Breaking News – Proposed AICPA Forensic Accounting Professional Standards for Forensic Services Engagements

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At the American Institute of CPAs' (AICPA's) 2018 Forensic & Valuation Services (FVS) Conference in Atlanta (November 2018), AICPA announced that new professional standards[1] for forensic services (defined below) had been developed. A task force for the FVS Executive Committee (FVSEC) initially fostered the proposed standards.

The proposed standards were subsequently analyzed and approved by the FVSEC, an AICPA standards-setting committee. On Dec. 10, 2018, AICPA held a webinar and issued the proposed professional standards for comment.[2] AICPA is asking for comments from AICPA members[3] and member firms, and other stakeholders[4] **until Feb. 28, 2019** on the new proposed standards.[5]

Background

Beginning in 2017, the FVSEC developed a three-year strategic plan that included input for all five of the FVS committees.[6] "With the continued growth of the demand for forensic services, it has become clear that the development of a forensic standard is a top strategic priority to

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[1] See exposure draft at https://www.aicpa.org/interstareas/forensicandvaluation/resources/standards/exposure-draft-statement-on-standards-for-forensic-services.html.

[2] "New standard proposed for forensic services engagements©" 2018 *Journal of Accountancy*, by Ken Tysiac, https://www.journalofaccountancy.com/news/2018/dec/new-standard-proposed-forensic-services-engagements-201820208.html.

[3] For purposes of this article, "members" refers to AICPA members and potentially to CPAs whose state accounting boards adhere to AICPA professional standards.

[4] Note: Including TSCPA members who may not be members of AICPA.

[5] Comments on the proposed new professional standards can be sent to Barbara Andrews, AICPA's director for forensic services at barbara.andrews@aicpa-cima.com and *BVWIRE,* Jan. 9, 2019, Issue #196-1 (*BVWIRE* – Issue #196-1).

[6] FVSEC, Forensic & Litigation Services Committee, Business Valuation Services Committee, Certified in Financial Forensics Credential Committee, and Accredited in Business Valuation Credential Committee, Frequently Asked Questions and Answers about SSFS No. 1, https://www.aicpa.org/interestareas/forensicandvaluation/resources/standards/exposure-draft-statement-on-standards-for-forensic-services.html.

improve consistency and quality of such services."[7] The objectives of the proposed standards include, but are not limited to:

- Providing more tailored authoritative guidance to members who perform forensic services;
- Enhancing overall quality of such services, and
- Serving the public interest.

Presently, the primary AICPA professional standards for forensic services are codified in the *Statement on Standards for Consulting Services*.[8] The *Statement on Standards for Consulting Services* was issued by the AICPA Management Consulting Services Executive Committee[9] and are effective for engagements beginning in January 1992.[10] The *Statement on Standards for Consulting Services* provides professional standards for a broad range of consulting services, not just forensic services (e.g., consultation, advisory services, implementation services, transaction services beside valuation and litigation services, staff and other support services, and product services).

What are Forensic Services and Who Does the Statement Apply To

The proposed *Statement on Standards for Forensic Services No. 1* (SSFS No. 1) is designed to provide more tailored authoritative guidance to CPAs who perform such services. The proposed standard also provides a "two-prong applicability test" based on the purpose of the services being provided and not the nature of the services. Specifically, the proposed standard would apply to professional services being provided for either a "litigation" or an "investigation" as defined with the proposed standard.[11]

Under the proposed SSFS No. 1, litigation is defined as "an actual or potential legal or regulatory proceeding before a trier of fact or a regulatory body as an expert, consultant, neutral, mediator or arbitrator in connection with the resolution of disputes between parties."[12] Investigation is defined as "a matter that is not litigation, but which may involve using the same skills[13] and the services [which] are performed in response to specific concern(s) of wrongdoing in which the member is engaged to perform procedures to collect, analyze, evaluate or interpret certain

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[7] Frequently Asked Questions and Answers about SSFS No. 1, https://www.aicpa.org/interestareas/forensicandvaluation/resources/standards/exposure-draft-statement-on-standards-for-forensic-services.html.

