



## Open meeting minutes – November 17, 2020

### Professional Ethics Division Professional Ethics Executive Committee

The Professional Ethics Executive Committee (PEEC or committee) held a duly called meeting on November 17, 2020. The virtual meeting convened at 10:00 a.m. and adjourned at 3:05 p.m.

[Agenda materials for this meeting](#) were made available to PEEC members and observers on November 4, 2020 and were posted to [www.aicpa.org](http://www.aicpa.org).

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## Attendance

### *Members*

Brian Lynch, Chair

Catherine Allen

Christopher Cahill

Thomas Campbell

Robert Denham

Anna Dourdourekas

Anika Heard

Kelly Hunter

Sharon Jensen

Jennifer Kary

Jeff Lewis

Alan Long

William McKeown

James Newhard

Stephanie Saunders

Lewis Sharpstone

Lisa Snyder

Peggy Ullmann

Douglas Warren

Lawrence Wojcik

### *AICPA staff*

James Brackens, Vice President – Ethics and Practice Quality

Toni Lee-Andrews, Director – Professional Ethics Division

Ellen Gorla, Associate Director

Jennifer Clayton, Senior Manager

Michele Craig, Lead Manager

Summer Young, Lead Manager

John Wiley, Manager

Shannon Ziemba, Manager

Karen Puntch, Case Investigator

Hanna Mayle, Coordinator

Teresa Bordeaux, Lead Manager – Governmental Auditing & Accounting

Mike Glynn, Senior Manager – Audit and Attest Standards

Kelly Mullins, Manager–Support Services and Communications

Sarah, Brack, Manager

Emily Daly, Manager

Liese Faircloth, Manager

Jennifer Kappler, Manager

Henry Grzes, Lead Manager – Tax Practice and Ethics

Sue Hicks, Senior Manager – Employee Benefit Plan Audit Quality Center

Kristy Illuzzi, Technical Issues Committee (TIC) Staff Liaison

Iryna Klepcha, Manager  
Melissa Powell, Manager  
Michael Schertzinger, Manager

Elena Redko, Manager – Content  
Development and Management – MA  
Barbara Andrews, Director –  
Forensics, Technology and  
Management Consulting

### Guests

Sonia Araujo, PwC  
Kent A. Absec, Idaho State Board of Accountancy  
Arthur Auerbach, Arthur Auerbach CPA  
Ian Benjamin, Chair, Enforcement Subcommittee  
Claire Blanton, RSM US LLP  
Lisa Brown, Ohio Society of CPAs  
D. Boyd Busby, Alabama State Board of Public  
Accountancy  
Allan Cohen, RSM US LLP  
Giles T. Cohen, PwC  
Colleen Conrad, NASBA  
Karen Cookson, HUD OIG  
Debbie Cutler, Debra A. Cutler CPA PC  
James Dalkin, Government Accountability Office  
George Dietz, PwC  
Anna Durst, Nevada Society of CPAs  
Dan Dustin, NASBA  
Jason Evans, BDO  
Wendy Garvin, Tennessee State Board of  
Accountancy  
Jo Ann Golden, New York State Society of CPAs  
Shelly Gower, Plante Moran  
Andy Gripp, Crowe LLP  
Mary Beth Halpern, Maryland Association of CPAs

Andy Mintzer, Hemming Morse, LLP  
Angela Miratsky, BKD, LLP  
Karen Moncrieff, EY  
Christina Moser, Plante Moran  
Jan Neal, Deloitte  
Donna Oklok, Accountancy Board of  
Ohio  
Jeff Olejnik, Wipfli LLP  
Christine Piche', CliftonLarsonAllen  
Rachel Reardon, Michigan Association  
of CPAs  
Mark Reynolds, Creative Value  
Consulting  
John Robinson, RSM US LLP  
Anna Seto, KPMG  
April Sherman, CliftonLarsonAllen  
Rachel Sinks, CliftonLarsonAllen  
Ola Marie Smith, State of Michigan  
Annette Stalker, Stalker Forensics  
Ivona Szady, Deloitte  
Joseph Tapajna, University of Notre  
Dame  
Jessica Tomc, EY  
Paula Tookey, Deloitte

