



**AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS
PROFESSIONAL ETHICS DIVISION
PROFESSIONAL ETHICS EXECUTIVE COMMITTEE
OPEN MEETING MINUTES
November 6, 2019**

The Professional Ethics Executive Committee (committee) held a duly called meeting on November 6, 2019 at the Association offices in Durham, NC. The meeting convened at 9:00 a.m. and adjourned at 4:25 p.m. on November 6, 2019.

<p><u>Attendance:</u> Brian Lynch, Chair Coalter Baker* Samuel L. Burke Chris Cahill Tom Campbell* Robert E. Denham Anna Dourdourekas Kelly Hunter Sharon Jensen Jennifer Kary</p>	<p>Martin Levin Jeff Lewis William McKeown James J. Newhard Lisa Snyder Stephanie Saunders Peggy Ullmann Douglas E. Warren Lawrence A. Wojcik</p>
<p><u>Staff:</u> James Brackens, VP - Ethics & Practice Quality Toni Lee-Andrews, Director Ellen Gorla, Associate Director Michele Craig, Lead Manager Summer Young, Lead Manager Aradhana Aggarwal, Manager Sarah Brack, Manager Liese Faircloth, Manager Iryna Klepcha, Manager Jennifer Kappler, Manager Hanna Mayle, Job Coordinator*</p>	<p>Melissa Powell, Manager Michael Schertzinger, Manager April Sherman, Manager John Wiley, Manager Shannon Ziemba, Manager Kristy Illuzzi, TIC Staff Liaison Mao Chen, Manager - Product Management & Development* Kelly Mullins, Manager – Support Services and Communications Elaine Bagley, Specialist</p>
<p><u>Guests:</u> Catherine Allen, Audit Conduct* Sonia Araujo, PwC* Kent Absec, Idaho State Board of Accountancy* Ian Benjamin, Chair, Enforcement Subcommittee Boyd Busby, Alabama State Board of Public Accountancy* Debbie Cutler, Debra A. Cutler, CPA, PC* Jim Dalkin, GAO George Dietz, PwC*</p>	<p>Elliot Lesser, Enforcement Subcommittee* Santa Marletta* Nancy Miller, KPMG Andy Mintzer, Hemming Morse, LLP* Karen Moncrieff, EY* Christine Piche', CLA* Jacqueline M. Reardon, TPRC* Joseph Sanford, Enforcement Subcommittee* Stephanie Sauer-Watts PwC* Rachel Sinks, Enforcement Subcommittee* Mike Sufczynski, Dixon Hughes Goodman</p>

<p>Dan Dustin, NASBA Jerold Fetzer, Arkansas Society of CPAs* Jo Ann Golden, New York State Society of CPAs* Anika Heard, PwC Allison Henry, Pennsylvania Institute of CPAs* David Holets, TRPC* Kelly Hnatt, External Counsel Kimberly Kuhl, KPMG</p>	<p>Ivona Szady, Deloitte* Joseph Tapajna, TPRC* Jessica Tomc, EY* Paula Tookey, Deloitte Sharron Waugh, Tennessee State Board of Accountancy* James West, BDO Michael Westervelt, CLA* S. Williams* Dan Wise, CohnReznick*</p>
<p>*Participated via phone</p>	

1. **Welcome**

Mr. Lynch welcomed the committee and discussed administrative matters.

2. **Staff augmentation**

Ms. Snyder provided the committee with a brief recap of the proposal’s history. She explained that at the August meeting the proposal was to permit staff augmentation services under the nonattest services subtopic subject to certain safeguards. One such safeguard was that the services must be for a short period of time (although the committee had not come to an agreement on how to describe what this period of time would be.) Ms. Snyder reminded the committee that, at the same time, NASBA had issued a letter to the committee expressing concerns on the direction the task force was moving, and instead believed that staff augmentation services should be prohibited as the appearance of acting as an employee would impair independence.

She noted that after further discussion, the task force recommended that staff augmentation services would generally impair independence except under certain limited circumstances. The task force recommended that the guidance be moved out of the nonattest services subtopic and added to the “Current Employment or Association” subtopic. Ms. Snyder described the safeguards that would be required to be in place in order for the services to not impair independence and described four options presented in the agenda materials regarding the circumstances when these services would be allowed (subject to the safeguards previously discussed).

