



**AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS  
 PROFESSIONAL ETHICS DIVISION  
 PROFESSIONAL ETHICS EXECUTIVE COMMITTEE  
 OPEN MEETING MINUTES  
 August 14, 2019**

The Professional Ethics Executive Committee (committee) held a duly called meeting on August 14, 2019 at the Association offices in Durham, NC. The virtual meeting convened at 10:00 a.m. and adjourned at 3:35 p.m. on August 14, 2019.

<p><b><u>Attendance:</u></b>          Brian Lynch, Chair          Coalter Baker          Samuel L. Burke          Chris Cahill          Tom Campbell          Robert E. Denham          Anna Dourdourekas          Kelly Hunter          Sharon Jensen          Jennifer Kary          Martin Levin</p>	<p>Jeff Lewis          William McKeown          James J. Newhard          Lisa Snyder          Stephanie Saunders          Peggy Ullmann          Douglas E. Warren          Lawrence A. Wojcik</p>
<p><b><u>Staff:</u></b>          Sue Coffey, SVP – Public Practice &amp; Global Alliances          James Brackens, VP - Ethics &amp; Practice Quality          Toni Lee-Andrews, Director          Ellen Gorla, Associate Director          Jennifer Clayton, Senior Manager          Michele Craig, Lead Manager          Summer Young, Lead Manager          Aradhana Aggarwal, Manager          Sarah Brack, Manager          Liese Faircloth, Manager          Iryna Klepcha, Manager          Jennifer Kappler, Manager          Melissa Powell, Manager          Michael Schertzinger, Manager          April Sherman, Manager</p>	<p>John Wiley, Manager          Shannon Ziembra, Manager          Henry Grzes, Lead Manager – Tax Practice &amp; Ethics          Kristy Illuzzi, TIC Staff Liaison          Pamela Lauchengco, Manager – Content Development &amp; Management – MA          Megan Kueck Lead Manager - State Regulation &amp; Legislation          Kelly Mullins, Manager – Support Services and Communications          Elaine Bagley, Specialist          Sarah Shannonhouse, Manager - Tax Practice &amp; Ethics</p>
<p><b><u>Guests:</u></b>          Ian Benjamin, Chair, Enforcement Subcommittee          Kelly Hnatt, External Counsel          Catherine Allen, Audit Conduct          Sonia Araujo, PwC</p>	<p>Elizatbeth McKneely, Deloitte          James West, BDO          Karen Moncrieff, EY          Jenny Norris, Indiana CPA Society          Pamela Ives Hill</p>

<p>Lisa Brown, Ohio Society of CPAs  Karen Cookson, US Department of Housing and Urban Development  George Dietz, PwC  Zach Donah, Massachusetts Society of CPAs  Anna Durst, Nevada Society of CPAs  Dan Dustin, NASBA  Jo Ann Golden, New York State Society of CPAs  Anika Heard, PwC  David Holets, TPRC  Nigel James, SEC  Terry Ann Kruse, Oregon Society of CPAs  Kimberly Kuhl, KPMG  Elliot Lesser, Enforcement Subcommittee  Lynette Linder, Connecticut Society of CPAs  Holly Love, Deloitte</p>	<p>Myriam Madden  Santa Marletta  Nancy Miller, KPMG  Andy Mintzer, Hemming Morse, LLP  Victoria Pitkin  Chris Rasmussen Arizona Board of Accountancy  Jacqueline M. Reardon, TPRC  Roby Sawyers, TPRC  Kevin Sell  Rachel Sinks, Enforcement Subcommittee  Susan Speirs, Utah Association of CPAs  Joan Sterling, BDO  John Szczomak, New Jersey Society of CPAs  Jessica Tomc, EY  Paula Tookey, Deloitte  Michael Westervelt, CLA  Patty Wyatt, Texas Society of CPAs</p>
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**1. Welcome and introductions**

Mr. Lynch welcomed the committee and discussed administrative matters.