Pamela Ives Hill, Missouri Society of CPAs

Kelly Hnatt, External Counsel

David Holets, Crowe LLP

Karen Jones, PwC

Vassilios Karapano, Securities and Exchange  
Commission

Ken Kortas, Wipfli, LLP

Christopher Kosty, Schneider Downs & Co., Inc.

Kimberly Kuhl, KPMG

Holly Love, Deloitte Tax LLP

Shawn McCall, Georgia Society of CPAs

Nancy Miller, KPMG

Shelly Van Dyne, BDO

Sharron Waugh, Tennessee State  
Board of Accountancy

Les Williford, BDO

Michael Winter, Pennsylvania Institute  
of CPAs

Paula Young, EisnerAmper, LLP

Darlene Zibart, Kentucky Society of  
CPAs

Paul Ziga, Georgia State Board of  
Accountancy

## Key votes in this meeting

### *Motion approved*

Issuance of [AICPA Professional Ethics Division: Strategy and Work Plan for 2021-2023](#)

### *Motion failed*

Re-exposure of the proposed Noncompliance With Laws and Regulations (NOCLAR) interpretation.

## Welcome

Mr. Lynch welcomed the committee and discussed administrative matters.

## NOCLAR

Mr. Denham updated PEEC on the task force's revisions to the proposed interpretations discussed at the August meeting including separate requirements for members in public practice. The task force made the following considerations and decisions:

- Whether the same requirements should apply for all attest services or whether more robust requirements should apply to certain attest services only, such as, financial statement audit and review services.

The task force concluded that the guidance should be more robust for financial statement attest services.

- To use the term "financial statement attest services" for consistency throughout the interpretation and proposed defining this term.
- Regarding the pending issue discussed at the August meeting related to the exclusion of certain non-attest services, decided that the proposed interpretation should not apply to forensic accounting services, as a member may be hired to specifically address an identified NOCLAR.
- Regarding tax engagements, such as "client privilege" and "Kovel arrangements," concluded that tax services pursuant to the protection of IRC Section 7525 should be carved out and identified in the proposed interpretation. However, the task force did not specifically exclude "Kovel arrangements" because those engagements are not defined in the AICPA code or other professional standards.

The committee questioned whether there are other engagements that should be excluded from the proposed interpretation. Ms. Hnatt recommended including a question in the exposure draft on this topic. The goal would be to obtain additional feedback and definitions of litigation and

investigation engagements that fall under forensic services. This could provide an understanding that these services are inclusive.

Mr. Denham also provided the committee with an update on the Auditing Standards Board's (ASB's) activities:

- The ASB NOCLAR task force presented a draft of the proposed amendments at the ASB's October 2020 meeting with a request that the ASB vote on exposure.
- The ASB considered the proposed amendments but did not vote as scheduled and deferred exposure.

Committee members motioned, seconded and voted on re-exposing the NOCLAR exposure drafts. The motion failed and PEEC deferred re-exposure of the proposed NOCLAR interpretations in order to obtain greater understanding of the ASB's direction.

The task force will request re-exposure at the February 2021 meeting.

### Records requests

After reviewing comments received on the May 1, 2020, exposure draft, the task force asked for PEEC's approval of changes to the "Records Requests" interpretation. Ms. Ullmann gave the update and the comments received back from the exposure draft were supportive overall.

PEEC requested further clarification and suggested task force draft some Qs & As related to requested datafiles and returning client-provided records.

There was no vote at this meeting to approve the revisions to the interpretation.