[8] *Statement on Standards for Consulting Services* is a/k/a *CS Section 100*.
[9] Note: The AICPA Management Services Executive Committee no longer exists at AICPA.
[10] CS Section 100, pg. 1.
[11] Frequently Asked Questions and Answers about SSFS No. 1, https://www.aicpa.org/interestareas/forensicandvaluation/resources/standards/exposure-draft-statement-on-standards-for-forensic-services.html.

[12] See definition of "litigation services" under AICPA's Code of Conduct (Code) at § 1.295.140.04.
[13] See definition of "investigation services" under AICPA's Code at § 1.295.140.03.

evidential matter to assist the stakeholder (e.g., client, board of directors, independent auditor or regulator) in reaching a conclusion on the merits of the concern(s)."[14]

It is important to note that the proposed SSFS No. 1 would apply when a member, who may have originally been engaged to perform services under another set of professional standards, discovers that the original scope of the engagement has been modified or amended and becomes a litigation or investigation engagement.[15]

There is often an overlap between (business) valuation work and forensics, so with the new standard, forensic services should be of interest to valuation experts. For example, business valuations that involve litigation (as defined above) would fall under the new proposed standard (including those where the scope converts to litigation during the development of providing such services).

The proposed SSFS No. 1 generally would not apply to audit, review, compilation, attestation and tax engagements. Because many clients of CPA firms have needs for litigation and/or investigation services, it behooves all CPAs to understand the new proposed standard and forensic services.

Summary of Proposed Standard and What is New

For the most part, SSFS No. 1 incorporates the general standards of the profession that are contained in the General Standards Rule of the Code (ET ¶ 1.300.001 and 2.300.001), which apply to all services performed by members (e.g., professional competence, due professional care, planning and supervision, and sufficient relevant data). In addition, certain established standards under AICPA's Compliance with Standards Rule of the Code (ET § 1.310.001 and 2.310.001) are also incorporated in the existing draft (e.g., client interest, integrity, objectivity and independence, understanding with client, and communication with client.) Members must serve their client[16] with integrity and objectivity, as required by the Code.

The proposed standard reinforces that members performing forensic services should **only** (**emphasis added**) be an advocate of their professional opinions and not an advocate for any parties involved in the litigation and/or investigation.

New or emphasized items in the proposed standard include, but are not limited to the following:

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[14] Frequently Asked Questions and Answers about SSFS No. 1, https://www.aicpa.org/interestareas/forensicandvaluation/resources/standards/exposure-draft-statement-on-standards-for-forensic-services.html.

[15] Note: The proposed standard suggests that members should modify the understanding with the client if such engagement converts to a forensic services engagement.

[16] See ET ¶ 0.400.07 for definition of client.

- Opining to the ultimate conclusion of fraud or other legal determinations[17] is prohibited – the ultimate decision as to the occurrence of fraud or other legal conclusions is determined by a trier-of-fact.

- Members may not provide expert opinions pursuant to a contingent fee arrangement while providing services in a litigation, unless explicitly allowed otherwise under the AICPA Code. A member may provide expert opinions relating to whether evidence is consistent with certain elements of fraud or other laws based on objective evaluation.

- Investigations – when a member is engaged by one party in a litigation engagement to provide expert opinions, the member may not perform the work under AT § 201 Agreed-Upon Procedures (AUP) Engagement standards. The AUP standards provide that in an engagement performed under the AUP standards, the member does not perform an examination (e.g., an external audit) or a review, as discussed in section 101, **and does not provide an opinion or negative assurance (emphasis added)**. However, results may be reported under AUP standards in an engagement where a member is engaged by the trier-of-fact and/or both sides of the dispute jointly. In that scenario, both the AUP standards and SSFS No. 1 would apply.

Please note, the proposed SSFS No. 1 is not authoritative currently. **Thus, the new or emphasized items discussed above are not final** (**emphasis added**). CPAs may consider the proposed item as best practices to be considered while the proposed standards are being finalized by AICPA.

Proposed Effective Date

Presently, the proposed SSFS No. 1's effective date would be for new engagements accepted on or after **May 1, 2019**. Early application of the provisions of the proposed statement would be permissible under the draft's current version.

Following Up/Questions

Please read/analyze the proposed standard and send comments to AICPA. (See contact person noted above.) If you have any questions about the proposed standard and would like some additional input, please contact Jerry Cross at the Texas Society of CPAs via email at jcross@tscpa.net.

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[17] This does not apply when the member is the trier-of-fact.

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