**2. Information technology and cloud services**

Ms. Gorla reported that the “Information Systems Services” interpretation (1.295.145) adopted by the committee at the May 2019 meeting is now available in the online code. Ms. Gorla also reported that the task force continues to work on drafting additional FAQs related to hosting and these centered around three topics.

One topic is how to avoid hosting when providing permitted nonattest services. Ms. Gorla noted that the draft FAQs related to this topic all incorporate the notion that the client should be given sufficient information so that the client’s data and records are complete. One idea of how to describe what “sufficient information” would include, is to connect it with the information that an individual with suitable skill, knowledge and/or experience (SKE) would need to accept responsibility for the permissible nonattest service. Others were concerned that this connection could imply that the member had to physically provide the individual with SKE the information and not just give them access to the information. A further concern expressed by some task force members was that it also could be interpreted to mean that the member would need to physically provide *all* work papers, calculations and other member-prepared records to avoid hosting when providing permitted nonattest services.

Another topic relates to concern that the code seems to have conflicting standards. This is because the “Records Requests” interpretation (1.400.200) concludes that to be in compliance with the Acts Discreditable Rule” (1.400.001) the member would need to provide certain information in their possession that would render the client’s financial information incomplete upon request, yet to avoid hosting, this information might need to be provided sooner.

The final topic that the task force is working on relates to sub-licensing a third-party vendor's software to an attest client. The situation presented to staff involved third-party vendors that market their products only through CPAs who in turn would sub-license the product to the client. The issue is when the client's data or records are maintained on the third-party vendor's server would the member be hosting this information since the license is through the member. Two members of the committee noted that they believed contractual provisions could be used to address this concern.

### **3. IESBA update**

Mr. Mintzer reported that the June 15, 2019 effective date of the revised and restructured IESBA code had just passed and accordingly there are many outreach efforts underway. He also noted the E-code was published in June and while enhancements will be made, it has many functionalities that users will find very helpful.

For the September meeting, he reported the Nonassurance Services (NAS) project is expected to come before the IESBA for a final read with a goal of it being voted out for exposure and the fees project is listed as a second read with a goal of voting it out for exposure at the December meeting. He noted that at the September meeting the IESBA will also meet with the IAASB.

Mr. Mintzer explained that the direction of travel of the NAS project is to retain the differences for NAS provided to PIEs and non-PIEs and to prohibit any NAS to a PIE when the self-review threat exists. Ms. Gorla noted that one observation raised at the IESBA meetings related to this direction of travel is regarding the timing of the project since the separate project to re-define PIE is scheduled to begin after the NAS project is completed or well underway. Mr. Mintzer explained that to address this concern the goal is that the effective dates of these two projects, as well as the fees project, would be aligned. As such, it would seem like conclusions reached in all three of the projects will likely be considered a bit "tentative" until all three projects are completed.

Mr. Mintzer reported that the landscape of the fees project has moved around a lot. While it started out with a position that low fees would be an indication that the public accountant is not doing enough work, given the significant pushback the board received (i.e., work such as pro bono work, discount work, off season work would be negatively impacted), the IESBA is now considering a concept that the firm should be satisfied that the level of fees will not prevent it from performing its services in compliance with standards. This concept has also received pushback since some struggle to see why this should be covered as an independence issue (as opposed to a broad issue). Accordingly, this discussion continues to evolve. Mr. Mintzer also noted that there are other components of the fees project, including transparency of fees with PIEs and strengthening standards on firm dependency.

Mr. Mintzer explained that the tax working group that he is a member of had its first meeting to come up with a work plan that will be discussed with the IESBA at the September meeting. This plan includes three phases, an information gathering phase where robust outreach and desktop research will take place, as well as evaluation and reporting recommendations phases.

