

NASBA

The Price of Confidentiality

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Confidentiality



- Fundamental in establishing trust in accountant/client and accountant/employer relationships
- Prior to new international standard, an accountant could not disclose noncompliance with laws or regs without client permission UNLESS a law or regulation required it.
- IESBA standard [NOCLAR] enlarges the role of auditors and other professional accountants in public protection.
- What was the driver of this dramatic change?

Drivers of IESBA NOCLAR standard

- Well publicized large-scale frauds.
- Concern that accountants were turning a “blind eye” to noncompliance.
- Strong pressure from regulatory community to examine more closely and change approach.
- Balance duty of confidentiality with acting in the public interest.

What is NOCLAR?

An act of omission or commission (intentional or not), that is contrary to a prevailing law or regulation committed by a client, employer or other individuals working for or under the direction of a client or employer. For example, laws and regs. for:

- Fraud, corruption and bribery
- Money laundering, terrorist financing and proceeds of crime
- Securities markets and training
- Banking and other financial products and services
- Data protection
- Tax and pension obligations and payments
- Environmental protection
- Public health and safety

IESBA NOCLAR, cont.



Applies to laws and regulations related to the professional accountant's training and expertise that:

- Directly impact the determination of material amounts and disclosures in the financial statements, or
- other laws and regulations, compliance with which is fundamental to the entity's operations, continued business or to avoid material penalties

** The accountant is not expected to be knowledgeable about all of the types of laws mentioned in the standard.*

Who should apply the IESBA NOCLAR standard?



All accountants are subject to the NOCLAR standard in jurisdictions where the IESBA standards are applied:

- Public practice (audit, tax, consulting)
- Business (corporate, academia, etc.)

When the IESBA standard applies

- Applies when in delivering a professional service to a client, or carrying out professional activities for company, the accountant becomes aware of – or suspects – NOCLAR has occurred or is about to occur.
- The standard does NOT apply when the accountant has no client or employer relationship with the company.
- The accountant is NOT responsible for identifying NOCLAR, however, if he/she becomes aware of such, the NOCLAR standard applies

What the IESBA standard requires

- Gain an understanding of the matter.
- Discuss with the appropriate parties and if needed those charged with governance.
- Evaluate actions of management and those charged with governance.
- Determine whether further action needed in the public interest given credible evidence of substantial harm to stakeholders.
- Communicate to other auditors (group audit) or a successor auditor.

Not required, but may be appropriate under circumstances:
Alert regulatory authority and/or resign from client or employer.

NOCLAR in the US

- AICPA proposed its own NOCLAR standard in March 2017
- Very similar to IESBA but excluded the notion that an accountant should consider whether to disclose NOCLAR to an outside body (including a successor auditor) due to AICPA and accountancy board confidentiality prohibitions
- Comments were diverse - many were opposed to applying NOCLAR standard to nonattest services providers; others thought the AICPA should reconsider disallowing disclosure to outside parties

IESBA's NOCLAR Impact in US

- International engagements.
- Significant expansion from audit to all other professional services and accountants in business.
- Disconnects accountant's responsibility from financial statements.
- Absent confidentiality, in U.S. environment could create a strong incentive for "fire hose" approach to disclosure.

“Whistleblower” Protections

- Under Dodd-Frank SEC can take legal action against employers who retaliate against whistleblowers.
 - Limited to protecting those reporting possible securities law violations.
 - Does not protect accountants in public practice disclosing NOCLAR about their clients.
- Protection as afforded auditors under SEC section 10A of Securities Exchange Act limited to audits of companies under SEC jurisdiction.

NOCLAR Resources

- <http://www.ethicsboard.org/responding-non-compliance-laws-and-regulations>
 - Standard
 - Basis for Conclusions
 - Summary Document
 - Videos
 - Q+As
- [AICPA Proposals and Comment Letters](#)