

June 18, 2021

Mr. Brian S. Lynch
Chair, AICPA Professional Ethics Executive Committee
AICPA
220 Leigh Farm Road
Durham, NC 27707

Via email: Ethics-ExposureDraft@aicpa.com

Re: AICPA Professional Ethics Division Exposure Draft, Proposed Interpretations and Definition—*Responding to Noncompliance With Laws and Regulations*

Dear Mr. Lynch:

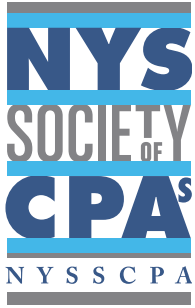
The New York State Society of Certified Public Accountants (NYSSCPA), representing more than 22,000 CPAs in public practice, industry, government and education, welcomes the opportunity to comment on the above-captioned exposure.

The NYSSCPA's Professional Ethics Committee deliberated the exposure draft and prepared the attached comments. If you would like additional discussion with us, please contact Victoria L. Pitkin, Chair of the Professional Ethics Committee, at (312) 670-0538, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,

Rumbi Bwerinofa-Petrozzello
President

Attachment



**NEW YORK STATE SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS**

COMMENTS ON

**AICPA PROFESSIONAL ETHICS DIVISION EXPOSURE DRAFT, PROPOSED
INTERPRETATIONS AND DEFINITION—*RESPONDING TO NONCOMPLIANCE
WITH LAWS AND REGULATIONS***

June 18, 2021

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Victoria L. Pitkin**

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New York State Society of Certified Public Accountants

Comments on

AICPA Professional Ethics Division Exposure Draft, Proposed Interpretations and Definition—*Responding to Noncompliance With Laws and Regulations*

The New York State Society of Certified Public Accountants (NYSSCPA or the Society) appreciates the opportunity to comment on the AICPA's Professional Ethics Executive Committee (PEEC) Exposure Draft, Proposed Interpretations and Definition—*Responding to Noncompliance with Laws and Regulations* (NOCLAR). We offer the following response to the request for comments in paragraph 42 of the Exposure Draft (ED or Proposed Interpretation).

Responses to Request for Comments

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

Response: We support the proposed carve outs being made for litigation and investigation services, and certain tax services. However, we are concerned that a blanket differentiation in requirements applicable to members in public practice providing nonattest services is unwarranted. Under the ED, a member providing nonattest services who becomes aware of a NOCLAR is only required to try to obtain an understanding of the matter. Communication with those charged with governance is limited to those circumstances where the member “has access” to them. In circumstances where the member has no access to those charged with governance, and the highest levels of management are involved in the noncompliance or suspected noncompliance, there is no redress for the member other than to remain silent. We believe that this is a deficiency in the Proposed Interpretation and ask PEEC to address this issue.

Furthermore, we do not understand why the documentation requirements regarding the NOCLAR would be different for those members performing attest and nonattest services. If a member performing nonattest services becomes aware of an instance of noncompliance or suspected noncompliance, we believe that they should be required to document the specifics of the matter and the discussion that was had with the appropriate level of management or those charged with governance, including with whom the issue was discussed and when. If the general intent of the Proposed Interpretation is to address the responsibilities of the member to act in the public interest when he or she becomes aware of noncompliance or suspected noncompliance, then those responsibilities should not be substantially different when the NOCLAR is detected through the performance of attest or nonattest services.

In addition, the Proposed Interpretation addresses the member's responsibility only. Many CPA firms have segregated departments whereby one member within the firm provides attest services and another member in the firm provides nonattest services not otherwise proscribed by ET 1.295, *Nonattest Services*. If the member who performs nonattest services becomes aware of noncompliance or suspected noncompliance, there is no requirement for that member to communicate with the member responsible for the attest service. Accordingly, we believe the Proposed Interpretation should be modified to require communication between members of the same firm who service the same client. Without having such information, the member performing the attest services may come to an erroneous conclusion regarding management integrity in the client acceptance/continuance process.

Question b.: 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.

Response: We believe that the exclusion of 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 is appropriate.

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

Response: We believe a one-year transition period is generous. We believe that a six-month transition would be sufficient for firms to incorporate the requirements of the Proposed Interpretation.

Other Comments

We believe the Proposed Interpretation could include greater emphasis on the need for a member to consult legal counsel knowledgeable in this area when encountering an issue of noncompliance or suspected noncompliance.