

**CALIFORNIA BOARD OF ACCOUNTANCY**

2000 EVERGREEN STREET, SUITE 250  
 SACRAMENTO, CA 95815-3832  
 TELEPHONE: (916) 263-3680  
 FACSIMILE: (916) 263-3675  
 WEB ADDRESS: <http://www.dca.ca.gov/cba>



**DEPARTMENT OF CONSUMER AFFAIRS  
 CALIFORNIA BOARD OF ACCOUNTANCY**

**FINAL**

**MINUTES OF THE  
 May 10-11, 2007  
 BOARD MEETING**

Courtyard by Marriott Cal Expo  
 1782 Tribute Road  
 Sacramento, CA 95815  
 Telephone: (916) 929-7900  
 Facsimile: (916) 920-5377

**I. Call to Order.**

President David Swartz called the meeting to order at 1:35 p.m. on Thursday, May 10, 2007, at the Courtyard by Marriott Cal Expo. The Board and ALJ Karen Brandt heard Agenda Item XII.A. The Board convened into closed session at 2:01 p.m. to deliberate and also to consider Agenda Items XII.B-G. The meeting reconvened into open session at 3:35 p.m. and adjourned at 4:30 p.m. President David Swartz again called the meeting to order at 9:00 a.m. on Friday, May 11, 2007, and adjourned at 2:03 p.m.

Board MembersMarch 22, 2007

David Swartz, President	1:35 p.m. to 4:30 p.m.
Donald Driftmier, Vice President	Absent
Robert Petersen, Secretary-Treasurer	1:35 p.m. to 4:30 p.m.
Sally Anderson	1:35 p.m. to 4:30 p.m.
Richard Charney	1:35 p.m. to 4:30 p.m.
Angela Chi	1:35 p.m. to 4:30 p.m.
Sally Flowers	Absent
Lorraine Hariton	1:35 p.m. to 4:30 p.m.
Clifton Johnson	1:35 p.m. to 4:30 p.m.
Leslie LaManna	1:35 p.m. to 4:30 p.m.
Bill MacAloney	1:35 p.m. to 4:30 p.m.
Marshal Oldman	1:35 p.m. to 4:30 p.m.
Manuel Ramirez	1:35 p.m. to 4:30 p.m.
Lenora Taylor	1:35 p.m. to 4:30 p.m.
Stuart Waldman	1:35 p.m. to 4:30 p.m.

Board Members

March 23, 2007

David Swartz, President	9:00 a.m. to 2:03 p.m.
Donald Driftmier, Vice President	Absent
Robert Petersen, Secretary-Treasurer	9:00 a.m. to 2:03 p.m.
Sally Anderson	9:00 a.m. to 2:03 p.m.
Richard Charney	9:00 a.m. to 2:03 p.m.
Angela Chi	9:00 a.m. to 2:03 p.m.
Sally Flowers	9:00 a.m. to 2:03 p.m.
Lorraine Hariton	9:00 a.m. to 2:03 p.m.
Clifton Johnson	9:00 a.m. to 2:03 p.m.
Leslie LaManna	9:00 a.m. to 2:03 p.m.
Bill MacAloney	9:00 a.m. to 2:03 p.m.
Marshal Oldman	9:00 a.m. to 2:03 p.m.
Manuel Ramirez	9:00 a.m. to 2:03 p.m.
Lenora Taylor	9:00 a.m. to 2:03 p.m.
Stuart Waldman	Absent

Staff and Legal Counsel

Alice Delvey-Williams, Exam and RCC Manager  
Patti Franz, Chief, Licensing Division  
Dominic Franzella, License Renewal Analyst  
Mary LeClaire, Executive Analyst  
Pete Marcellana, Practice Privilege Analyst  
Kris McCutchen, Initial Licensing and Practice Privilege Manager  
Corina Meloche, License Renewal Analyst  
Anne Mox, Executive Assistant  
Greg Newington, Chief, Enforcement Program  
Dan Rich, Assistant Executive Officer  
George Ritter, Legal Counsel  
Carol Sigmann, Executive Officer  
Jeanne Werner, Deputy Attorney General, Department of Justice

Committee Chairs and Members

Roger Bulosan, Chair, Qualifications Committee  
Randy Miller, Vice Chair, Administrative Committee

