

November 30, 2020

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

Via email: Ethics-ExposureDraft@aicpa-cima.com

Re: AICPA Professional Ethics Division Exposure Draft, Proposed Interpretation—*Staff Augmentation Arrangements*

Dear Mr. Lynch:

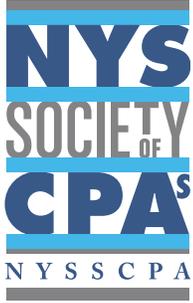
The New York State Society of Certified Public Accountants (NYSSCPA), representing more than 22,000 CPAs in public practice, industry, government and education, welcomes the opportunity to comment on the above-captioned exposure.

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 Jo Ann Golden, Chair of the Professional Ethics Committee, at (212) 719-8300, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,

Edward L. Arcara
President

Attachment



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

COMMENTS ON

**AICPA PROFESSIONAL ETHICS DIVISION EXPOSURE DRAFT, PROPOSED
INTERPRETATION—*STAFF AUGMENTATION ARRANGEMENTS***

November 30, 2020

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New York State Society of Certified Public Accountants

Comments on

AICPA Professional Ethics Division Exposure Draft, Proposed Interpretation— *Staff Augmentation Arrangements*

The New York State Society of Certified Public Accountants (NYSSCPA) appreciates the opportunity to provide comments on the AICPA's Professional Ethics Executive Committee (PEEC) exposure draft, Proposed Interpretation—*Staff Augmentation Arrangements* (ED or Proposed Interpretation).

General Comments

The NYSSCPA submitted a comment letter to PEEC on its exposure draft, Proposed Interpretation of the AICPA Code of Professional Conduct: *Staff Augmentation Arrangements Interpretation (ET sec 1.295.157)* (the original proposal) dated February 25, 2019. Based on the comment letter submitted by the National Association of State Boards of Accountancy (NASBA) in response to the original proposal, and PEEC's continued deliberations on this issue, we wish to retract our previous position on this matter as reflected in our February 25, 2019 letter.

Characterization of the interpretation

We observe that PEEC has now changed the characterization of the Proposed Interpretation. Under the original proposal, the interpretation was classified as part of the ET sec. 1.295, *Nonattest Services*. The new proposal classifies the interpretation as part of ET sec. 1.275, *Current Employment or Association with an Attest Client*. We conclude, therefore, that PEEC believes that the relationship created by a staff augmentation arrangement is that of employer (i.e., attest client)/employee (i.e., loaned staff).

We agree with the characterization of the relationship as an employment relationship because as stated in paragraph .01 of the ED "...the attest client is responsible for the direction and supervision of the activities performed by the augmented staff." Historically, the key determinant in the employee/independent contractor relationship issue centered around who supervises and directs the activity of the individual. In circumstances where the company directs the activities of the individual, the individual is, generally, determined to be an employee. We believe this concept should be applied to this issue. Accordingly, we conclude staff augmentation arrangements create employment relationships with attest clients.

Because the staff augmentation arrangement creates an employment relationship, we believe ET sec. 1.275.005, *Simultaneous Employment or Association with an Attest Client*, already addresses these situations. Under this interpretation, employment relationships with an attest client create multiple threats to the member's independence

that "...would not be at an acceptable level and could not be reduced to an acceptable level by the application of safeguards." (ET 1.275.005.02). The extant interpretation allows two very specific exceptions which would not impair the member's independence provided the prescribed safeguards are implemented. In a staff augmentation arrangement, an individual may work for the attest client during normal operating hours, but then be called upon to work for the firm after hours on other client matters.

Accordingly, in order to avoid falling under the Simultaneous Employment interpretation, we believe the Proposed Interpretation needs to include a strict proscription against the individual performing *any* work on behalf of the firm during the period of the staff augmentation arrangement. Without such a strict prohibition against performing work on behalf of the firm while in the employ of the attest client, we do not believe that PEEC can support the creation of a new interpretation under ET sec. 1.275 because the requirements of ET sec. 1.275.005 would prevail.

Potential conflicts between state boards of accountancy and AICPA

Not every state has adopted the AICPA *Code of Professional Conduct* (the Code) as their code of conduct. A staff augmentation arrangement could easily cross state lines such that staff employed by a firm in a state that has adopted the Code is loaned to an attest client in a state that has not adopted the Code, or vice versa. We are concerned that the adoption of the interpretation will create situations where the staff or firm will run afoul of a state board of accountancy or other governing body while still complying with the requirements of the Code.

