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ETHICS FOR ACCOUNTANTS IN 2023

FEATURING HERB RUBENSTEIN, JD, MPA, PGA





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Learning Objectives

- Identify recent updates and proposed updates to the AICPA Code of Conduct.
- Recognize how Sustainability/ESG now impacts ethics through the Sustainability Accounting Standards Board and other important developments
- Discover business opportunities in the field of ethics for CPAs and accounting/finance professionals.
- Explore opportunities to improve ethics within your organization and/or your client's business.

Overview and Importance of This Course

- Stay up-to-date on ever evolving ethics standards
- New era of ethics - violate any regulation, any accounting misstep, any maltreatment of the environment or employees, any misrepresentation -now Ethical Violations
- Fines skyrocketing - rebounding in many areas - where they had gone down
- Anticipatory Ethics is the new paradigm
- Client violates any rule, regulation, makes any misrepresentation now considered an ETHICS violation
- Great opportunities professionally to expand your business
 - Your human capital, skills and knowledge in the field of ethics for accountants
 - Your reputation
 - Your business
 - Accounting's role in helping business serve society

Important Themes of the Course

- ▶ Ethics - applying accepted morals to daily activities that are right for the times. Wage discrimination OK by gender, race in the 1950's and '60's and today against the law. ESG not considered years ago, now key reporting standards enforced by the SEC and more agencies to come
- ▶ Where there is a reported metric - there should be an accountant playing a KEY ROLE in developing the metric, ensuring its accuracy and timeliness, including DIVERSITY METRICS
- ▶ Every new ethics rulings, just like every new client request. represents a new business opportunity for accountants since it modifies or reinforces how accountants serve clients
- ▶ Today, the big fight is transparency vs. secrecy - NOCLAR
- ▶ New technologies, AI, Blockchain, Cryptocurrency must be mastered by accountants if clients are considering using them

AGENDA - CAN THERE BE UNETHICAL MEETINGS BY ACCOUNTANTS?

- ▶ Learning Objectives, Themes and discussed importance of the course
- ▶ All of these terms really describe the concept of “AN AGENDA”
- ▶ My position: It is UNETHICAL for 2 or more people to have a meeting that will cover numerous subjects and is designed to lead to a decision or evaluate data or information necessary for future decision making AND NOT HAVE A WRITTEN AGENDA
- ▶ At Intel - one executive said it would be UNTHINKABLE
- ▶ Maybe you don't set the agenda and the person who should will not allow others to help set an agenda and does not use them
- ▶ You can WRITE AN AGENDA FOR YOURSELF for every meeting you attend
- ▶ So, what are your goals for this two-hour webinar on Ethics for Accountants?

Learning Objective 1

Identify recent updates and proposed updates to the AICPA Code of Conduct.

NOCLAR - AICPA Joins The Rest of the World

- ▶ New NOCLAR Disclosure Reporting Rule goes into effect June 30, 2023
- ▶ Back in April 2016 - IESBA Creates new NOCLAR Standard - When a CPA sees a client (or if internal to an organization, the organization itself) do something that is noncompliant with approved ethics or accounting rules, *or any law or regulation*, the accountant has a duty:
 - ▶ Notify the client audit committee in writing and sooner the better
 - ▶ If you continue your relationship must monitor the situation (if possible)
 - ▶ If non-compliant person or entity does not come into compliance within a reasonable period of time, the accountant has a duty to report the non-compliance to the auditor, audit committee or in some cases the appropriate governmental and/or licensing authority
- ▶ <https://www.journalofaccountancy.com/news/2022/mar/peec-issues-wide-range-ethics-guidance-cpas.html>

More on NOCLAR

- ▶ **NEW INTERPRETATIONS AND RELATED REVISIONS: RESPONDING TO NONCOMPLIANCE WITH LAWS AND REGULATIONS**
- ▶ These new interpretations come under the *Integrity and Objectivity Rule*. When effective, they will require all members *who become aware of NOCLAR* as described in the Applicability and Scope sections of the interpretations to *take timely action(s)* based on the member's particular circumstances. A brief summary of the requirements follows:
- ▶ **MEMBERS IN PUBLIC PRACTICE**
- ▶ The requirements for members in public practice vary based on whether or not a member performs a financial statement audit or review for a client.
- ▶ When the **MEMBER PROVIDES AUDIT OR REVIEW SERVICES TO A CLIENT**, the requirements are as follows:

More on NOCLAR

- ▶ Upon becoming aware of *credible information* concerning an instance of NOCLAR (or suspected NOCLAR), the member should obtain an understanding of the matter.
- ▶ If the member *identifies or suspects that NOCLAR has occurred or is likely to occur*, he or she should discuss the matter with the appropriate level of management. When appropriate, the member should also discuss the matter with those charged with governance (governance board). In these discussions, the member should advise the parties to take appropriate and timely action.
- ▶ Later, the member should *evaluate the appropriateness of management's response* to the NOCLAR.
- ▶ The member should *consider whether to withdraw from the engagement* (if possible, under law or regulation), particularly if the client's management and/or governance board fail to respond appropriately to the NOCLAR.
- ▶ The member *should document relevant details about the NOCLAR* as described in the interpretation.
- ▶ SEE: <https://www.auditconduct.com/post/aicpa-issues-4-new-pronouncements>