Several committee members expressed concerns with the proposed direction. One common concern was that the description of a short period of time was too proscriptive, especially given the lack of specificity in the prior position. Another common concern was how the current position would be applied to affiliates given the move from the Nonattest Services subtopic and therefore, no longer being subject to the affiliate exception for certain non-audit services. In response to a question about whether the committee should not take any action, Ms. Snyder noted that this had previously been discussed but the task force believed that the project should move forward because other standard-setters have issued guidance on this issue and the AICPA guidance should not remain ambiguous.

Several committee members agreed that the new proposal needed to be proscriptive because of the nature and the appearance of these services and one committee member noted that the more judgement the committee can remove from the members' decision-making, the better.

Many committee members also believed that augmented staff members should not be on the attest team. It was reported that TIC did not believe this was a service for an audit client that impacted the vast majority of small firms and one committee member from a small firm confirmed that his firm would not provide these services.

Many committee members also believed while there were significant threats associated with certain staff augmentation services such as for services that were subject to attest procedures, there are other services, such as tax compliance, where a client may need lower level staff for a limited period of time where there were no threats to independence.

Ms. Snyder explained that the proposed interpretation was moved from nonattest services because it seemed to fit better in the employment section since the threats were focused on the appearance of employment. It was noted that this would result in closer convergence with the IESBA's interpretation, which is placed outside of the nonattest services section.

The committee discussed different situations in which independence would appear impaired and those that would not. Since the current proposal is far more proscriptive than the previous proposal, Mr. Baker was asked if he believed NASBA might accept a threats and safeguard approach where the member would use their professional judgment. Mr. Baker explained that he supported the more proscriptive language as it is clear and would require less judgment and more similar to the SEC position.

A straw poll was taken in which the committee was asked if the current proposal that would generally prohibit these services was too proscriptive. The committee was relatively split. Several committee members emphasized that they believed the proposal needed to include a threats and safeguard approach and asked if NASBA would agree to such an approach. Mr. Baker said it was unlikely NASBA and its member state boards would deviate from their current position.

Ms. Snyder requested input on whether the 30-day time period was appropriate. The general sense of the committee was that the time period should not be left vague like the IESBA standard and some agreed that 60 days may be more appropriate. By straw poll most believed that for defining "short period of time", the terms "unexpected situations" and "significant hardship for the client to make other arrangements" would be useful. Some members however were unclear as to what would constitute a significant hardship.

Ms. Snyder agreed to have the task force meet to consider the committee's feedback and to present a revised draft at the next meeting for the committee's consideration.

3. Inducements

Ms. Dourdourekas provided the committee with a high-level overview of the Task Force's progress with the practice aid and explained that the draft presented with the meeting materials was a rough draft. Ms. Dourdourekas further explained that in the current draft of

the practice aid the Task Force did not include references to the term “inducement(s)” in the practice aid. The Task force also decided not to include a decision tree in the practice aid since members would need to comply with the conceptual framework for this topic and there would not be many steps to follow if included.

Mr. Wojcik opened up the discussion on thoughts for not using the term “inducement(s)”. Mr. Campbell (Task Force Member) explained that the term “inducement” reaches the conclusion before an analysis is made that something is considered bad before it is started (gift, entertainment, contributions, etc.)

Ms. Snyder pointed out that except for political contributions the practice aid focus is on nonattest clients and that we do not address independence specifically. Ms. Snyder recommended that it should be made clear that independence has more prescriptive guidance regarding gifts and entertainment and there should be an explanation that the practice aid’s focus is on the Integrity and Objectivity rule as well as if the position on political contributions should be taken for all clients.

Ms. Snyder mentioned that the concept “intent” is something IESBA spent a lot of time on, but we do not address this topic in the practice aid. At least when determining when it is appropriate to accept or not. Ms. Snyder recommended that the Task Force should refer to the IESBA Code to determine how the IESBA Code addressed “intent”. For example, “reason to believe” type standard.

