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Washington, DC 20548

June 23, 2021

Ms. Toni Lee-Andrews
Director, Professional Ethics Division
American Institute of Certified Public Accountants
220 Leigh Farm Road
Durham, North Carolina 27707-8110

GAO's Response to the AICPA's Professional Ethics Executive Committee's Proposed Interpretations and Definition of the AICPA Code of Professional Conduct, *Responding to Non-Compliance with Laws and Regulations*, June 2021

Dear Ms. Lee-Andrews:

This letter provides GAO's comments on the proposed interpretation and definition entitled *Responding to Non-Compliance with Laws and Regulations*, which the American Institute of Certified Public Accountants (AICPA) prepared. GAO provides standards for performing high-quality audits of government organizations, programs, activities, and functions and of government assistance received by contractors, nonprofit organizations, and other nongovernment organizations with competence, integrity, objectivity, and independence.¹ These standards, often referred to as generally accepted government auditing standards (GAGAS), are to be followed by auditors and audit organizations when required by law, regulation, agreement, contract, or policy. For financial audits, GAGAS incorporates by reference the AICPA's Statements on Auditing Standards. For attestation engagements, GAGAS incorporates by reference the AICPA's Statements on Standards for Attestation Engagements.

The AICPA Code of Professional Conduct does not currently provide specific guidance for its members who encounter noncompliance with laws or regulations (NOCLAR) or suspected NOCLAR. The AICPA Professional Ethics Executive Committee (PEEC) believes that including robust guidance in the proposed interpretations—setting forth a member's responsibilities when encountering a NOCLAR at a client or within the employing organization—serves the public interest.

We support the AICPA's efforts to develop guidance setting forth members' responsibilities when encountering NOCLAR or suspected NOCLAR to provide further clarity to members and help serve the public's interest.

We provide our responses below to the AICPA's questions included in the proposed interpretations and definitions.

¹GAO, *Government Auditing Standards: 2018 Revision Technical Update April 2021*, [GAO-21-368G](#) (Washington, D.C.: April 2021).

Responses to Questions Included in the Proposed Interpretation

1. Do you agree with the differentiation in requirements applicable to members in public practice providing services other than financial statement attest services?

We believe that differentiating the requirements applicable to members in public practice that provide services other than financial statement attest services is appropriate.

2. Do you agree that a litigation or investigation engagement as defined in, and subject to, Statement on Standards for Forensic Sciences (SSFS) No. 1, and an engagement to which the protections set forth in Internal Revenue Code (IRC) Section 7525 apply, should be excluded from the proposed interpretation for members in public practice? If not, why? Are there other nonattest services that should be excluded from the proposed interpretation? If yes, please identify which services and explain why.

We agree that it is appropriate to exclude litigation or investigation engagements as defined in, and subject to, SSFS No. 1, and engagements to which the protections set forth in IRC Section 7525 (*Confidentiality Privileges Relating to Taxpayer Communication*) apply. We agree that services performed under SSFS No.1 may be conducted to address known or suspected NOCLAR, and to that end, compliance with the interpretation would be inconsistent with the purpose of an engagement conducted under SSFS No.1. In addition, we agree that tax services performed pursuant to IRC Section 7525 should be excluded as client privilege arrangements, which may be applicable, would be inconsistent with NOCLAR requirements.

We believe that while an additional exclusion is unnecessary, additional clarification could be provided for engagements that are performed in accordance with GAGAS. Laws, regulations, and provisions of contracts or grant agreements may require that audits be performed in accordance with GAGAS, which may require auditors to report NOCLAR to external parties, the relevant funding agency, or both. We suggest adding the following language in the scope section:

An auditor performing an audit in accordance with GAGAS may be required to report on noncompliance with laws, regulations, and provisions of contracts or grant agreements that differ from or go beyond this interpretation.

3. Is a one-year transition period for the effective date appropriate? If not, why?

We believe that a 1-year transition period for the effective date is appropriate.

Thank you for the opportunity to comment on these important issues. If you have questions about this letter or would like to discuss any of the matters it addresses, please contact me at (202) 512-3133 or dalkinj@gao.gov.

Sincerely yours,



James R. Dalkin
Director
Financial Management and Assurance