More on NOCLAR

- ▶ **OTHER MEMBERS IN PUBLIC PRACTICE (NOT PROVIDING FINANCIAL STATEMENT AUDITS OR REVIEWS)**
- ▶ Upon becoming aware of credible information concerning an instance of NOCLAR (or suspected NOCLAR), other members in public practice should obtain an understanding of the matter.
- ▶ If the member identifies or suspects that NOCLAR has occurred or is likely to occur, he or she should discuss the matter with the appropriate level of management. When appropriate and if the member has access, the member should also discuss the matter with those charged with governance (governance board). In these discussions the member should advise the parties to take appropriate and timely action.
- ▶ The member *should communicate the NOCLAR to the client's auditor*, if within the same firm and consider whether to do so if the auditor is in the same network as the member. Otherwise, the interpretation precludes the member from disclosing the NOCLAR to the client's external auditor.
- ▶ The member is encouraged to document the relevant details of the matter as described in the interpretation.

More on NOCLAR

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- ▶ The member should communicate the NOCLAR to the client's auditor, if within the same firm and consider whether to do so if the auditor is in the same network as the member. Otherwise, the interpretation precludes the member from disclosing the NOCLAR to the client's external auditor.
- ▶ The member is encouraged to document the relevant details of the matter as described in the interpretation.

More on NOCLAR - Members in Business (Con't)

- ▶ The member should determine whether disclosure to the organization's auditor, if any, is appropriate and necessary.
- ▶ The member should evaluate the appropriateness of management's and the governance board's response to the NOCLAR.
- ▶ ***The member should determine whether to act further in the public interest (e.g., resign from the organization, inform the organization's parent company about the NOCLAR, or report the NOCLAR to an appropriate authority, if permitted by law and regulation).***
- ▶ The member is encouraged to document relevant details about the NOCLAR as described in the interpretation.

More on NOCLAR

- ▶ **OTHER MEMBERS IN BUSINESS (NON-SENIOR ROLE)**
- ▶ Upon becoming aware of credible information concerning an instance of NOCLAR (or suspected NOCLAR), a member who does not serve in a senior role in an organization should obtain an understanding of the matter.
- ▶ If the member identifies or suspects that NOCLAR has occurred or is likely to occur, he or she should discuss the matter with his or her immediate supervisor, if any, to determine how to address the NOCLAR. If the supervisor was involved with the NOCLAR, the member should discuss the matter with the next higher level of authority.
- ▶ The member should determine whether disclosure to the organization's auditor, if any, is appropriate and necessary.
- ▶ *Further action by the member may include reporting the NOCLAR to an appropriate authority, if permitted by law and regulation.*
- ▶ The member is encouraged to document relevant details about the NOCLAR as described in the interpretation.

Academic Community Response to NOCLAR

- Will promote new academic research on impact of unethical behavior and financial results
- Will lead to publications that will increase public awareness and involvement
- Will promote transparency
- Will influence how accounting is taught
- Will promote study of how often and under what circumstances accountants do actually report NOCLAR

More on NOCLAR

- ▶ The PEEC also adopted conforming changes to the interpretations “Ethical conflicts” for members in public practice and business (ET sec. 1.000.020 and 2.000.020, respectively).
- ▶ Official notice of the revisions will appear in the Journal of Accountancy online in June 2022. The new interpretations and revisions are effective June 30, 2023, and early implementation is allowed.
- ▶ NOCLAR includes:
 - ▶ Financial irregularities, fraud, deviations from GAAP, failure to report material information
 - ▶ ESG Reporting Errors and Environmental Accounting Fraud and Misrepresentation
 - ▶ Discrimination, Failure to pay women, minorities, LGBTQ equal pay for equal work
 - ▶ Sexual harassment which has financial implications to client
 - ▶ Any violation of state or federal law including whistleblower retaliation
 - ▶ Any violation of any state or federal regulation
 - ▶ NOCLAR covered activities will grow over time as the concept of “materiality” grows

Question 1

- Regarding the new NOCLAR rule, how has it/will it impact the way you practice accounting?
 - a) This will have a significant impact
 - b) This will have a moderate impact
 - c) This will have little impact
 - d) I am not sure

Independence and Information Systems Services (1.295.145)

- Issued: 6/2019, effective 1/1/21, went into effect for 1/1/23 to allow for additional educational efforts (practice aids), but early implementation is allowed.
- Clarifies definitions and rules of information system services for non-attest work.
- Definitions:
 - COTS Software (Commercially Available Software)- Commercially available software designed, developed, distributed, and maintained by third party.
 - Designing Software - Determining how it will function, process data, and produce results.
 - Developing Software - Writing and testing code.