PEEC and division staff discussed the following in the meeting:

- Clarification around what format the files needed to be in when complying with an initial request for client provided records be returned to the client.
- The phrase "making records available." PEEC agreed with the use of this term.
- The phrase "usable and accessible" regarding the format of files. PEEC questioned whether it is the client or the member who determines if the format is usable and accessible and requested further clarification either in the interpretation itself or in a Q&A.
- The term "beneficiary." The task force recommended adding this term to the terminology section of the interpretation because doing so will make the guidance clearer. PEEC supported this but wants the term restricted to only professional services requested by an engaging entity to be performed for the benefit of another person or entity.
- Revisions to paragraph 10b. The purpose of these revisions was to clarify that formulas

need to be provided only when the member is engaged to make formulas available as part of a completed work product or when they are used to create a member-prepared record and the client's financial information would be incomplete if they were not made available.

- The assertion in paragraph .08c that after a member has provided records, there is no requirement to “make the records available to any other associated parties, such as the general partner, majority shareholder, or spouse.” PEEC questioned whether this appropriate for spouses filing a joint tax return who subsequently separated or divorced. Should the member be required to provide records to both spouses, upon request? The task force will discuss this situation and, if appropriate, bring revisions for PEEC's consideration to the February 2021 meeting.
- Datafiles for a tax return preparation engagement. Clarification was requested on whether a member is required to provide a datafile in this circumstance.

The task force will report back on these matters during the February 2021 meeting, at which time it will also seek adoption of the revised “Records Requests” interpretation.

### Strategy and work plan (SWP)

Ms. Lee-Andrews and Ms. Klepcha updated PEEC on this project and Mr. Lynch requested release to publish:

- The Planning Task Force (PTF) met once in the 3Q and updated the SWP to reflect feedback from PEEC after Ms. Sue Coffey's professional issues update in the August meeting.
- The PTF added three new member enrichment projects:
  - Protecting client confidentiality and data security. Though most commenters did not support protecting client confidentiality and data security when the SWP was issued, the pandemic has changed things. Many accounting firms and their clients are working remotely. This increases risks of intentional or unintentional disclosure of confidential information. Therefore, the PTF believes that the division should undertake a member enrichment project to provide non-authoritative guidance to increase data security awareness.
  - Gig employment. There is no guidance that specifically addresses whether gig workers are considered professional employees. The PTF believes that the division should undertake a member enrichment project to assist members in making this determination.
  - New services. Modern companies may outsource a key component of their business model to third parties and that organization's third-party relationships may pose various risks. In relation to this trend, CPAs are being asked to perform

new types of services, such as third-party assessments.

The PTF believes the division should undertake a member enrichment project to evaluate what provisions of the code apply when certain new services are rendered and whether any rules and interpretations should be updated to ensure the code is fit for purpose to be able to support the professional performing these services in a manner that protects the public interest.

Mr. Lynch asked the committee's approval to issue the AICPA Professional Ethics Division: Strategy and Work Plan for 2021-2023. Committee members moved, seconded and unanimously agreed to approve the issuance of the AICPA Professional Ethics Division: Strategy and Work Plan for 2021-2023.

### Pooled employee plans (PEPs)

Ms. Gorla reported to PEEC on this project:

- Staff has received questions related to PEPs, a new type of 401(k) multiple employer plan (MEP) created by Congress in the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019, in which unrelated employers may participate and which is established by a pooled plan provider (PPP).
- To address these questions, staff worked with members of the AICPA Employee Benefit Plan Audit Quality Center, Mr. Lynch, and Ms. Dourdourekas to develop Qs & As to provide some guidance to members.

### Question 1

#### Will a member need to be independent of the pooled plan provider when auditing the PEP?

This question arose because under item (i) of the affiliate definition, the code considers a participating employer an affiliate only when the employer is the plan administrator:

- i. The participating employer that is the plan administrator of a multiple employer employee benefit plan financial statement attest client.

