

**Nevada Board Committee Interpretation**  
**Code of Conduct Rule 1.400.001 – Acts Discreditable**  
**Requests by clients and former clients for records**

**Client Provided Records**

- *Client-provided records* are accounting or other records belonging to the client that were provided to the member by, or on behalf of, the client, including hard copy or electronic reproductions of such records.

**Interpretation:**

Client-provided records in the member's custody or control should be returned to the client at the client's request even if outstanding fees are due.

- Member should provide the requested records in any format usable by the client.

**Examples:**

QuickBooks files as provided by client, on-line bank statements, credit card statements, stock broker statements any information that the member was provided on-line access to.

**Member Prepared Records**

- *Member-prepared records* are accounting or other records that the member was not specifically engaged to prepare and that are not in the client's books and records or are otherwise not available to the client, with the result that the client's financial information is incomplete.

**Interpretation:**

When a client makes a request for member-prepared records that are in the custody or control of the member or the member's firm (member) that have not previously been provided to the client, the member should respond to the client's request as follows:

- Member-prepared records relating to a completed and issued work product should be provided to the client, except that such records may be withheld if there are fees due to the member for the specific work product.
- Member should make the records available in any usable and accessible format. The member is not required to convert records that are not in electronic format to electronic format. If the records are requested in a specific format and the records are available in such format within the member's custody and control, the request should be honored. In addition, the member is not required to make formulas available, unless the member was engaged to make such formulas available as part of a completed work product or the formulas were used to create member-prepared records without which the client's financial information would be incomplete.

**Examples:**

Adjusting, closing, combining, or consolidating journal entries (including computations supporting such entries), and supporting schedules and documents that are proposed or prepared by the member as part of an engagement (for example, an audit).

### **Member's Work Products**

- *Member's work products* are deliverables as set forth in the terms of the engagement, such as tax returns.

### **Interpretation**

When a client makes a request for a member's work products that are in the custody or control of the member or the member's firm (member) that have not previously been provided to the client, the member should respond to the client's request as follows:

- Member's work products should be provided to the client, except that such work products may be withheld
  - if there are fees due to the member for the specific work product;
  - if the work product is incomplete;
  - for purposes of complying with professional standards (for example, withholding an audit report due to outstanding audit issues); or
  - if threatened or outstanding litigation exists concerning the engagement or member's work.
- Member should make the records available in any usable and accessible format. The member is not required to convert records that are not in electronic format to electronic format. If the records are requested in a specific format and the records are available in such format within the member's custody and control, the request should be honored. In addition, the member is not required to make formulas available, unless the member was engaged to make such formulas available as part of a completed work product or the formulas were used to create member-prepared records without which the client's financial information would be incomplete

### **Examples:**

Any deliverable engaged to perform which may include tax returns, payroll tax reports, audit, or financial statements.

### **Member's Working Papers**

- *Member's working papers* are all other items prepared solely for purposes of the engagement and include items prepared by the
  - member, such as audit programs, analytical review schedules, and statistical sampling results and analyses, and
  - client, at the request of the member and reflecting testing or other work done by the member.
  - Member, such as accounting entries prepared through accounting software (e.g. QuickBooks or other accounting software) or other electronic means (e.g. spreadsheets) solely for the purposes of issuing a deliverable (e.g. financial statements, tax return or other analysis) and in which the member was not engaged to prepare the underlying accounting entries.
  - Electronic tax data file

### **Interpretation:**

Member's working papers are the member's property and need not be provided to the client under provisions of this interpretation.

### **Examples:**

Audit programs, analytical reviews, or any other items needed to meet professional standards that would support the work or opinion of the member.

### Terminology

- The term *client* includes current and former clients.
- NV - Member defined as Licensee or Practitioner

### Format Records Should Be Provided

- The member is not required to convert records that are not in electronic format to electronic format or to convert electronic records into a different type of electronic format. Member should make the records available in any usable and accessible format. The member is not required to convert records that are not in electronic format to electronic format. If the records are requested in a specific format and the records are available in such format within the member's custody and control, the request should be honored. In addition, the member is not required to make formulas available, unless the member was engaged to make such formulas available as part of a completed work product or the formulas were used to create member-prepared records without which the client's financial information would be incomplete.

### Additional Requests for Information:

Once the member has complied with these requirements, he or she is under no ethical obligation to comply with any subsequent requests to again provide such records or copies of such records. However, if subsequent to complying with a request, a client experiences a loss of records due to a natural disaster or an act of war, the member should comply with an additional request to provide such records.

### Timeliness of Response to Request

Where a member is required to return or provide records to the client, the member should comply with the client's request as soon as practicable but, absent extenuating circumstances, no later than 45 days after the request is made.

### Charging Fees for Request/Retaining Copies

In connection with any request for client-provided records, member-prepared records or a member's work products, the member may

- charge the client a reasonable fee for the time and expense incurred to retrieve and copy such records and require that such fee be paid prior to the time such records are provided to the client,
- make and retain copies of any records returned or provided to the client.

### Record Retention Policy

The member is under no obligation to retain records for periods that exceed applicable professional standards, state and federal statutes and regulations, and contractual agreements relating to the service performed.



