PROFESSIONAL ETHICS EXECUTIVE COMMITTEE

Open Meeting Agenda

February 11, 2020

Durham, NC

AICPA Professional Ethics Executive Committee
Open Agenda
February 11, 2020

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/279114761 **International numbers available:** https://zoom.us/u/aVZsUQ9Xt		
February 11th	*Open meeting begins*	
10:00 a.m. – 10:05 a.m.	**Welcome** Mr. Lynch will welcome the committee members and discuss administrative matters.	
10:05 a.m. – 11:05 a.m.	**Staff augmentation** Ms. Snyder/Mr. Lynch and Mr. Wiley will seek feedback from the committee on the revised proposal.	**Agenda item 1A** **Agenda item 1B** **Agenda item 1C** **Agenda item 1D** **Agenda item 1E**
11:05 a.m. – 11:30 a.m.	**IESBA update** Mr. Mintzer, Ms. Madden and Ms. Goria will update the committee on the activities from the December meeting and provide an overview of the three outstanding exposure drafts. ❖ NAS Exposure Draft and related Comparison ❖ Fee Exposure Draft ❖ Guide for Professional Accountancy Organizations—Developing Good Practices for Members Providing Tax Advice	
11:30 a.m. – 12:00 p.m.	**Record requests - Fees for copying/retrieval** Ms. Ullmann and Ms. Sherman will seek approval to expose proposed revisions to the "Records Requests" interpretation.	**Agenda item 2A** **Agenda item 2B** **Agenda item 2C**
12:00 p.m. – 1:00 p.m.	*Lunch*	
1:00 p.m. – 1:30 p.m.	**NOCLAR** Mr. Denham and Ms. Lee-Andrews will provide the committee with a status report on this project.	
1:30 p.m. – 2:00 p.m.	**SEC independence proposal** Ms. Lee Andrews seeks the committee's input on the plan to respond to the SEC's independence proposal. ❖ External Link: SEC Independence Proposal	**Agenda item 3A** **Agenda item 3B**
2:00 p.m. – 2:10 p.m.	**Inducements** Ms. Dourdourekas and Ms. Craig will provide the committee with a status update.	
2:10 p.m. – 2:20 p.m.	**Single Audits** Ms. Kappler and Ms. Powell will seek input from the committee on the proposed scope and composition of the task force.	

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2:20 p.m. – 2:30 p.m.	**Strategy and work plan consultation paper** Mr. Lynch and Ms. Klepcha will update the committee on feedback received to date.	
2:30 p.m. – 2:40 p.m.	**Statements on standards for tax services** Ms. Saunders and Mr. Wiley will provide the committee with a status report on this project.	
2:40 p.m. – 2:45 p.m.	**Minutes of the PEEC open meeting** The committee is asked to approve the minutes from the May 2019 open meeting.	**Agenda item 4**
TBD	**Task force meetings as needed**	
	Open meeting concludes	
	Future meeting dates • May 5 - 6, 2020; Durham, NC • August 11 - 12, 2020; Durham, NC* • November 17 - 18, 2020; Durham, NC* ***** In person versus call in format not yet determined.	

Staff Augmentation Task Force

Task force members
Lisa Snyder (Chair), Coalter Baker, Jeff Lewis, Brian Lynch, Nancy Miller
Staff: Ellen Goria, John Wiley

Task force charge
The Staff Augmentation Task Force's initial charge is to study the issue of staff augmentation and independence and determine whether additional guidance for members is warranted.

Reason for agenda item
The task force seeks the committee's feedback on the current direction of the "Staff Augmentation Arrangements" interpretation (ET Section 1.275.040) found in **Agenda item 1B**.

Summary of issues
Background
At the November PEEC meeting, feedback was received regarding the task force's change in position that staff augmentation arrangements would impair independence except in certain situations where required safeguards are met. Many committee members believed that the revised interpretation was too proscriptive and believed relocating the interpretation to the Current Employment or Association with an Attest Client section of the code would result in implications when applying the proposed guidance to affiliates. There were also concerns regarding moving away from a threats and safeguards approach as members described many scenarios that work performed in a staff augmentation arrangement would not be subject to attest procedures but would still be prohibited under the revised interpretation. Finally, there was discussion regarding the short period of time being restricted to 30 days and whether augmented staff should be prohibited from participating on the attest engagement.

The committee requested the task force continue to deliberate and report back to the committee in February.

Proposed revised position
Bifurcation safeguard
To help address the concerns expressed during the November meeting that the proposal was too restrictive since it would prohibit these arrangements even when the activities performed by the augmented staff would not be subject to attest procedures, the task force recommends bifurcating the interpretation based upon whether the activities performed would (or would not) be subject to attest procedures to address the self-review threat. Under this approach, when it is reasonable to conclude that the activities will not be subject to attest procedures, the proposal would permit such arrangements (even when the activities might reoccur, or the client would not experience a hardship) when all the following safeguards are in place:

a. The activities are provided for short period of time.
b. The augmented staff is not used on the attest engagement.
c. The activities provided by the augmented staff would not be prohibited under the "Nonattest Services" subtopic.
d. There is a person with suitable SKE designated by the client to determine, supervise and evaluate the adequacy of the activities

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However, the task force does not believe the bifurcation safeguard needs to be applied when the activities will not reoccur, and the attest client would experience a hardship, provided the safeguards in bullets a. through d. above are applied. The task force believes this is an important point and recommends specific feedback be solicited should the proposal be exposed.

Questions for the committee

1. Do you agree with the bifurcation of the interpretation between activities that are subject to attest procedures and those that are not?
2. Do you agree with the task force's conclusion that activities that are reasonably not expected to be subject to attest procedures be allowed to reoccur? If not, why?
3. Do you agree with the task force's conclusion that activities that are reasonably not expected to be subject to attest procedures do not have to create a hardship for the attest client? If not, why?
4. Do you agree with the language with .03a, including the use of the word "significant" to describe the hardship?

Short period of time

The task force continues to believe that a limited duration of time is an important safeguard for permitted staff augmentation arrangements. As such, the task force recommends retaining the requirement that the activities only be provided for a short period of time. While the task force understands that the IESBA Code leaves the determination of time to professional judgment, it believes some guidance is helpful so that a diversity in practice does not develop. At the November meeting the task force proposed putting a cap on the length of time that these arrangements can be provided but allowing the cap to be rebutted when appropriate to provide some flexibility.

During the November meeting several members were concerned that the proposed 30-day cap was too proscriptive. After further discussion, the task force agreed that since one of the safeguards included in the proposal is that the arrangement not create a hardship for the attest client, the cap should be extended from 30 to 60 days. This would result in the cap being rebutted less frequently. The task force believes this is an important point and recommends specific feedback be solicited should the proposal be exposed.

Question for the committee

5. Do you agree the duration of the arrangements should usually be limited to less than 60 days?

Participation on attest engagement

The initial exposure draft was consistent with the IESBA Code because the proposal suggested not using the augmented staff on the attest engagement team as a possible safeguard. At the November meeting, the concept was elevated slightly in that it proposed that the firm should, where practicable, "…consider not using the augmented staff on the *attest engagement team*, or not using the augmented staff to perform attest procedures on any areas for which the staff performed activities during the augmented staff arrangement."

The task force was asked to further discuss the augmented staff's participation on the attest engagement since the task force had reported that discussions with representatives of the AICPA Technical Issues Committee (TIC) indicated that these arrangements did not appear to be a significant small firm issue. Based upon this feedback, the task force agreed to recommend that augmented staff be kept off the attest engagement.

Question for the committee

6. Should a specific question be asked in the exposure draft whether this prohibition would create a significant issue for small firms?
7. Are there any other safeguards that should be required to reduce threats to an acceptable level?

Location

The task force believes the interpretation should remain in the employment section of the code. Doing so would allow the proposal to be consistent with how the IESBA code addresses temporary personnel assignments (i.e., not considered a nonattest service) and would address NASBA's concern regarding the appearance of co-employment.

To address the concern expressed by many committee members that locating the guidance in this section could result in unnecessary restrictions to certain affiliates of an attest client, the task force recommends that the application of the proposed interpretation be exempted for certain affiliates (i.e., consistent with the exemption for leases and nonattest services). The task force's proposed revision appears in **Agenda item 1E**.

Questions for the committee

8. Do you agree with the proposed location of the interpretation given the task force's proposed revisions?
9. Do you agree that the application of the proposed interpretation should be exempted for certain affiliates consistent with the exemption for leases and nonattest services?

Effective date

The task force continues to believe that a delayed effective date of three months would be helpful.

Action needed

The committee is asked to provide input on the task force's proposed revisions.

Communications plan

Ms. Mullins will work with task force staff to develop and appropriate communications plan.

