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AICPA® EthicallySpeaking

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The Professional Ethics Executive Committee (PEEC) is a senior technical committee of the AICPA. The PEEC helps the AICPA carry out key aspects of its overall mission, namely to promote public awareness and confidence in the integrity, objectivity, competence, and professionalism of its members; establish professional ethics standards and other guidance for the profession in the Code of Professional Conduct; assist members in continually improving their professional conduct and performance; and monitor such performance by enforcing current standards.

Announcement
At the November 2009 PEEC meeting, Kenneth Dakdduk, the current chair of the PEEC, announced that he would be rotating off of the committee so he could take over as chair of the International Federation of Accountants (IFAC's) International Ethics Standards Board for Accountants (IESBA). It was also announced that Wes Williams would assume the position of chair. Please refer to Faces of the PEEC for further details regarding Williams' background.

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For additional information about projects of the Professional Ethics Executive Committee, contact Ellen Goria at (212) 596-6096 or egoria@aicpa.org.

Standard-Setting Projects

Immediate Family Member's Participation in Retirement or Savings Plans (Staff Liaisons: Jason Evans and Ellen Goria; Task Force Chair: Linda McAninch)

The PEEC is considering the impact on a member's independence when an immediate family member of a covered member participates in an employer's benefit plan that is either a client, sponsored by a client, or invests in a client, when such participation is the result of the family member's employment.

On September 4, 2009, the PEEC issued an exposure draft that included, among other things, certain revisions to the subsection "Application of the Independence Rules to a

Covered Member's Immediate Family" of Interpretation No. 101-1, "Interpretation of Rule 101," under Rule 101, *Independence* (AICPA, *Professional Standards*, vol. 2, ET sec. 101 par. .02), which include some exceptions to the independence requirements for certain immediate family members.

Overall, the comment letters received were supportive of the proposals and the Task Force anticipates presenting its recommendations to the PEEC at its February 4-5, 2010 meeting.

Confidential Client Information (Staff Liaison: James West; Task Force Chair: James Curry)

The PEEC is considering the issue of whether or not a member would be in violation of Rule 301, *Confidential Client Information* (AICPA, *Professional Standards*, vol. 2, ET sec. 301 par..01), if client information, such as statistical information and other data, was shared with a third party on a "no-name" basis for research or benchmarking purposes without the client's specific consent.

On September 4, 2009, the PEEC issued an exposure draft that included, among other things, a revision to Ethics Ruling No. 2, "Distribution of Client Information to Trade Associations," of ET section 391, *Ethics Rulings on Responsibilities to Clients* (AICPA, *Professional Standards*, vol. 2, ET sec. 391, par. 2), along with a proposed new definition of *confidential client information*. The proposal concludes that the use or disclosure of client information that is not known to be in the public domain or is not available to the public would be considered a breach of client confidentiality (that is, a violation of Rule 301) unless the member received the client's consent to disclose or use such information.

A number of comment letters were received, including some from members in academia who expressed concern that the proposal could severely limit certain audit research. The Task Force was expanded to include an academic as well as a member from business and industry and the Task Force plans to report its discussions to the PEEC at its February 4-5, 2010, meeting.

Client Affiliates (Staff Liaisons: Ellen Goria and April Sherman; Task Force Chair: Brian Lynch).

The Client Affiliates Task Force is charged with determining the circumstances under which independence would be considered impaired when members have financial interests in, or other relationships with, entities that are related to a client (in other words, client affiliates).

At the PEEC's November 2009 meeting, the Task Force reported that it started to analyze independence with respect to "downstream affiliates" (for example, subsidiaries) and "upstream affiliates" (for example, parents) and will next expand the analysis to consider brother-sister entities. The PEEC provided its input and requested that the Task Force present its preliminary recommendations to the PEEC at its February 4-5, 2010, meeting.

