



PROFESSIONAL ETHICS EXECUTIVE COMMITTEE

Open Meeting Agenda

October 22, 2019
Durham, NC



**AICPA Professional Ethics Executive Committee
Open Agenda
October 22, 2019**

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| <p>Open meeting: Phone access: +1 669 900 6833 (US Toll) or +1 646 876 9923 (US Toll) Meeting ID: Web access: https://aicpa.zoom.us/j/595377756 International numbers available: https://zoom.us/j/595377756</p> | | |
| <i>October 22nd</i> | <i>Open meeting begins</i> | |
| 2:00 p.m. – 2:05 p.m. | <p>Welcome Mr. Lynch will welcome the committee members.</p> | |
| 2:05 p.m. – 4:00 p.m. | <p>NOCLAR Mr. Denham and Ms. Lee-Andrews will provide the committee with a status report on this project.</p> | <p>Agenda Item 1A Agenda Item 1B</p> |
| | <i>Open meeting concludes</i> | |
| | <p>Future meeting dates</p> <ul style="list-style-type: none"> • November 6 - 7, 2019; Durham, NC • February 11 - 12, 2020; Durham, NC • May 5 - 6, 2020; Durham, NC* • August 11 - 12, 2020; Durham, NC* • November 17 - 18, 2020; Durham, NC* <p>* In person versus call in format not yet determined.</p> | |

Non-Compliance with Laws and Regulations (NOCLAR) Task Force

Task Force Members

Bob Denham (Chair), Carlos Barrera, Sam Burke, Brian Lynch, Bill Mann, Elizabeth Pittlekow, Lisa Snyder; Observers: Coalter Baker, Dan Dustin, Tom Neill; Staff: Toni Lee-Andrews, Jim Brackens, Ellen Gorla, Michele Craig, Skip Braziel

Task Force Charge

The Task Force's charge is to develop conforming guidance in response to standards entitled Responding to Non-Compliance with Laws and Regulations (NOCLAR) promulgated by the International Ethics Standards Board for Accountants (IESBA).

Reason for Agenda

The Committee is asked to approve a formal request to the Auditing Standards Board (ASB) to modify its current standards and require communication to successor auditors of a former client if a member determines to resign from an engagement due to a client's NOCLAR.

Background

In response to the NOCLAR exposure draft (Exposure Draft), the National Association of State Boards of Accountancy (NASBA) submitted a comment letter indicating that the guidance in the exposure draft did not go far enough, and client confidentiality should not impede reporting a NOCLAR to an outside authority. Specifically, there were concerns that the proposed language would discourage CPAs from acting in the public interest even after the CPA demonstrated compliance with all relevant professional standards and may also be construed as either limiting or prohibiting a NOCLAR disclosure without written client consent. NASBA recommended "tabling this project until such time as UAA (Uniform Accountancy Act) language is developed to incorporate NOCLAR requirements". NASBA has added this project to the joint AICPA/NASBA UAA Committee's agenda.

A Joint Task Force was formed to address NOCLAR, consisting of equal representation of both PEEC and UAA members as well as AICPA and NASBA representatives. The AICPA representatives are (from PEEC) Bob Denham, Lisa Snyder and (from UAA) Tom Neil and Anna Durst. The NASBA representatives are (from PEEC) Carlos Barrera, Stephanie Saunders and (from UAA) Coalter Baker and Vickie Petete. Bob Denham and Coalter Baker serve as co-chairs.

The Joint Task Force met several times this year on April 23 (conference call), July 30 and July 31 (Washington, DC), and most recently on September 10 (conference call). Staff included representation for both AICPA and NASBA (Jim Brackens, Toni Lee-Andrews and Kelly Hnatt represented AICPA; Louise Haberman, Dan Dustin and Noel Allen represented NASBA).

Summary Joint Task Force Meetings

At its July and September meetings the Joint Task Force discussed NOCLAR as it relates to members in public practice, performance of nonattest services, members in business and the ASB and the Audit Issues Task Force (AITF) activities.

Members in Public Practice

At its July meeting the Joint Task Force discussed the AICPA Code's guidance as it relates to client confidentiality for members in public practice. The extant "Confidential Client Information Rule" (1.700.001) of the AICPA Code prohibits members in public practice from disclosing confidential client information without specific consent of the client (except in limited circumstances) that would not permit disclosure of a NOCLAR. However, the Rule requires compliance with standards, laws, and government regulations. It was noted that not every state board of accountancy (state board) has fully adopted the AICPA Code, but the majority of the state boards have either fully adopted or partially adopted various aspects of the AICPA Code.

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). Accordingly, as an option to further address NOCLAR, the Joint Task Force considered encouraging the ASB to change its current standards and require communication to successor auditors¹ 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 ASB would take on such a project and the timing on their agenda.

The Joint Task Force also discussed in detail as to whether changes to the ASB standards requiring disclosure of a NOCLAR to successor auditors would be sufficient, or whether the standards should require members to go further such as, allow or require reporting a NOCLAR to the appropriate authorities. No consensus was reached by the Joint Task Force on this matter, but all agreed moving forward with successor auditor communications first was in order.