Materials presented

Agenda item 1B	Proposed revised interpretation
Agenda item 1C	November 2019 version marked for proposed changes
Agenda item 1D	Exposed interpretation marked for proposed changes
Agenda item 1E	Proposed changes to the Client Affiliates interpretation

Revised "Staff Augmentation Arrangements" interpretation

1.275.40 Staff Augmentation Arrangements

.01 In this interpretation, staff augmentation arrangements involve lending firm personnel ("augmented staff") to an attest client whereby the attest client is responsible for the direction and supervision of the activities performed by the augmented staff. Under such arrangements, the firm bills the attest client for the activities rendered by the augmented staff but does not direct or supervise the actual performance of the activities.

.02 If a partner or professional employee of the member's firm serves as augmented staff for an attest client, familiarity, management participation, advocacy, or self-review threats to the member's compliance with the "Independence Rule" [1.200.001] may exist.

.03 Where the results of the activities performed under the staff augmentation arrangement will be subject to attest procedures, threats could not be reduced to an acceptable level and independence would be impaired unless all of the following safeguards are met:

a. The staff augmentation arrangement is being performed due to an unexpected situation that would create a [significant] hardship for the attest client to make other arrangements.
b. The staff augmentation arrangement is not expected to reoccur.
c. The staff augmentation arrangement is performed only for a short period of time. There is a rebuttable presumption that a short period of time would not exceed 60 days.
d. The augmented staff performs only activities that would not otherwise be prohibited by the "Nonattest Services" subtopic (ET sec. 1.295) of the "Independence Rule" (ET sec. 1.200.001).
e. 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 provided by 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.
f. The firm does not use the augmented staff on the attest engagement team.

.04 Where it is reasonable to conclude that the results of the activities performed under the staff augmentation arrangement will not be subject to attest procedures, threats would be at an acceptable level and independence would not be impaired provided the safeguards in paragraphs .03 c. – f. are met.

.05 Refer to paragraph .02 f. of the "Client Affiliates" interpretation [1.224.010] of the "Independence Rule" [1.100.001] for additional guidance.

Effective Date

.06 Effective [three months after announcement is published in The Journal of Accountancy].

~~Proposed~~*Revised* "Staff Augmentation Arrangements" interpretation

1.275.040 Staff Augmentation Arrangements

.01 In this interpretation, staff augmentation arrangements involve lending firm personnel ("augmented staff") to an attest client whereby the attest client is responsible for the direction and supervision of the ~~nonattest services~~***activities*** performed by the augmented staff. Under such arrangements, the firm bills the attest client for the ~~nonattest services~~***activities*** rendered by the augmented staff but does not direct or supervise the actual performance of the ~~nonattest services~~***activities***.

.02 If a partner or professional employee of the member's firm serves as augmented staff for an attest client, familiarity, management participation, advocacy, or self-review threats to the member's compliance with the "Independence Rule" [1.200.001] may exist. ~~However, *threats* would be at an acceptable level and *independence* would not be *impaired* in [TBD] situations provided all of the following *safeguards* are met:~~

.03 ~~The augmented~~ ***Where the results of the activities performed under the*** staff ***augmentation arrangement will be subject to attest procedures, threats could not be reduced to an acceptable level and independence would be impaired unless all of the following safeguards are met:***

- ***a. The staff augmentation arrangement is being performed due to an unexpected situation that would create a [significant] hardship for the attest client to make other arrangements.***
- b. ***The staff augmentation*** arrangement is not expected to reoccur.
- c. ***The staff augmentation arrangement*** is performed only for a short period of time. There is a rebuttable presumption that a short period of time would not exceed ~~30~~***60*** days.
- d. The augmented staff performs only activities that would not otherwise be prohibited by the "Nonattest Services" subtopic (ET sec. 1.295) of the "Independence Rule" (ET sec. 1.200.001).
- e. 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 provided by 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.
- f. ~~Where practicable, the~~ ***The*** firm ~~should consider~~***does*** not ~~using~~***use*** the augmented staff on the attest engagement team~~, or~~***.***

.04 Where it is reasonable to conclude that the results of the activities performed under the staff augmentation arrangement will not ~~using the augmented staff to perform~~***be subject to*** attest ~~procedures on any areas for which the staff performed activities during~~***, threats would be at an acceptable level and independence would not be impaired provided*** the ~~augmented staff arrangement~~ ***safeguards in paragraphs .03 c. – f. are met.***

.05 Refer to paragraph .02 f. of the "Client Affiliates" interpretation [1.224.010] of the "Independence Rule" [1.100.001] for additional guidance.

Effective Date

.06 Effective [three months after announcement is published in The Journal of Accountancy

Revised "Staff Augmentation Arrangements" interpretation

1.275.040 ~~1.295.157~~ Staff Augmentation Arrangements

.01 ~~When a member or member's firm has a~~***In this interpretation,*** staff augmentation ~~arrangement with~~***arrangements involve lending firm personnel ("augmented staff") to*** an attest client~~, self-review and~~ ***whereby the attest client is responsible for the direction and supervision of the activities performed by the augmented staff. Under such arrangements, the firm bills the attest client for the activities rendered by the augmented staff but does not direct or supervise the actual performance of the activities.***

.02 ***If a partner or professional employee of the member's firm serves as augmented staff for an attest client, familiarity,*** management participation***, advocacy, or self-review*** threats to the member's compliance with the "Independence Rule" ~~(ET sec.~~ ***[***1.200.001~~)~~***]*** may exist.

.03 ~~Threats to compliance with the "Independence Rule" (ET sec. 1.200.001) would not~~ ***Where the results of the activities performed under the staff augmentation arrangement will*** be ~~at~~***subject to attest procedures, threats could not be reduced to*** an acceptable level~~,~~ and independence would be impaired unless~~, in addition to applying the "General Requirements for Performing Nonattest Services" interpretation (ET sec. 1.295.040),~~ all ***of*** the following safeguards are met:

- ***a. The staff augmentation arrangement is being performed due to an unexpected situation that would create a [significant] hardship for the attest client to make other arrangements.***
- ***b. The staff augmentation arrangement is not expected to reoccur.***
- ***c. The staff augmentation arrangement is performed only for a short period of time. There is a rebuttable presumption that a short period of time would not exceed 60 days.***
- ***d. The augmented staff performs only activities that would not otherwise be prohibited by the "Nonattest Services" subtopic (ET sec. 1.295) of the "Independence Rule" (ET sec. 1.200.001).***
- e. 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 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.
- f. The ~~activities do~~***firm does*** not ~~result in~~***use*** the augmented staff ~~assuming management responsibilities as described in~~***on*** the ~~"Management Responsibilities" interpretation (ET sec. 1.295.030)~~***attest engagement team***.
- ~~a.~~ ***Where it is reasonable to conclude that the results*** of the ~~"Independence Rule" (ET sec. 1.200.001).~~
- ~~b. The augmented staff performs only activities that would not otherwise be prohibited by the "Nonattest Services" interpretation (ET sec. 1.295.000) of the "Independence Rule" (ET sec. 1.200.001).~~
- ~~c. The duration of the arrangement is for a short period of time.~~

~~.02 In all circumstances, the member should consider whether~~***activities performed under*** the staff augmentation arrangement ~~creates the appearance of prohibited employment with the attest client. (See the "Simultaneous Employment or Association with an Attest Client" interpretation [ET sec. 1.275.005] of the "Independence Rule" [ET sec. 1.200.001]). When evaluating the appearance of prohibited employment with the attest client, the member should consider factors such as the following:~~

~~a. The duration of the staff augmentation arrangement~~
~~b. Whether the augmented staff will provide services to other clients during the period of the arrangement~~
~~c. The frequency with which the augmented staff will perform activities at the attest client's location (for example, daily)~~

.04 ~~Whether the arrangement is discrete or recurring in nature, and if recurring, the frequency of such recurrenceHowever~~ ***will not be subject to attest procedures***, threats ~~to compliance with the "Independence Rule" (ET sec. 1.200.001) would not be~~ ***would be*** at an acceptable level and independence would ~~be impaired if the augmented staff is held out or treated as an employee of the attest client, such as being any of the following:~~***not be impaired provided the safeguards in paragraphs .03 c. – f. are met.***

~~d. Listed as an employee in the attest client's directories or other attest client publications~~
~~e. Referred to by title or description as supervising or being in charge of any business function of the attest client~~
~~f. Identified as an employee of the attest client in correspondence such as email, letterhead, or internal communications~~
~~g. Able to participate in compensation or benefit plans (including health or retirement plans) of the attest client~~

~~.03 The significance of any threats should be evaluated, and safeguards applied, when necessary, to eliminate the threats or reduce them to an acceptable level. These are some examples of such safeguards:~~

~~a. Not using the augmented staff on the attest engagement team, or not using the augmented staff to perform attest procedures on any areas for which the staff performed activities during the augmented staff arrangement~~
~~b. Discussion of the threats and any safeguards applied with those charged with governance~~
~~c. Rotation of individuals performing the staff augmentation activities~~
~~d. Monitoring the scope of activities performed by augmented staff~~

.05 Refer to paragraph .02 f. of the "Client Affiliates" interpretation [1.224.010] of the "Independence Rule" [1.100.001] for additional guidance.

