in May, which was attended by Mr. Burke and Ms. Lee-Andrews. Certain jurisdictions have adopted the standard and reported having challenges in implementation. Ms. Lee-Andrews has reached out to those jurisdictions to obtain additional information regarding such challenges.

9. IESBA Update

Ms. Gorla reported that at the May meeting the Board received preliminary feedback provided regarding the two roundtables that were held regarding (1) approaches to redefining professional skepticism so that it is appropriate for all types of professional activity; and (2) consideration of the impact that Non-Assurance Services (NAS) has on independence. She noted that the Board agreed the Fees Working Group should develop a proposal on fees and bring a draft to the Board in September and the NAS Task Force should try to put terms of reference together that included how the NAS project will cover this topic. Ms. Gorla also noted that the Basis for Conclusion document for the Inducements, Including Gifts and Hospitality would be given to the PIOB in June.