Mr. McKeown did not agree with the guidance provided in the examples of reasonable in the circumstances table as stated, since the table provided definitive answers. Mr. McKeown recommended that we should soften the table and instead say “here are some considerations”.

Ms. Snyder explained that the initial reason for inducements was to address the bribery and fraud act but morphed into hospitality, gifts and entertainment are also inducements. Ms. Snyder recommended that a discussion should be included to address those types of inducements that are problematic.

Ms. Snyder recommended that “third party” should be addressed when referring to “reasonable in the circumstances” (i.e. What is reasonable to a third party?)

Mr. McKeown commented that the wording “mutual recommendation or promotion of business interest, product or service” as an action or offering that may need to be evaluated may be too strong. Mr. McKeown stated that although there should be disclosure, we would not want to prohibit this type of recommendation.

The task force will take the committees feedback and recommendations to revise the draft practice aid.

4. IESBA update

Mr. Mintzer reported that that the Tax Services working group will be trying to determine what the ethical line is between tax planning, tax avoidance and tax evasion. He explained that the working group is expected to provide the IESBA with a report in December 2020 and that the

working groups efforts so far have been on conducting desktop research and robust outreach to international stakeholders. He believes it will be a challenging project, especially trying to define tax avoidance and tax evasion from a global perspective, since there are many differing perspectives.

Mr. Mintzer reported that another project he is working on is the new Public Interest Entity (PIE) working group. The working group's terms of reference should be approved at the December meeting and is a joint working group with the IAASB. Mr. Mintzer explained that since the PIE definition is integral to the Non-assurance Services (NAS) and Fees proposals that are expected to be approved for exposure at the December 2019 meeting, the NAS and Fees proposals would not be effective until the listed entity and PIE definitions are finalized and effective. The hope is to have something out by the end of 2021.

Mr. Mintzer explained that the NAS proposal received significant debate at the September meeting which resulted in the proposal not being voted out for exposure as expected. He explained that the direction of travel was that when the self-review threat is present for a PIE independence would be impaired. That means that there would never be a situation where safeguards could be applied to eliminate or reduce these threats to an acceptable level. The IESBA is expected to approve this NAS proposal for exposure at its December 2019 meeting.

Mr. Mintzer reported that the IESBA had its third annual joint session with the IAASB in September 2019. In addition to the joint session, the two boards broke up into smaller joint groups and had some discussion about PIEs and had a live video session with the co-chairs of the Monitoring Group.

Ms. Gorla reported that the Technology working group's focus so far has been on the impacts of artificial intelligence (AI) and big data on our ethical responsibilities. She noted that the working group did share a preliminary report with the IESBA at the September meeting and the final report is expected to be provided at the December meeting. Ms. Gorla noted that she and Mr. Lynch, Ms. Dourdourekas, Ms. Miller met with the working group chair and staff person to explain PEEC's technology related projects (e.g., information system services, hosting services) and the sense is that the NAS proposal discussed by Mr. Mintzer would not cover these topics, rather the Technology working group would be allowed to provide its report and recommendations on how best to proceed on these topics.

Ms. Gorla noted that because of the U.S. anti-trust laws, we have only provided some limited feedback on the Fees project. She reported that in lieu of feedback, Ms. Hnatt has provided members of the Fees project team with an understanding of the constraints these laws place upon us and why it will be very challenging for us to converge with. Ms. Gorla noted that the fees proposal is scheduled to be approved for exposure at the December meeting and the committee will need to decide whether it will comment on the proposal. Ms. Hnatt assured the committee that our two members were not on the project task force which is where much of the in-depth discussion is taking place.

5. Record requests - Fees for copying/retrieval

Ms. Sherman explained that paragraph 11a of the "Records Requests" interpretation states that a member can require a client to pay the member's copying and retrieval fees (if such fees are incurred) prior to returning records that a client provided. The Committee agreed that

this was not the intent of paragraph 11a and agreed that client-provided records should always be made available to the client even if the member incurs costs related to the return of such records and such fees are not paid prior to the retrieval of the records. For other categories of records, fees to recoup a member's shipping charges should be allowed. There was no further discussion of shipping charges.