Because the PPP will usually not be a participating employer, members were curious whether they should evaluate the situation using the conceptual framework or if they should conclude that the PPP was an affiliate since it is the plan administrator of the PEP.

### Analysis and discussion

One of the division's existing Qs & As<sup>1</sup> explains that when it comes to a MEP, the participating sponsor that has overall responsibility for plan governance is the party that should be considered an affiliate of the plan. This is the party who oversees the day to day operations of

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<sup>1</sup> Find this Q & A in [Application of the independence rules to affiliates of employee benefit plans](#).

the plan, whether directly or by outsourcing.

Because PEP's are a type of MEP, the working group believes the PPP should be considered the affiliate of the PEP as under section 101(a)(3)(A)(i) of the SECURE Act the PPP is the plan administrator as well as a named fiduciary and is responsible for performing all administrative duties. Given this, it seems that the PPP should be considered an affiliate under item (i) as opposed to evaluating under the conceptual framework.

Because these plans go live on January 1, 2021 and because the Secretary of the Treasury has not yet issued the model plan language or guidance on the administrative duties and other actions required to be performed by a PPP, staff did not recommend a code revision at this time. Instead, staff recommended development of two new Qs & As.

The committee asked staff to edit the second FAQ to make it clearer that members are not required to monitor non-affiliates.

### Question 2:

Does the member need to be independent of the PEP when a member's financial statement attest client is the PPP (or an entity controlling the PPP)?

This question arose because item (j) of the affiliate definition concludes that when a MEP is sponsored by a financial statement attest client (or an entity controlled by the financial statement attest client) the MEP is an affiliate.

- j. A single or multiple employer employee benefit plan sponsored by either a *financial statement attest client* or an entity *controlled* by the *financial statement attest client*. All participating employers of a multiple employer employee benefit plan are considered sponsors of the plan

So, members questioned whether the PPP, when not a participating employer, should be considered a sponsor and as such an affiliate under item (j) or if they should evaluate the relationship using the conceptual framework.

### Analysis and discussion

Ms. Goria recommended that for purposes of item (j) of the affiliate definition, the PPP should be considered a sponsor and consequently an affiliate as opposed to evaluating the relationship using the conceptual framework. This conclusion is supported by

- [Section 101\(a\)\(3\)\(A\)\(i\)](#) of the [SECURE Act](#). This section considers the PPP the plan administrator as well as a named fiduciary and is responsible for performing all administrative duties.
- The division's existing document [Application of the independence rules to affiliates of employee benefit plans](#). The Qs & As in this document explain what a MEP is and

equates the plan sponsor to the participating employer that is the plan administrator. One Q&A in this document explains that the plan administrator is the entity that has overall responsibility for plan governance and is who oversees the day to day operations of the plan, whether directly or by outsourcing.

- the definition of plan sponsor<sup>2</sup> in the Employment Retirement Income Security Act (ERISA) which states in part that a plan sponsor includes the entity that "...maintains the plan."
- the plan governance discussion in paragraph .32 of the AICPA Guide *Employee Benefit Plans*.

### Revision options

Options for revision of items (i). and (j). of the affiliate definition include the following:

- Revise the definition only if the Qs & As prove to be insufficient.
- Revise the definition because clarity in the enforceable standard is always helpful.
- Include revisions for items (i). and (j) the next time the affiliate definition is revised for something else.

Staff will bring the request back to the committee after the Secretary of the Treasury issues the model plan language or guidance on the administrative duties and other actions required to be performed by a PPP.

### International Ethics Standards Board for Accountants updates

Mr. Mintzer reported to PEEC on the International Ethics Standards Board for Accountants (IESBA) activities for the following:

- Fees. This exposure draft generated 64 comment letters. Overall supportive.
- Nonassurance Services (NAS). This exposure draft generated 66 comment letters. Overall supportive.