## Official release

Revised “Records Requests”  
interpretation (ET sec. 1.400.200) under  
the “Acts Discreditable Rule” (ET sec.  
1.400.001)

**AICPA Professional Ethics Division**

**Effective July 31, 2021**

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March 10, 2021

Ethics interpretations are promulgated by the executive committee of the Professional Ethics Division to provide guidelines about the scope and application of the rules but are not intended to limit such scope or application. Publication in the *Journal of Accountancy* constitutes notice to members.

The Professional Ethics Executive Committee adopted a revised "Records Requests" interpretation (ET sec. 1.400.200) under the "Acts Discreditable Rule" (ET sec. 1.400.001) at its February 9, 2021 meeting.

The interpretation will be effective on July 31, 2021.

## Text of the revised “Records Requests” interpretation [1.400.200]

The following revised interpretation was adopted by the Professional Ethics Executive Committee on February 9, 2021, and is effective on July 31, 2021.

(Additions appear in **bold italic** and deletions in ~~strike through~~. Defined terms appear in **bold roman**.)

### 1.400.200 Records Requests

#### *Terminology*

.01 The following terms are defined here solely for use with this interpretation:

- a. A client includes current and former *clients*.
- b. A member means the *member* or the *member's firm*.
- c. Client-provided records are accounting or other records, including hardcopy and electronic reproductions of such records, belonging to the client that were provided to the member by, or on behalf of, the client.
- d. Member-prepared records are accounting or other records that the member was not specifically engaged to prepare and that are not in the client's books and records or are otherwise not available to the client, thus rendering the client's financial information incomplete. Examples include adjusting, closing, combining, or consolidating journal entries (including computations supporting such entries) and supporting schedules and documents that the member proposed or prepared as part of an engagement (for example, an audit).
- e. ~~OBJ~~ Member's work products are the deliverables set forth in the terms of the engagement, such as tax returns.
- f. Working papers are all other items prepared solely for purposes of the engagement and include items prepared by the
  - i. member, such as audit programs, analytical review schedules, and statistical sampling results and analyses.
  - ii. client at the request of the member and reflecting testing or other work done by the member.
- g. ***Make records available means to provide the records in any format that is usable and accessible, whether electronic or otherwise, regardless of the format in which they were received.***
- h. ~~OBJ~~ ***Beneficiary is a person or entity for which the engaging entity has requested the member to perform professional services.***

## **Applicability**

.02 When a person or entity engages a member to perform *professional services* (engaging entity) with respect to ~~or for the benefit of another person or entity~~ a **beneficiary**, the member will be considered in compliance with the requirements of this interpretation related to client-provided records if the member ~~returns~~ **makes** these records **available** to the person or entity that ~~gave~~ **provided** the records to the member **or to the individual designated or held out as the entity's or individual's representative**.

.03 ~~When an engaging entity engages a member to perform professional services for the benefit of another person or entity (beneficiary), the~~ **The** member will be considered in compliance with the requirements of this interpretation related to **member-prepared records and** a member's work products if the member ~~provides~~ **makes** such ~~work products~~ **records and work products available** to the beneficiary **or to the individual designated or held out as the beneficiary's representative**. For example, if a company engages a member to perform personal tax services for the benefit of its executives, the member would be in compliance with the interpretation if the member ~~provided~~ **made** the tax returns **available** to the executives (see the "[Confidential Client Information Rule](#)" [1.700.001]).

.04 When an engaging entity engages a member to perform *professional services* with respect to another entity that is not the beneficiary of the *professional services*, absent an agreement stating otherwise, the member would be in compliance with the requirements of this interpretation related to a member's work products if the ~~member~~ **provided** **made** such work products **available** to the engaging entity **or to the individual designated or held out as the engaging entity's representative**. For example, if a company engaged a member to value the assets of another company for a possible acquisition, absent an agreement stating otherwise the member would be in compliance with this interpretation if the member ~~provided~~ **made** the valuation report **available** only to the engaging entity.

## **Interpretation**

.05 Members must comply with the rules and regulations of authoritative regulatory bodies, such as the member's state board(s) of accountancy, when the member performs services for a client and is subject to the rules and regulations of such regulatory ~~bodyies~~ **ies**. For example, a member's state board(s) of accountancy may not permit a member to withhold certain records, even though fees are due to the member for the work performed. Failure to comply with the more restrictive provisions of the applicable regulatory body's rules and regulations concerning the return of certain records would constitute a violation of this interpretation.

.06 ~~The member should return client-provided records in the member's custody or control to the client at the client's request.~~ **When an initial request for client-provided records is received, the member should make those records in the**



member's custody or control available to the person or entity that provided the records to the member. The member may charge a reasonable fee for the time and expense incurred to retrieve, copy, and ship such records; however, the client-provided records may not be withheld for nonpayment of such fees.

.07 ~~Unless a~~ **A member and the client or beneficiary may agree to terms other than those stated in this paragraph. When this occurs, the member should respond in accordance with such agreement. Otherwise,** ~~have agreed to the contrary, when a client makes~~ **a member should respond to** a request for member-prepared records or a member's work products that are in the member's custody or control and that have not previously been **made available** ~~provided to the client, or, if applicable, to the beneficiary~~ **the member should respond to the client's request** as follows:

- a. The member should ~~provide~~ **make available** member-prepared records relating to a completed and issued work product; ~~to the client, except that~~ **however,** such records may be withheld if fees are due to the member for that specific work product.
- b. Member's work products should be ~~provided~~ **made available;** ~~to the client, except that~~ **however,** such work products may be withheld **if**
  - i. if fees are due to the member for the specific work product;
  - ii. if the work product is incomplete;
  - iii. if for purposes of complying with professional standards (for example, withholding an audit report ~~due to~~ **with** outstanding audit issues); or
  - iv. if threatened or outstanding litigation exists concerning the engagement or **the** member's work.