In addition, the Committee agreed that the interpretation should require a member to make client records available for the client's retrieval rather than requiring the member to return the records. The Committee decided to make changes to the interpretation (for wider reach) rather than draft an FAQ that would only address a specific situation. As this will require re-exposure, a small task force was created, with Peggy Ullmann appointed as the chair.

6. Strategy and work plan consultation paper

Ms. Klepcha provided an overview of the changes made to the draft the PEEC members discussed at the PEEC meeting in August 2019. Ms. Klepcha explained that the introduction was added to the consultation paper,

"Reporting of an independence breach to an affiliate that is also an attest client" was moved from the "Proposed projects with no subgroup recommendation" category to the "Proposed new standard-setting projects" category, and "De Minimis fees" was moved from the "Projects not to pursue" category to the "Proposed New Standard-Setting" category.

Mr. Cahill recommended that the introduction refer to the AICPA Professional Ethics Division's Strategy and Work Plan instead of the PEEC's Strategy and Work Plan.

Mr. Lynch clarified that the definition of an affiliate in the AICPA Code of Professional Conduct extends to common ownership by entities and not common ownership by individuals; however, the SEC rule does not specifically refer to common control by entities and, therefore, individuals can be affiliates under the SEC rule.

Ms. Snyder suggested a revision to the "Reporting of an independent breach to an affiliate that is also an attest client" to clarify that the question is whether members need to communicate the breach to sister and downstream affiliates that are also attest clients. Ms. Snyder also recommended that the consultation paper inquire how members are applying the "Breach of an Independence Interpretation" subsection in relation to affiliates that are also attest clients. Mr. McKeown stated that one of the goals of the project could be to determine whether it was necessary to communicate a breach to an affiliate that was not directly affected.

Ms. Snyder suggested a revision to the "Definition of office" to clarify that the definition is used to determine which partners are covered members and therefore need to remain independent of an attest client.

Ms. Snyder noted that the purpose of the exhibits was not clear. Ms. Hnatt recommended that exhibit A include projects of the AICPA Professional Ethics Division and exhibit B include projects of the PEEC (i.e., "Restricted use reports and independence provisions with a financial audit centric perspective" and "Records requests" should be moved from exhibit A to exhibit B).

Mr. Cahill asked whether the end of the comment period should be moved due to the upcoming busy season. Mr. Burke stated that the date seemed to be reasonable.

It was moved, seconded, and unanimously agreed to publish the consultation paper for review and comments.

7. Statements on standards for tax services

Ms. Saunders gave a quick summary of the 3 working subgroups of the Statements on Standards for Tax Services (SSTS) revision task force and noted that the full task force would be having an in-person meeting the following week in Washington DC to continue their work on the revisions, as well as update and seek feedback on the current status of the revisions from the Tax Practice Responsibilities Committee (TPRC) at their meeting the following day. She noted the goal of the task force is to get an initial complete set of documents ready for discussion at the Tax Executive Committee (TEC) in February 2020. Ms. Saunders also noted that the task force was the subject of 2 podcasts to promote awareness of the project as part of the Ethically Speaking series hosted by the AICPA Professional Ethics Division, as well as the revision project was the subject of articles in the November issues of The Tax Advisor and the Journal of Accountancy. Ms. Saunders invited committee members to provide any feedback on the podcasts and articles as they give more detail about the content of the revision project, and she then explained that her role on the task force was make sure the task force was not invading PEEC's standard setting space or have any standards that would be in conflict with guidance already existing in the code. Mr. Holets, chair of the SSTS revision task force, reiterated that while he thought the goal of presenting the initial revised standards to the TEC in February was realistic, he stated that was dependent on the results of the in-person task force and TPRC meetings the following week.

Mr. Brackens asked Ms. Saunders asked about any direction the task force was taking regarding firm quality control, and she said the task force was taking a stance of encouraging firms to have a quality control document in line with the position of the IRS. Mr. Holets confirmed that was the focus of the task force and emphasized there was no intention to involve peer review with the revised standards but reminded the committee that the TPRC has a voluntary tax practice guide that is available, but that program would not be part of the revised standards.

