



**AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS
 PROFESSIONAL ETHICS DIVISION
 PROFESSIONAL ETHICS EXECUTIVE COMMITTEE
 OPEN MEETING MINUTES
 May 15, 2019**

The Professional Ethics Executive Committee (committee) held a duly called meeting on May 15, 2019 at the Sheraton Grand in Seattle, WA. The meeting convened at 9:00 a.m. and adjourned at 4:45 p.m. on May 15, 2019.

<p><u>Attendance:</u> Samuel L. Burke, Chair Coalter Baker A. Carlos Barrera Stanley Berman Chris Cahill Tom Campbell Robert E. Denham Anna Dourdourekas Kelly Hunter Martin Levin Brian S. Lynch</p>	<p>William Darrol Mann William McKeown Steven Reed James Smolinski Lisa Snyder Stephanie Saunders Shelly Van Dyne Sharon Jensen*</p> <p><u>Not in attendance:</u> Greg Guin</p>
<p><u>Staff:</u> James Brackens, VP - Ethics & Practice Quality Toni Lee-Andrews, Director Ellen Gorla, Associate Director Jennifer Clayton, Senior Manager* Michele Craig, Lead Manager* Summer Young, Lead Manager* April Sherman, Manager* Liese Faircloth, Manager* Jennifer Kappler, Manager* Iryna Klepcha, Manager* Melissa Powell, Manager* Michael Schertzinger, Manager*</p>	<p>John Wiley, Manager* Shannon Ziemba, Manager* Henry Grzes, Lead Manager – Tax Practice & Ethics* Kristy Illuzzi, TIC Staff Liaison* Laura Hyland, Governmental Auditing & Accounting* Pamela Lauchengco, Manager - Content Development & Management – MA* Kelly Mullins, Manager – Support Services and Communications* Elaine Bagley, Specialist* Sarah Shannonhouse, Manager - Tax Practice & Ethics*</p>
<p><u>Guests:</u> Jeff Lewis, Chair, Independence/Behavioral Standards Subcommittee Ian Benjamin, Chair, Technical Standards Subcommittee Kelly Hnatt, External Counsel Catherine Allen, Audit Conduct* Sonia Araujo, PwC Jason Evans, BDO</p>	<p>Paula Tookey, Deloitte* Vassilios Karapanos, SEC* Ivona Szady, Deloitte* Joseph Tapajna, TPRC/Deloitte* James West, BDO* Jenny Norris, Indiana CPA Society* Pamela Ives Hill* Sarah Ference, CAN*</p>

Jennifer Kary, Crowe Horwath Nancy Miller, KPMG James Dalkin, GAO Peggy Ullmann, Ullmann & Company PC Kimberly Kuhl, KPMG *Participated via phone	Andy Mintzer, Hemming Morse, LLP* Stacey Lockwood, Society of Louisiana CPAs* Dan Wise, CohnReznick, LLP* Joseph Tapajna* Jim Newhard, James J. Newhard, CPA*
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1. Welcome and introductions

Mr. Burke welcomed the committee and introductions were made.

2. State and local government

Ms. Miller presented an overview of the interpretation and informed the committee that the comment letters received on the most recent exposure draft were generally supportive. Ms. Miller reviewed the revised interpretation with the committee and requested feedback. The committee made editorial changes to the interpretation including: 1) clarified that an investor could be either the financial statement attest client or an affiliate under item a.i. of paragraph .03 2) added language to further describe an investment that is considered temporary in paragraph .03 c.i. (The committee wanted to further describe what is meant by temporary in the interpretation and suggested that further guidance be included in the implementation guide), 3) clarified wording in paragraphs .03 c. ii. and iii such that for purposes of this interpretation, an investment held to principally enhance an investors ability to provide governmental services would not be considered an investment, 4) clarified language in paragraph .06 to be consistent with similar language in the Code, 5) removed f. in paragraph .06 since it was not likely to occur as frequently as the last example, and 6) made a minor clarification to paragraph .11.

Ms. Powell presented an overview of the draft implementation guide, and Ms. Kappler presented an overview of the draft checklist practice aid. One member of the committee questioned whether it was appropriate to adopt the interpretation at this meeting since the related practice aids were not finalized.

A motion was made, seconded and passed with one abstention to adopt the interpretation as modified by the committee.

Ms. Kappler presented the communication plan for the interpretation and requested feedback. The feedback was supportive of such a robust communication plan. Specific interest was shown in the train-the-trainer sessions and the opportunity for podcasts and/or webinars.

3. Selected procedures engagements

Mr. Hunter presented the Frequently Asked Questions (FAQs) developed by the task force to the committee. The committee expressed that adding examples may help with the understanding. The committee noted that there may also be confusion related to who the responsible party is. The language of the FAQs will be updated to mirror the language in the final standard once it is voted out. The committee suggested deleting the fifth proposed FAQ and perhaps adding an additional FAQ related to practitioner involvement with design of the procedures if they are also involved with the underlying subject matter.