.08 Once a member has complied with **paragraphs .02 through .07** ~~these requirements, he or she~~ **the member** is under no ethical obligation to

- a. comply with any subsequent requests to again ~~provide~~ **make** records or copies of records **available** ~~described in paragraphs .03-.04~~. However, if **after** ~~subsequent to~~ complying with a request a client experiences a loss of records due to a natural disaster or an act of war **is experienced**, the member should, **when practicable**, comply with an additional request to ~~provide~~ **make** such records **available**.
- b. retain records for periods that exceed applicable professional standards, state and federal statutes and regulations, and contractual agreements relating to the service performed. [Prior reference: paragraph .02 of ET section 501]
- ~~.09c.~~ **A member who has provided** ~~make the~~ records **available to any other associated party** ~~an individual designated or held out as the client's~~

representative, such as the general partner, majority shareholder, or spouse, is not obligated to provide such records to other individuals associated with the client. [Prior reference: paragraphs .377-.378 of ET section 591]

~~.10.09~~ Working papers are the member's property, and the member is not required to provide **make** such information **available** to the client. However, state and federal statutes and regulations and contractual agreements may impose additional requirements on the member.

~~.11.10~~ In fulfilling a request for ~~client-provided records, member-prepared records, or a member's work products~~ **the member's copy of client-provided records that was previously made available to the client or a party identified in paragraph .02, member-prepared records, or a member's work products**, the member may

- a. charge the client a reasonable fee for the time and expense incurred to retrieve, and copy, **and ship** such records and require **payment** that the client pay the fee before the member provides **makes** the records **available** to the client.
- b. provide **make** the requested records **available** in any format usable **and accessible format** by the client. However, the member is not required to convert records that are not in electronic format to electronic format. If the client requests records **are requested** in a specific format and the records are available in such format within the member's custody and control, the client's request should be honored. In addition, the member is not required to provide the client with formulas **make formulas available**, unless the formulas support the client's underlying accounting or other records or the member was engaged to provide **make** such formulas **available** as part of a completed work product **or the formulas were used to create member-prepared records without which the client's financial information would be incomplete**.
- c. make and retain copies of any records that the member **already made available** returned or provided to the client.

~~.12.11~~ **When a** member who is required to return or provide **make** records **available, the member** to the client should comply with the client's request as soon as practicable but, absent extenuating circumstances, no later than 45 days after the request is made.

~~.13.12~~ The fact that the statutes of the state in which the member practices grant the member a lien on certain records in his or her custody or control does not relieve the member of his or her obligation to comply with this interpretation. [Prior reference: paragraph .02 of ET section 501]

**14.13** A member would be considered in violation of the "Acts Discreditable Rule" [1.400.001] if the member does not comply with the requirements of this interpretation.



# Frequently Asked Questions: General ethics

As of September 8, 2021

AICPA Professional Ethics Division

## Introduction

The answers to these frequently asked questions (FAQs) are based on guidance the AICPA Professional Ethics Division staff provided in response to members' inquiries. The FAQs are not rules, regulations, or statements of the Professional Ethics Executive Committee and, therefore, are not authoritative guidance. The Conceptual Framework for Members in Public Practice (ET sec. 1.000.010)<sup>1</sup> and the Conceptual Framework for Members in Business (ET sec. 2.000.010) should be used in conjunction with these FAQs. Further, the answers do not address the requirements of other regulatory bodies, such as the state boards of accountancy, the Securities and Exchange Commission (SEC), and the U.S. Government Accountability Office whose positions may differ from those of the AICPA.

Terms that are defined in the AICPA code appear in italic. The first time a defined term or citation to the AICPA code appears, it will be linked.

The date the FAQ was added or revised appears in brackets at the end of the answer. Dates are not given for purely editorial revisions (for example, revised citations for the code).

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<sup>1</sup> All ET sections can be found in AICPA *Professional Standards*.

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## Blind trusts

**Question.** A covered member creates a blind trust and transfers assets into the blind trust. The covered member will not supervise or participate in the trust's investment decisions during the term of the trust. Will the trust and the underlying assets be considered the covered member's direct financial interests?

**Answer.** Although the covered member will not supervise or participate in the trust's investments decisions during the term of the trust, the trust and the underlying investments will be considered the covered member's direct financial interest if: (1) the covered member retains the right to amend or revoke the trust, or (2) the underlying trust investments will ultimately revert to the covered member as the grantor of the trust. See the "Trusts Investments" interpretation (ET sec. 1.245.020) under the "Independence Rule" (ET sec. 1.200.001) for other rights and responsibilities that would cause a trust and the underlying investments to be considered direct financial interests of a covered member. [December 2012]

## Campaign contributions

**Question.** May a member make a political contribution to the campaign of an individual that is associated with an attest client in a key position or holds a financial interest in the attest client that is material and/or enables the individual to exercise significant influence over the attest client without impairing independence or violating any other rule of conduct?