Non-attest Services

The Joint Task Force discussed the requirements relating to a member's discovery of a NOCLAR during the performance of non-attest engagements. Consensus was not reached for this topic. However, the Joint Task Force agreed that a member should be required to disclose a NOCLAR to the assurance engagement team when the member's firm provides non-attest services to an assurance client. It was noted that disclosure outside the firm of a NOCLAR discovered during the performance of a non-attest service could not be required by the AICPA Code without a member vote to revise the Rules. Such disclosure, however, could be required by modification of the UAA and subsequent implementation of legislation by all licensing jurisdictions.

The Joint Task Force recognized that there may be defensible reasons as to why including additional requirements for addressing NOCLAR when providing non-attest services would not be reasonable. A potential action item might include careful scrutiny of the most significant non-attest services including an evaluation of individual services and how to address a NOCLAR. The Joint Task Force agreed that, if the ASB adopted the successor auditor communication as contemplated by the Joint Task Force, it would make sense to defer additional requirements for addressing NOCLAR when providing non-attest services for non-assurance clients until a later

¹ The Joint Task Force discussed requiring communication of "assurance services" without concluding which assurance services should be included in this requirement. Accordingly, this document uses the term "auditor" even though there may be a broader application.

date, though monitoring the impact of the NOCLAR adoption to see whether such services should be addressed at such future time.

Members in Business

The Joint Task Force discussed whether the requirements in the Exposure Draft were too restrictive for members in business and agreed that this matter would need to be considered as well due to the potential impact to the UAA or other language revisions. It was noted that it would be important to revisit the Exposure Draft comment letters as they relate to members in business and review the current applicable standards prior to explicitly considering the extent of the NOCLAR guidance. The Joint Task Force agreed that allowing a member in business to report a NOCLAR would be more desirable than requiring a member to report a NOCLAR.

ASB and AITF's Activities

At its September meeting the Joint Task Force was informed of the process that would need to be followed for the ASB to consider revising assurance standards as described above. 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 goal is to discuss the working group's project plan with the ASB during its meeting in late October.

On September 23rd, Jim Brackens and Toni Lee-Andrews met with the AITF's working group (Working Group) at its initial meeting to provide the history of PEEC's and the Joint Task Force's discussions. On the call, the Working Group inquired as to the PEEC's position as to the importance and priority of revising assurance standards for auditor communications. Staff explained to the Working Group that we are in somewhat of a "chicken and egg" situation, as PEEC has asked whether the ASB would take up this initiative and what the timing would be. The Working Group members are very supportive of this initiative (former NASBA PEEC member Gaylen Hansen is a member of the Working Group) and indicated it would be helpful for PEEC to make a formal request of the ASB to take up this initiative and to expedite it once on the ASB's calendar.

Task Force Recommendation

The 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.

Action Needed

The Committee is asked to approve the issuance of a formal communication to the ASB (Agenda Item 1B) that expresses PEEC's desire for the ASB to modify 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. Further, the communication will request the ASB to expedite its process to the extent possible. The communication is to be delivered in time to be shared at the ASB's October 28-31, 2019 meeting.

Materials Presented

Agenda Item 1B- Draft letter to ASB

Date: October 22, 2019

Subject: Re: request for modification of current standards with respect to communication of a NOCLAR to successor auditors of a former client

From: Brian S. Lynch, Chair, PEEC
Toni Lee-Andrews, Director – Professional Ethics Division

To: Mike Santay, Chair ASB

CC: Bob Dohrer, AICPA Chief Auditor

As you are aware the PEEC created a Task Force charged with developing conforming guidance in response to the NOCLAR standards promulgated by the International Ethics Standards Board for Accountants (IESBA). In March 2017, PEEC issued an exposure draft with proposals for two new interpretations entitled “Responding to Non-Compliance with Laws and Regulations”.

In response to the exposure draft, the National Association of State Boards of Accountancy (NASBA) submitted a comment letter expressing concerns that the proposed language would discourage CPAs from acting in the public interest even after the CPA demonstrated compliance with all relevant professional standards and may also be construed as either limiting or prohibiting a NOCLAR disclosure without written client consent. NASBA recommended “tabling this project until such time as UAA (Uniform Accountancy Act) language is developed to incorporate NOCLAR requirements”. NASBA has added this project to the joint AICPA/NASBA UAA Committee’s agenda.

Based on NASBA’s response and other concerns, the PEEC did not adopt the proposed interpretations.

The extant “Confidential Client Information Rule” (1.700.001) of the AICPA Code prohibits members in public practice from disclosing confidential client information without specific consent of the client (except in limited circumstances) that would not permit disclosure of a NOCLAR. 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).

The PEEC is aware that 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.

Accordingly, the PEEC is formally requesting ASB to modify 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 PEEC also requests that if the ASB takes on this initiative that the ASB expedite its process to the extent possible.

If you have any questions regarding the responses provided above, please contact Toni Lee-Andrews, at (919) 402-4695 or Toni.LeeAndrews@aicpa-cima.com. PEEC and the NOCLAR Task Force appreciate ASB’s consideration of this matter.

Sincerely,

Brian Lynch, *Chair*
Professional Ethics Executive Committee