Mr. Fetzner asked if speculation regarding stricter regulations are in process at the IRS are going being addressed in the revised standards and Ms. Saunders and Mr. Holets both responded no, and they both were not directly aware of any new requirements coming from the service, as that area would be monitored by the TPRC. Ms. Saunders added that one of the task force subgroups had considered conflicts of interest as part of their discussions, one area of speculation regarding potential IRS activity, and that the task force believed the AICPA code was clear in that area so it would not be addressed in the SSTSs.

8. Tone of voice

Ms. Chun, from the Association communications team, presented Association tone of voice and how ethics communications can benefit from the guidelines.

9. State and local government

Ms. Jennifer Kappler presented the revised implementation guide and explained the revisions made based on suggestions by our editorial team using the AICPA's branding and tone of voice guide. Several members of PEEC expressed concern that the overall tone may be too informal for the information explained in the implementation guide. PEEC requested that the wording be modified to include more formal language.

10. Information technology and cloud services

Ms. Gorla explained that a few FAQs were drafted to address how members could avoid providing hosting services when providing other permitted nonattest services (e.g., bookkeeping, tax, payroll). Since all incorporated the underlying requirement that the client should be given sufficient information so that the client's data and records are complete, the task force recommends FAQ 5 be revised to address this broadly. The committee provided staff with editorial suggestions along with the following key points:

- It was central to the FAQs that the client be given sufficient information so that the client's data and records are complete.
- The answer needs to respond to the question and so if the answer is the guidance that we want to give, then the question should be adjusted.
- The FAQ should connect the software to the nonattest service that the member is providing. That is, make it clear that it is the member not the client, who is using the software to assist them with providing the service.

Mr. Cahill noted that he would send staff his suggested revisions to FAQ 10 and the committee believed the answer provided in FAQ 11[1] was apparent and recommended it be deleted. With respect to FAQ 12, the committee noted it supported making this guidance more direct (less complex or simple) and provide some suggested revisions for consideration.

11. NOCLAR

Mr. Denham reported on task force activity since the August PEEC meeting. One of the limited circumstances in which the AICPA Code allows disclosure of confidential client information without specific client consent is when the member is required to do so as part of their professional obligations of the "Compliance With Standards Rule" (1.310.001). At its September 10th meeting, as an option to further address NOCLAR, the Joint PEEC/UAA NOCLAR Task Force considered encouraging the ASB to change its current standards and require communication to successor auditors of a former client if a member determines to resign from an assurance engagement due to a client's NOCLAR. The Joint Task Force was in favor of this as an option and requested feedback as to whether the ASB would take on such a project and the timing on their agenda.

Subsequently, the ASB's Audit Issues Task Force (the planning task force for the ASB) discussed this proposal and noted this topic would ordinarily be addressed in the context of the ASB's broader convergence policies. However, the AITF agreed to establish a working group to scope out a limited convergence project dealing only with NOCLAR auditor communications in such a manner as to avoid "scope creep" into a larger convergence initiative. The PEEC NOCLAR Task Force met on October 9, 2019 and voted to recommend that PEEC formally request the ASB to take up the aforementioned initiative and expedite its process.

At a special open session meeting of PEEC on October 22nd, PEEC voted to formally request the ASB to modify its current standards and require communication to successor auditors of a former client if at the time of termination of the assurance engagement the member is aware of the client's NOCLAR. PEEC also requested that the ASB expedite its process to the extent possible.

Mr. Denham indicated that the ASB discussed the project at their meeting last week. They described the project and informed the ASB that their NOCLAR working group and AICPA staff had drafted a project proposal that they would email to the AITF following their meeting. After AITF approval of the project plan, it will be emailed to all ASB members. The ASB will be discussing the issues and preliminary draft revisions during a conference call on December 6th and plan to vote for exposure at their January, 2020 meeting. Normally for a revision of this nature they would be thinking of a fairly short exposure period (45-60 days) versus their normal 90 day exposure period, except it could be longer due to busy season.

12. Minutes of the PEEC open meeting

With the two new members abstaining it was moved, seconded and agreed to adopt the minutes from the August 2019 open meeting with no dissent.