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Independence and Information Systems Services - (cont'd)

- Definitions (Cont'd)
 - Customizing Software - Enhance or modify the software by adding new features/functions.
 - Install Software - Perform an initial load onto a client's hosting site.
 - Implementing Software - Range of activities including installation, configuring, design, and development.
 - FIS System (Financial Information System) - Aggregates source data significant to financial statements or processes.

Independence and Information Systems Services - (cont'd)

- Threats to independence at acceptable level for performing design, development, and implementation services for non-FIS with an attest client.
- Threats to independence not at an acceptable level when designing or developing FIS for an attest client.
- Threats to independence at acceptable level when performing implementation services related to FIS COTS software where services do not involve design, development, customizations, or creation.
- Must always be in compliance of general requirements for non-attest services!

Staff Augmentation

- Issued in March 2021, effective in November 2021.
- Part of IESBA convergence.
- Involves lending firm staff to attest client when attest client directs and supervises their activities. Firm then bills the attest client for work performed by augmented staff.

Staff Augmentation - Cont'd

- Independence threats would not be at an acceptable level unless all of the following criteria are met:
 - Due to unexpected circumstances and would be significant hardship for client to make other arrangements.
 - Augmented staff arrangement is not expected to recur.
 - Augmented staff help only occurs for a short time frame (less than 30 days).
 - Augmented staff neither participates or is in position to influence attest engagement.

Question 2

- ▶ Which of the following conditions need to be met for independence threats to be at an acceptable level in a staff augmentation for an attest client?
 - a) Unexpected circumstances for client and significant hardship for other arrangements.
 - b) Augmented staff will not be recurring.
 - c) Augmented staff will only help for less than 30 days.
 - d) All of the above.

Acts Discreditable Rule -

- AICPA Rule 501 - Now applies to any discrimination in violation of state, local or federal laws or harassment
- Beware, plaintiffs' attorneys, and I use to be one, will pick up on this and use it as leverage to get a large settlement in a discrimination or harassment case against an accounting firm or accountant
- Scope of this rule is huge: Applies to retired and nonworking CPA's
<https://www.aicpa.org/content/dam/aicpa/research/standards/codeofconduct/downloadabledocuments/2014december15contentasof2014june23codeofconduct.pdf>, 1.400, page 105
- A member shall not commit an act discreditable to the profession.
- Old rule, 2015, but gets new teeth every day. Now includes “disclosure of confidential client information.” Hacking = violation? Is there a “reasonable safeguards defense?” What was reasonable yesterday may not be today.

Acts Discreditable Rule (con't)

- ▶ Applies to “record requests” from clients and others, See:
- ▶ <https://us.aicpa.org/content/dam/aicpa/interestareas/professionalethics/community/exposedrafts/downloadabledocuments/2021/2021-March-records-requests-official.pdf>
- ▶ Effective July 31, 2021
- ▶ Entire Webinars are out there just on this rule alone.
- ▶ The Legal Profession should have such a rule and the Rules Professional Conduct of Oklahoma for lawyers has a very similar rule, unlike other states.

Additional Changes and Evolving Areas

- Covered members shall also include “immediate family members” for new ethical proposals.
- AICPA has ongoing “convergence projects” with IESBA.
- The new “Knowing Misrepresentations in the Preparation and Presentation of Information interpretation, as revised, was approved.
- The new “Pressure to Breach The Rules” interpretation, was approved.
- Accounting firms that license software to an attest client to input their data and receive output must now be for discrete software products and not “an entire information system.”
- Cannot operate an attest client’s network - prohibited service.
- Proposed new definition “Financial Statement Attest Services” PEEC 2/9/21 agenda item for meeting
<https://www.aicpa.org/content/dam/aicpa/interestareas/professionalethics/community/meetingminutesandagendas/downloadabledocuments/2021/open-agenda-peec-february-2021-meeting.pdf>

Question 3

- ▶ In terms of independence, a “covered member” must consider:
 - a) Spouse/spousal equivalent
 - b) Parents
 - c) Dependents
 - d) All of the above

Enforcement Actions of Interest

- AICPA 107 Enforcement Actions in 2022 and 2023 - See:
<https://us.aicpa.org/forthepublic/disciplinaryactions/2022>
<https://us.aicpa.org/forthepublic/disciplinaryactions/2023>
- SEC: Credit Suisse to pay \$275 to UK and US in joint enforcement action re: Mozambique Bond Offerings - Announced October 19, 2021 and now in 2023 Credit Suisse goes belly up bought by HSBC
- SEC: SEC announces many enforcement actions for deficient cybersecurity procedures
- SEC: SEC announces big fines for ESG reporting violations and new action against BNY Mellon: <https://www.sec.gov/news/press-release/2022-86>
- EY fined 100M for delivering an ethics credit course for CPE credit and giving its employees the answers in advance. Exact thing KMPG did in 2020 and got fined 50M. Principle: Fines DOUBLE
- PPP, ERTC huge prosecutions now and coming soon including Jail time; Employees of big banks using private email and networks (WhatsApp, etc.” and jeopardizing privacy of clients and banks fined 1.8B