**Answer.** Yes. A member would not impair independence or be in violation of any other rule of conduct provided the political contribution is not made with the intention of influencing the procurement of professional services or in contravention of federal or state laws or regulations. Related Guidance: "Offering or Accepting Gifts or Entertainment" interpretation (ET sec. 1.285.010) under the "Independence Rule" and "Offering or Accepting Gifts or Entertainment" interpretation (ET sec. 1.120.010) under the "Integrity and Objectivity Rule" (ET sec. 1.100.001) [August 2012]

## Disclosure of commissions

**Question.** When is a member required to disclose to a client that a commission will be received under the "Commissions and Referral Fees Rule" ET sec. 1.520.001)?

**Answer.** A member should disclose that a commission would be received at the time the referral is being made so that the client can decide whether to act on the recommendation.

Related Guidance: "Receipt of a Commission" interpretation (ET sec. 1.520.020) [August 2012]

## Independent contractors

**Question.** Would *independence* be *impaired* if a CPA *firm* retained an independent contractor (as defined by IRS regulations and other federal regulatory guidance such as case law and revenue rulings) on a part-time basis that is employed by or associated with an *attest client* in a *key position*?

**Answer.** Yes. *Independence* would be *impaired* if an independent contractor retained by the *firm* was simultaneously employed by or associated with an *attest client* in a *key position*. However, if the independent contractor is employed by or associated with the *attest client* in a non-key position, a *member* should consider the following criteria when determining if *independence* (in fact and appearance) is *impaired*:

- a. Location of the *firm office* where the independent contractor will work in relation to the location of the office providing services to the *attest client*.
- b. Whether the independent contractor performs services for other *firms* or entities or solely to the *member's firm*. Factors to consider include but are not limited to:
  1. The percentage of income the individual derives from the *member's firm* in relation to the individual's total "self-employed" or earned income.
  2. The percentage of income the individual derives from the *client* entity in relation to the individual's total earned income.
  3. The amount of time the individual devotes to the *member's firm* versus time devoted to the *attest client*.
  4. The amount of time the individual devotes to the *member's firm* versus time devoted to other *firms* or entities.

In situations in which the *threats* to *independence* (in fact or appearance) are deemed not significant, the *member* or the *member's firm* should consider the potential conflict of interest arising from such a relationship as set forth in the "[Conflicts of Interest for Members in Public Practice](#)" interpretation (ET sec. 1.110.010) under "Integrity and Objectivity Rule". If *threats* are deemed significant, the *member* should consider whether *safeguards* are available to eliminate or reduce them to an *acceptable level*. If no *safeguards* could eliminate or reduce *threats* to an *acceptable level*, *independence* would be considered *impaired*.

Related Guidance: "[Conceptual Framework for Independence](#)" interpretation (ET sec. 1.210.010). [August 2012]

## Letter of intent to purchase practice

**Question.** Would *independence* be *impaired* under the "Independence Rule" if a *member* enters into a non-binding letter of intent to sell his or her practice to a purchaser that is not *independent* with respect to one or more of the *member's attest clients*?



**Answer.** No. A non-binding letter of intent to sell the *member's* practice would not *impair* the *independence* of the *member* if the purchaser is not *independent* with respect to one or more of the *member's attest clients*. [August 2013]

### Pro bono/below cost fees

**Question.** May a *member* perform *professional services* for a *client* for no fee or for a fee that is below cost without *impairing independence* or violating any other rule of conduct?

**Answer.** Yes. However, regardless of what fee is charged, *members* are required to comply with all professional standards that are applicable to the services performed. For example, a *member* must comply with the "[General Standards Rule](#)" (ET sec. 1.300.001), which requires *members* to

- only undertake those *professional services* that the *member* or the *member's firm* can reasonably expect to be completed with professional competence.
- exercise due professional care in the performance of *professional services*.
- adequately plan and supervise the performance of *professional services*.
- obtain relevant data to afford a reasonable basis for conclusions or recommendations in relation to any *professional services* performed.

The *member's* state board(s) of accountancy may have rules that are more restrictive than provided in the above guidance. Accordingly, *members* should consult with their state board(s) of accountancy for guidance.

*Professional services* performed for a *client* for no fee or a fee below cost would not be considered a gift for purposes of applying the "[Gifts and Entertainment](#)" subtopic (ET sec. 1.120.010) of the "Integrity and Objectivity Rule" and the "[Gifts and Entertainment](#)" subtopic (ET sec. 1.285.010) of the "Independence Rule."

Related Guidance: "Independence Rule", "[Unpaid Fees](#)" interpretation (ET sec. 1.230.010), "Integrity and Objectivity Rule," "General Standards Rule," "[Compliance with Standards Rule](#)" (ET sec. 1.310.001), "[Accounting Principles Rule](#)" (ET sec. 1.320.001), "[Confidential Client Information Rule](#)" (ET sec. 1.700.001), "[Contingent Fee Rule](#)" (ET sec. 1.510.001), "[Commissions and Referral Fees Rule](#)" (ET sec. 1.520.001), "[Acts Discreditable Rule](#)" (ET sec. 1.400.001), "[Advertising and Other Forms of Solicitation Rule](#)" (ET sec. 1.600.001). [August 2012; Revised August 2014]

### Compliance with SSCS's when member does not hold out as CPA

**Question.** The "Compliance with Standards Rule" requires that a *member* who performs *professional services*, including consulting services, comply with standards promulgated by bodies designated by *Council*, regardless of whether the *member* is holding out as a CPA. The standards applicable to members performing consulting services are set forth in the Statements on Standards for Consulting Services (SSCSs) and specifically state that such standards apply

to *members* holding out as a CPA while providing consulting services. Would a *member* who does not hold out as a CPA be in compliance with "Compliance with Standards Rule" if the member did not comply with the SSCSs while performing consulting services for a *client*?