Ms. Gorla reported that the technology working group will be presenting a preliminary report at the September meeting based upon the outreach and desktop research it conducted. Given the broad landscape of technology, the working group focused on artificial intelligence (AI) and data. One recommendation already made by the working group is that the Role and Mindset task force include as a potential bias in its exposure draft, the automation bias. In addition to this recommendation, the preliminary report will likely recommend (1) some nonauthoritative guidance be developed to highlight how the fundamental principles interact with these services and (2) a new threat category, known as the “Complexity threat” be added to the code. One observation the working group plans to highlight in its preliminary report is that the working group sees a lot of overlap between the fundamental principles in the code and the ethical principles used by AI developers. Accordingly, the report may include a recommendation that consideration be given as to whether the fundamental principles could possibly be revised to include messaging found in the ethical principles that would be considered helpful.

It was agreed that staff should use the IFAC Convergence Task Force to develop comment letters on IESBA exposure drafts.

#### **4. Strategy and work plan consultation paper**

Ms. Klepcha provided the committee with a status update on the project, and the structure of the agenda item, which included the recommendations of the PEEC Planning Task Force.

The committee agreed that the consultation paper should solicit feedback about the format members find most useful for member enrichment materials. Ms. Snyder asked if the paper will solicit input from the public regarding prioritization of projects. Ms. Klepcha explained that the Planning Task Force will recommend timing (Year 1, 2, 3) after feedback is received. Ms. Snyder suggested the consultation paper explain what the “significance of the topics” means.

Mr. Campbell clarified his feedback regarding “Client Access to Information in the Cloud” and “Confidentiality from the Government” and Mr. McKeown clarified his feedback regarding “Reporting of an Independence Breach to an Affiliate That Is Also an Attest Client”, which were topics listed under Proposed Projects with No Subgroup Recommendation. The committee recommended that “Reporting of an Independence Breach to an Affiliate that is also an Attest Client” be classified as a member enrichment project under Proposed New Projects.

Mr. McKeown recommended that “De Minimis Fees” be in Proposed New Projects. After discussion, the committee agreed to move the project to that category. Mr. Newhard recommended “Peer Review for Tax Practice” be included in “Proposed New Projects.” Mr. Henry Grzes, Lead Manager with the Tax Practice & Ethics Division, explained peer review for tax practice on a voluntarily basis. Mr. Lynch explained why the Planning Task Force did not recommend projects be pursued to compare the code to standard setter’s rules (e.g., SEC, PCAOB, the Department of the Treasury, HHS and state boards) aside from the IESBA, GAO, and DOL.

#### **5. NOCLAR**

Mr. Denham reported on task force activity since the May PEEC meeting. As mentioned in May, a joint PEEC/UAA task force has been formed, consisting of equal representation of both PEEC and UAA members as well as AICPA and NASBA representatives. The joint task force met on July 30th and 31st and agreed on several items. The first is a recommendation that the Auditing Standards Board (ASB) revise standards to require a CPA to disclose NOCLAR to the successor auditor, follow current auditing standards (report up chain of command, then resign), but add a requirement to respond to potential successors request for NOCLAR information, and require potential successor to request NOCLAR information from predecessor and evaluate prior to accepting the engagement. If the decision is to accept the engagement regardless of NOCLAR, require documentation of the evaluation and conclusion as to why the decision was appropriate. Secondly, PEEC should, with respect to members in public practice for attest/assurance (exact engagements to be determined) clients, explicitly indicate members should follow "recommended" ASB standard as well as applicable laws and require NOCLAR discovered when performing non-attest engagements to be reported to attest/assurance engagement partner. With respect to members in business, make explicit that NOCLAR, if not handled properly internally, is to be reported to the external auditor and allow member to report to appropriate authority, if deemed in the public interest.

The joint task force did not conclude as to whether disclosure of NOCLAR, either discovered during attest/assurance or non-attest engagements, should be limited to potential successor auditors or should be reported out to the appropriate authority. Next steps include a meeting of the joint task force on September 10th as well as the PEEC NOCLAR task force developing a recommendation to present to the committee in November.