Enforcement Actions (Con't)

- \$473M Paid by McKinsey to State AG's for its role in Opioid Crisis
- Recent “Announcement of Investigation”; “Announcement of Settlement”; and “Announcement The Investigation is Ongoing” Continuing Investigation with regard to one company ALL MADE ON THE SAME DAY BY THE SEC: Principle: All investigations will be permanent - that is the new rule.
- 2022 SEC record 6.4B in fines and penalties. See: <https://www.whitecase.com/insight-our-thinking/us-ma-fy-2022-sec-scored-record-penalties#:~:text=In%20fiscal%20year%202022%2C%20the,penalties%2C%20disgorgement%20and%20prejudgment%20interest.>
- Second “guessing” - reviewing poor audits - KPMG entities fined 7.7m. Silicon Valley Bank - auditor KPMG being investigated
- PCAOB issuing fines personally against executives
- Poor Board of Directors processes now a focus of future investigations. See: <https://angle.ankura.com/post/102i6p9/a-new-pcaob-board-sets-new-enforcement-priorities>

Ethical Violations - General

- Now include privacy - Facebook, Google
- Sexual harassment - Too many to list - See next slide on Acts Discreditable Rule
- The era of the 5 billion dollar fine: Google, Facebook, and others will join this club
- Wells Fargo, Deutsche Bank continuing issues
- EY- UK order 11m pay Whistleblower, staff must testify in Wirecard AG case per German Court, other EY scandals unfolding right before our eyes
- \$20 million tweets - Musk
- Goldman Sachs - Malaysia
- McKinsey and failure to disclose conflicts - disgorgement of fees
- Accountant confidentiality - stops with a subpoena or threat of criminal prosecution of an accountant -26 U.S. Code § 7216 – Exceptions to confidentiality provided by 26 U.S. Code § 6713
- New Era of “Immunity” Deals - Accountants now testify regularly against clients
- JP Morgan Chase - CEO Dimon reports Chase committed fraud with clients on PPP
- Wells Fargo - Admits its employees committed fraud on PPP

Future Agenda of PEEC of the AICPA

- See:
<https://us.aicpa.org/interestareas/professionalethics/community> Great future look as to where ethics issues are headed
- Know about this future oriented senior committee on ethics, new interpretations, new ethics rules
- You can participate by phone or become more involved at national PEEC level or your state level Ethics Committee of the State Chapter
- Areas of PEEC interest can be the subjects of future articles by you and members of your firm and topics to discuss at future conferences, public speeches on "Future Ethical Issues Facing Accountants" you can give to Rotary, Optimist, Kiwanis, Chamber of Commerce and many other nonprofit organizations who invite speakers

In 2023

- ▶ PEEC asked for comment by Sept. 2022 two new definitions and minor related revisions to one definition and two interpretations
- New definition *compliance audit* (ET sec. 0.400.09)
- New definition *compliance audit attest client* (ET sec. 0.400.10)
- Revised definition of *financial statement attest client* (ET sec. 0.400.18, currently 0.400.16)
- Revised “Client Affiliates” interpretation (ET sec. 1.224.010)
- Revised “State and Local Government Client Affiliates” interpretation (ET sec. 1.224.020)
- Expecting 10,000 new compliance audits in 2023 due to covid See: <https://us.aicpa.org/content/dam/aicpa/interestareas/professionalethics/community/exposedrafts/downloadabledocuments/2022/2022complianceauditsexposure.pdf>

3 minute break.



Contingent Fees

- 1.500 in the Standards cited below
- Allowed in certain circumstances, but not when the CPA or firm also performs audit or other attest functions
- Not allowed in preparing original or amended tax return or claim for a tax refund (except in specified circumstances - see: Interpretation 302 - 1)
- <https://www.aicpa.org/content/dam/aicpa/research/standards/codeofconduct/downloadabledocuments/2014december15contentsof2014june23codeofconduct.pdf>
- Many areas where a contingent fee is appropriate and this could be a new line of business, and profit, for accountants and accounting firms.

Contingent Fees (Con't)

- Allowed when representing client when revenue agent is examining client's tax return
- Filing an amended tax return claiming refund based on test case involving a different taxpayer or when the refund exceeds the threshold for review of the Joint Committee on Taxation or state taxing authority
- Requesting a refund when the federal or state authorities improperly assessed interest or penalties
- Request for reduction in property tax assessment
- Representing a client when requesting a private letter ruling or influencing the drafting of a regulation or statute
- WHEN THERE IS A CONTROVERSY WITH AN OUTCOME IN SOME DOUBT - HRR
- This is my own rule, so beware, but I think it is the principle here.