Inadvertent Violations (Staff Liaisons: Ellen Goria and Brandon Mercer)

The PEEC decided at its November 2009 meeting that it did not appear necessary to develop formal, authoritative guidance on inadvertent independence violations because the PEEC's enforcement process takes into consideration whether or not a violation is inadvertent as part of its sanctioning guidelines. The PEEC did, however, believe (1) nonauthorative guidance should be developed because small- and medium-sized practices currently may not have guidance to help them determine an appropriate course of action

when they inadvertently violate the independence standards, and (2) the nonauthorative guidance should focus on factors that help firms determine the impact of a violation on the engagement team's independence and objectivity, whether reliance on the attest report is still appropriate, and whether safeguards may be applied that would allow users to continue to rely on the report despite the occurrence of the independence violation.

Codification Project (Project Consultant: Catherine Allen; Staff Liaison: Ellen Goria; Task Force Chair: Wes Williams)

The primary objective of the codification project is to improve the AICPA Code of Professional Conduct by making it topically organized, informative, and easier to navigate. Currently, many ethics provisions appear throughout the AICPA Code of Professional Conduct and nonauthoritative guidance (such as, informal staff positions, questions and answers [Q&As], and basis for conclusions documents) reside outside of the AICPA Code. This project provides an opportunity to topically organize the authorative guidance and evaluate if any of the nonauthoritative guidance should be included in the codification.

At the PEEC's November 2009 meeting, the PEEC considered a draft topical outline for the codification that contained a format similar to that of the IESBA Code of Ethics for Professional Accountants (IESBA Code). The PEEC also approved the formation of various subtask forces to work with the Codification Task Force, including subtask forces on drafting conventions, implementation of conceptual framework approach, state board issues, and implementation of nonauthoritative guidance.

IFAC Convergence—Members In Business and Industry (Staff Liaison: Jason Evans; Task Force Chair: Alan Steiger)

The IFAC Convergence—Members in Business and Industry Task Force is comprised of members of PEEC and the AICPA Business & Industry Executive Committee and is charged with (*a*) reviewing Part C of the IESBA Code (applicable to professional accountants in business) and consider where additional guidance may be appropriate for AICPA members in business and industry, and (*b*) coordinating its activities with the Codification Task Force.

At the PEEC's November 2009 meeting, the Task Force reported that it generally supported the guidance set forth in Part C of the IESBA Code and believed much of it would be useful for AICPA members in business. The PEEC provided its input on a number of issues, including its support of including a confidentiality requirement in the AICPA Code that would prohibit members in business and industry from disclosing confidential information with respect to their employers, similar to that existing for members in public practice and their clients (such as Rule 301 – Confidential Client Information).

Interpretation 101-3: Establishing or Maintaining Internal Control (Staff Liaisons: Lisa Snyder and Ellen Goria; Task Force Chair: Wes Williams)

At its November 2009 meeting, the PEEC considered a possible inconsistency within Interpretation No. 101-3, "Performance of nonattest services," under Rule 101, *Independence* (AICPA, *Professional Standards*, vol. 2, ET sec. 101, par. .05) as it relates to the general activity (for example, prohibition) of establishing or maintaining internal controls, including ongoing monitoring activities for a client. The PEEC was advised that some perceive an inconsistency in Interpretation No. 101-3 because certain bookkeeping services and other nonattest services that are permitted under Interpretation No. 101-3 might be viewed as "maintaining internal controls" for the client. As such, the PEEC

appointed a Task Force to further consider this potential inconsistency and determine if clarification is needed. The Task Force includes members of the PEEC as well as representatives of the Accounting and Review Services Committee and the Auditing Standards Board.

Other Projects

Task forces also continue to work on projects related to providing clients with eXtensible Business Reporting Language and International Financial Reporting Standards related services and the impact such services would have on a member's independence.

Details about these as well as a complete list of the projects the PEEC plans to undertake during the next three years and a list of all PEEC exposure drafts are available online.

