

December 15, 2021

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

Via email: ethics-exposedraft@aicpa.org

Re: AICPA Professional Ethics Division Exposure Draft: *Proposed Revised Interpretation—Unpaid Fees*

Dear Mr. Lynch:

The New York State Society of Certified Public Accountants (NYSSCPA), representing more than 21,000 CPAs in public practice, industry, government and education, welcomes the opportunity to comment on the above-captioned exposure draft.

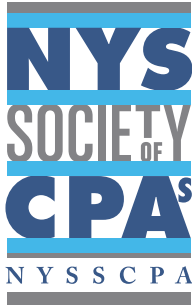
The NYSSCPA's Professional Ethics Committee deliberated the exposure draft and prepared the attached comments. If you would like additional discussion with us, please contact Victoria L. Pitkin, Chair of the Professional Ethics Committee, at (312) 670-0538, or Ernest J. Markezin, NYSSCPA staff, at (212)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

Sincerely,

A handwritten signature in black ink, appearing to read "Rumbi Bwerinofa-Petrozzello". The signature is written over a faint, light blue watermark of the NYSSCPA logo.

Rumbi Bwerinofa-Petrozzello
President

Attachment



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

COMMENTS ON

**AICPA PROFESSIONAL ETHICS DIVISION EXPOSURE DRAFT: *PROPOSED
REVISED INTERPRETATION—UNPAID FEES***

December 15, 2021

Principal Drafters

**Peter J. DelVecchia
Elliot L. Hendler
Kelly Kennedy-Ryu
Elliot A. Lesser
Santa Marletta
Andrew M. Mintzer
Victoria L. Pitkin**

NYSSCPA 2021–2022 Board of Directors

Rumbidzai Bwerinofa-
Petrozzello, *President*

Lynne M. Fuentes,
President-Elect

Thomas S. Pirro
Secretary/Treasurer

Kelly Capron, *Vice
President*

Kimberly G. Johnson, *Vice
President*

Kevin Matz, *Vice President*

Patricia A. McGrath, *Vice
President*

David G. Young *Vice
President*

Joanne S. Barry, *ex officio*

Edward L. Arcara

Steven K. Baierlein

Ramona Cedeno

Margaret Chen

William H. Dresnack

Zachary Gordon

Orumé A. Hays

Elliot L. Hendler

William C. Huether

John B. Huttlinger

Michael R. Koeppl

Katelyn Kogan

Edward N. Lee

Philip J. London

Shmueli Milecki

Michael E. Milisits

John A. Mourer

Lisa A. Mrkall

Maria L. Petrollese

Jennifer Pickett

Alexander Resnick

Ronald F. Ries

Sharon Sica-Costanzo

Denise M. Stefano

Jennifer Stone

Maria E. Suppa

A’Isha Torrence

Mark M. Ulrich

Liren Wei

Charles J. Weintraub

Craig A. Zellar

NYSSCPA 2021–2022 Professional Ethics Committee

Victoria L. Pitkin, *Chair*

Eric H. Altstadter

Susan M. Barossi

David M. Beckman

Nicole A. Booth

Gary E. Carpenter

David C. Daly

Peter J. DelVecchia

Elliot L. Hendler

Diane L. Jules

Kelly Kennedy-Ryu

Steven J. Leifer

Elliot A. Lesser

Santa Marletta

Andrew M. Mintzer

Brian K. Pearson

Paul M. Ribaud

Robert E. Sohr

NYSSCPA Staff

Ernest J. Markezin

New York State Society of Certified Public Accountants

Comments on

AICPA Professional Ethics Division Exposure Draft: *Proposed Revised Interpretation—Unpaid Fees*

The New York State Society of Certified Public Accountants (NYSSCPA) appreciates the opportunity to provide comments on the AICPA's Professional Ethics Executive Committee's (PEEC) Exposure Draft, *Proposed Revised Interpretation, Unpaid Fees*, dated September 20, 2021 (the Proposal).

General Comments

We support the PEEC's efforts to converge with other standards setters and to develop a principles-based framework for members, however, we have concerns with the proposed changes to the guidance regarding unpaid fees.