Effective Date

.06 ~~This interpretation is effective six~~***Effective [three*** months after ~~notice of adoption~~***announcement*** is published in ~~the~~***The*** Journal of Accountancy. ~~Early implementation is allowed.~~

Text of revised "Client Affiliates" interpretation (additions in bold italic)

1.224.010 Client affiliates

.01 Financial interests in, and other relationships with, affiliates of a financial statement attest client may create threats to a member's compliance with the "Independence Rule" [1.200.001].

.02 When a client is a financial statement attest client, members should apply the "Independence Rule" [1.200.001] and related interpretations applicable to the financial statement attest client to their affiliates, except in the following situations:

a. A covered member may have a loan to or from an individual who is an officer, a director, or a 10 percent or more owner of an affiliate of a financial statement attest client during the period of the professional engagement unless the covered member knows or has reason to believe that the individual is in such a position with the affiliate. If the covered member knows or has reason to believe that the individual is an officer, a director, or a 10 percent or more owner of the affiliate, the covered member should evaluate the effect that the relationship would have on the covered member's independence by applying the "Conceptual Framework for Independence" [1.210.010].

b. A member or the member's firm may provide prohibited nonattest services to entities described under items c–l of the definition of affiliate during the period of the professional engagement or during the period covered by the financial statements, provided that it is reasonable to conclude that the services do not create a self-review threat with respect to the financial statement attest client because the results of the nonattest services will not be subject to financial statement attest procedures. For any other threats that are created by the provision of the nonattest services that are not at an acceptable level (in particular, those relating to management participation), the member should apply safeguards to eliminate or reduce the threats to an acceptable level.

c. A firm will only have to apply the "Subsequent Employment or Association With an Attest Client" interpretation [1.279.020] of the "Independence Rule" if the former employee, by virtue of his or her employment at an entity described under items c–l of the definition of affiliate, is in a key position with respect to the financial statement attest client. Individuals in a position to influence the attest engagement and on the attest engagement team who are considering employment with an affiliate of a financial statement attest client will still need to report consideration of employment to an appropriate person in the firm and remove themselves from the financial statement attest engagement, even if the position with the affiliate is not a key position.

d. A covered member's immediate family members and close relatives may be employed in a key position at an entity described under items c–l of the definition of affiliate during the period of the professional engagement or during the period covered by the financial statements, provided they are not in a key position with respect to the financial statement attest client.

e. A covered member who is an individual on the attest engagement team, an individual in a position to influence the attest engagement, or the firm may have a lease that does not meet the requirements of the "Leases" interpretation [1.260.040] under the "Independence Rule" [1.200.001] with an entity described under items c–l of the definition of affiliate during the period of the professional engagement. The covered member should use the "Conceptual Framework for Independence" [1.210.010] to evaluate whether any threats created by the lease are at an acceptable level. If the covered member concludes that threats are not at an acceptable level, the covered member should apply safeguards to eliminate the threats or reduce them to an acceptable level.

f. ***The firm may enter into a staff augmentation arrangement with entities described under items c–l of the definition of affiliate during the period of the professional***

engagement or during the period covered by the financial statements. The firm should use the "Conceptual Framework for Independence" to evaluate whether any threats created by the staff augmentation arrangement are at an acceptable level. If the firm concludes that threats are not at an acceptable level, the covered member should apply safeguards to eliminate the threats or reduce them to an acceptable level.

[Paragraphs .03–.09 are unchanged.]

[See Revision History Table.]

Records Requests: Fees for Copying and Retrieving Records Task Force

Task force members
Peggy Ullmann (Chair), Martin Levin, Jeff Lewis, Stephanie Saunders.
Staff: April Sherman, Aradhana Aggarwal

Task force charge
The Records Requests task force's charge is to recommend to the committee changes to the "Records Requests" interpretation regarding the charging of copying, shipping, and retrieval fees.

Reason for agenda item
At the November 2019 meeting staff sought the committee's feedback regarding paragraph .11a of the "Records Requests" interpretation (1.400.200), as the existing paragraph implies that a member may require a client to pay the member's copying and retrieval fees prior to returning client-provided records. The committee agreed that this was not the intent of paragraph .11a and appointed this task force to make changes to the interpretation. While discussing this issue, the task force discovered other areas of the interpretation where revisions should be considered, and those recommendations are also discussed below.

Summary of issues
Fees for copying, retrieval from storage, and shipping
The current interpretation requires that client-provided records in the member's custody or control should be returned to the client upon request (in paragraph .06) but then goes on to explain in paragraph .11 that a member may charge the client a reasonable fee for the time and expense incurred to retrieve and copy client records and may withhold such records for non-payment of the fee.

The task force agreed that

- a member may charge such fees; however, the member should not withhold client-provided records due to non-payment of the fees;
- a member may withhold a *copy* of client-provided records previously provided to the client pursuant to non-payment of such fees; and
- the list of fees may include shipping costs.

The conclusion in the first bullet above was solely based upon the feedback PEEC provided at the November 2019 meeting. The second bullet simply represents clarification that, while a member should not withhold *original* records provided by a client pursuant to non-payment of fees of any type, the member would not be prohibited from withholding *copies* of such records if the client requests an additional copy. (This is consistent with paragraph .08 of the interpretation.)

Therefore, the task force recommends the following revisions to paragraphs .06 and .11a:

> .06 ~~The member should return client-provided records in the member's custody or control to the client at the client's request.~~ ***When a client makes a request for client-provided records, the member should return those records in the member's custody or control to the client. Such client-provided records cannot be withheld if fees are due to the member. Further, while the member may charge the client***

a reasonable fee for the time and expense incurred to retrieve, copy, and ship such records, the client-provided records may not be withheld or delayed due to non-payment of such fees.

.11 In fulfilling a request for ~~client-provided records,~~ member-prepared records, ~~or~~ a member's work products***, or the member's copy of client-provided records previously provided (as referenced in paragraph .08)***, the member may

a. charge the client a reasonable fee for the time and expense incurred to retrieve ~~and~~**,** copy ***and ship*** such records and require that the client pay the fee before the member ~~provides~~ ***makes*** the records ***available*** to the client.

"Provide" and "return" versus "make available"

The task force desired to place some responsibility on the client in retrieving records created by the member. The member will be in compliance with the interpretation if the member either returns the records or makes them available when requested by the client. To reflect this position, the task force recommends that the words "provide" or "return" be replaced with the phrase "make available" throughout the interpretation as they relate to all records other than client-provided records. Therefore, the task force recommends revisions to Paragraphs .03, .04, .07, .08, .09, .10, .11 and .12. (See Agenda item 2B.)

Member-prepared records

During its discussion the task force questioned why paragraph .03 did not require member-prepared records be provided to the beneficiary, as it seems as if this paragraph would be applicable to both categories of records. The task force learned, after consulting with the staff of the Client Task Force, that this is believed to be an oversight and as such, recommends the following revisions:

03. When an engaging entity engages a member to perform professional services for the benefit of another person or entity (beneficiary), the member will be considered in compliance with the requirements of this interpretation related to ***member-prepared records and*** a *member's* work products if the *member* ~~provides~~ ***makes*** such ~~work products~~ ***records available*** to the beneficiary. For example, if a company engages a member to perform personal tax services for the benefit of its executives, the member would be in compliance with the interpretation if the member ~~provided~~ ***made*** the tax returns ***available*** to the executives (see the "Confidential Client Information Rule" [1.700.001]).

State boards of accountancy feedback

After the November 2019 meeting, NASBA sent a questionnaire to state boards of accountancy asking which states adopted the "Records Requests" interpretation's guidance regarding withholding records pursuant to copying and retrieval fees. Of the 39 boards who responded, 24 stated that they adopted the AICPA's guidance. (See Agenda item 2C.) Of the 15 states who did not adopt the AICPA's guidance, the following states commented specifically about copying and retrieval fees:

- Idaho allows the charging of such fees but does not specify when the fees must be paid.
- Minnesota believes the answer depends upon "whether it was just client-provided records, or just CPA-prepared work or both." Minnesota would rely upon its legal counsel's advice.