## **6. Statements on standards for tax services**

Mr. Wiley presented a quick overview of how the task force was created, and that its charge is to review and revise existing standards as well as consider the adoption of new standards. He also described the makeup of the formal task force membership as well as other advisors to the task force.

Ms. Saunders discussed that the existing standards were first developed in the 1960s and 1970s and the current version of the standards was last revised in early 2010. She noted that the aspirational timeline for completion of this project is to have the revised standards ready to be exposed to the AICPA membership by the end of 2020.

Ms. Saunders explained that the task force has three working subgroups: 1) the review and refreshing of existing standards subgroup, 2) data security subgroup, and 3) potential new standards subgroup. New standards are being discussed in many areas, including quality control, reliance on tools, and representation before the IRS.

Mr. Wiley discussed the various AICPA communication channels that are being used to promote this project and Ms. Saunders welcomed PEEC's input on any suggested revisions to the standards as well as ideas regarding how to promote this revision project to the membership.

Ms. Saunders discussed that revised standards and any new standards would be reformatted and reordered for ease of use. She noted that the entire task force will be meeting on August

16th to discuss comments on individual drafts of existing and new standards from the working subgroups, and will meet again in person in Washington, DC on November 14th.

Mr. Brackens inquired if the task force was looking to adopt new requirements regarding data security. Ms. Saunders replied that data security is a major issue for tax practitioners, and they are working on how to provide information to members through the standards regarding what they need to be aware of and what they should do to protect data, as well as what to do in the event of a data breach. Mr. Brackens stated that it sounded like the standards are going to tell the members where to go for information and be more educational, rather than establishing any hard requirements, and was supportive of that approach.

Mr. Grzes elaborated that they did not want to be duplicative with existing standards, or worse, in conflict with existing standards or standards being contemplated by PEEC. Mr. Holets commented that the task force is being mindful not to put in “you must do this” types of standards, but rather “these are steps you should consider” language.

## **7. State and local government**

Ms. Powell and Ms. Kappler presented an update on the status of the practice aids that support the interpretation that was adopted in May. Ms. Powell discussed the implementation guide and requested feedback on the content included.

PEEC had the following comments:

- A question was raised on whether the guide encourages a member to and leads to a member believing that it’s acceptable to choose to exclude an entity that is required to be included in the reporting entity’s financial statements. PEEC also questioned if the nonattest services exception that applies to such circumstances would contribute to a client choosing to exclude an entity that is required to be included. Ms. Miller pointed out that this is how the interpretation is written and believes that the nonattest services exception is appropriate based on the significance of the threats that exist when a firm does not audit an entity. Upon further discussion, PEEC decided that the words “chooses to” should be removed to remedy the concerns expressed. Also related to excluded entities, PEEC asked if the entity tree could show that the excluded side (right side) of the tree would be considered a departure from the applicable financial reporting framework.
- Suggested that the introduction to the guide clarify that the interpretation is for entities required to be included in the financial statements, whether they are excluded or not.
- Suggested that the guide refer to the next section in the DEF Company example where it mentions RST Company.
- Suggested that the terms “more than trivial and clearly inconsequential” be revised to say, “more than trivial **or** clearly consequential.”

PEEC inquired about the timeline for finalizing and releasing the guide. Ms. Kappler indicated that we would like the guide to be finalized before the November meeting. Ms. Miller also emphasized the importance of getting the guide out to members as soon as possible and indicated that final fatal flaw reviews would be requested after editorial changes are finalized.

Ms. Kappler updated PEEC on the status of editorial's review of the guide and explained the "tone of voice" edits that the guide will undergo. She then introduced and demonstrated the affiliate evaluator tools created using Survey Monkey and requested feedback. No comments were received.

Ms. Kappler gave an update on communications that have occurred since the May PEEC meeting and the planned communications going forward.

## **8. Inducements**

Ms. Dourdourekas provided a brief recap of the May 2019 PEEC meeting to the committee. Specifically, the committee agreed that the Frequently Asked Questions (FAQ) approach would be enough for AICPA's convergence with IESBA, since the AICPA was substantially converged with IESBA.

