

Sept. 4, 2015

Ken Siong, IESBA Technical Director  
International Ethics Standards Board for Accountants  
International Federation of Accountants  
529 Fifth Avenue, 6<sup>th</sup> Floor  
New York, NY 10017  
[kensiong@ethicsboard.org](mailto:kensiong@ethicsboard.org)

Re: IESBA Exposure Draft – *Responding to Noncompliance with Laws and Regulations (NOCLAR)*

Dear Mr. Siong,

The Professional Ethics Committee (the committee) of the Pennsylvania Institute of Certified Public Accountants (PICPA) appreciates the opportunity to provide comments on the proposed revisions to the International Ethics Standards Board for Accountants (IESBA) Code of Ethics for Professional Accountants (Code). The PICPA is an association of more than 22,000 members working to improve the CPA profession and better serve the public interest. Founded in 1897, the PICPA is the second-oldest CPA organization in the United States. Membership includes practitioners in public accounting, education, government, and industry. The committee is a cross-section of our membership, with practitioners from large, regional, and small public accounting firms, members serving in business, and accounting educators.

The committee supports the IESBA's efforts to provide a mechanism for permitting the professional accountant (PA) to disclose confidential client information where disclosure is necessary to serve the public interest. The decision on whether to take that step entails a significant degree of judgment and consultation, and the committee agrees that robust guidance is needed to help members make these decisions. The committee also appreciates the IESBA's responsiveness to the numerous and significant concerns that the committee expressed in its comment letter on the original exposure draft. The revised exposure document appears to have addressed many of those concerns. While much of the language has been improved, the committee has a number of comments on the proposed provisions that are included below.

### **General Matters**

1. Where law or regulation requires the reporting of identified or suspected noncompliance with laws and regulations (NOCLAR) to an appropriate authority, do respondents believe the guidance in the proposals would support the implementation and application of the legal or regulatory requirement?

The committee is not aware of any conflicts between the proposed guidance and any laws or regulations that require the reporting of identified or suspected NOCLAR to an appropriate authority.

2. Where there is no legal or regulatory requirement to report identified or suspected NOCLAR to an appropriate authority, do respondents believe the proposals would be helpful in guiding PAs in fulfilling their responsibility to act in the public interest in the circumstances?

The committee agrees that the revised guidance is helpful in guiding PAs in fulfilling their responsibility to act in the public interest.

3. The board invites comments from preparers (including those charged with governance), users of financial statements (including regulators and investors), and other respondents on the practical aspects of the proposals, particularly their impact on the relationships between:

- (a) Auditors and audited entities
- (b) Other PAs in public practice and their clients
- (c) Professional accountants in business (PAIBs) and their employing organizations

The committee notes that many of the state statutes governing the practice of public accountancy in the United States preclude the accountant from disclosing confidential client information. The National Association of State Boards of Accountancy is encouraging state boards of accountancy to converge with the AICPA's Code of Professional Conduct, which may be altered based on revisions to the IESBA's Code. However, it may take a significant period of time before the proposed changes work their way through the U.S. state regulatory system.

### **Specific Matters**

4. Do respondents agree with the proposed objectives for all categories of PAs?

The proposed objectives appear appropriate for all categories of PAs, aside from Section 225.3 (i). This section proposes that one of the objectives of the PA is to "deter the commission of noncompliance where it has not yet occurred." It is unclear how the PA could be in a position to deter the commission of noncompliance of a client. The committee believes the intent of the guidance is to provide a mechanism for the PA to report suspected fraud or illegal acts that come to their attention in the event that the client does not take appropriate actions. The committee recommends that clarifying language be included in the final guidance.

5. Do respondents agree with the scope of laws and regulations covered by the proposed Sections 225 and 360?

The committee agrees with the scope of the laws and regulations covered by the proposed guidance.

6. Do respondents agree with the differential approach among the four categories of PAs regarding responding to identified or suspected NOCLAR?

The committee agrees with the differential approach among the four categories of PAs regarding responding to identified or suspected NOCLAR.

7. With respect to auditors and senior PAIBs:

- (a) Do respondents agree with the factors to consider in determining the need for, and the nature and extent of, further action, including the threshold of credible evidence of substantial harm as one of those factors?
- (b) Do respondents agree with the imposition of the third-party test relative to the determination of the need for, and nature and extent of, further action?
- (c) Do respondents agree with the examples of possible courses of further action? Are there other possible courses of further action respondents believe should be specified?
- (d) Do respondents support the list of factors to consider in determining whether to disclose the matter to an appropriate authority?

The committee supports the guidance for auditors and senior PAIBs with the exception of the following:

225.17 – Indicates that if management and those charged with governance agree that noncompliance has occurred, the PA “shall prompt them to take appropriate and timely actions.” The requirement to “prompt” management and those charged with governance goes beyond the advisory nature of the PA-client relationship. The committee, therefore, recommends that the language be revised to indicate that the PA should recommend, or advise, management and those charged with governance to take appropriate and timely actions.

225.18 – Indicates that the PA should consider whether management and those charged with governance understand their legal or regulatory responsibilities with respect to the matter. The committee notes that the wording of this suggests that the auditor is capable of providing legal advice. The committee requests that the wording be revised to read that management and those charged with governance should be advised to seek outside legal counsel to ensure that management is advised of its legal and regulatory requirements.

225.25 – This section proposes that the PA should take into account the perspective of whether a reasonably informed third party, weighing all of the specific facts and circumstances, would likely conclude that the accountant has acted appropriately in the public interest. The committee does not support this provision, as most third parties expect that PAs report all suspected fraud and illegal acts, regardless of a materiality threshold. The committee recommends revising the language to include the concept of the perspective of a peer.

8. For PAs in public practice providing services other than audits, do respondents agree with the proposed level of obligation with respect to communicating the matter to a network firm where the client is also an audit client of the network firm?

The committee concurs with this obligation to contact a network firm where the client is also an audit client of the network firm.

9. Do respondents agree with the approach to documentation with respect to the four categories of PAs?

The committee agrees with the revised approach to the documentation guidance.

Thank you for the opportunity to provide our comments related to the proposed revisions to the Code of Ethics for Professional Accountants. Feel free to contact me at (412) 338-9300 or the PICPA staff liaison, Allison Henry, at (215) 972-6187 with any questions regarding our comments.

Sincerely,



Jeffrey A. Ford, CPA  
Chair, PICPA Professional Ethics Committee

cc: Lisa Snyder, Director AICPA Ethics Division  
Allison Henry, CPA, PICPA Staff Liaison