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<sup>2</sup> The term "plan sponsor" means (i) the [employer](#) in the case of an [employee benefit plan](#) established or maintained by a single [employer](#), (ii) the [employee organization](#) in the case of a [plan](#) established or maintained by an [employee organization](#), or (iii) in the case of a [plan](#) established or maintained by two or more [employers](#) or jointly by one or more [employers](#) and one or more [employee organizations](#), the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or *maintain the plan*. (emphasis added and source is <https://www.law.cornell.edu/uscode/text/29/1002>).

- Public interest entities (PIE)

### *Themes in the Fees and NAS comment letters*

#### *Lack of evidence*

One of the criticisms received on the NAS exposure draft is that the rationale for certain provisions (e.g., prohibiting NASs to PIEs that give rise to the self-review threat and bright line fee dependency) are purely optics as there is no empirical evidence to support them.

#### *Effective date*

Originally, the plan was for all three proposals (Fees, NAS and PIE) to have the same effective date and this was a common issue among commenters. In the September meeting, the IESBA discussed three possibilities:

1. All three effective December 2023
2. Non-PIE provisions effective December 2021 and PIE provisions effective December 2022
3. Non-PIE provisions effective December 2021 and PIE provisions effective December 2023

Option 3 is the PIE task force's recommendation, because it would allow for two years before the PIE provisions are effective, giving local bodies and firms additional time to implement.

#### *Tax avoidance*

The IESBA discussed the proposed guidance on tax avoidance, as highlighted in [PEEC's open meeting agenda item 6B](#). The proposal as drafted currently seems to have moved to a very high degree of confidence.

#### *Entities that fall under the PIE definition*

The committee asked whether large private entities would fall under the definition of PIE. Mr. Mintzer believes the IESBA would want local jurisdictions to consider this question as it is trying to stay away from including any thresholds in the guidance. The committee requested that an analysis of entities that would fall under the PIE definition be added to the PIE project summary ([agenda item 6C](#)).

#### *Engagement Quality Reviewer*

IESBA has adopted guidance for this project and the final standard and basis for conclusion should be issued soon.

#### *Engagement team*

One question the engagement team project is dealing with is "What entities do component auditors need to be independent of when they are not part of the group auditor's network?"

## *Technology*

This task force is developing guidance to address the recommendations from the phase 1 report issued by the Technology Working Group. Though many of the recommendations are for nonauthoritative guidance, the task force is looking to make some edits to the IESBA code. One such area that is being considered is independence and how the sale or leasing of technology to a client should be evaluated. Currently, the task force is exploring evaluating it as both a business relationship as well as the underlying service provided by the technology.

## *SEC update*

Ms. Goria reported that the SEC issued revised independence rules.

The committee discussed whether to appoint a task force to consider SEC revisions to its independence rules and determine whether the code should be revised for any of these revisions:

- In the loan area, there are elements that would make SEC rules less restrictive than the code. For example, the SEC now permits student loans from an audit client, provided certain caveats are met. The SEC also broadened the \$10,000 credit card provision to include all consumer loans.
- On the merger transition framework that the SEC issued, the code provides some guidance, but it is not as broad as the SEC's and so some could say the code is more restrictive.

## *Committee discussion*

Because the SEC's changes will likely be effective before the task force concludes its work, the committee considered whether to and decided to issue a nonenforcement policy. This is consistent with what PEEC did in 2000 during the SEC's modernization effort.

PEEC also considered whether the policy should be evergreen or if PEEC should issue a specific policy for each situation.

The committee agreed that it was in favor of staff drafting a specific policy for the unique situation. The policy will conclude that the member will be in compliance with the code if the member implements and complies with the revised SEC's rules or our code.

The committee decided to rescind the 2020 policy and agreed to appoint a task force.

Staff will draft a nonenforcement policy for PEEC's consideration at the December 2020 meeting.

## *Minutes of the August PEEC open meeting*

Committee members moved, seconded and agreed to approve the minutes from the August 2020 open meeting with no dissent.