- Nebraska allows the charging of such fees but does not require payment prior to the delivery of the records.
- Tennessee does not specifically mention such fees but does not prohibit the charging of such fees.
- Texas requires licensees to return client records at no charge. (Staff assumes that Texas is only referring to client-provided records since it used the word "return".) However, Texas does allow licensees to charge fees for providing additional copies and fees to provide "workpapers" to a client.

NASBA also presented to state boards the following specific shipping scenario that PEEC discussed in November 2019:

A client opted to leave several boxes of the client's original records with a member and then moved to a different part of the country. When the client later requested the shipment of the records to the client, the member refused to ship them until the client first paid the shipping cost.

NASBA asked if, in a similar scenario, the state boards of accountancy would allow a CPA to withhold client-provided records, CPA-prepared records, and/or a CPA's work products until the client paid the shipping costs. 15 states answered yes; 12 answered no.

Due to the timing in which the NASBA survey results were received by staff, the task force was not able to discuss as a group whether the results would affect its recommendations.

Action needed
The task force seeks from the committee approval for exposure regarding the revised version of "Records Requests" interpretation. The committee is also asked to discuss whether the changes should be effective upon publication or if a delayed effective date is necessary.

Communication plan
Ms. Mullins will work with task force staff to develop an appropriate communications plan.

Materials presented

Agenda item 2B	Revised interpretation
Agenda item 2C	State boards of accountancy feedback

Text of proposed interpretation "Records Request":

- **Text in black bold italic and strikethrough represent proposed revisions.**

1.400.200 Records Requests

Terminology

.01 The following terms are defined here solely for use with this interpretation:

a. A client includes current and former *clients*.
b. A member means the *member* or the *member's firm*.
c. Client-provided records are accounting or other records, including hardcopy and electronic reproductions of such records, belonging to the client that were provided to the member by, or on behalf of, the client.
d. Member-prepared records are accounting or other records that the member was not specifically engaged to prepare and that are not in the client's books and records or are otherwise not available to the client, thus rendering the client's financial information incomplete. Examples include adjusting, closing, combining, or consolidating journal entries (including computations supporting such entries) and supporting schedules and documents that the member proposed or prepared as part of an engagement (for example, an audit).
e. Member's work products are deliverables set forth in the terms of the engagement, such as tax returns.
f. Working papers are all other items prepared solely for purposes of the engagement and include items prepared by the
    i. member, such as audit programs, analytical review schedules, and statistical sampling results and analyses.
    ii. client at the request of the member and reflecting testing or other work done by the member.

Applicability

.02 When a person or entity engages a *member* to perform *professional services* (engaging entity) with respect to or for the benefit of another person or entity, the *member* will be considered in compliance with the requirements of this interpretation related to client-provided records if the *member* returns these records to the person or entity that gave the records to the member.

.03 When an engaging entity engages a *member* to perform *professional services* for the benefit of another person or entity (beneficiary), the *member* will be considered in compliance with the requirements of this interpretation related to ***member-prepared records and*** a *member's* work products if the *member* ~~provides~~ ***makes*** such ~~work products~~ ***records available*** to the beneficiary. For example, if a company engages a *member* to perform personal tax services for the benefit of its executives, the *member* would be in compliance with the interpretation if the *member* ~~provided~~ ***made*** the tax returns ***available*** to the executives (see the "Confidential Client Information Rule" [1.700.001]).

.04 When an engaging entity engages a *member* to perform *professional services* with respect to another entity that is not the beneficiary of the *professional services*, absent an agreement

stating otherwise, the *member* would be in compliance with the requirements of this interpretation related to a *member's* work products if the *member* ~~provided~~ ***made*** such work products ***available*** to the engaging entity. For example, if a company engaged a *member* to value the assets of another company for a possible acquisition, absent an agreement stating otherwise, the *member* would be in compliance with this interpretation if the *member* ~~provided~~ ***made*** the valuation report ***available*** only to the engaging entity.

Interpretation

.05 Members must comply with the rules and regulations of authoritative regulatory bodies, such as the member's state board(s) of accountancy, when the member performs services for a client and is subject to the rules and regulations of such regulatory body. For example, a member's state board(s) of accountancy may not permit a member to withhold certain records, even though fees are due to the member for the work performed. Failure to comply with the more restrictive provisions of the applicable regulatory body's rules and regulations concerning the return of certain records would constitute a violation of this interpretation.

.06 ~~The member should return client-provided records in the member's custody or control to the client at the client's request.~~ ***When a client makes a request for client-provided records, the member should return those records in the member's custody or control to the client. Such client-provided records cannot be withheld if fees are due to the member. Further, while the member may charge the client a reasonable fee for the time and expense incurred to retrieve, copy, and ship such records, the client-provided records may not be withheld or delayed due to non-payment of such fees.***

.07 Unless a member and the client have agreed to the contrary, when a client makes a request for member-prepared records or a member's work products that are in the member's custody or control and that have not previously been provided to the client, the member should respond to the client's request as follows:

a. The member should ~~provide~~ ***make available to the client*** member-prepared records relating to a completed and issued work product ~~to the client~~, except that such records may be withheld if fees are due to the member for that specific work product.
b. Member's work products should be ~~provided~~ ***made available*** to the client, except that such work products may be withheld
    i. if fees are due to the member for the specific work product;
    ii. if the work product is incomplete;
    iii. if for purposes of complying with professional standards (for example, withholding an audit report due to outstanding audit issues); or
    iv. if threatened or outstanding litigation exists concerning the engagement or member's work.

.08 Once a member has complied with these requirements, he or she is under no ethical obligation to

a. comply with any subsequent requests to again ~~provide~~ ***make*** records or copies of records described in paragraphs .03–.04 ***available to the client***. However, if subsequent to complying with a request, a client experiences a loss of records due to a natural disaster or an act of war, the member should comply with an additional request to provide ***(or make available***) such records.
b. retain records for periods that exceed applicable professional standards, state and federal statutes and regulations, and contractual agreements relating to the service performed. [Prior reference: paragraph .02 of ET section 501]

.09 A member who has provided ***(or made available)*** records to an individual designated or held out as the client's representative, such as the general partner, majority shareholder, or spouse, is not obligated to provide ***or make*** such records ***available*** to other individuals associated with the client. [Prior reference: paragraphs .377–.378 of ET section 591]

.10 Working papers are the member's property, and the member is not required to ~~provide~~ ***make*** such information ***available*** to the client. However, state and federal statutes and regulations and contractual agreements may impose additional requirements on the member.

.11 In fulfilling a request for ~~client-provided records~~ member-prepared records, ~~or~~ a member's work products, ***or the member's copy of client-provided records previously provided (as referenced in paragraph .08),*** the member may

a. charge the client a reasonable fee for the time and expense incurred to retrieve ~~and~~***,*** copy ***and ship*** such records and require that the client pay the fee before the member ~~provides~~ ***makes*** the records ***available*** to the client.
b. ~~provide~~ ***make*** the requested records ***available*** in any format usable by the client. However, the member is not required to convert records that are not in electronic format to electronic format. If the client requests records in a specific format and the records are available in such format within the member's custody and control, the client's request should be honored. In addition, the member is not required to ~~provide~~ ***make formulas available*** **to** the client ~~with formulas~~, unless the formulas support the client's underlying accounting or other records or the member was engaged to ~~provide~~ ***make*** such formulas ***available*** as part of a completed work product.
c. make and retain copies of any records that the member returned or provided to the client.

.12 A member who is required to return or ~~provide~~ ***make*** records ***available*** to the client should comply with the client's request as soon as practicable but, absent extenuating circumstances, no later than 45 days after the request is made.

.13 The fact that the statutes of the state in which the member practices grant the member a lien on certain records in his or her custody or control does not relieve the member of his or her obligation to comply with this interpretation. [Prior reference: paragraph .02 of ET section 501]

.14 A member would be considered in violation of the "Acts Discreditable Rule" [1.400.001] if the member does not comply with the requirements of this interpretation.

NASBA REGIONAL DIRECTORS' FOCUS QUESTIONS REPORT

The following is a summary of the written responses to focus questions gathered from the member Boards by NASBA's Regional Directors between November 6, 2019, and January 6, 2020. Responses which indicated nothing to report have not been included in this summary.