Conflict between the AICPA Code of Professional Conduct and the International Code of Ethics for Professional Accountants (the International Code)

We are aware that in accordance with the AICPA's agreement with IFAC, US standards cannot be less restrictive than international standards. We believe the maintenance of a strict proscription against the employment or association, including staff augmentation arrangements, with an attest client will not put the Code in a negative position in relation to the International Code. In fact, we believe that adherence to ET sec. 1.275.005 will make the Code more restrictive than the International Code.

From a practical point of view, we believe that US members operate in a more litigious environment than firms operating elsewhere. In our view, the Proposed Interpretation exposes firms to potential litigation as lawyers will seek to exploit the conflicts between ET sec. 1.275.005 and proposed ET sec. 1.275.007. Accordingly, a more restrictive code with respect to staff augmentation arrangements would be warranted by the more litigious environment in which we operate.

Specific Comments

We offer the following responses to the specific questions posed in the ED.

Question: Should staff augmentation arrangements with attest clients be permitted under any circumstances? Why or why not?

Response: No. As discussed above, we believe that the staff augmentation arrangement creates an employer/employee relationship between the firm personnel and the attest client. We are not swayed by the provision that "...the firm bills the attest client for the activities performed by the augmented staff." Whether the staff is paid directly by the attest client or indirectly through the firm does not minimize the appearance that firm personnel are being simultaneously employed by the firm and an attest client. While, in an emergent situation, it may be easier for an attest client to turn to their CPA for assistance, the threat to the firm's appearance of independence is so great that we do not believe it can be reduced to an acceptable level through the application of safeguards.

We believe that any service that could be provided by firm personnel could equally well be sourced from companies specializing in temporary personnel placement. The desire to service a client or, worse, the desire to increase client billings should not take precedence over the firm's independence.

Question: If you believe staff augmentation arrangements should be permitted, do you agree with the proposed interpretation, including the proposed safeguards, that would allow such arrangements in very limited situations? Why or why not?

Response: We do not believe the proposed safeguards are sufficient to reduce the threat to independence to an acceptable level. The fact that an unexpected situation created the need for staff augmentation (para. .02a), the arrangement will not recur (para. .02b), or will only last a short period of time (para. .02c) are not safeguards. These first three conditions read more like rationalizations to allow an arrangement that should be proscribed, as discussed in our General Comments section above.

Question: Do you believe that 30 days is an appropriate time period for the attest client to make other arrangements (see par. .02c of the interpretation)? If not, why?

Response: As discussed above, we do not believe the fact the staff augmentation relationship will last for "only a short period of time" (.02c) is an actual safeguard. Furthermore, we are concerned with the inclusion of a rebuttable presumption that a short period of time will not exceed 30 days. We are of the opinion that where there is a will to find a justification, a pretext that more time is needed will be found. If PEEC believes that 30 days is an appropriate limit on the "short period of time," we suggest the Proposed Interpretation make the 30 day limit a strict proscription rather than a rebuttable presumption.

Question: Should an exception for staff augmentation arrangements with certain affiliates of a financial statement attest client, as described in paragraphs 14–19 of this explanation, be permitted?

i. Why or why not?

ii. If it should be permitted, should the proposed additions discussed in paragraphs 18–19 of this explanation be added as drafted or do you have suggested revisions?

Response: We believe that the provisions of ET sec. 1.224.010 should be applied to staff augmentation arrangements between a firm and an affiliate of an attest client. Because the affiliate is not an attest client itself, the provisions of ET sec. 1.275.005 would not apply. Because we do not support the inclusion of the Proposed Interpretation in the Code, the suggested inclusion of the paragraph described in .15 of the explanation is unnecessary. The proposed addition of a new item (f) to paragraph .02 of ET sec. 1.224.010, *Client Affiliates*, is acceptable.

Question: Do you believe there should be an exemption for staff augmentation arrangements for all SSAE engagements when the services provided by the augmented staff do not relate to the specific subject matter of the SSAE engagement, or should the exemption be limited to only AUPs under the SSAEs? Why or why not?

Response: Whether the services provided in a staff augmentation arrangement do or do not relate to the specific subject matter of an SSAE engagement is irrelevant if the arrangement cannot, first, overcome the apparent conflict with the simultaneous employment or association with an attest client interpretation discussed in the General Comments section above.

Question: Are there specific aspects of the proposal that you believe are too permissive or too restrictive? If so, please explain.

Response: Please refer to our comments in the General Comments section above.

Question: Does a six-month delayed effective date allow firms enough time to implement the necessary policies and procedures and terminate any relationships that would no longer be permitted? Why or why not?

Response: We do not believe that this Proposed Interpretation should be implemented for the reasons discussed above.