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International Highlights

The IESBA has embarked on a "quiet period" for the next year or two (with respect to independence standard-setting) so member bodies can go through their due process to update their codes for the recent changes made by the IESBA. For the period 2010–2012, the IESBA will likely undertake projects dealing with (*a*) responding to fraud or illegal acts (consider guidance for professional accountants on how to respond in situations where they encounter a suspected fraud or illegal act), (*b*) conflicts of interest (consider whether to expand the guidance in the IESBA Code on conflicts of interest), and (*c*) the application of the independence requirements to collective investment vehicles.

The IESBA will also focus its efforts on developing tools, resources, and other assistance such as Q&As, to help member bodies implement the new code. It is also believed that the IESBA will likely develop guidance on what it means to converge with the IESBA *Code of Ethics for Professional Accountants*.

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The Securities and Exchange Commission/Public Company Accounting Oversight Board Independence Rules

At the December 2009 AICPA National Conference on Current SEC and PCAOB Developments, Paul A. Beswick, deputy chief accountant, Office of the Chief Accountant of the Securities and Exchange Commission (SEC) gave a speech. Beswick reminded members of the importance of the timing of the communication required by the Public Company Accounting Oversight Board (PCAOB) rule concerning written communion to the audit committee about all relationships between the firm (and its affiliates) and the potential audit client (or persons in financial reporting oversight roles at the audit client) that may reasonably be thought to bear on independence. Specifically, Beswick noted that because of the increase in the number of initial public offerings (IPO), he believed it was important to remind the profession that "the written communication to the audit committee must occur prior to the firm accepting an IPO engagement; that is, prior to the start of the professional engagement period for an audit under PCAOB standards." He further noted that, "to the extent an audit firm has an existing private client now preparing to go public, the firm will have to reevaluate its relationships with the audit client under the PCAOB and the SEC independence rules as a necessary step prior to being engaged or beginning any PCAOB audit procedures." He concluded by stating that, "of course, this would include a robust process to identify any engagements, services, or other independence matters that impact

the firm's independence as the audit firm is now subject to SEC and PCAOB independence rules."

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Updates to Ethical Tax Standards

In the last issue of *Ethically Speaking*, it was mentioned that the Tax Executive Committee (TEC) had voted to approve revised Statements on Standards for Tax Services (SSTS) that will become effective on January 1, 2010. The revised SSTS are now available online and reflect numerous language clarifications as well as a few substantive changes. The most significant substantive revisions to the Revised SSTSs are the following:

- Current SSTS No. 1, *Tax Return Positions* (AICPA, *Professional Standards*, vol. 2, TS sec. 100): The current standard was changed to indicate that, in recommending a tax return position or preparing or signing a tax return, a member should
  - satisfy the reporting standard and disclosure requirements of the applicable taxing authority, or
  - if the taxing authority has no written standard or if it is lower than the following standard, the following will apply: for undisclosed positions, "realistic possibility of success;" for disclosed positions, "reasonable basis." (Note: TS section 100 contains no reference to an applicable taxing authority. Also, this represents an increase in the reporting standard for disclosed positions; in the current SSTSs, the standard for disclosed positions is "not frivolous.")

- Current SSTS No. 6, *Knowledge of Error: Return Preparation* (AICPA, *Professional Standards*, vol. 2, TS sec. 600) and No. 7, *Knowledge of Error: Administrative Proceedings* (AICPA, *Professional Standards*, vol. 2, TS sec. 700): The two SSTSs were combined to form SSTS No. 6 in the revised SSTSs.
- Current SSTS No. 8, *Form and Content of Advice to Taxpayers* (AICPA, *Professional Standards*, vol. 2, TS sec. 800) was renumbered as SSTS No. 7 and
  - it is noted that when communicating written advice to a taxpayer, the member should comply with any relevant standard of the applicable taxing authority.
  - it is emphasized that the member should consider the tax return reporting and disclosure requirements and the potential penalty consequences regarding the tax return position on which advice is being provided.
  - the list of factors to be considered in determining the form of advice to be provided is expanded.