Respectfully submitted,

C. Jack Emmons (NM) – Chair, Committee on Relations with Member Boards
--Southwest Regional Director
Stephen F. Langowski (NY) – Northeast Regional Director
J. Andy Bonner, Jr. (TN) – Southeast Regional Director
Kenya Y. Watts (OH) – Great Lakes Regional Director
Faye D. Miller (ND) – Central Regional Director
Alison L. Houck (DE) – Middle Atlantic Regional Director
Jason D. Peery (ID) – Mountain Regional Director
Katrina Salazar (CA) – Pacific Regional Director

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Alabama, Alaska, Arkansas, Arizona, District of Columbia, Delaware, Florida, Georgia, Guam, Idaho, Illinois BOE, Illinois DFPR, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, Virginia, Wisconsin, Wyoming

1. **The AICPA's Code of Professional Conduct provides that "in fulfilling a request for client-provided records, member-prepared records, or a member's work products, the member may charge the client a reasonable fee for the time and expense incurred to retrieve and copy such records and require that the client pay the fee before the member provides the research to the client." Does your state's laws or rules follow the AICPA Code of Professional Conduct with respect to a licensee charging a client a reasonable fee for the time and expense incurred to retrieve and copy such records and require that the client pay the fee before the member provides the records to the client?**

   Yes: Alaska, Arizona, Florida, Guam, Illinois DFPR, Indiana, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Mexico, North Carolina*, North Dakota, Oklahoma, South Dakota, Utah, Virginia, Wisconsin, Wyoming

   *However, our rule cannot use the word "reasonable" as our Rules Review Commission prohibits the use of that word in rules.

   No: Alabama, Arkansas, California, Delaware, District of Columbia, Georgia, Idaho, Illinois BOE, Maine, Maryland, Nebraska, New York, Ohio, South Carolina, Tennessee, Texas, West Virginia

If No, what is your state's law or rule with respect to the above scenario?

Alabama: Alabama statute requires a CPA to furnish to a client or former client a copy of the licensee's working papers to the extent such working papers include records that would ordinarily constitute part of the client's records and are not otherwise available to the client along with any records belonging to or obtained from the client. (Section 34-1-21.)

Arkansas: Our Code of conduct allows reasonable fees for member prepared records and work products, but not client provided records. We do not believe it is appropriate to allow licensees to charge for a client to get its own records back.

California: California Business and Professions code section 5037 requires a licensee to furnish accounting records and other records belonging to or obtained by or on behalf of the client to the client upon request. This section also requires the licensee's working papers to be provided to the extent that those working papers include records that would ordinarily constitute the client's books and records and are not otherwise available to the client. CBA Regulations section 68 states that unpaid fees do not give a licensee reason to retain client records.

District of Columbia: 2512.4. A licensee shall furnish to a client or former client, upon request made within a reasonable time after original issuance of the document in question, the following items:

(a) A copy of a tax return of the client;
(b) a copy of any report, or other document, issued by the licensee to or for the client;
(c) Any accounting or other records belonging to, or obtained from or on behalf of, the client and the licensee removed from the client's premises or received from the client's account; and
(d) a copy of the licensee's working papers, to the extent that these working papers include records that would ordinarily constitute part of the client's books and records and are not otherwise available to the client. District of Columbia Municipal Regulations and District of Columbia Register – Chapter 17-25
17-2512- CODE OF PROFESSIONAL CONDUCT: RESPONSIBILITIES TO CLIENTS

Georgia: Licensees are required to provide original client records at the client's request.

Idaho: Idaho licensees may charge a client or former client a fee for costs associated to time spent and photocopying requests, but it does not specify when the fee must be paid.

Maine: A "reasonable fee" provision is not in Maine's laws or rules.

Maryland: Maryland's Code of Professional Conduct, found at COMAR 09.01.06, is silent on the issue of whether a licensee may charge a fee for the time and expense involved in producing records. It does provide that a licensee shall produce the records in a "reasonable" time.

Minnesota: The question is too broad to answer. We think it possibly could result in different answers depending on whether it was just client prepared records, or just COA prepared work or both. We would seek the advice of our counsel based on the specific circumstances.

Nebraska: Our Regulations within Chapter 5.002 do reference the ability of the CPA to charge for reasonable fees in the preparation of the records but does not require the payment be made before delivering the records. Since we do reference the reasonable fee charge most pay this fee before receiving the records. We do not require the payment of professional fees before the records must be delivered.

New York: New York does not have a law or rules regarding this hypothetical situation explicitly stating a fee can be charged to retrieve and copy records.

Ohio: Client records are accounting records, or other records provided by the client. Workpapers, if payment has been made, must provide the records once.

Tennessee: Tennessee rules do not explicitly set forth this wording. However, they do not forbid the licensee from charging fees when records requests occur.

Texas: A licensee must return client records at no charge to the client. If the client asks for additional copies the licensee may charge a reasonable fee to reproduce the copies and may charge a reasonable fee to provide work papers to the client. The licensee is not required to provide proprietary information.

West Virginia: West Virginia Code section 30-9-24 Licensee's working papers; clients' records – requires a licensee to provide the documents within a reasonable time upon request. West Virginia Code does not address fees charged for time and expense incurred to retrieve and copy the records.

2. **The AICPA's Ethics Division recently investigated a case where a client requested that a member mail boxes of the client's records to the client's new address, after the client opted to move to a different part of the country and leave the records with the member. The client refused to pay the shipping charges requested by the member, so the member refused to provide the records. Under this scenario, would your state's laws or rules allow the firm to withhold client-provided records, CPA-prepared records, and/or a CPA's work products until payment of shipping costs is received from the client?**

Yes: Alabama, Arkansas, California, Florida, Guam, Idaho, Kentucky, Louisiana, Mississippi, Missouri, Montana, North Carolina, South Dakota, Tennessee, Wyoming

No: Arizona, Delaware, Georgia, Nebraska, New Mexico, New York, North Dakota, Ohio, Oklahoma, Texas, Utah, West Virginia

N/A: District of Columbia, South Carolina, Utah

Please explain below:

- **Arizona:** A.R.S.32-744 regarding ownership and custody of working papers and records require that client records be returned. The statute does not address how any cost related to returning a record would be addressed.

- **Arkansas:** CPA prepared records and work products only.

- **California**: California regulations do not address the payment of shipping costs. As long as the licensee is making the records available to the client the licensee would not be in violation of CBA Regulations record retention rules.

- **Delaware:** We don't specify anything related to cost.

- **District of Columbia:** This scenario does not match any conditions in the regs.

- **Georgia:** Licensees are required to provide original client records at the client's request.

- **Idaho:** Without specifically stating when the fee is to be collected, the stance of the Board is this would be discussed at the time of the request and be left up to the firm as to their business decision since a licensee is not required to furnish records to a client or former client more than once.

- **Kansas**: We would have to investigate the matter.

- **Kentucky:** The answer is based upon past Board decisions of the statute regarding client records which allowed a firm to charge a reasonable amount to copy and deliver records to a former client.

- **Louisiana**: Interesting scenario. What was the outcome? Our Board rules reference AICPA's Code of Professional Conduct, so that would weigh heavily in any Board determination.

- **Missouri:** Our statute allows for the licensee to charge a reasonable fee to produce records. Legal counsel agrees this would mean that the licensee is entitled to receive the reasonable fee before producing records.

- **Montana**: The Board has adopted and incorporates the AICPA Code of Professional Conduct.

- **Nebraska:** Again, our regulations do not reference the ability for the CPA to hold records until any payment is made. It has been the Board's practice to indicate to the CPA they have means within the civil court to obtain payment. As executive director, I would take the above scenario to the Board fur further guidance as we have not experienced this type of scenario.

- **Nevada:** MAC 628.500 says that with some limited exception, we adopt the code of professional conduct and we don't see that there is an exception for records retention. So, our take on this is that although the code does not specifically mention shipping costs, we would allow the firm to retain the records until the client paid the costs to ship. It is not the Practitioner's fault that the client moved out of state, and the client could always pickup the documents if they don't want to pay for shipping. The Board would not discipline a practitioner that wanted to be paid reasonable shipping costs.

- **New Mexico:** Our law provides that certain working papers (records that ordinarily constitute part of the client's records) be provided to the client. The law is silent on fees or costs to be reimbursed.

- **New York:** New York does not have a law or rule on shipping costs for client records. It does, however, have a rule stating that a CPA cannot withhold the records if the client paid the fee.

- **Ohio:** Our rule does not address shipping costs. It does provide that client records must be returned within 30 days of a written request. Not sure how we would respond to this case.

- **South Carolina**: Cannot answer as this is a specific scenario.

- **Tennessee:** The licensee does not have to furnish any work product to his or her client until satisfactory arrangements for payment for services rendered to or on behalf of such client are made. Because of this, the licensee in this scenario would have the right to withhold the client's documents until satisfactory arrangements (i.e., paying for shipping across country) are made.

- **Texas:** I believe requiring the client to pay the expense of mailing client records to the client to be a reasonable charge. The licensee would be justified in not mailing the client records without the client agreeing to pay for the mailing.

- **Utah:** Our state law/rule does not address shipping costs.