Other Participants

Bruce Allen, California Society of Certified Public Accountants (CalCPA)  
Sheri Bango-Cavaney, American Institute of Certified Public Accountants  
Ed Barnicott, NASBA Mobility Project Manager  
Ken Bishop, Chair, NASBA CPA Mobility Task Force  
James Brackens, American Institute of Certified Public Accountants  
Susan Coffey, American Institute of Certified Public Accountants  
Mike Duffey, Ernst & Young LLP

Julie D'Angelo Fellmeth, Center for Public Interest Law (CPIL)  
Peggy Ford Smith, Society of California Accountants (SCA)  
Michelle Elder, Society of California Accountants (SCA)  
Kenneth Hansen, KPMG LLP  
Carrie Lopez, Director, Department of Consumer Affairs  
Linda McCrone, California Society of Certified Public Accountants (CalCPA)  
Morris Miyabara  
Carl Olson, Chairman, Fund for Stockowners Rights  
Michael Bruce Rivett  
Richard Robinson, E&Y, DT, PWC, KPMG  
Hal Schultz, California Society of Certified Public Accountants (CalCPA)  
Jeannie Tindel, California Society of Certified Public Accountants (CalCPA)

## II. Board Minutes.

The draft Board minutes of the March 22-23, 2007 Board meeting were adopted on the Consent Agenda (See Agenda Item XIII.C.)

## III. Report of the President.

Mr. Swartz introduced and welcomed Ms. Carrie Lopez, Director of the Department of Consumer Affairs (DCA). He stated that Ms. Lopez had served as Executive Director for Coro Southern California, overseeing development strategies and programs since 2001. Coro is a non-profit, non-partisan organization that trains and prepares civic leaders. Before being promoted to Executive Director, Ms. Lopez served as Director of Training and Programs. In the mid-1990s, she worked for the City of San Diego as an organizational effectiveness specialist. Ms. Lopez thanked the Board for its service to the State in providing consumer protection. She stated that she looked forward to serving the people of California and would strive to make herself available to the Board.

Mr. Swartz introduced three new Board members, Mr. Manuel Ramirez, Ms. Sally Anderson, and Ms. Lenora Taylor. He announced that Mr. Ramirez had served as president and chief executive officer for Ramirez International Financial and Accounting Services, Inc., for the past six years. He also is the audit committee chairman of the Santa Ana Business Bank. From 1990 to 2001, Mr. Ramirez served as senior manager and then partner for the CPA international consulting firm Strabala Ramirez & Associates. Previously, he was a tax associate with Price Waterhouse and an accountant at the firm McGladrey & Pullen. A graduate of California State University Fullerton, he has a MS degree in Tax Law from Golden Gate University and has achieved Diplomat of the American Board of Forensic Accountants status. Mr. Ramirez is Finance and Investment Committee Chairman of the Make-A-Wish foundation and Finance Chair for the Boy Scouts of America, along with serving on the boards of two dozen other philanthropic and business organizations. He is a member of the California Society of CPAs and the American Institute of CPAs.

Mr. Ritter indicated that the Board would now take oral comments on the proposed amendments, and receiving no response, Mr. Ritter closed the regulatory hearing.

C. Regulations for Board Adoption.

1. Proposed Amendments to Section 30 of Title 16 of the California Code of Regulations Regarding Practice Privilege "Safe Harbor".

Mr. Ritter reported that the proposed language changes to Section 30 was provided in the agenda packet. **(See Attachment 1.)** Mr. Ritter reported that no oral or written comments had been received.

**It was moved by Mr. Swartz, seconded by Mr. Ramirez, and unanimously carried to adopt the proposed amendment to Section 30.**

2. Proposed Amendments to Sections 95, 95.2, and 95.6 of Title 16 of the California Code of Regulations Regarding Citation and Fine.

Mr. Ritter reported that the proposed language changes to Sections 95, 95.2, and 95.6 were provided in the agenda packet. Mr. Ritter reported that no oral or written comments had been received.

**It was moved by Mr. Swartz, seconded by Mr. Ramirez, and unanimously carried to adopt the proposed amendments to Sections 95, 95.2, and 95.6.**

IX. Committee and Task Force Reports.

A. Administrative Committee (AC)

1. Report on the May 3, 2007, AC Meeting.

Mr. Miller reported that the AC met on May 3, 2007, in Los Angeles and was pleased to welcome Ms. LaManna to the meeting. He indicated that the AC reviewed eight cases that were previously closed by staff and the Committee concurred with all staff conclusions. Mr. Miller additionally stated that the Committee held two investigative hearings.