**Answer.** Yes. Because the SSCSs apply to those *members* holding out as CPAs, a *member* who does not hold out as a CPA would not be in violation of "Compliance with Standards Rule" if the *member* performed consulting services that did not comply with the SSCSs. The *member* must still comply with all other rules of the code, including the "General Standards Rule" which requires that the member comply with the following standards:

- a. Professional Competence. Undertake only those *professional services* that the member or the member's *firm* can reasonably expect to be completed with professional competence.
- b. Due Professional Care. Exercise due professional care in the performance of *professional services*.
- c. Planning and Supervision. Adequately plan and supervise the performance of *professional services*.
- d. Sufficient Relevant Data. Obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any *professional services* performed.

#### Use of standards that have not been established by a body designated by AICPA Council

**Question 1:** May a *member* perform a *professional service* using standards that have not been established by a body designated by AICPA Council, as set forth in [appendix A](#), "Council Resolution Designating Bodies to Promulgate Technical Standards" (Council resolution) (ET appendix A) of the AICPA Code of Professional Conduct (hereinafter referred to as "alternative standards")?

**Answer 1:** Yes, there are circumstances in which a *member* is permitted to perform a *professional service* using alternative standards. However, the *member* must consider whether the *professional service* can be covered by technical standards established by a body designated by AICPA Council (hereinafter referred to as "established standards"). Examples of such standards are the Statements on Auditing Standards (SASs), Statements on Standards for Attestation Engagements (SSAEs), Statements on Standards for Accounting and Review Services (SSARSs) and Statement on Standards for Consulting Services (SSCS). The "Compliance With Standards Rule" (ET sec. [1.310.001](#) and [2.310.001](#)) states the following:

A member who performs auditing, review, compilation, management consulting, tax, or other professional services shall comply with standards promulgated by bodies designated by Council.

The [Council resolution](#) sets forth those bodies designated by Council to promulgate technical standards and includes AICPA standard-setting bodies, such as the Accounting and Review Services Committee (ARSC), Auditing Standards Board (ASB), and Management Consulting Services Executive Committee. (See all bodies designated by Council at [appendix A](#)).

When a *member* is engaged to perform a *professional service* that can be covered by established standards, the *member* must perform the service using such established standards. The *member* is permitted to also apply any relevant alternative standards.

When a *member* is engaged to perform a *professional service* that, based on his or her professional judgment, cannot be covered by established standards, the *member* will not be considered to be in violation of the "Compliance With Standards Rule" if only the alternative standards are applied.

Irrespective of the *professional service* performed by the *member* and whether he or she applies established or alternative standards, or both, the *member* must always comply with the "General Standards Rule" (ET sec. 1.300.001 and 2.300.001) when performing any *professional service*. This rule requires that a *member* comply with the following standards:

- a. Professional competence. Undertake only those professional services that the member or the member's *firm* can reasonably expect to be completed with professional competence.
- b. Due professional care. Exercise due professional care in the performance of professional services.
- c. Planning and supervision. Adequately plan and supervise the performance of professional services.
- d. Sufficient relevant data. Obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed.

*Members* should also be aware that laws or regulations, including state boards of accountancy rules and regulations, may require the *professional service* to be performed under established standards. [May 2016]

#### Form of communication

**Question.** The "Transfer of Files and Return of Client Records in Sale, Transfer, Discontinuance or Acquisition of a Practice" interpretation [1.400.205] requires certain communications to the *client* be in writing. Would electronic communications such as email be an acceptable form of communication?

**Answer.** Yes, provided electronic communication is considered an acceptable form of written notice to the *client* under the applicable state law. [August 2016]

### Transfer of files to another partner in the firm

**Question.** When a *partner* leaves a *firm* and his or her *clients* are transferred to another *partner* in the *firm*, do the requirements of the “Transfer of Files and Return of Client Records in Sales, Transfer, Discontinuance or Acquisition of Practice” interpretation need to be applied?

**Answer.** No. In such situations, the ownership of the *firm* has not been transferred outside of the *firm*; the *clients* have only been reassigned to a different *partner* in the *firm*. [August 2016]

### Transfer of client files in a merger

**Question 1.** The “[Confidential Client Information Rule](#)” does not prohibit the review of a member’s professional practice, which, per the “[Disclosing Client Information in Connection With a Review or Acquisition of the Member’s Practice](#)” interpretation, includes a review performed in conjunction with a prospective purchase, sale, or merger of all or part of a member’s practice. Would the “Confidential Client Information Rule” prohibit a member from disclosing confidential client information to the owners of the successor firm after the consummation of such a purchase, sale, or merge?