- **West Virginia:** If the firm prepared and made the records available for the client, but had not received the fee associated with the shipping expense, I believe the firm could tell the client that the records are available for the client to pick up or the firm can ship them once shipping costs are paid. But this is not addressed in state law.

- **Wyoming:** This would depend on the facts of the case.

SEC Independence Proposal

Staff: Toni Lee-Andrews, Michele Craig and Iryna Klepcha

Reason for agenda item
Staff seeks the committee's input on its proposed plan to respond to the SEC Independence Proposal. Comments to the proposal are due by March 16, 2020.

To facilitate the task force's efforts, staff has developed **Agenda Item 3B**, a comparison of the SEC's proposed amendments to the code's independence guidance.

Summary of issues
The SEC is proposing amendments to codify certain staff consultations and modernize certain aspects of its auditor independence framework (Rule 2-01, Qualification of Accountants). The proposed amendments, if adopted would effectively structure the independence rules and analysis so that relationships and services that would not pose threats to an auditor's objectivity and impartiality do not trigger non-substantive rule breaches or potentially time-consuming audit committee review of non-substantive matters.

The following are the proposed amendments to the SEC's auditor independence rules:

- Amend the definitions of affiliate of the audit client and Investment Company Complex (ICC) to address certain affiliate relationships, including entities under common control;
- Amend the definition of the audit and professional engagement period to shorten the look-back period, for domestic first-time filers in assessing compliance with the independence requirements;
- Add certain student loans and de minimis consumer loans to the categorical exclusions from independence-impairing lending relationships;
- Replace the reference to "substantial stockholders" in the business relationship rule with the concept of beneficial owners with significant influence;
- Replace the outdated transition and grandfathering provision to introduce a transition framework to address inadvertent independence violations that only arise as a result of merger and acquisition transactions; and
- Make certain miscellaneous updates.

A preliminary task force is being formed to work on drafting a comment letter from PEEC responding to the SEC's proposed amendments. The task force will include committee members that are currently working with the Center for Audit Quality (CAQ) to help develop CAQ's comment letter to the SEC's proposal.

The task force will hold its first meeting in February to review the comparison document at a high level and to decide if PEEC will respond to all questions or certain questions included in the SEC's proposal.

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Questions for the Committee

1. Does the committee believe the task force should include other members, such as small firm representatives?

2. Does the committee prefer to review and discuss the comment letter prepared by the task force prior to being issued or is negative confirmation acceptable?

Action needed

To provide input on the proposed plan for responding to the SEC's independence proposal.

Materials presented

Agenda Item 3B: Comparison of SEC's proposed amendments to the AICPA's guidance

SEC Proposed Amendments to Auditor Independence Rules-Overview

I. Definition of affiliate-Rule 2-01(f)(4)(i) [*operating companies including portfolio companies*]

a. *Proposed change:* To include a materiality requirement with respect to operating companies under common control. Amendment to focus the independence analysis on sister entities that are material to the controlling entity.

b. *Reason for SEC proposed change:* Audit firms providing services to or having relationships with sister entities not material to the controlling entity do not typically present issues with respect to the audit firm's objectivity or impartiality.

c. *Summary of differences vs. AICPA's guidance:* AICPA is less restrictive than the proposed amendment to the SEC rule as the SEC amendment will include as an affiliate a sister entity that is material to the controlling entity. However, the AICPA's definition of "affiliate" includes a sister entity if the financial statement attest client and the sister entity are each material to the entity that controls both.

d. *Additional notes:*

i. The SEC points out that under the proposed amendment these services are subject to the general standards and an audit firm may identify independence concerns (fact or appearance) with sister entities that are not material to the controlling entity. This is in line with the AICPA's conceptual framework approach.

ii. The SEC references the AICPA's materiality evaluation under its "affiliate" definition.

e. *SEC Request for Comment (Nos.1-5):*

i. Should the materiality requirement be included, as proposed, so that only sister entities that are material to the controlling entity are deemed to be an affiliate of the audit client? Alternatively, should the SEC retain the current common control provision in the affiliate of the audit client definition?

ii. Does the proposed amendment sufficiently focus the common control prong of the definition of affiliate of the audit client on those relationships and services that are most likely to threaten auditor objectivity and impartiality? Should the SEC focus on the materiality of sister entities to the controlling entity, as proposed? If not, are there other amendments that would better focus on relationships and services that are more likely to threaten auditor objectivity and impartiality? For example, should the SEC focus on whether sister entities are material to the entity under audit, in addition to whether they are material to the controlling entity? Should the SEC consider aggregating sister entities in the materiality assessment rather than the assessment being done on an individual basis? Or is aggregation of multiple sister entities sufficiently covered by the general standard under Rule 2-01(b)?

iii. Would auditors and audit clients face challenges in applying the materiality concept in this context? Would auditors face particular challenges assessing materiality in connection with private portfolio companies? If so, what are those challenges and how could they be addressed?

iv. Would focusing only on sister entities that are material to the controlling entity increase the risk that auditors will be performing audits when they are not objective and impartial? If so, is the overarching consideration of all relevant facts and circumstances, as required by Rule 2-01(b), sufficient to mitigate this risk? Would focusing on sister entities that are material to the controlling entity increase the risk of appearance issues?

v. Are there other types of affiliates that should be excluded from the definition because services and relationships with such entities rarely threaten an auditor's objectivity and impartiality

II. Definition of Investment Company Complex (ICC)-Rule 2-01(f)(4)(iv) *[proposed Rule 2-01(f)(4)(ii)]* and (f) (14) [ICC]

a. *Proposed changes:*
   i. *Entity under audit and unregistered funds:*
      1. Clarify with respect to an "entity under audit" that is an investment company, or an investment adviser or sponsor, the auditor and the audit client should look solely to the ICC definition (proposed Rule 2-01(f) (14)) to identify affiliates of the audit client instead of an analysis based on the prongs in the proposed rule.
      2. Add "unregistered funds" to the definition of investment companies for entities under audit.
   ii. *Common control with any investment company, investment adviser or sponsor:*
      1. Add paragraph to the ICC definition that will include only sister investment companies, advisers, and sponsors that are material to the controlling entity. For example, an investment adviser that is under common control with the investment adviser of an investment company under audit would be considered to be an affiliate if the investment adviser is material to the controlling entity.
   iii. *Investment companies that share an investment adviser or sponsor included within the ICC definition:*
      1. No change, as an auditor will still need to consider as part of its independence analysis, sister investment companies that have the same investment adviser or sponsor as the investment company under audit whether or not the sister investment companies are material to the shared investment adviser or sponsor.
   iv. *Significant influence within the ICC Definition:*
      1. Include in the proposed ICC definition a significant influence prong to partially align with the current significant influence analysis applicable to operating companies in the definition of affiliate. An amendment to the definition of the term audit client to include a reference to the ICC definition.

b. *Reason for SEC proposed changes:*
   i. To focus the definition from the perspective of the entity under audit and align certain portions of the ICC definition with the proposed amendments to sister entities under the affiliate definition (Rule 2-01(f)(4)(i)).
   ii. To focus the independence analysis for unregistered funds under audit and align with the analysis to be taken for registered companies.

c. *Summary of differences vs. AICPA's guidance:*
   i. AICPA is less restrictive than the proposed amendment to the SEC rule as the SEC amendment will include as an affiliate a sister entity that is material to the controlling entity. However, the AICPA's definition of "affiliate" includes a sister entity if the financial statement attest client and the sister entity are each material to the entity that controls both.
   ii. AICPA is less restrictive than the proposed SEC rule as an investment adviser or sponsor of an investment company under audit is precluded from services or relationships from the auditor, which will not change. The SEC proposed changes are addressing investment advisers under common control and adding the materiality component to the controlling entity. However, the AICPA guidance includes the evaluation of materiality and significant influence before an investment adviser is considered an affiliate of a financial statement attest client.