Relationship Junior/Senior

- Clear obligations of junior accountant in disagreement with senior/supervisory accountant
- Must report disagreement regarding material matter to higher ups in the firm when it is clear that disagreement cannot be resolved between the two
- Junior is totally responsible for junior's actions even if told to do something by a supervisor
- Excellent rule. Must train all new employees in ethics.

Relationship Junior/Senior (con't)

- Different from the legal profession
- Senior lawyer rules
- Junior lawyer not encouraged to speak to higher ups in the firm
- Model Code for lawyer exonerates the junior lawyers, Code of Conduct AICPA does not
- Inference - training for junior CPA's is critical, must be capable of independent judgment consistent with the Code of Conduct

International Ethics Standards Board for Accountants

- International Ethics Standards Board for Accountants (*IESBA*)
- Part of the International Federation of Accountants
- Why learn about new international standards since they are voluntary in the US unless approved by the AICPA
- Globalization - many countries adopt their ethical standards before the AICPA/US
- IESBA - Inspired NOCLAR provision discussed above

IESBA Issues Completely Revised Code of Ethics - 2022

- <https://www.ethicsboard.org/publications/2022-handbook-international-code-ethics-professional-accountants>
- Voluntary Code for US Accountants, but could be the future due to so many “convergence projects with the AICPA
- Streamlined, easier to navigate, still 200 pages
- ▶ <https://www.ifac.org/knowledge-gateway/supporting-international-standards/discussion/forthcoming-key-changes-iesba-code>
- ▶ Like the PEEC agendas, items being covered by the IESBA good subject material for your future articles, newsletters, speeches, panel presentations and guidance to clients.

Question 4

- The IESBA standards are currently in the US:
- a) Mandatory
- b) Voluntary
- c) State by State determination would be appropriate

Whistleblower Payments

- On May 5, 2023 SEC announces record \$279M whistleblower payment. See: <https://www.cnbc.com/2023/05/05/sec-record-whistleblower-award.html> - Situation not described.
- IRS issues several whistleblower payments in 2022 in excess of \$100M
- Expect many more awards to whistleblowers
- Laws in 49 States, 55 Federal Agencies authorized/mandated to pay whistleblowers 10 to 30% of agency recovery
- False Claims Act (cheating government) over 2B in recoveries due with millions paid by DOJ to whistleblowers in 2022. See: <https://www.justice.gov/opa/pr/false-claims-act-settlements-and-judgments-exceed-2-billion-fiscal-year-2022>
- Accountants make great whistleblowers as Thomson Reuters reported back in 2007 - not news here. <https://www.reuters.com/article/us-fraud-survey/whistle-blowers-still-best-at-finding-fraud-survey-idUSN1643696820071016>

Whistleblower Paradigm

- Demonization of those who are truth tellers will diminish and they will get promoted or get health payouts like EY paying 11m per UK Court Order
- Company vs. Whistleblower - now the whistleblower will be the home “team”
- Courage to speak the truth will be valued and will not as often as in the past lead to being fired
- Accountants can be whistleblowers even if they helped the client perform the act now being complained about, just could not direct it

Question 5

- Can accountants be whistleblowers regarding services they provided to the client?
- A) Yes
B) No

Referral Fees - Ethical Issues

- Rule 503 - Again different from the legal profession
- Allowed between CPA's if disclosed to the client
- No limits in the Code on amount of referral fees
- No limits seen in the Code as to type of referral fees, cash, in-kind, all seem to be allowed

Question 6

- The Code of Conduct allows for the payment or receipt of referral fees by CPAs whenever the referral fee is:
 - Agreed to by the Client in a signed writing
 - Notice is given to the Client in writing by CPA receiving
 - Notice is given to the Client in writing by CPA paying
 - All of the above

Ethics and Client Relations

- Pursuant to the Statements on Standards for Tax Services - CPAs must advise client of all penalties, interest, and adverse consequence if a taxing authority does not agree with the tax position a CPA has recommended
- Full disclosure of risks regarding tax positions is now rising to the level of an ethical violation for failure to comply
- How do you assess the risks associated with ethical violation being reported on the internet, especially when a coverup is charged?
- Err on the side of information client of something more than “worst case scenario,” warn them of “catastrophe potential” - would have helped VW, Wells Fargo
- When asked how much a fine could be, beware fines are and will continue to grow. Give a general range but state that this is no longer predictable

Learning Objective 2

Recognize How Sustainability Now Impacts Ethics Through the Sustainability Accounting Standards Board

