



National Association of State Boards of Accountancy

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Professional Ethics Executive Committee
c/o Toni Lee-Andrews, Director
American Institute of Certified Public Accountants
1211 Avenue of the Americas
New York, NY 10036-8775

Via e-mail: Ethics-ExposureDraft@aicpa-cima.com

Re: Proposed Interpretations and Definition – Responding to Noncompliance with Laws and Regulations (NOCLAR)

Dear Members and Staff of the AICPA Professional Ethics Executive Committee (PEEC):

The National Association of State Boards of Accountancy (NASBA) appreciates the opportunity to comment on the above-referenced Exposure Draft, *Proposed Interpretations and Definition – Responding to Noncompliance with Laws and Regulations* (the Exposure Draft). NASBA’s mission is to enhance the effectiveness and advance the common interests of State Boards of Accountancy (State Boards) that regulate all Certified Public Accountants (CPAs) and their firms in the United States and its territories, which includes all audit, attest and other services provided by CPAs. State Boards are charged by law with protecting the public.

We appreciate the extent to which PEEC reviewed the feedback received from the initial exposure draft issued in 2017 and the good faith discussions that the PEEC NOCLAR task force held with NASBA representatives and staff during the period culminating with the release of the current exposure draft.

General Comments

We believe that the proposed interpretations are a good first step toward addressing the ethical responsibilities of a member who encounters NOCLAR. NASBA encourages PEEC to continue to monitor the sufficiency of the AICPA *Code of Professional Conduct* (Code) and be prepared to propose additional revisions to the Code to protect the public interest. We also encourage the State Boards to consider whether their state laws and regulations adequately reflect provisions dealing with a CPA’s response to NOCLAR, including whether it would be appropriate to permit CPAs to override confidentiality provisions in cases where NOCLAR creates a significant threat to the public interest.

NASBA agrees with PEEC that it is in the public interest for an auditor who is aware of a NOCLAR to be able to communicate the NOCLAR to the successor auditor. The Code's Confidential Client Information Rule (ET sec. 1.700.001) prohibits the disclosure of a NOCLAR without the client's consent unless the communication meets one of the specific exceptions set forth in the rule. One such exception is compliance with professional standards. NASBA analyzed the laws and regulations of the fifty-five state boards of accountancy (Boards) and found that fifty-two Boards specifically provide an exception to their confidentiality provisions if the CPA follows professional standards. We firmly believe that it is in the public interest to allow the predecessor auditor to freely discuss matters involving NOCLAR with the successor auditor.

We believe the revision to the proposed interpretation that allows both senior and other CPAs in business to report a NOCLAR to a regulatory body depending on various factors is a significant enhancement to the proposed interpretation.

We agree that the interpretation is enhanced by clarifying that senior and other CPAs in business should disclose a NOCLAR to their employer's external auditor if the CPA determines such disclosure is necessary pursuant to the CPA's obligation to provide all information necessary to enable the auditor to perform the audit.

Comments on Specific Questions

Do you agree with the differentiation in requirements applicable to members in public practice providing services other than financial statement attest services?

NASBA believes that the proposed revisions are a substantial improvement to the originally proposed interpretation applicable to members in public practice. We agree with the PEEC's decision to bifurcate the guidance for CPAs in practice so that there are separate requirements for CPAs in practice providing financial statement attest services and CPAs in practice providing services other than financial statement attest services. We believe that adding a definition of financial statement attest service will add greater clarity to the Code.

Do you agree that a litigation or investigation engagement as defined in, and subject to, SSFS No. 1, and an engagement to which the protections set forth in IRC Section 7525 apply, should be excluded from the proposed interpretation for members in public practice? If not, why? Are there other nonattest services that should be excluded from the proposed interpretation? If yes, please identify which services and explain why.

NASBA believes that the carve out of certain litigation or investigation engagements that are subject to the AICPA's Statement on Standards for Forensic Services (SSFS) No. 1 is appropriate because the CPA may be engaged to perform such services specifically to address a known or suspected NOCLAR. We also agree that another carve out for tax services provided pursuant to the protection of Internal Revenue Code Section 7525 (client privilege) is appropriate.

Is a one-year transition period for the effective date appropriate? If not, why?

NASBA believes that the one-year transition period for the effective date of the interpretation is appropriate, but only if guidance and resources are available when the final interpretations are released and made effective. We suggest the PEEC leverage frequently-asked-questions developed by the International Ethics Standards Board for Accountants (IESBA). In addition, for members in business, more time and outreach may be necessary to ensure those members are aware of their new ethical responsibilities under the Code.

Other Matters:

We offer the following additional, specific comments and observations on the Exposure Draft for the PEEC's consideration:

Members in Public Practice:

- Paragraph .01 indicates that when the engaging entity and subject entity are different, the member's responsibility is solely to the engaging entity. However, we would note that when performing a financial statement audit of the subject entity, the member would still be responsible for informing management and those charged with governance (TCWG) of the subject entity about certain types of NOCLAR in accordance with the auditing standards.
- Paragraph .10 refers to matters that are "clearly inconsequential." We recommend adding the qualifying language from the IESBA standard: "Whether a matter is clearly inconsequential is to be judged with respect to its nature and its impact, financial or otherwise, on the client, its stakeholders, and the general public." We suggest the word *clearly* be removed; the definition of inconsequential is "of no significance" so, the word *clearly* is not relevant.
- Paragraph .11 states that it is the responsibility of TCWG to "identify and address" any noncompliance. TCWG have the responsibility of oversight but we do not believe that TCWG are responsible for identifying NOCLAR.
- Paragraph .13 states that if a member engaged to perform financial statement attest services becomes aware of *credible* information concerning a NOCLAR, the member should obtain an understanding of the matter. The word *credible* is not consistent with terminology used in the auditing standards. We recommend the PEEC consider using terminology from the auditing standards, e.g., quality of evidence.

Members Providing Services Other Than Attest Services:

- The second sentence of paragraph .32 (and other similar paragraphs in the proposed standards) states "Whether an act constitutes noncompliance is ultimately a matter to be determined by a court or other appropriate adjudicative body." We recommend deleting the sentence. It is a statement of fact but does not add to the guidance in any meaningful way.

- Paragraph .40 (and other similar paragraphs in the proposed standards) states that “The member should determine whether withdrawal from the engagement is necessary in the public interest.” We recommend deleting the phrase “*in the public interest*” in that paragraph as consideration of the public interest is more fully described in paragraph .41(e) (and other similar paragraphs in the proposed standards).

Members in Business

- The heading before paragraph .14 uses the term “Professional Accountants” (a term used in the IESBA Code) when “Members” was likely the intended term.

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Again, we appreciate the opportunity to comment on the Exposure Draft.

Very truly yours,



A. Carlos Barrera, CPA
NASBA Chair



Ken L. Bishop
NASBA President and CEO