**Answer 1.** The “Confidential Client Information Rule” would not prohibit the member from disclosing confidential client information to the other owners of the successor firm after the purchase, sale, or merger of all, or part of, a member’s practice, provided the member retains an ownership interest in the successor firm and complies with the requirements of the “Transfer of Files and Return of Client Records in Sale, Transfer, Discontinuance or Acquisition of a Practice. [May 2017]

**Question 2.** Firm A is merging with Firm B (a sole proprietorship) to form Firm C. The sole owner of Firm B plans to join Firm C as a nonequity *partner*. Do the requirements of the “[Transfer of Files and Return of Client Records in Sale, Transfer, Discontinuance or Acquisition of a Practice](#)” interpretation (ET sec. 1.400.205) under the “Acts Discreditable Rule” (ET sec. 1.400.001) apply to Firm B’s owner?

**Answer 2.** Yes, the requirements apply. As a nonequity *partner*, Firm B’s owner would not have any ownership in Firm C, and would be responsible for requesting each *client’s* consent to transfer *client* working papers to Firm C. Alternatively, if Firm C decides to make Firm B’s owner an equity *partner* in Firm C, regardless of the percentage of ownership, then the requirements of the “[Transfer of Files and Return of Client Records in Sale, Transfer, Discontinuance or Acquisition of a Practice](#)” interpretation under the “Acts Discreditable Rule” would not apply. [February 2019]

## Transfer of Files and Return of Client Records in Acquisition of a Nonmember Practice

**Question.** Firm A (currently owned by a nonmember) will be sold to Firm B (owned by *members*). Firm A's owner will not join Firm B. Paragraph .05 of the "[Transfer of Files and Return of Client Records in Sale, Transfer, Discontinuance or Acquisition of a Practice](#)" interpretation requires that a *member* acquiring another *firm* or practice be satisfied that *client* consent was obtained prior to the transfer of *client* files and records to the *member*. Since the owners of Firm A are not *members* and therefore not subject to the interpretation's requirement to obtain *client* consent, would owners of Firm B still need to be satisfied that *client* consent was obtained prior to the transfer of the *client* files and records to Firm B?

**Answer.** Yes. Paragraph .05 of the "[Transfer of Files and Return of Client Records in Sale, Transfer, Discontinuance or Acquisition of a Practice](#)" interpretation requires successor *members* to be satisfied that the steps in paragraph .01 of the interpretation (to obtain *client* consent) were performed prior to the transfer of *client* records to the *members*. The requirement applies even if the predecessor is not a *member*.

## Electronic records

**Question 1:** Are the electronic data files created when a *member* prepares a tax return for a *client* using the *member's* own tax preparation software considered to be a *member's* working paper or a member-prepared record as defined in the "[Records Requests](#)" interpretation (ET sec. 1.400.200), and must it be provided to the *client* upon request?"

**Answer 1:** The electronic tax data file would generally be considered a *member's* working paper that has been created in the performance of the tax return preparation engagement but not a file that the *member* was specifically engaged to prepare (that is, the tax return is the work product the member has been engaged to prepare). The information contained in the tax data file is typically obtained from the *client's* books and records as well as the *client's* representations. Such information should therefore be available to the *client* through means other than the tax data file and the *client's* tax return records would not be rendered incomplete without the tax data file. Accordingly, the tax data file would not meet the description of a member-prepared record.

Working papers are considered to be the *member's* property under the interpretation and therefore, a *member* would not be required to provide the electronic data file to the *client*. However, state and federal statutes and regulations and contractual agreements may impose additional requirements on the *member*. The *member* must observe the highest standard of professional conduct which exists in the matter. [August 2015]

**Question 2:** Are account grouping schedules, depreciation schedules and carryover schedules prepared by a *member* to support a *client's* business tax return considered to be a *member's* working paper or a member-prepared record as defined in the "[Records Requests](#)" interpretation and must they be provided to the *client* upon request?

**Answer 2:** Grouping schedules, depreciation schedules and carryover schedules, are considered member-prepared records. However, since the *client's* records would be incomplete without this information the *member* would need to provide them to the *client* unless fees remain unpaid for the tax engagement. [August 2015]

**Question 3:** Are the adjusting entries proposed by a *member* to reconcile a *client's* book and tax records considered to be a *member's* working paper or a member-prepared records as defined in the "[Records Requests](#)" interpretation and must they be provided to the *client* upon request?

**Answer 3:** These adjusting entries are considered member-prepared records. Since the *client's* records would be incomplete without this information the *member* would need to provide them to the *client* unless fees remain unpaid for the tax engagement. [August 2015]

### Sample - Client Provided Records



25,000	2,000
4,000	500
4,800	5,000
33,800	7,500

- Balance Sheet and Income Statement
- Unadjusted Trial Balance
- Third-Party Tax Forms, such as 1099 series (MISC, DIV, INT, etc.)
- Original Receipts or Substantiation Logs
- Payroll or Sales Tax Reporting Returns



### Sample - Member's Working Papers

- Adjusted Trial Balance
- Scan or Copy of Client Records with Footing and Notes
- Results of Research, Notes to File and Calculations



### Sample - Member Prepared Records

- Tax Return Grouping Schedules
- Book and Tax Adjusting Entries (Schedule W support)
- Depreciation Schedules, Carryover schedules

[August 2015]

**Question 4:** The member was engaged to prepare *financial statements* using information provided by the client. As part of the engagement, the member entered the trial balance information received from the client into a commercial off-the-shelf (COTS) software product (for example, QuickBooks) to generate the *financial statements*.

The member provided the client with a hard copy of the *financial statements* and supporting documents. The client has since switched CPAs and requested that the member send the data file to new CPA. Must the member make the data file available to the new CPA?