B. CPA Qualifications Committee (QC).

1. Minutes of the January 10, 2007, QC Meeting.

The minutes of the January 10, 2007, QC meeting were adopted on the Consent Agenda. (See Agenda Item XIII.C.)

2. Report on the April 25, 2007, QC Meeting.

Mr. Bulosan reported that the QC met on April 25, 2007, in Los Angeles. The QC reviewed a total of 17 licensure applicant appearances, 12 were approved and 5 were deferred.

Mr. Bulosan reported that there was a discussion related to the editorial changes to the Certificate of the Attest form for non-public experience. The Certificate of the Attest form for public experience was changed at the January 2007 Board meeting. Both forms were under review by the Department of Consumer Affairs' Legal Division.

Mr. Bulosan reported that there was a lengthy discussion related to the Educational Outreach Program. A conference call was conducted with QC Subcommittee members, Mr. Michael Williams and Mr. Fausto Hinojosa, and Board staff. Subcommittee members had reviewed the CPA Licensing Applicant Handbook (Handbook) available on the Board's Web site and believed that the Handbook fully explained the issues related to California's two pathways to licensure as well as the options for obtaining licensure with general accounting or attest experience. Mr. Bulosan indicated that the Subcommittee would continue to address the distribution of the Handbook to the Universities and students interested in Accounting and had sought the assistance of Ms. Loretta Doon, CEO of CalCPA. He indicated that this topic would be a future QC agenda topic.

Mr. Bulosan stated that the QC's next meeting would be on July 11, 2007, at the Sacramento Board office.

C. Committee on Professional Conduct (CPC).

1. Minutes of the March 22, 2007, CPC Meeting.

The minutes of the March 22, 2007, CPC meeting were adopted on the Consent Agenda. (See Agenda Item XIII.C.)

2. Report on the May 10, 2007, CPC Meeting.  
(See Agenda Item IX.C.3.)

3. Discussion Related to Cross-Border Practice and the Amended Exposure Draft, Proposed Revisions to AICPA/NASBA Uniform Accountancy Act Sections 23, 7, and 14.

Mr. Swartz reported that the CPC held an in-depth discussion of the issues related to cross-border practice covered in the UAA Exposure Draft. One purpose of that discussion was to identify comments on the Exposure Draft for the Board to communicate to NASBA and the

AICPA. The CPC recommended that the Board approve and communicate the following points to NASBA:

- The Board supports modifying the UAA to provide for cross-border practice with no notification.

**It was moved by Dr. Charney, seconded by Mr. Ramirez, and unanimously carried to adopt the proposed comment.**

- The Board supports NASBA's efforts to develop its national licensee database and believes it will be useful to both state boards and consumers.

**It was moved by Ms. Chi, seconded by Ms. Hariton, and unanimously carried to adopt the proposed comment.**

- The Board recommends that the UAA embrace the overarching principle that state boards should trust one another to appropriately license and appropriately discipline.

Ms. Hariton stated that she supported the UAA requirement that mandates the 150 hours of education in order to be considered substantially equivalent and does not support licensure with only an AA degree. She expressed concern that the CPC had not discussed this area enough to accept this broad of a statement.

**It was moved by Ms. Flowers, seconded by Mr. Johnson, and carried to adopt the proposed comment. Ms. Hariton was opposed.**

- The Board is aware that the UAA contemplates a future in which an individual would be licensed only in the state of principal place of business. However, the current reality is that many practitioners are licensed in multiple states. Within this framework, the Board is concerned that the UAA does not address how discipline by a state other than the state of principal place of business affects a practitioner's right to engage in cross-border practice.

**It was moved by Ms. Lamanna, seconded by Mr. Ramirez, and unanimously carried to adopt the proposed comment.**

- The Board is concerned regarding terminology which may be used inconsistently in the UAA. The Board recommends that the meaning of terms such as "home office," "home state," and "state of principal place of business" be clarified and that the UAA be reviewed to ensure that these and other terms are used consistently throughout.