We believe the current, bright-line, one year approach has served auditors well throughout the years and should not be revised to a principles-based framework. The existing rule is objective, easy to apply and accomplishes its purpose. The current approach avoids abuse and ensures consistency. The proposed changes would make application subjective such that covered members could conceivably reach different conclusions concerning whether independence is impaired, even with the same fact pattern. Partners involved in different aspects of the audit relationship with a client – such as separate relationship and engagement partners, or if separate partners are on the company audit and employee benefit plan audit – may reach different conclusions as to whether an unpaid fee poses a threat to independence.

Specific Comments

We have provided the following responses to PEEC's specific questions posed in paragraph 10 in the Explanation section of the Proposal.

- a) PEEC does not believe unpaid fees create advocacy threats and, as such, proposes to eliminate this from the interpretation. Do you believe the advocacy threat is applicable to unpaid fees? If so, please explain.**

Response: We agree that unpaid fees do not create advocacy threats.

- b) Are the factors to consider when evaluating whether threats are at an acceptable level clear? Should any other factors be considered?**

Response: We suggest that guidance be provided for the factor described in paragraph .02a as to how a covered member is to assess the significance of the unpaid fees. Is it in relation to the firm’s practice as a whole, to the client relationship, the covered member’s portion of the firm’s practice or some other criteria? In certain circumstances the entire audit relationship with a public company might be considered immaterial if the firm is used as the materiality criteria, or if an engagement partner is not proscribed from using such a loose definition of materiality.

With respect to the factor described in paragraph .02c, we suggest the factor be modified or removed. The covered member has negotiated a fair fee, with which the client has agreed. The member may write-off or discount the fee if the client is experiencing financial hardship, but if fees remain unpaid, these unpaid fees will be a threat to independence. If this factor is included, the advocacy threat should remain as it may allow the accountant to put the client’s financial interests above their own or their firm’s interests.

In addition, we suggest an additional factor be added that addresses the firm’s prior experience with the client’s adherence to payment schedules.

c) Do you agree with the use of the terms “clearly insignificant” and “significant” in paragraph .03 of the interpretation? Why or why not?

Response: In general, defining unpaid fees as “clearly insignificant” and “significant” is subjective and can have different meanings to different users of the standard. If the Proposal moves forward and these terms continue in use, we suggest the following edit to the second sentence in paragraph .03:

“Alternatively, threats would not be at an acceptable level when unpaid fees are both not clearly insignificant to the covered member and relate to professional services provided more than one year prior to the issuance date of the current-year attest report.”

d) Should any other safeguards be provided as examples in paragraph .04?

Response: We recommend making it clear that in any given situation one *or more* of the safeguards might be necessary.

The proposed safeguard paragraph .04c, agreeing to a payment schedule before the current-year attest report is issued, may not be an effective safeguard as the client may refuse to comply with the payment schedule after receiving the report. If this safeguard is included as part of the final interpretation, we recommend changing the wording to state: “Obtain an agreement from the client to a payment schedule before the current-year attest report is issued.” In addition, we recommend that guidance be provided as to how long payment terms may extend into the future.

With respect to the proposed safeguard in paragraph.04.b, greater clarity is recommended with respect to when the payment is to be made, such as before the issuance of the report.

- e) **Are the safeguards in paragraphs .04a and .04d clearly delineated? Why or why not?**

Response: The firm is included in the definition of a covered member so its independence will also be impaired. Therefore, using a reviewer within the firm is not an adequate safeguard. An independent party would need to be engaged to perform the review prior to the attest report being issued. This would increase costs and may impose a hardship on smaller firms.

A post-issuance review is not an effective safeguard as it is applied after the report has been released and does not prevent a report being issued while independence may have been impaired.

- f) **Is it clear in paragraph .04f that communication with those charged with governance is not in itself a sufficient safeguard?**

Response: Although this would be a good item to communicate to those charged with governance, we do not believe this is a sufficient safeguard to reduce the threat to independence to an acceptable level.

- g) **Do you agree that a six-month delayed effective date provides adequate time to implement the proposal? If not, why, and what period would provide adequate time?**

Response: If the Proposal moves forward, we agree with the effective date proposed.