**Answer 4:** The member is not required to make the data file available unless the member agreed to do so in the engagement letter or other similar agreement. Because the member was engaged only to prepare the *financial statements*, the data file is considered the member's working paper.<sup>2</sup> Additionally, the *financial statements* are not considered incomplete without the data file because the member provided the *client* with the *financial statements* and supporting documents.

The "Records Request" interpretation does not prohibit the member from making the data file available to the new CPA. [February 2021]

**Question 5:** The member was engaged to prepare a tax return for a client. As part of the engagement, the member entered the information received from the client into a commercial-off the-shelf (COTS) product (for example, QuickBooks). The member provided the client with a hard copy of the tax return and supporting documents. The client has since switched CPAs and requested that the member send the data file to the new CPA. Must the member make the data file available to the new CPA?

**Answer 5:** The member is not required to make the data file available unless the member agreed to do so in the engagement letter or other similar agreement. Because the member was engaged only to prepare the tax return, the data file is considered the member's working paper.<sup>2</sup> Additionally, the tax return is not considered incomplete without the data file because the member provided the client with the tax return and supporting documents.

The "Records Request" interpretation does not prohibit the member from making the data file available to the new CPA. [February 2021]

**Question 6:** The member was engaged to prepare a tax return. The tax *client* dropped off related tax documents at the member's office. As part of the engagement, the member scanned the documents and posted them to the member's portal. Did the member meet the obligation to return client-provided records<sup>3</sup> to the client?

**Answer 6:** If the client can access the records from the portal, it can be concluded the member has met the obligation. If the client can neither access the portal nor download the files or if the

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<sup>2</sup> The term "working paper" is defined in paragraph .01f. of the "Records Requests" interpretation.

<sup>3</sup> The term "client provided records" is defined in paragraph .01c. of the "Records Requests" interpretation

client specifically requested that the original documents be returned, then the member has not met the obligation. [February 2021]

**Question 7:** The member was engaged to prepare a tax return. The tax client dropped off related documents at the member's office. The client then moved across the country and now wants the member to ship those original documents so the client can retain a new CPA to prepare the tax return. May the member either (1) charge the client up front to ship the client-provided records back to the client or (2) require the client to pick up the records at the member's office?

**Answer 7:** If the client requests that the member ship the client-provided records back, the member may ask the client to pay shipping fee prior to shipping the records. However, if the client does not pay the fee, the member is still required to comply with the request within 45 days.

If the client is not willing to pay the shipping costs, the member can ask the client whether another format (such as electronic) would be usable and accessible to the client.

Because the client is now located a significant distance from the member, requiring the client to pick up the records at the member's office would not meet the accessibility requirement of the "Records Requests" interpretation.

Ultimately the member is responsible for complying with the request for the client-provided records within 45 days, using reasonable means. [February 2021]

#### Long association of senior personnel of the engagement team

**Question 1:** Does the familiarity *threat to independence* increase when senior personnel<sup>4</sup> of the engagement team have been on the attest engagement team for a long period of time?

**Answer 1:** Yes, the familiarity *threat to independence* may increase when senior personnel serve on the *attest engagement team* for a long period of time. The senior personnel will need to determine the significance of these *threats* and relevant factors for evaluating the *threat to independence*. Some of the factors to consider are as follows:

- a. Factors relating to senior personnel who are on the *attest engagement team* may include these:
  - i. The overall length of the individual's relationship with the *attest client*, including whether such relationship existed while the individual was at a prior *firm*

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<sup>4</sup> For the purposes of this Q&A, senior personnel are defined as *partners*, *partner equivalents*, and any other individuals on the *attest engagement team* who have responsibility for decision making on significant auditing, accounting, and reporting matters that affect the results of the *attest engagement* and who maintain regular contact with *attest client* management or *those charged with governance*.



- ii. How long the individual has been on the *attest engagement team* and the nature of the roles performed
  - iii. The extent to which the work of the individual is directed, reviewed, and supervised by other senior personnel
  - iv. The extent to which, due to the individual's seniority, the individual has the ability to influence the outcome of the *attest engagement*, for example, by making key decisions or directing the work of others on the *attest engagement team*
  - v. The closeness of the individual's personal relationship with the *attest client's* senior management or *those charged with governance*
  - vi. The nature, frequency, and extent of the interaction between the individual and the *attest client's* senior management or *those charged with governance*
- b. Factors relating to the *attest client* may include the following:
- i. The *attest client's* accounting and financial reporting issues and whether they have changed
  - ii. Whether there have been any recent changes in senior management or *those charged with governance*
  - iii. Whether there have been any structural changes in the *attest client's* organization that affect the nature, frequency, and extent of interactions the *member* may have with senior management or *those charged with governance*

The combination of two or more factors may increase or reduce the significance of these *threats*. For example, familiarity *threats* created over time by an increasingly close relationship between the senior personnel on the *attest engagement team* and an individual in the *attest client's* senior management would be reduced by the departure of that individual in the *attest client's* senior management and the start of a new relationship. This change in senior management at the *attest client* could reduce or eliminate the familiarity threat. [March 2018]

**Question 2:** Can the *firm* still perform the *attest engagement* if it has been determined that there is a significant familiarity *threat* to the "Independence Rule" because one or more senior personnel<sup>5</sup> has served on the *attest engagement team* for a long period of time?