Additionally, the AICPA does not include the sister of an investment adviser in its guidance.

iii. The SEC and AICPA's guidance on significant influence appears to be close but not exact. The AICPA's affiliate guidance refers to a direct financial investment that enables significant influence and evaluates materiality (in either direction). An entity controlled by the financial statement attest client is included in the AICPA's affiliate definition if it has a direct investment in an entity that enables significant influence and is material. The SEC only refers to an entity that has significant influence and is material (in either direction).

d. Additional notes:

i. The inclusion of "unregistered funds" moves the SEC closer to the AICPA as the AICPA's guidance also applies to entities not subject to the SEC's requirements (nonpublic entities).

ii. The proposed amendments to the ICC definition may alter the composition of the entities that are deemed to be affiliates; however, the overarching general standard (Rule 2-01(b)) still applies.

iii. The AICPA's guidance does not address an investment company financial statement attest client or sister investment company sharing an investment adviser.

e. *SEC Request for Comment (Nos.6-15)*:

i. Entity under audit and unregistered funds:

1. Should the proposed ICC definition specifically reference the entity under audit and explicitly define investment companies, for the purpose of proposed paragraph (f) (14), to include unregistered funds, as proposed?
2. Is it appropriate to direct auditors of an investment adviser, sponsor, or investment company to the investment company complex definition, as the SEC proposed to amend it, to determine the entities that will be considered affiliates of the audit client? Why or why not? Would that lead to more consistent independence analyses by auditors of these entities?

ii. *Common control with any investment company, investment adviser or sponsor:*

1. Should the SEC include a materiality qualifier in Rule 2-01(f)(14)(i)(D), as proposed so that only sister investment companies or investment advisers or sponsors that are material to the controlling entity are included in the proposed definition of ICC and, as a result, are deemed to be an affiliate of the audit client? Should the SEC focus on whether sister investment companies, advisers, or sponsors are material to the investment company, adviser, or sponsor under audit, in addition to whether they are material to the controlling entity? Should the SEC consider aggregating sister entities in the materiality assessment rather than the assessment being done on an individual basis? Or is aggregation of multiple sister entities sufficiently covered by the general standard under Rule 2-01(b)?
2. Does the proposed amendment sufficiently focus the common prong of the ICC definition on those relationships and services that are most likely to threaten auditor objectivity and impartiality? Should the analysis focus on the materiality of sister entities to the controlling entity, as proposed?
3. Would auditors and audit clients face challenges in applying the materiality concept in this context? Would auditors face particular challenges assessing materiality in connection with unregistered funds? If so, what are the challenges and how could they be addressed?

4. Would focusing only on sister entities that are material to the controlling entity increase the risk that auditors will be performing audits when they are not objective and impartial? If so, is the overarching consideration of all relevant facts and circumstances, as required by Rule 2-01(b), sufficient to mitigate this risk? Would focusing on sister entities that are material to the controlling entity increase the risk of appearance issues?
5. Is it appropriate for auditors to assess whether or not sister investment companies are material to the controlling entity even when a sister's fund investment adviser may not be material to the controlling entity? Should the SEC include a reference to paragraph (f)(14)(i)(C) within paragraph (f)(14)(i)(D), as proposed?

iii. *Investment companies that share an investment adviser or sponsor included within the ICC Definition:*
1. Should paragraph (f)(14)(i)(F) be adopted as proposed? Should the SEC instead include a materiality qualifier for sister investment companies in proposed paragraph (f)(14)(i)(F)?

iv. *Significant influence within the ICC Definition:*
1. Should the SEC incorporate a significant influence prong into the ICC definition, as proposed?
2. Should the SEC adopt the proposing conforming amendment to Rule 2-01(f)(6) to include the reference to proposed paragraph (f)(14)(i)(E)?

III. Definition Audit and Professional Engagement Period– Rule 2-01(f)(5)(iii),

a. *Proposed change:* Amend Rule 2-01(f)(5)(iii) so that the one year look back provision for issuers filing or required to file a registration statement or report with the Commission for the first time ("first-time filers") will apply to all such filers.
b. *Reason for SEC proposed change:* Align domestic issuers with foreign private issuers with respect to when a company first files or is required to file.
c. *Summary of differences vs. AICPA's guidance:* The AICPA does not address a look back period similar to the SEC. Under the AICPA guidance the period of the professional engagement begins once the member engages the attest client and lasts for the entire duration for the professional relationship vs. an actual time period as indicated in the SEC guidance (i.e., first day of the last fiscal year before filing or requirement to file).
d. *SEC Request for Comment (No. 16):*
i. The SEC is proposing to amend rule 2-01(f)(5) to shorten the look back period for all first-time filers to the most recently completed fiscal year, which would result in treating all first-time filers (including domestic issuers and FPIs) similarly for purposes of our independence requirements under Rule 2-01. Should the SEC amend Rule 2-01(f)(5) as proposed? Alternatively, should the SEC consider instead lengthening the lookback period for FPIs to all periods in which financial statements are being audited or reviewed to harmonize the lookback periods?

IV. Rule 2-01(c)(1)(ii)(A) (the "Loan Provision") and Rule 2-01(c)(1)(ii)(E) (the "Credit Card Rule")

a. *Proposed changes:*
i. *Proposed amendment to except student loans*
1. Add, as part of the exceptions, student loans obtained from a financial institution under its normal lending procedures, terms, and requirements for a covered person's educational expenses provided the loan was obtained by the individual prior to becoming a covered person in the firm.

ii. *Proposed amendment to clarify reference to "a Mortgage Loan"*

1. Revise the exclusion related to mortgage loans to refer to “mortgage loans” instead of “a mortgage loan”.

iii. *Proposed amendment to revise the credit card rule to refer to “Consumer Loans”*

1. Replace the reference to “credit cards” with “consumer loans” to except personal consumption loans, such as retail installment loans, cell phone installments plans, and home improvement loans that are not secured by a mortgage on a primary residence. As such, the proposal is to review the provision to reference any consumer loan balance owed to a lender that is an audit client that is not reduced to $10,000 or less on a current basis taking into consideration the payment due date and available grace period.

b. *Reason for SEC proposed change:*

i. *Student Loans:* Based on feedback received from the SEC’s Loan Provision Proposing Release asking whether student loans should be included as an exception from the Loan Provision.

ii. *Mortgage Loans:* To clarify that the reference to a mortgage loan was not intended to exclude just one outstanding mortgage loan on a borrower’s primary residence.

iii. *Consumer Loans:* A limited amount of debt that is routinely incurred for personal consumption, even if the audit client is the lending entity, would typically not impair an auditor’s objectivity and impartiality.

c. *Summary of differences vs. AICPA’s guidance*

i. Overall loan exception difference: AICPA may be more restrictive as one of the safeguards under the AICPA’s guidance is that the excepted loans are obtained prior to the lending institution becoming an attest client, whereas the SEC seems to only address an individual obtaining a loan prior to becoming a covered person in the firm.

ii. *Student Loans:* AICPA is more restrictive as the SEC proposes to exclude any student loans (regardless of materiality) obtained for a covered person’s educational expenses whereas the AICPA’s guidance only allows for unsecured loans that are immaterial as long as certain safeguards in the independence interpretation are met.

iii. *Mortgage Loans:* AICPA and SEC seem to be aligned as the AICPA refers to both “home mortgage” and “home mortgages”. However, based on the overall loan exception difference noted in item i. the AICPA may be more restrictive.

iv. *Consumer Loans:* The AICPA may be more restrictive as it relates to unsecured loans. Similar to the SEC the AICPA specifically addresses the $10,000 aggregated balance allowed for credit cards to be an exception to the loan interpretation. However, for other unsecured loans (identified as consumer loans by the SEC) the AICPA only includes such loans in its exception if they are immaterial and would require that certain safeguards are met (including the difference identified in i.) whereas the SEC includes such unsecured loans in the $10,000 aggregate balance limit and does not specify any restrictions regarding when an individual may take the consumer loan.

d. *SEC Request for Comment (Nos.17-24):*

i. *Proposed amendment to except student loans*

1. The SEC is proposing to except student loans obtained for covered person’s education expenses that were not obtained while the covered person in the firm was a covered person. Should the SEC adopt this new exception as proposed? Should the SEC limit the proposed exception to student loans not obtained only for the individual’s educational expenses (i.e., not the loans of immediate family members), as proposed?

2. Should all student loans be excepted from the application of the Loan Provision? Should the proposed exception include any other limitations, such as being limited only to the covered person's accounting and auditing educational expenses? Alternatively, should the SEC expand the proposed exception to student loans of immediate family members? If the SEC expands the exception to student loans of immediate family members, should the SEC adopt a dollar limit on the aggregate amount of student loans that may be excepted? Is the overarching consideration of all relevant facts and circumstances related to the auditor's objectivity and impartiality, as required by Rule2-01(b), sufficient to mitigate against any potential risks that student loans obtained for multiple immediate family members could be significant?
3. Should the proposed student loan exception include a limit on the amount that may be outstanding? If so, what is the appropriate amount?

ii. *Proposed amendment to clarify reference to "a Mortgage Loan"*
1. Should the SEC revise Rule 2-01(c)(1)(ii)(A)(1)(iv) to refer to "mortgage loans" instead of "mortgage loan", as proposed?

iii. *Proposed amendment to revise the credit card rule to refer to "Consumer Loans"*
1. The SEC proposes amending Rule 2-01(c)(1)(ii)(E) to replace "credit cards" with "consumer loans" and revise the provision to reference any consumer loan balance owed to a lender that is an audit client that is not reduced to $10,000 or less on a current basis taking into consideration the payment due date and available grace period. Should the SEC amend Rule 2-01(c)(1)(ii)(E), as proposed?
2. Is the outstanding balance limit of $10,000 appropriate? If not, what would be a more appropriate limit?
3. Is further guidance needed regarding how "current basis" applies for different types of consumer loans? If so, what additional guidance should the SEC provide?
4. Is further guidance needed regarding the types of loans that would be considered "consumer loans" under the proposed amendment? If so, what additional guidance should the SEC provide?