The committee agreed that the FAQs should be released at the same time as the final standard and that placement with the other General FAQs would be appropriate.

4. Information technology and cloud services

Ms. Van Dyne reviewed revisions made to the proposal since the last committee meeting. She explained that since the Strategy & Work Plan (SWP) is currently under development, the task force recommends the committee consider adding a statement to the introduction of the interpretation that makes it clear it is applicable to attest engagements on subject matter other than financial statements.

Ms. Van Dyne also described changes made to the “discrete exception” (par. .05) in which a member may design or develop a template that performs a discrete calculation. The task force struggled with this “blanket” exception because it could be interpreted to mean that a member would be permitted to design a template that is significant to the client’s financial statements. To address this concern, Ms. Van Dyne explained the task force recommends that the sentence in par. .05 on discrete calculations be removed. The task force recommends revising par. .03(a) to exclude from the definition of “financial information system” (“FIS”) a tool that meets three conditions: (i) the tool is noncomplex and discrete, (ii) the client is able to reperform the calculation (i.e., it’s not a “black box”, thus the client is able to take responsibility for it) and, (iii) the client evaluates and accepts responsibility for the assumptions and inputs. One member raised a concern about the noncomplex requirement and whether it’s consistent with the general requirements in 1.295. Ms. Van Dyne explained that the intent is not that the client be able to reperform the calculation but be able to accept responsibility for the results of the calculation. To address the concern, the committee removed the term “noncomplex” and added other language to clarify its intent that the client be able to understand the calculation and the output.

Ms. Van Dyne further explained that the task force clarified in par. .22 that discrete means “individually separate, distinct and nonrecurring”. A concern about using the term “nonrecurring” was discussed, since technology consultants may need to return to an engagement to address a client issue. The committee agreed to replace “nonrecurring” with “not ongoing” since the concern it wanted to address was a member having continuous responsibility as opposed to the member repeatedly providing the service over a period of time.

Although one member noted that .22(b) *apply virus solutions or updates*, and (c) *apply certain updates and patches*, should be removed from the list of permissible services because those activities could be construed as the member having ongoing maintenance responsibility, the committee decided to keep the examples in since the lead in to the examples stipulated that in order to be permitted the services had to be “*individually separate, distinct and not ongoing*”.

A motion was made, seconded and unanimously passed to adopt the interpretation as modified by the committee with an effective date of January 1, 2021 with early implementation allowed.

The committee agreed that existing FAQs 1 through 6 and 8 of the Information Technology Services FAQs should be deleted from the FAQ document and that FAQ 7 should remain.

Ms. Illuzzi, the staff liaison for the Technical Issues Committee (TIC) reminded the committee that TIC had not responded to the Hosting Services exposure draft because they believed the firm had to be specifically engaged to provide the services. She explained that PCPS firms had significant reservations with the upcoming July 1st effective date since some portal providers had not yet implemented the necessary changes to their software so that members would not inadvertently be hosting information sent to a client through a portal. Given these significant concerns, the committee was asked if it would be willing to re-open the interpretation and adjust the language that concerns the PCPS member firms or further delay the effective date so that portal providers could implement the necessary changes to its software.

Mr. Burke noted that due process was followed when adopting the interpretation. The committee agreed, by a straw poll, that it was not supportive of further delaying the effective date. However, it did support further clarification be provided through the development of additional FAQs.

5. Staff augmentation

Ms. Hnatt updated the committee regarding conversations with AICPA internal counsel about potential issues with co-employment in staff augmentation engagements. Mr. Denham noted that employment laws vary from state to state in addition to federal vs. state. He also added that it will be important for individual firms to know the applicable laws in their respective jurisdictions. Ms. Snyder gave a synopsis of the comment letters received in response to the exposure draft of the interpretation, and the committee discussed many of the common reactions to the exposed version. Mr. Cahill noted that the comparable IESBA interpretation was not included in their respective non-attest services section as proposed by the task force, and the committee discussed the effects regarding convergence with IESBA. Ms. Snyder noted that she was comfortable with IESBA's placement of their staff augmentation interpretation within their code, but also noted that if the interpretation was not implemented, she was comfortable with the AICPA code being more restrictive. Mr. Barrera expressed concern regarding the interpretation moving forward given questions regarding all the different jurisdictions. Mr. Baker noted that while NASBA was against the proposed interpretation as stated in their comment letter, they would poll their members at upcoming regional meetings to better obtain individual state's positions. The committee concluded to table voting on the proposed interpretation until staff had an opportunity to dive deeper into the co-employment issue, and to allow NASBA to provide more feedback from its members. The task force agreed to meet again once the solicited feedback is obtained and report back to the committee in August.

6. PEEC 2019 Strategy and Work Plan

This agenda item was tabled due to time constraints.