**Answer 2:** Yes, the *firm* may still be able to perform the *attest engagement*, if *safeguards* can be applied to eliminate the *threat* or reduce it to an *acceptable level*. Examples of such *safeguards* may include the following (this list is not all inclusive):

- a. Changing the role of the senior personnel on the *attest engagement team* or the nature and extent of the tasks the senior personnel performs
- b. Having a professional accountant who was not included in the *attest engagement team* review the work of the senior personnel

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<sup>5</sup> For the purposes of this Q&A, senior personnel are defined as *partners*, *partner equivalents*, and any other individuals on the *attest engagement team* who have responsibility for decision making on significant auditing, accounting, and reporting matters that affect the results of the *attest engagement* and who maintain regular contact with *attest client* management or *those charged with governance*.

- c. Performing an independent internal or an external quality review of the attest engagement
- d. Rotating the senior personnel off the *attest engagement team* for an appropriate period based on the significance of the *threats*

If there are no *safeguards* that could be applied that would eliminate the *threat* or reduce it to an *acceptable level*, then *independence* will be *impaired*.

When the *member* applies *safeguards* to eliminate or reduce significant *threats* to an *acceptable level*, the *member* should document the identified *threats* and *safeguards* applied. [March 2018]

## Loans

**Question:** The “Loans and Leases with Lending Institutions” interpretation (ET 1.260.020) permits a covered member and that member’s immediate family to have a home mortgage from an attest client when all specified safeguards are met. Does this provision apply to other loans collateralized by the borrower’s primary or other residence?

**Answer:** Yes. The home mortgage loans covered by paragraphs .02 and .03 of the interpretation apply to all loans collateralized by a borrower’s primary residence (for example, a home equity line of credit) or non-primary residence (for example, a secondary or vacation home). [May 2021]

## Staff augmentation arrangements

**Question 1:** What are the differences between a staff augmentation arrangement with a *client* and a nonattest services engagement?

**Answer 1:** In a staff augmentation arrangement, the *client* agrees to be responsible for the direction and supervision of the activities performed by the loaned staff. The *member’s* supervision of the arrangement is limited to ensuring compliance with the terms of the arrangement rather than overseeing the activities of the loaned staff.

In a nonattest services engagement, the *member* or *member’s firm* is solely responsible for the direction and supervision of the staff’s activities. A nonattest services engagement generally results in the *member’s* issuance of a work product that is subject to the *firm’s* quality control process, including a review of the staff’s work prior to signing off on the final work product. [September 2021]

**Question 2:** The “[Staff Augmentation Arrangements](#)” interpretation (ET sec. 1.275.007) under the “[Independence Rule](#)” [1.200.001] requires that the augmented staff arrangement is not expected to reoccur.

If the *member* or *member's firm* has loaned staff for a prior unexpected situation and the *attest client* experiences a new unexpected situation, is the *member* prohibited from entering into another staff augmentation arrangement?

**Answer 2:** It depends. If another unexpected situation does arise and making other arrangements will create significant hardship for the *attest client*, the *member* needs to evaluate the facts and circumstances to determine whether loaning staff again will *impair independence*, even if only in appearance. In performing this evaluation, the *member* should consider factors such as the following:

- Whether, during the prior staff augmentation arrangement, the *member* should have reasonably expected that the *attest client* would need another such arrangement in the future
- The length of time that has passed since the previous staff augmentation arrangement
- Whether the situation giving rise to the need for loaned staff is different than what existed for the prior arrangement
- Whether the work to be performed and the loaned staff will be different from the work and staff involved in the prior arrangement
- Whether *attest client* has other options to deal with the current situation [September 2021]

**Question 3:** The "[Staff Augmentation Arrangements](#)" interpretation (ET sec. 1.275.007) under the "[Independence Rule](#)" [1.200.001] says that such arrangements are allowable only if there is an unexpected situation that would create a significant hardship for the *attest client* to make other arrangements.

What constitutes an unexpected situation?

**Answer 3:** An unexpected situation is an event or set of circumstances that was not planned for and was unforeseen by the *attest client*. Examples of unexpected situations that can affect an *attest client* include the sudden loss of a key employee, natural disasters, and casualty losses such as fire or theft. [September 2021]

**Question 4:** The "[Staff Augmentation Arrangements](#)" interpretation (ET sec. 1.275.007) under the "[Independence Rule](#)" [1.200.001] says that such arrangements can only be performed if there is an unexpected situation that would create a significant hardship for the *attest client* to make other arrangements.

What constitutes a significant hardship?

**Answer 4:** *Members* should use professional judgment in determining whether the unexpected situation will create a significant hardship for the *attest client*. In making this determination, the *member* should weigh factors such as the urgency of the need and the length of time it would take the *attest client* to make alternative arrangements. [September 2021]

**Question 5:** The "Staff Augmentation Arrangements" interpretation (ET sec. 1.275.007) under the "Independence Rule" [1.200.001] is effective November 30, 2021. How is the effective date applied to maintain *independence*?

**Answer 5:** To maintain *independence*, the *safeguards* provided for in the *interpretation* must be met for the following:

- New arrangements entered into on or after November 30, 2021
- Existing arrangements that are in place as of November 30, 2021

Any existing arrangements should be terminated by November 30, 2021 if the required *safeguards* cannot all be met as of that date. [September 2021]