V. Rule 2-01(c)(3), the "Business Relationships Rule"

a. *Proposed changes:*
i. Replace the term "substantial stockholders" in the Business Relationships Rule with the phrase "beneficial owners (known through reasonable inquiry) of the audit client's equity securities where such beneficial owner has significant influence over the audit client".
ii. Additional guidance on the reference to "audit client" when referring to persons associated with the audit client in a decision-making capacity, including the beneficial owner with significant influence. Refer to "entity under audit" vs. "audit client" that includes affiliates.

b. *Reason for SEC proposed change:*
i. Align the Business Relationships Rule with the proposed amendments to the Loan Provision by replacing the reference to substantial stockholders with a significant influence analysis.
ii. The independence analysis should focus on whether the beneficial owner has significant influence over the entity under audit, since business relationships with persons with such influence could be reasonably expected to impact an auditor's objectivity and impartiality.

c. *Summary of differences vs. AICPA's guidance:* The AICPA prohibits two type of business relationships.
    i. The first business relationship is a cooperative arrangement between the member (or member's firm) and the attest client of the cooperative arrangement is material to the firm or the attest client.
        1. In this case the AICPA may be more restrictive regarding the application of the interpretation to members vs. the SEC's guidance applying to covered persons. For example, the SEC seems to allow an individual at the firm (not a covered person) to have a business relationship with the audit client.
        2. However, the SEC's guidance is more restrictive as the AICPA allows for an immaterial cooperative business relationship between a covered member and the attest client, whereas the SEC prohibits direct and material indirect business relationships between a covered person an audit client. For example, the AICPA seems to allow an immaterial business relationship between members (including covered members) and the attest client.
    ii. The second business relationship prohibited by the AICPA is the joint closely held investment, which is consistent with the SEC's significant influence analysis as it relates to owners of the attest client, but the AICPA is less restrictive as this business relationship would need to be material to the covered member to impair independence.
d. *Additional notes:*
    i. The focus on whether the beneficial owner has significant influence over the entity under audit does not seem to be clear in the Business Relationships Rule.
e. *SEC Request for Comment (Nos. 25-28)*
    i. Should the SEC replace the reference to "substantial stockholders" in the Business Relationships Rule with the concept of beneficial owners with significant influence, as proposed? Would the proposed amendment make the rule more clear and reduce complexity, given that "substantial stockholder" is not currently defined in S-X? Alternatively, should "substantial stockholder" be defined? If so, how should the SEC define it?
    ii. Would the proposed amendment result in more fewer instances of business relationships that are prohibited by Rule 2-01(c)(3)? Does the concept of beneficial owners with significant influence, as proposed, more appropriately identify relationships that are likely to impair an auditor's objectivity and impartiality than the current rule?
    iii. The SEC understands that it is more common today for companies to enter into multi-company arrangements in delivering products or services and that audit firms may contribute to such multi-company arrangements, such as through intellectual property or access to data using common technology platforms. Do these arrangements present instances where an auditor's objectivity and impartiality would not be impaired even after considering the proposed amendments discussed in this release? If so, what further amendments should be considered to appropriately focus on relationships where it is more likely an auditor's objectivity and impartiality would be impaired?
    iv. Is the guidance related to "persons associated with the audit client in a decision-making capacity" and its application to the amended Loan Provision appropriate? Is further guidance needed to assist auditors and their clients in applying the recently amended Loan Provision and the proposed amendments? If so, what additional guidance is needed? Should the SEC codify this guidance in their rules?

VI. Rule 2-01(e)- M&A inadvertent violations

a. *Proposed change*: Replace the outdated transition and grandfathering provision to introduce a transition framework to address inadvertent independence violations that only arise as a result of mergers and acquisition transactions that will require compliance with independence standards; correcting independence violations as promptly as possible; and having a quality control system in place.

b. *Reason for SEC proposed change*: To preserve investor protection and provide a transition framework so the auditor and its audit client can transition out of prohibited services and relationships in an orderly manner.

c. *Summary of differences vs. AICPA's guidance:*
   i. AICPA provides similar guidance to the SEC's proposed change under the Breaches of an Independence Interpretation. Both AICPA and the SEC require compliance with independence; a quality control system in place and addressing the independence violation. However, the AICPA guidance is less restrictive as the SEC guidance requires promptly correcting the lack of independence whereas, the AICPA addresses promptly communicating the breach of independence. Additionally, the AICPA provides more detailed guidance related to the breach of independence that includes evaluating the significance, addressing the consequences of the breach, and communicating with those charged with governance.

d. *Additional notes:*
   i. IESBA has similar guidance and requires ending the relationship as soon as reasonably possible, but no later than six months after the effective date of the merger or acquisition.
   ii. The SEC paper refers to a six month period as an expectation for corrective action to be taken for the proposed amendment, but this time-frame is not included in the actual rule.

e. *SEC Request for Comment (Nos. 29-34):*
   i. Should the SEC provide the transition framework to address inadvertent independence violations arising from mergers and acquisitions, as proposed? Should the SEC expand the proposed framework to encompass IPOs? If so, would this eliminate the need for the proposed amendments in Section II.A.2? If the SEC expands the proposed framework to encompass IPOs, are there additional criteria we should include in the quality control requirement? Are there other transactions that should be covered by the proposed framework?
   ii. Are the proposed criteria for the quality control requirement sufficiently clear? If not, how could they be clarified?
   iii. Are there other criteria that should be added to the quality control requirement?
   iv. Should certain prohibited services and relationships continue to be an independence violation regardless of the transition framework such as if the service or relationship results in the auditor auditing its own work?
   v. The proposed framework requires any independence violations resulting from merger or acquisition to be corrected as promptly as possible. What is a reasonable period of time after the consummation of a merger or acquisition that would allow for an auditor to correct most types of violations covered by the proposed framework? Should the proposed amendments specify a maximum period of time for such corrections?
   vi. Should the SEC exclude certain types of merger and acquisition transactions from the proposed transition framework? If so, what transactions should be excluded? For example, should the framework exclude transactions that are in substance

more like an IPO, such as when the acquirer is a public shell company? In these situations, would it be more appropriate to apply the proposed amendments related to the look-back period for IPOs?

VII. Miscellaneous Updates-Not addressed in the AICPA Code

a. Proposed amendments to update the reference to concurring partner within Rule 2-01

i. *Proposed change:* Replace references to "concurring partner" with the term "Engagement Quality Reviewer" and use the term "Engagement Quality Control Reviewer" to describe "partner conducting a quality review".

ii. *Reason for SEC proposed change:* To be consistent with current auditing standards.

b. Proposed amendment to preliminary note to Rule 2-01

i. *Proposed change:* Technical amendment to convert the current preliminary note into introductory text.

ii. *Reason for SEC proposed change:* Consistent with current Federal Register practices.

c. Proposed amendment to delete outdated transition and grandfathering provision

i. *Proposed change:* Delete current Rule2-01(e), the transition and grandfather provision for the 2003 amendments, and reserve for proposed amendments.

ii. *Reason for SEC proposed change:* Due to passage of time this guidance is no longer necessary.

d. SEC Request for Comment (No. 35)

i. Should the SEC make the miscellaneous updates described? Are there other conforming amendments the SEC should make in light of these updates?

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.

Attendance: 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 Jeff Lewis William McKeown James J. Newhard Lisa Snyder Stephanie Saunders Peggy Ullmann Douglas E. Warren Lawrence A. Wojcik
Staff: James Brackens, VP - Ethics & Practice Quality Toni Lee-Andrews, Director Ellen Goria, 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*	 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
~~Guests:~~ 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*	 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

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 *Participated via phone	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*

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. <u>Inducements</u>

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 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. <u>IESBA update</u>

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. Goria 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. Goria 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. Goria 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. Goria 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. <u>Record requests - Fees for copying/retrieval</u>

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. <u>Strategy and work plan consultation paper</u>

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. Fetzer 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. Goria 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 then 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

Mr. Wojcik requested that the August minutes be updated to note that the new members abstained from approving the May minutes. It was moved, seconded and unanimously agreed to adopt the minutes from the August 2019 open meeting.