Sustainability and Ethics / ESG

- Excess pollution, financial irregularities, violations of regulations are now considered ethical violations by many
- Today there is the nonprofit - International Financial Reporting Standards and it includes the International Sustainability Standards Board - big deal. Since Europe is ahead of US here, organization moved from New York to London, Canary Wharf, near where every major accounting firm in the world is located
- For more information <https://www.ifrs.org/groups/international-sustainability-standards-board/>
- KPMG announces 1.5B multi-year investment in ESG - <https://www.accountingtoday.com/news/kpmg-invests-1-5b-in-multi-year-esg-program>
- Fines paid and regulatory citations incurred by companies violating ESG reporting standards going up
- Some political backlash in US against this, but there has been too much evidence since 2012 that ESG reporting data are better predictors of future financial performance than many financial reporting indicators so investors use it and will continue to demand and to use it regardless of political backlash

International Sustainability Standards Board

- ▶ Develop and disseminate sustainability accounting standards
- ▶ Assist corporations “disclose material, decision-useful information to investors”
- ▶ New Credential - Fundamentals of Sustainability Accounting
- ▶ Human capital metrics - Amount of training per employee, total cost per employee, employee engagement scores, turnover rates (talent retention), benchmarking data compared to competitors for employee survey data
- ▶ Transparency metrics such as the ratio of CEO pay to typical worker pay
- ▶ Open Standards Setting Meetings - Like PEEC - you can listen in...

Regulations, Ethics and Business

- ▶ Tighter regulatory environment is contributing to companies being unethical in an attempt to show they are complying with new regulations
- ▶ Classic example, Volkswagen (VW), with its defeat software regarding emissions levels - REGULATION AVOIDANCE THROUGH UNETHICAL PRACTICES
- ▶ CEO of VW in criminal proceedings in May, 2023 in Germany admitted he knew about the defeat software designed to violate emissions standards
- ▶ VW Set aside about \$10 billion, but this will be a \$60+ billion problem and delayed its bringing of electric cars to the market
- ▶ Companies cheating on miles per gallon violating EPA reporting requirements
- ▶ Penalties for willful violations soaring over the past five years and expected to continue to climb globally and in the US
- ▶ Privacy violations skyrocketing by Apple, Google, others
- ▶ Mislabeling of fossil fuel products being shipped by rail in the US - stopped hearing about the rail car crashes, didn't you? Mislabeling stopped

Recent Events

- ▶ Jan 2023 - Brazilian retailer Americanas SA - \$4B accounting scandal based on reverse-factoring, supply chain finance loose rules. See: <https://news.bloomberglaw.com/bankruptcy-law/a-4-billion-accounting-bombshell-exposes-supplier-finance-risks> - Now in Bankruptcy, auditor was PWC
- ▶ March 31, 2023 - SEC charges Mobile, Atlanta shipbuilder Austal USA/Austal Limited (Australian Firm) premature revenue recognition - going after three executives, future government contracts at stake. See: <https://www.sec.gov/news/press-release/2023-69>
- ▶ SAS 134-140 Audit Standards tightened. See: <https://www.mncpa.org/resources/publications/perspectives/october-2021/major-audit-standard-implementation-are-you-ready/>
- ▶ March, 2023 - EVOQUA Water Technologies, inflated recognition of revenue during IPO period \$8.5M settlement. See: <https://www.reuters.com/business/evoqua-water-pay-85-mln-settle-us-sec-accounting-fraud-charges-2023-03-13/>
- ▶ FASB to issue new standards on "Accounting for Exchange-Traded Digital Assets and Commodities"
- ▶ More Cryptocurrency fines that I could ever list
- ▶ Urgent talk to regulate AI as it explodes across the globe - Fastest takeup of any technology in history - do not be left behind

More Recent Events

- ▶ Mastercard creates strategic alliance with Bakkt to bring credit card payments into compatibility with cryptocurrency (payments and rewards in cryptocurrency)
- ▶ First Cryptocurrency bank chartered in US (Alaska) - 2021
- ▶ Many companies and organizations now stand accused of fraudulent DEI data reported - accountant must have a role in the development of every numerical “metric,” financial, scientific, or otherwise that is reported
- ▶ In 2023 EY’s German Arm barred from doing audits going forward due to Wirecard scandal; Wirecard fraud cost banks, investors, creditors \$3.8B. See: <https://www.wionews.com/business-economy/ernst-youngs-german-arm-barred-from-auditing-over-wirecard-scandal-578990>
- ▶ EY tries to break up the firm with “Project Everest” basically spinning off its audit division and it announced in April 2023 its US arm refused to do this and stopped the project
- ▶ For updated information on accounting scandals see: <https://www.complianceweek.com/accounting-fraud/4288.tag>

