

March 15, 2016

Ms. Anita M. Ford
Chair, AICPA Peer Review Board
c/o Tom Kindem, Staff Liason to Peer Review Board
American Institute of Certified Public Accountants
220 Leigh Farm Road
Durham, NC 27707-8110

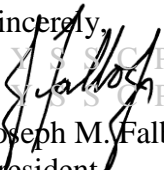
By e-mail: tkindem@aicpa.org

Re: Records Retention versus Defense of the Peer Reviewer

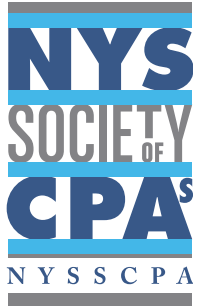
Dear Ms. Ford:

The New York State Society of Certified Public Accountants (NYSSCPA), representing more than 28,000 CPAs in public practice, business, government and education, wishes to provide some commentary and seek some guidance on the above captioned topic.

The NYSSCPA's Peer Review Committee deliberated a concern surrounding the 120 record retention period and prepared the attached comments. If you would like additional discussion with us, please contact Liren Wei, Chair of the Peer Review Committee at (718) 445-6308, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,

Joseph M. Falbo, Jr.
President

Attachment



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

**COMMENTS ON
RECORDS RETENTION VERSUS DEFENSE OF THE PEER REVIEWER**

March 15, 2016

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Raymond M. Nowicki
Grace G. Singer
William A. Zeronda**

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Ernest J. Markezin
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New York State Society of Certified Public Accountants

Comments on

Records Retention versus Defense of the Peer Reviewer

We appreciate the ability to reach out to the AICPA Peer Review Board (PRB) on matters of peer review which are of mutual interest. Our Peer Review Committee (Committee) has been evaluating the impact of the PRB's records retention guidance (the "120 - day rule") given the current state of DOL and GAO evaluations of peer review quality.

Our Committee is aware of the AICPA Engagement Expert Oversight results, which are consistent, more or less, with DOL and GAO conclusions that many of the subject engagements were non-conforming engagements. Our Committee also is aware of subpoenas being served on peer reviewers for their records and their testimony.

The changing environment of litigation and enforcement along with heightened scrutiny is now presenting a conundrum for peer reviewers: the peer reviewer is required to abide by the AICPA records retention rule, yet they may find that they should be retaining those same records to adequately defend themselves and their firms from unverified allegations. Examples exist where an ERISA benefit plan engagement is classified by the DOL as "non-conforming," and evidence later demonstrates that the failed engagement was not only not reviewed by the peer reviewer in question, it was not on the list of engagements made available for review. Yet the peer reviewer is subjected to an indefensible presumption that the peer reviewer failed to perform in conformity with peer review standards and to identify firm engagement departures that constituted "material information," the omission or misstatement of which leads to a "failed audit" (DOL's term). While we know that there is a difference between the AICPA Quality Control based system review and the DOL engagement-focused inspection process, the DOL still considers the matter to be a systemic failure of the peer review program.

Transparency is clearly becoming the siren of regulators, the public and the AICPA. Peer Review reports, and sometimes Findings and Remedial Action Plans are available on public websites of the PCAOB, state boards of accountancy and the firm's themselves. There is substantial information available now in the public domain, much of which is voluntarily offered by firms.

The peer review program started some 30 years ago, with the primary intent to enhance quality through critical evaluation, in a manner which was protected by privacy as between the reviewer and the reviewed firm. Given the changing environment, our Committee suggests the PRB reconsider its policy on record retention to allow the peer reviewer to retain working papers directly or indirectly supporting the evaluation of public interest engagements (e.g., DOL, GAO, PCAOB and other "must-picks") beyond the existing 120 day limit, and that such records include but not be limited to the engagement specific checklists on public interest engagements, the client list, and any MFC's or FFC's which were a by-product of the public interest engagements. We recognize that the records retention period may need to be limited to a reasonable period of time to satisfy statutes of limitation established by regulatory bodies.