**It was moved by Mr. Ramirez, seconded by Ms. Hariton, and unanimously carried to adopt the proposed comment.**

- The Board is concerned about the complexity of the firm registration provisions. The Board believes that the sheer complexity of these provisions may make them difficult for state boards to understand and state legislatures to enact.

**It was moved by Ms. Anderson, seconded by Mr. MacAloney, and unanimously carried to adopt the proposed comment.**

- The Board does not support separating audits and reviews in the firm registration requirements and believes the same requirements should apply to both of these attest services.

**It was moved by Ms. Chi, seconded by Mr. Ramirez, and unanimously carried to adopt the proposed comment.**

Mr. Swartz stated that the CPC would discuss allowing cross-border practice in California with no notification and would address problems related to substantial equivalency in more detail at an upcoming Board meeting.

D. Legislative Committee.

1. Minutes of the March 22, 2007, Legislative Committee Meeting.

The Minutes of the March 22, 2007, Legislative Committee meeting were adopted on the Consent Agenda. (See Agenda Item XIII.C.)

2. Report on the May 10, 2007, Legislative Committee Meeting.

Ms. Sigmann stated that the Legislative Committee met yesterday and discussed the following bills.

3. Update on Legislation.

- a. AB 721 (Maze) – Public Records: Request from Legislature.

Ms. Sigmann reported that AB 721 would require state agencies to respond within three business days when a public records request comes from a member of the Legislature. AB 721 is currently awaiting a hearing in Assembly Appropriations. The Legislative Committee recommends that the Board continue to “watch” this bill.

## **TITLE 16. CALIFORNIA BOARD OF ACCOUNTANCY**

NOTICE IS HEREBY GIVEN that the California Board of Accountancy is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Courtyard by Marriott CalExpo, 1780 Tribute Road, Sacramento CA 95815 at 11:00 a.m. on May 11, 2007. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the California Board of Accountancy at its office no later than 5:00 p.m. on May 10, 2007, or must be received by the California Board of Accountancy at the hearing. If submitted at the hearing, it is requested, although not required, that 25 copies be made available for distribution to Board members and staff. The California Board of Accountancy, upon its own motion or at the instance of any interested party, may thereafter adopt the proposal substantially as described below or may modify such proposal if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as the Contact Person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 125.9, 148, 5010, 5096 and 5096.9 of the Business and Professions Code and to implement, interpret or make specific Sections 125.9, 148, 5050, 5051, 5096, 5096.3, 5096.14, and 5100 of the Business and Professions Code, the California Board of Accountancy is considering changes to Division 1 of Title 16 of the California Code of Regulations as follows:

### **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

#### **1. Amend Section 30 Title 16 of the California Code of Regulations.**

Section 5096.9 of the Business and Professions Code authorizes the California Board of Accountancy to adopt regulations to implement, interpret, or make specific the statutory provisions related to Practice Privileges.

Current Section 30, applicable during the period January 1, 2006, through December 31, 2007, provides for a "safe harbor period" during which an individual shall not be deemed to be in violation of the practice privilege requirements solely because he or she began practice in California prior to submitting a Practice Privilege Notification Form, provided the Notification Form is submitted within five business days of the date practice begins.

Section 5096.14 of the Business and Professions Code mandates that the Board amend Section 30 to extend the operative period of the "safe harbor" provision through December 31, 2010.

This proposal would amend Section 30 to extend the operative period of the "safe harbor" provision in compliance with this statutory mandate.

The objective of this proposal is to amend Section 30 to achieve compliance with the policy direction given by the Legislature specific to the "safe harbor" provision.

## **2. Amend Sections 95, 95.2, and 95.6 Title 16 of the California Code of Regulations.**

Section 125.9 of the Business and Professions Code authorizes any board within the Department of Consumer Affairs to establish, by regulation, a system for the issuance of a citation which may contain an order to pay an administrative fine in an amount not to exceed \$5,000. Section 148 of the Business and Professions Code authorizes a board within the Department of Consumer Affairs to establish by regulation a similar system for the issuance of a citation to an unlicensed person who is acting in the capacity of a licensee.

Current Section 95 provides for the issuance of citations to licensees of the California Board of Accountancy. Current Section 95.2 provides a schedule of administrative fine amounts that may be assessed in the citation. Current Section 95.6 provides for the issuance of a citation to an unlicensed person acting in the capacity of a licensee.