7. External directors

Mr. McKeown explained that the task force is recommending that the project not proceed as the use of external directors is not a broad ethical issue since it is currently being used primarily by large firms. Rather, the task force believes that since firms have unique structures, members should use their judgement combined with the guidance in the code to determine how best to safeguard any threats created by external directors.

8. IESBA update

Ms. Gorla reported that the materials for the June IESBA meeting were not available yet, but that a number of key projects would be discussed, including Nonassurance Services, Fees, Role and Mindset and Technology.

9. Inducements

Ms. Dourdourekas presented the agenda material to the committee, which included background information related to convergence with IESBA's standards. Ms. Dourdourekas explained to the committee that staff performed a comparison of the IESBA's standards on inducements to the AICPA's code's guidance related to gifts and entertainment as well as other non-authoritative guidance from both the AICPA and IESBA. Based on the comparison, the task force identified that the AICPA code's independence guidance is more restrictive than the IESBA's standards on independence and that no action is necessary to converge on this topic. The task force identified differences between the AICPA code and IESBA standards as it relates to the "Integrity and Objectivity Rule" in which the AICPA code appeared to be less restrictive. The task force recommended to the committee that the AICPA is substantively converged with the IESBA's Inducements guidance and that the identified differences could be addressed through frequently asked questions to be fully converged.

A committee member questioned if the gift and the amount of the gift would be addressed. Ms. Dourdourekas and Mr. Campbell (task force member) pointed out that this would be addressed in the FAQs (page 160 of the agenda lists the topics that will be included in the FAQs).

Ms. Snyder gave a little background as a former member of the IESBA's Inducements Task Force that this topic was sparked due to the fraud and bribery act and pointed out that the "Integrity and Objectivity Rule" requires members to comply with laws and regulation and this should be included as part of the reason that the AICPA is substantively converged with IESBA. Ms. Snyder also suggested that the task force add an FAQ that would address a gift that is clearly insignificant but with the intent to influence improper behavior.

The committee agreed that the FAQ approach would be sufficient for IESBA convergence and agreed with the task force moving forward with the development of the FAQs as recommended.

10. Transfer of files and return of client records in sale, transfer, discontinuance, or acquisition of a practice

Ms. Sherman presented two versions of an FAQ that would address whether a member purchasing a practice from a nonmember is required to be satisfied that client consent was obtained before client records were transferred to the member. The committee agreed that the member should be satisfied that client consent was obtained. However, the committee requested that staff reword the FAQ's question so that it focuses on paragraph .05 of the "Transfer of files and return of client records..." interpretation rather than paragraph .01. The committee agreed that staff did not have to bring the final revised FAQ back before the committee; review by Mr. Brackens and Ms. Lee-Andrews would be sufficient.

11. NOCLAR

Mr. Denham reported on task force activity since the February PEEC meeting. A joint task force consisting of an equal number of NASBA and AICPA members, while also being equally balanced between UAA membership and PEEC membership, has been formed in an effort to move forward in a collaborative manner. The purpose of this task force will be to develop a blueprint of the way forward with NOCLAR; specifically, to reach agreement on the major issues and determine where the issues should be addressed – the UAA or the Code of Conduct. The task force met via teleconference on April 23, 2019. Task force members were given a history of NOCLAR starting with the IESBA standard through the PEEC exposure draft and related comment letters received. Also discussed were the UAA Committee’s history and activities regarding NOCLAR, including highlights from the joint AICPA/UAA Committee meeting held in Nashville last fall. Next steps were discussed, and an in-person meeting will be held in Washington, DC on July 30-31st. Once an agreement is reached regarding the issues, the UAA Committee and PEEC NOCLAR Task Force will separately address language changes for their respective areas. Bob Denham (co-chair), Carlos Barrera, Stephanie Saunders, and Lisa Snyder represent PEEC on the joint task force.

12. Statements on Standards for Tax Services (SSTS) Task Force

Ms. Saunders updated the committee on the activities of the SSTS Revision Task Force. She noted that the Tax Executive Committee (TEC) approved formation of a task force at the request of the Tax Practice Responsibility Committee (TPRC) to undertake revision of the standards from August 2018. The task force has formed three separate subgroups:

- Review/Refresh of Existing Standards
- Data Security/Conflicts of Interest
- Other possible new standards including Quality Control, Reliance on Tools and Representation before the IRS

She noted that the task force is attempting to seek input from all AICPA members on these revisions and areas where standards need to be added or revised. She indicated that if anyone on the committee wants to provide information, she would be glad to bring back their feedback to the task force. She plans to give regular updates at PEEC meetings.

13. Minutes of the February 2019 PEEC open meeting

Ms. Lee-Andrews requested that the meeting convened date be updated from 2018 to 2019. It was moved, seconded and unanimously agreed to adopt the minutes from the February 2019 open meeting.