

# EMERGING ETHICS ISSUES

**2011 Regional Meetings**

**June 9 – Omaha, NE**

**June 23 – Point Clear, AL**

**Gaylen R. Hansen**

**NASBA**

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**ETHICS  
AT HOME**

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## Codification of the Code of Conduct

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### Codification Project Overall Objectives

- **Single source of all relevant guidance**
  - Topically organized
  - Clarifying language
  - On-line searchable and downloadable pdf versions\*
- **Authoritative rules will remain unchanged**
- **Incorporate some non-authoritative guidance**
  - Basis for conclusions, Q&As, informal policies, practice aids, etc.

**Intent is more user friendly Code, simpler and more intuitive but without changing current requirements and restrictions.**

\* Paper version will remain available in AICPA's *Professional Standards*.

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## Codification Project

### Objectives – Incorporates Conceptual Framework

- Approach can't be used to override existing prohibitions or requirements
  - Framework applies only if no specific guidance in Code
  - Identification of threats and application of safeguards to either eliminate or reduce threats to an acceptable level

**Currently the majority of the Code does not provide insight into why certain relationships are prohibited or permitted.**

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## Codification Project

### Objectives – Timing

- Long-term project: 4 years
- Completion target: Winter 2012

**For first two years, Codification will retain old Code citations to assist regulators and others in transition to new referencing conventions.**

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## Codification Project State Board Advisory Group

- State Board Advisory Group
  - Dan Sweetwood (NE)
  - Edith Steele (Former Executive Director, OK)
  - Kent Bailey (OR)
  - Mark Crocker (TN)
  - Rona Shor (NY)
  - Susan Harris (MS)

**Project has included outreach efforts with State Boards to consider impact of changes.**

## PEEC Current Projects Omnibus Proposal – February 2011

- *Affiliates and Independence*, ET 101-18 (new)
- *Nonattest Services*, ET 101-3 (partial revision)
- *Distribution of Client Information*, Rule 301, Ruling #2 (revised)
- *Conceptual Framework for Independence*, ET Section 100-1 (partial revision)
- *Independence for Certain Attestation Engagements (SSAE)*, ET 101-11 (partial revision)

**Much of Omnibus Proposal is clean up as a result of codification project. Five items above are most significant and apply solely to public practice.**

## ET 101-18, *Affiliates & Independence*

### Broadens Requirements to Interests & Relationships

- Current guidance
  - Limited to investor/investee situations (ET 101-8)
- ET 101-18 broadens scope of existing guidance
  - All F/S attest engagements
  - Apply conceptual framework to other attest engagements (e.g., agreed-upon procedures, SAS 70 / SSAE 16)

**ET 101-18 guidance is beyond that of IFAC due to diverse and sometimes complex organizational structures in U.S.**

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## ET 101-18, *Affiliates & Independence*

### Many More Types of Affiliations Now Addressed

- Traditional structures
  - Control, significant influence and direct financial interest
  - Subsidiaries, parents, brothers/sisters, partnerships, LLCs
- Non-traditional structures
  - Based on appearance or alignment relationships
  - Trusts, unions, benefit plans and sponsors, unregistered investment companies / private equity funds

**Additional focus on non-traditional structures.**

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## ET 101-3, *Nonattest Services*

### Clarify Independence for Certain General Activities

*Establishing or maintaining* internal controls, including performing ongoing monitoring activities for a client (old)

- “*Designing and implementing*” clearer than “*establishing or maintaining*”
- Clarifies if ET 101-3 general guidelines complied with certain activities don't impair independence
  - Bookkeeping, assisting with form and content of F/S, account reconciliations, posting audit adjustments, network maintenance

**Some believe there has been inconsistency in practice related to treatment of general activities.**

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## ET 101-3, *Nonattest Services*

### Clarifies Management Responsibilities vs. Functions

The member should not perform *management functions* or make management decisions for the attest client. (old)

- Management “*responsibilities*” clearer than “*functions*”
- If management accepts responsibility and other general requirements met CPA may assist
- Conceptual framework must be applied to ascertain whether management has accepted its responsibilities

**Revision should end practice of management simply designating someone to accept responsibility and make decisions. Rather, CPA / firm must be able to conclude they have not stepped into a management role.**

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## ET 101-3, *Nonattest Services*

### New Guidance on Monitoring Activities

- Ongoing monitoring vs. separate evaluations (SE)
  - Depending on scope, extent of control testing, and frequency of SE, these activities could be deemed equivalent to ongoing monitoring
- *New Requirement!* Significance of the threat created by performing SE should be evaluated and safeguards applied, if necessary

**Overall, except for single new requirement, ET 101-3 revisions not more restrictive nor intended to change current practice.**

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## Distribution of Client Information

### Revised Definition of *Confidential Client Information*

*Any information obtained from the client that is not known to be in the public domain or available to the public. (New definition)*

- Information in the public domain not confidential
  - Book, periodical, newspaper
  - Commercial databases
  - Document released by client
  - Regulatory or governmental filings

**Controversial as a result of academics' concern over limiting access to data needed for research.**

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## Distribution of Client Information Requires Client's Written Consent

- Before disclosure client written consent required
  - Nature of information
  - Type of third-party for distribution
  - Intended use of information
- Consent applies even if client is not specifically identified
  - CPA responsible for de-identification
- Consider confidentiality agreements with third parties

**Other info in CPA possession doesn't require consent: e.g. if related to CPA judgments, decisions and actions (actual / budgeted audit hours, risk assessments, materiality). May be released subject to de-identification.**

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## Independence Conceptual Framework Updated of Definition Public Interest Entity (PIE)

1. Listed entities (including foreign exchanges)
  2. Entities requiring audit by regulation / legislation with independence applicable to listed entities
- Removes some entities from PIE definition
    - ERISA EBPs, H&W plans, entities or programs subject to Single Audit Act (A-133), financial institutions, etc.