This proposal would amend Section 95 to include a provision authorizing the issuance of a citation for a violation of a term or condition of probation. Also, this proposal would amend Section 95.2 to delete the schedule of fines, and instead authorize the assessment of fines in the range of not less than \$100 or more than \$5,000 for each investigation. In addition, this proposal would increase the maximum fine authorized under Section 95.6 to \$5,000 for each investigation.

The objective of this proposal is to update and improve the Board's citation and fine regulations by permitting the issuance of citations for a violation of a term or condition of probation, deleting a cumbersome schedule of fine amounts, and making the maximum fine amounts consistent with the maximum amounts authorized by statute.

### **FISCAL IMPACT ESTIMATES**

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: Insignificant.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None.

Business Impact:

The California Board of Accountancy has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

AND

The following studies were relied upon in making that determination: None.

Impact on Jobs/New Businesses:

The California Board of Accountancy has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

The California Board of Accountancy is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None.

## **EFFECT ON SMALL BUSINESS**

The California Board of Accountancy has determined that the proposed regulations would affect small businesses.

## **CONSIDERATION OF ALTERNATIVES**

The California Board of Accountancy must determine that no reasonable alternative which it considered or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

## INITIAL STATEMENT OF REASONS AND INFORMATION

The California Board of Accountancy has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

## TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the California Board of Accountancy at 2000 Evergreen Street, Suite 250, Sacramento, California 95815.

## AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file that is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Web site listed below.

## CONTACT PERSON

Inquiries or comments concerning the proposed administrative action may be addressed to:

Name: Aronna Wong  
Address: California Board of Accountancy  
2000 Evergreen Street, Suite 250  
Sacramento, CA 95815

Telephone No.: (916) 561-1788  
Fax No.: (916) 263-3675  
E-Mail Address: awong@cba.ca.gov

The backup contact person is:

Name: Dan Rich  
Address: California Board of Accountancy  
2000 Evergreen Street, Suite 250  
Sacramento, CA 95815

Telephone No.: (916) 561-1713  
Fax No.: (916) 263-3675  
E-Mail Address: drich@cba.ca.gov

Inquiries concerning the substance of the proposed regulations may be directed to Aronna Wong at (916) 561-1788.

Web site Access: Materials regarding this proposal can be found at [www.dca.ca.gov/cba](http://www.dca.ca.gov/cba).

## TEXT OF PROPOSAL

### Section 30. Safe Harbor – Period of the Notice.

(a) Notwithstanding Section 29, during the period January 1, 2006, through December 31, ~~2007~~ 2010, an individual shall not be deemed to be in violation of this Article or Article 5.1 of the Accountancy Act (commencing with Business and Professions Code Section 5096) solely because he or she begins the practice of public accounting in California prior to submitting the Notification Form, provided the Notification Form is submitted within five business days of the date practice begins. An individual who properly submits the Notification Form to the Board within the five-day period provided for in this Section shall be deemed to have a practice privilege from the first day of practice in California unless the individual fails to timely submit the required fee pursuant to Section 31.

(b) Subsection (a) of this section does not apply in those instances in which prior approval by the Board is required pursuant to Section 32.

(c) In addition to any other applicable sanction, the Board may issue a fine of \$250 to \$5,000 for notifying the Board more than five business days after beginning practice in California. In assessing a fine amount, consideration shall be given to the factors listed in Section 95.3.

Note: Authority cited: Sections 5010 and 5096.9, Business and Professions Code.

Reference: Sections 125.9, 5096, ~~and 5096.3~~, and 5096.14, Business and Professions Code.

### Section 95. Citations.

(a) The executive officer of the board, in lieu of filing an accusation seeking the suspension or revocation of any permit or certificate or the censure of the holder of any such permit or certificate pursuant to Sections 5100, 5101 and 5156 of the Business and Professions Code, may issue a citation to any person as defined in Section 5035 of the Business and Professions Code who holds a permit or certificate from the board for a violation of any provision of the Accountancy Act or any regulation adopted by the board.

(b) In his or her discretion, the board's executive officer may issue a citation under this section to a licensee for a violation of a term or condition contained in a decision placing that licensee on probation.

NOTE: Authority cited: Sections 125.9 and 5010, Business and Professions Code.

Reference: Sections 125.9, Business and Professions Code.