Ethical Duty for Cybersecurity

- ▶ Duty to protect client confidentiality as discussed previously
- ▶ Legal standard - “prevailing standard of care” which changes every few months; so annual review of computer security issues essential for accountants;
- ▶ Ethical standard - do what you can reasonably to do to prevent being hacked and having your client’s data spilled all over the internet; Always look for Red Flags
- ▶ SEC requires in 10-Q Item 1A or item 1 or 7 disclosure location - disclosure of known, or should be known, cybersecurity risks and penalties are now real
- ▶ WHAT TO DO: HIRE EXPERT: READ:
<https://umbrella.cisco.com/info/cybersecurity-threat-trends-report>

Ethical Duty for Cybersecurity (Con't)

- ▶ International Federation of Accountants' excellent 2021 PowerPoint
- ▶ https://www.ifac.org/_flysystem/azure-private/uploads/IESBA/Information-Security-and-the-Profession-Calderon.pdf
- ▶ Only 5% of companies are properly protected; remote working increases risk
- ▶ 95% of cybersecurity breaches are caused by human error
- ▶ No duty of accountant to advise client in this area, UNLESS THEY SEE LACK OF PROTECTION FOR FINANCIAL DATA? MIGHT BE AN OPEN QUESTION, but if contract between accounting firm and company is broadly written, there might be both a legal and ethical duty to point this out under NOCLAR
- ▶ In-house accountant, employee, likely an ethical duty if accountant sees cybersecurity problems or significant risks - write the memo, take action
- ▶ Cost of breach of data, average 3.86 per IFAC
- ▶ Cybersecurity, Privacy and Ransomware Insurance - always a good idea

Ethical Duty for Cybersecurity (Con't)

- ▶ AICPA Cybersecurity Resource and Risk Management Framework:
<https://us.aicpa.org/interestareas/frc/assuranceadvisoryservices/cyber-security-resource-center> and
<https://us.aicpa.org/interestareas/privatecompaniespracticesection/qualityservicesdelivery/exploring-cybersecurity>
- ▶ SEC to issue new cybersecurity guidelines in 2023. See: <https://www.sec.gov/news/press-release/2023-52>
- ▶ In 2022 many SEC actions against Banks for violation of SEC's Identity Theft Red Flags Rule (Regulation S-ID).
- ▶ Accounting firms are getting hacked with some regularity: See:
<https://www.theaccessgroup.com/en-sg/blog/act-cybersecurity-concerns-accounting-sg/>
- ▶ Huge financial, reputational losses for accounting firms and accountants if hacked: See:
<https://www.theaccessgroup.com/en-sg/blog/act-cybersecurity-concerns-accounting-sg/>
- ▶ AICPA weighs in: <https://www.aicpa-cima.com/news/article/q-and-a-2-cyberattacks-cpa-firms-should-fear>
- ▶ Accounting Today - <https://www.accountingtoday.com/opinion/the-importance-of-cybersecurity-in-the-accounting-profession>

Punishment for Ethical Violations

- ▶ All states belong to Joint Ethics Enforcement Program
- ▶ Financial penalties skyrocketing as stated earlier
- ▶ \$5 billion in fines for Google by EU, \$3 billion for Wells Fargo
- ▶ Starting to see a lot of individual prosecutions
- ▶ Suspensions from practice, from areas of work (such as securities or the financial sector) is expanding rapidly

Punishment (Con't)

- Expulsion from the AICPA is an option
- Even admonishment will be publicized by your State organization
- Corrective Action
- Subsequent Monitoring
- Fines are increasing
- Manafort trial put accounting profession on trial, literally
- Prosecutor's view - behind every fraud is an accountant
- You do not want an "immunity from prosecution agreement" \$50k in legal fees, career is toast

Learning Objectives 3 & 4

- Business Opportunities in the Field of Ethics
- Explore Opportunities to Improve Ethics

Ways to Improve Reputation

- Accountants will find a competitive advantage by building their own reputation for being an ‘ethics’ expert
- Write articles and share drafts with colleagues; post on website and send out with “newsletters”
- Give speeches to external groups, even by Zoom for a good while or even give a guest lecture at college or university, every semester if possible
- Internal seminars and internal newsletters, communications
- Participate in professional committees dealing with ethics
- Recommending future changes to ethics rules

Question 7

- Accountants can build their reputation for ethics excellence in the profession by:
 - a) Giving internal and external speeches, writing articles
 - b) Participating on ethics committees
 - c) Recommending changes in ethics rules
 - d) All of the above

Six Steps To Improve Your Client's Ethical Compliance

- Step 1. Create or reinforce the position of Chief Ethics Officer, with clear duties, power, budget, direct reports, responsibilities, significant compensation package, clear reporting systems
 - Provide adequate staff
 - High profile communication
 - Can be compromised easily by Chief Executive Officer

Step 2 To Improve Your Client's Ethical Compliance

- Step 2. Set ethical standards, policies and guidelines for your organization
 - For example, DEVELOP OR IMPROVE a code of conduct FOR YOUR ORGANIZATION, provide ethical compliance training, and revise the code of conduct periodically to expand its reach
 - Manage the ethics conversation in your organization
 - Assist clients in developing their own code of conduct