A task force of the TEC is currently updating SSTS Interpretation No. 1-1, "Realistic Possibility Standard" and No. 1-2, "Tax Planning" (AICPA, *Professional Standards*, vol. 2, TS sec. 100) and is also developing further guidance that will take the form of practice aids and articles.

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Ethics Hotline

The AICPA Ethics Hotline provides nonauthoritative guidance to members on questions related to ethics, including independence. Each year it responds to more than 4,000 inquiries. The Ethics Hotline is open from 9 a.m. to 5 p.m. eastern time on weekdays and a staff member can be reached by dialing either (888) 777-7077, menu option no. 5, followed by menu option no. 2, or by e-mail at ethics@aicpa.org.

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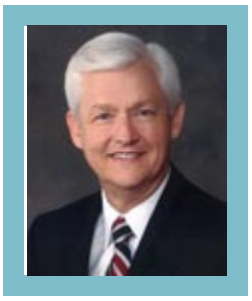
Faces of the PEEC

Wes Williams—New Chair of the PEEC



Williams took over as chair of the PEEC in November 2009. Prior to this appointment, Williams served as a member of the PEEC from 2003 through 2006. While a member of the PEEC, he served on the IFAC Convergence and Monitoring, Tax Compliance Services, Indemnification and Limitation of Liability, and Retention of Client Records task forces. He continued his involvement after rotating off by serving on the PEEC's Firm Name Working Group and Network Firm Task Force. Prior to Williams' involvement with the PEEC, he dedicated 9 years to other AICPA ethics-related committees, including the Technical Standards Subcommittee and Joint Trial Board. Williams has more than 35 years of CPA experience and is the partner-in-charge of Crowe Horwath LLP's Assurance Professional Practice group, which is the national office for audit and accounting related matters for the firm. Williams has also served as a member of the PCAOB Standing Advisory Group. He is active in his community, including service on the board of directors of Memorial Health System. Williams graduated from Purdue University and is a member of the Indiana CPA Society, a member of the Center for Audit Quality Professional Practice Executive Committee, and a member of the IFAC Forum of Firms Transnational Auditors Committee.

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Other Resources

- The Frequently Asked Questions (FAQs) Related to Performance of Nonattest Services provide taff insight into numerous topics such as tax, IT, bookkeeping, and controllership services.
- The *Plain English Guide to Independence* was updated as of July 1, 2009. This guide discusses in "plain English" the independence requirements of the AICPA and certain other rule making and standard setting bodies in the United States so that you can understand and apply the requirements with greater confidence and ease.
- The Professional Ethics 2009/2010 Update continuing professional education course will update you about new and revised ethical requirements that have been adopted or were being proposed or considered during the past year.
- Two new review tools are available to assist members in achieving compliance with the AICPA, U.S. Government Accountability Office (GAO; formerly U.S. General Accounting Offices), SEC, and PCAOB independence rules. Each of the review tools are divided into two sections. The first section is a series of questions designed to help auditors identify potential independence issues. The second section suggests possible follow-up actions that auditors may consider in addressing an independence issue.

- Independence Compliance: Checklists and Tools for Complying with AICPA, SEC, and PCAOB Independence Requirements
- Independence Compliance: Checklists and Tools for Complying With AICPA and GAO Independence Requirements, Second Edition

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Future Meetings

February 4–5, 2009—San Antonio
May 25–26, 2010—TBD
August 19–20, 2010—TBD

Interested parties are encouraged to attend the open (public) meetings in person. Furthermore, the Professional Ethics Division maintains an open phone line so that interested parties can observe the PEEC's public meetings via telephone. Anyone interested in attending a meeting in-person or via conference call should contact Ellen Goria at egoria@aicpa.org.

- Agenda materials for meetings are available online approximately one week before the meeting.
- Minutes of past meetings are available online.

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