## Section 95.2. Fines.

The executive officer of the Board shall assess fines in accordance with the following schedule: provided, however, in no case shall the total exceed \$2,500 for each investigation. The amount of the administrative fine assessed by the executive officer pursuant to this article shall not be less than \$100 or more than \$5,000 for each investigation.

<i>Rule*</i>	<i>Description</i>	<i>Range of Fines</i>	
3	Notification of Change of Address	\$100	to \$1,000
5	Observance of Rules	200	to 2,000
52	Response to Board Inquiry	200	to 2,000
52.1	Failure to Appear	200	to 2,000
53	Discrimination Prohibited	200	to 2,000
54.1	Disclosure of Confidential Information Prohibited	200	to 2,000
54.2	Recipients of Confidential Information	200	to 2,000
56	Commissions Basic Disclosure Requirement	500	to 2,500
56.1	Commissions Professional Services Provided to the Client	500	to 2,500
57	Incompatible Occupations/Conflict of Interest	200	to 2,000
58	Accountant's Report	200	to 2,000
62	Contingent Fees	150	to 2,000
63	Advertising	100	to 2,000
65	Independence	300	to 2,500
67	Approval of Use of Fictitious Name	100	to 2,000
68	Retention of Client's Records	150	to 2,000
68.1	Working Papers Defined; Retention	500	to 2,500
69	Certification of Applicant's Experience	150	to 2,000
75.11	Certificate of Registration; Continuing Validity	100	to 1,000
80	Inactive License Status	150	to 2,000
87	Basic Requirements	100	to 2,000
87.1	Return to Active Status Prior to Renewal	100	to 2,000
87.5	Additional Continuing Education Requirements	100	to 2,000
87.6	Records Review Continuing Education Requirements	100	to 2,000
87.7	Continuing Education in the Accountancy Act, Board Rules, and Other Rules of Professional Conduct	100	to 2,000
89	Control and Reporting	100	to 1,000
89.1	Review of Financial Statements	100	to 1,000
90	Exceptions and Extensions	100	to 2,000

94 Failure to Comply 150 to 2,000

*\*References for Rules are to sections of Title 16 of the California Code of Regulations.*

*Business and Professions Code Section*

123	Subversion of the Licensing Examination	\$100	to	\$1,000
490	Conviction of a Crime - Substantial Relationship Required	200	to	2,000
496	Violation of Exam Security	100	to	1,000
5027	Continuing Education Regulations	100	to	2,000
5037	Ownership of Accountants' Work Papers	150	to	2,000
5050	Practice Without a Valid Permit: Temporary Practice, Out of State Licensee	150	to	2,000
5055	Title of Certified Public Accountant	150	to	2,000
5056	Title of Public Accountant	150	to	2,000
5058	Use of Confusing Titles or Designations Prohibited	100	to	2,000
5060	Name of Firm	100	to	1,000
5061	Commissions	500	to	2,500
5062	Reports on Financial Statement Required Report Conforming to Professional Standards	200	to	2,500
5063	Reportable Events	100	to	1,000
5071	Restriction on Practice as Partnership	100	to	1,000
5072	Requirements for Registration as a Certified Public Accountant Partnership	150	to	2,000
5076	Termination of Partnership	150	to	2,000
5078	Offices Not Under Personal Management of a Certified Public Accountant or Public Accountant:: Supervision	100	to	2,000
5079	Non Licensee Ownership	100	to	2,000
5081	Requirements for Admission to Certified Public Accountant Examination	100	to	1,000
5081.1	Educational Requirements	100	to	1,000
5100	Discipline in General (a) through (j)	500	to	2,500
5101	Discipline of Partnership	100	to	2,000
5104	Relinquishment of Certificate or Permit	100	to	2,000
5105	Delinquency in Payment of Renewal Fee	100	to	2,000
5151	Application for Registration as Corporation	100	to	1,000
5152	Corporation Reports	100	to	1,000
5152.1	Accountancy Corporation Renewal of Permit to Practice	100	to	1,000
5154	Directors, Shareholders and Officers Must Be Licensed	100	to	1,000
5155	Disqualified Shareholder Non participation	100	to	1,000

<del>5156</del>	<del>Unprofessional Conduct</del>	<del>200</del>	<del>to</del>	<del>2,000</del>	<del>10</del>
<del>5158</del>	<del>Practice of Public Accountancy;</del>				
	<del>Management</del>	<del>100</del>	<del>to</del>	<del>2,000</del>	<del>5</del>

NOTE: Authority cited: Sections 125.9, 148 and 5010, Business and Professions Code.  
Reference: Sections 125.9, 148 and 5100(g), Business and Professions Code.