Step 3 To Improve Your Client's Ethical Compliance

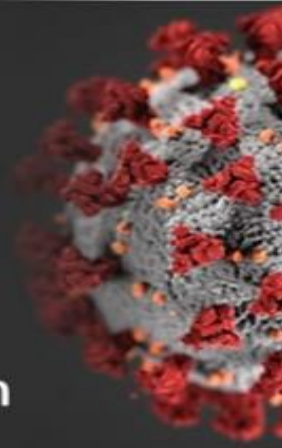
- Step 3. Develop an “ethics hotline” where people can report ethical concerns anonymously.
 - Beware of recent Murray Energy company fine of \$150,000+ after it did this
 - Must support the activity once you have done it
 - Can be “silver bullet”
 - Likely source of information to Dimon of JP Morgan Chase and CEO of Wells Fargo that they had to report to the federal government due to previous settlements

Example of Ethics Hotlines

- ▶ <https://forms.theilne.co.uk/crimestoppers-covid-fraud-hotline>
- ▶ <https://www.shrm.org/resourcesandtools/tools-and-samples/hr-qa/pages/whywouldanemployerwanttohaveawhistleblowerorethicshotline.aspx>

REPORT COVID-19 FRAUD

Contact the National Center for
Disaster Fraud Hotline:
866-720-5721 or
Justice.gov/DisasterComplaintForm



Step 4 To Improve Your Client's Ethical Compliance

- Step 4. Develop an array (current listing) of ethical threats and challenges that your organization is facing and is expected to face.
 - Update this list periodically
 - Use this list to predict where our ethical challenges will come from in the future
 - New threat: Epstein Money - Every fundraising program must have a **SOFA**. Yes, I created this for this webinar and you are the first to hear about it. Former Development of the Autism Society of Colorado.
 - **SOURCE OF FUNDS ANALYSIS** - Accountants must create a process, internal control, to vet, investigate the actual source of all money above some threshold (to be set by each client based on the accountant's input, that is being donated. This investigation leads to a report and an approval process by members of the board or executives in the organization not in the development office.
 - **Note:** Essential service: It is very painful for a client to give back money already budgeted, or worse yet, already spent. Avoids awful publicity and infighting.

Step 5 To Improve Your Client's Ethical Compliance

- Step 5. Set ethical standards for your sector or industry.
 - Write about, speak about, publish and attend conferences
 - Takes a thought leadership and practice leadership role in setting high ethical compliance standards
 - This is what I am doing with my forthcoming book on confronting the ethical crisis in the legal profession

Step 6 To Improve Your Client's Ethical Compliance

- Step 6. Develop measures of ethical behavior and rewards for very ethical behavior, publicize it, and provide negative reinforcements (penalties) personally to individuals and groups for their failure to be ethically compliant.
 - There must be a zero-tolerance policy towards failures to be ethically compliant.
 - Create swift adjudication system that is fair
 - Create adequate budget for enforcement - great work

Conclusion

- Ethics seen as “good to do” now becoming the minimum standard of behavior
- Social media exposes ethical violations
- Customers will be making decisions based on ethics ratings of companies
- Note Rex Tillerson’s speech on the value of “a life of integrity” - not taking short cuts even when the pressure is from your client, your supervisor, or even yourself
- Ethics is a commitment, more than a behavior or group of behaviors
- Managerial integrity = Leadership

Conclusion (Con't)

- Great opportunity for CPAs
- Build your reputation for ethics expertise
- Assist your own firm and your clients in becoming more ethically compliant and ethically exceptional
- This will boost business and improve the profession
- If we were in the post-ethics period, today coming to a theatre near you, brace yourself for the Post-Post Ethics period - CLAMPDOWN

Conclusion (Con't)

- ▶ Not only know the Code of Conduct, but also know:
- ▶ Examples of recent ethics violations, scope of penalties, how the violator was caught, pending investigations
- ▶ Sources of pressures on companies to not be ethically compliant
- ▶ Anticipatory ethics or predictive ethics is a source of competitive advantage for CPAs going forward
- ▶ The role and activities of the Professional Ethics Executive Committee of the AICPA
- ▶ Potential lucrative use of role of contingent fees
- ▶ Tell clients you can't do "X" because of the "Acts Discreditable Rule"

Question 8

- The most valuable aspect of this course for you was:
 - a) Getting ethics CPE credit
 - b) Learning new ways to expand my business providing ethics
 - c) Learning where ethics rulings will likely be headed
 - d) Learning about sustainability as an ethical area
 - e) Learning about contingent and referral fee rules

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Please take the course survey following the program. You can access your CPE certificate, the program recording, and reference materials by logging in to your Encoursa dashboard.

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