Ms. Dourdourekas reported that since the last meeting the task force decided and recommends developing a practice aid using an overall threats and safeguard approach that will serve as an educational tool to members. In addition to FAQs, the practice aid will include an overview of the related guidance, best practices, case studies and a decision tree. The committee agreed with the recommended approach.

Ms. Dourdourekas reported that the task force is in the process of developing the practice aid and that a draft version will be provided at the November meeting.

## **9. Staff augmentation**

Ms. Snyder reminded PEEC that it had decided to table its discussion of the revised interpretation at the May 2019 meeting for the task force to obtain feedback regarding concerns of potential co-employment issues and to solicit additional feedback from NASBA.

Regarding the co-employment issue, Ms. Snyder noted that Ms. Hnatt had discussions with employment counsel whose advice was that this should not in itself keep the proposal from moving forward since the co-employment issue would be more of a workplace liability issue that could be addressed through an engagement letter with the client.

Ms. Snyder explained that NASBA submitted a second comment letter to PEEC noting that after additional consultation (feedback obtained from state boards during its June meetings, the NASBA Board, as well as state board representatives that were audit practitioners) they were still opposed to the interpretation and felt PEEC should not continue with the project. Ms. Snyder reported that given this feedback, the task force was concerned with proceeding, and in fact she would be concerned if adopting the proposed interpretation would result in multiple standards for the profession or be the cause for why state boards choose not to adopt the AICPA code.

Mr. Baker reinforced that NASBA went through a robust consultation in arriving at its initial and updated recommendations and that its primary concern is protection of the public interest. He noted that those participating in the additional consultation referred to above were in unanimous agreement that the project should not be pursued. Mr. Baker noted that when discussing NASBA's second comment letter, the task force asked him to consult with NASBA to see if it would be more accepting of the proposal if the short period of time meant weeks as

opposed to months, or at least a very short period based on an emergency or a non-recurring hardship. While he would report back on NASBA's feedback, personally he thought such an approach would be more palatable.

Ms. Snyder then asked practicing committee members whether their firms were performing staff augmentation services for attest clients, and if so, what limitations their firms placed on these arrangements. Most of the members that responded indicated their firms only provide these services to nonattest clients, not to attest clients. One firm noted that they had one such engagement in the tax compliance arena that they are monitoring closely. When asked why these firms did not provide these services to their attest clients, most noted concerns over appearance and some cited that since the code was so vague, they used the conceptual framework. One representative noted that an FAQ regarding controllership services led their firm to believe that under certain circumstances such services would be permissible.

Ms. Snyder explained that if the committee decided to go the route of prohibiting staff augmentation services, Ms. Hnatt believes that the proposal should be re-exposed since there would be a significant change in position. This would be true even if the committee decided that the guidance should be non-authoritative. Ms. Snyder also noted that the consensus of the task force was that if guidance was issued, it should be authoritative so that it is clear what the committee's position is on this topic.

Ms. Snyder asked the committee for feedback on how the task force should move forward. Ms. Saunders noted that she felt appearance was a primary concern, and that it was ironic that in its discussion of hosting services and tools used by the profession, such services could jeopardize independence but providing staff to an attest client could not. She emphasized that weeks was more reasonable in appearance than months or even a year. Mr. Cahill thought that the task force should not lose sight of the IESBA code when making its deliberations. Ms. Illuzzi stated that she would be happy to reach out again to TIC members, but most of the firms she discussed this with do not provide such services due to appearance concerns.

Ms. Snyder stated that the task force would go back and deliberate, and if the task force decided to significantly change its interpretation of short period of time, the task force would reach out again to NASBA for their input.

#### **10. Minutes of the May 2019 PEEC open meeting**

The minutes were revised to add detail to item 4 and to include guests, Peggy Ullmann and James Newhard. With the six new members abstaining it was moved, seconded and agreed to adopt the revised minutes from the May 2019 open meeting with no dissent.