**Important since revision defines which entities are PIE's for purposes of determining nature and extent of safeguards to be applied under Conceptual Framework. New definition of PIE consistent with IFAC.**

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## ET 101-11, Independence for Attestation Engagements (SSAE)

- Covered members need to be independent of responsible party (which may not necessarily be the engaging party)
- Consider ET 102-2, *Conflicts of Interest* for engaging party
- Prohibited non-attest services permitted if they do not relate to specific subject matter of the SSAE and comply with the general requirements of ET 101-3

**Frequently with agreed-upon procedures or SAS 70/SSAE 16 engagements, the responsible party is different than the engaging party.**

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## PEEC Current Projects Omnibus Proposal – April 2011

- Defines “Member in Business & Industry” (New)
- Confidential Information From Employment (New)
- Financial Interests (New)
- False, Misleading, or Deceptive Acts in Marketing Professional Services (New)

**All of above, except Confidential Information, applies only to private practice.**

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## CPAs in Business & Industry Defined

*A member [CPA] employed or engaged on a contractual basis or volunteer basis in an executive, staff, or administrative capacity in such areas as industry, the public sector, education, the not-for-profit sector, regulatory bodies, or professional bodies. This does not include members [CPAs] while engaged in the practice of public accounting.*

**CPAs in public practice may also fall under B&I definition (e.g., service on volunteer board). Similarly, CPAs in B&I can be engaged in public practice (e.g., part-time tax prep).**

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## ET 501-9, *Confidential Information Obtained From Employment*

- Applies to all CPAs
- Act discreditable if disclosure of proprietary info without authority or consent of employer
- Exceptions for legal or professional responsibilities

**Not intended to prohibit using expertise gained through prior employment.**

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**ET 501-9, *Confidential Information Obtained From Employment (cont.)***

- Applies to current and previous employers, including voluntary service
- Confidential info = any proprietary info pertaining to employer not in public domain and obtained as result of employment

**OK to use info to obtain financing, deal with customers, vendors and others on behalf of employer.**

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**ET 501-10, *Financial Interests***

- Addresses threats to integrity and objectivity of CPAs in industry
- Recognizes threats created as result of financial interests or performance incentives
- Identifies safeguards to reduce threats
  - Consultation or education on ethical and legal issues

**Financial interests or incentives are not prohibited.**

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*ET 501-11, False, Misleading, or Deceptive Acts in Marketing Professional Services*

- Claims a CPA in industry makes about qualifications
- Representations about certifications or accreditations that would cause a reasonable person to misunderstand or be deceived
- Violation is an “act discreditable”

Addresses resume exaggerations and outright fraud.

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**ETHICS  
ABROAD**

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## IESBA\* Current Projects

- Responding to Fraud or Illegal Acts
- Inadvertent Violations
- Conflicts of Interest

\* IFAC's International Ethics Standards Board for Accountants

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## IESBA Current Projects Responding to Fraud or Illegal Acts

- Confidentiality vs. disclosure
  - Is there a duty to disclose confidential information about a suspected fraud or illegal act?
  - How do you exercise the duty?
  - Who should disclosure be directed to?
  - What if matter is not addressed by client or employer?
  - Should guidance differ for public vs. private practice?

**Project will likely expand to cover unethical and improper acts.**

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## IESBA Current Projects Inadvertent Violations

- Should Code address violations or be left solely to regulators?
- Should all violations be reported, regardless of magnitude?  
Are some violations so great they cannot be overcome?  
What is impact on client, public?
- What does “inadvertent” mean?
- Should project apply only to independence? What about objectivity, integrity?

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## IESBA Current Projects Inadvertent Violations (Cont.)

- Are expectations the same for both small and large firms?
- What level of adherence to QC standards are required?
- What discussions are required with those in charge of governance, and when?
- What documentation is required?

**Focus may expand to all violations. Overriding concern is giving a pass for unethical behavior. Remember, many countries do not have regulatory systems similar to ours.**

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IESBA Current Projects  
Conflicts of Interest

- Define conflicts
- Requirement to identify and evaluate
- Reasonable and informed third-party test
- Safeguards to address threats

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**ETHICS  
CONVERGENCE**

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## Convergence Strategies

- Significant advantages to identify and narrow differences where appropriate
  - AICPA requirements exceed IFAC
    - Loans and contingent fees
  - IFAC requirements exceed AICPA
    - Partner compensation / evaluation based on selling non-attest services
    - Confidentiality of accountants in business and industry

**Substantive changes to AICPA Code will follow due process procedures.**

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# QUESTIONS?

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## Ethics and Strategic Professional Issues Committee

- Gaylen Hansen, Chair
- Richard David, Co-Chair
- Kent Bailey
- Steven Corbeille
- Bobby Creech
- John Dailey
- Andy DuBoff
- Gary Fleming
- 
- Gary Forte
- Mike Fritz
- Ray Johnson
- Kurt Kofford
- Chad Singletary
- Dick Thorsen
- Cecil Wood
- Lisa Axisa, NASBA Staff