**95.6 Unlicensed, Unregulated Practice.**

The executive officer of the board may issue citations, in accordance with Section 125.9 and 148 of the Business and Professions Code, against any person defined in Business and Professions Code Section 5035 who is acting in the capacity of a licensee under the jurisdiction of the Board. Each citation may contain an assessment of an administrative fine, an order of abatement fixing a reasonable period of time for abatement of the violation, or both an administrative fine and an order of abatement. Administrative fines shall be in a range from \$100 to ~~\$2,500~~ \$5,000 for each investigation. Any sanction authorized for activity under this section shall be separate from and in addition to any other civil or criminal remedies.

NOTE: Authority cited: Sections 125.9, ~~125.95~~ 148, and 5010, Business and Professions Code. Reference: Sections 125.9, ~~125.95~~, 148, 5050 and 5051, Business and Professions Code.

**CALIFORNIA BOARD OF ACCOUNTANCY  
INITIAL STATEMENT OF REASONS**

**Hearing Date:** May 11, 2007

**Subject Matter of Proposed Regulations:** Practice Privilege Safe Harbor, Citation and Fine.

**Amend Section 30 of Title 16 of the California Code of Regulations.**

**Specific Purpose:**

This proposal would amend Section 30 to extend the operative date of the safe harbor provision through December 31, 2010. This proposal also updates the authority and reference note to include a reference to Business and Professions Code Section 5096.14.

**Factual Basis/Rationale:**

Section 5096.14, added to the Business and Professions Code by AB 1868, (Chapter 458, Statutes of 2006, effective September 25, 2006), requires that the Board amend Section 30 to extend the operative period of the safe harbor provision until December 31, 2010. This rulemaking action is necessary to comply with this statutory mandate.

**Amend Section 95 of Title 16 of the California Code of Regulations.**

**Specific Purpose:**

This proposal would amend Section 95 to add a provision authorizing the issuance of a citation for a violation of a term or condition of probation. It also designates current Section 95 as subsection (a), and the proposed addition as subsection (b).

**Factual Basis/Rationale:**

Currently, the Board has no mechanism for penalizing a probationer for a minor violation of the terms of probation such as failing to file a timely quarterly report or failure to complete required continuing education. Adoption of this proposal is necessary to give the Board the option of using citation and fine as a tool for enforcing compliance with the terms of probation.

The lettering of the paragraphs as subsection (a) and subsection (b) is necessary to enhance the clarity and readability of the regulation.

**Amend Section 95.2 of Title 16 of the California Code of Regulations.**

**Specific Purpose:**

This proposal would amend Section 95.2 to delete the schedule of fines and instead add a general statement indicating that administrative fines assessed by the executive officer shall not be less than \$100 or more than \$5,000.

**Factual Basis/Rationale:**

Current Section 95.2 contains a lengthy, cumbersome schedule of fines. This schedule of fines provides for a maximum fine amount of \$2,500. At the time Section 95.2 was originally adopted, \$2,500 was the maximum fine amount authorized by the enabling statute, Business and Professions Code Section 125.9. In 2003, Section 125.9 was amended to increase the maximum authorized fine to \$5,000. Section 95.2 has not yet been updated to reflect this larger fine amount.

The proposed revision is necessary to streamline Section 95.2 by deleting the cumbersome schedule of fines. The revision is also necessary to update Section 95.2 to give the Board the option of issuing fines up to the current statutory maximum of \$5,000. While it is anticipated that most fines will remain at or near the current level, there may be instances in which a fine closer to the statutory maximum is warranted.

**Amend Section 95.6 of Title 16 of the California Code of Regulations.**

**Specific Purpose:**

This proposal would add a reference to Business and Professions Code Section 148 both in the text of the regulation and in the authority and reference note. This proposal would also change the upper limit of the range of fines authorized by this section from the \$2,500 to \$5,000.

**Factual Basis/Rationale:**

Current Section 95.6 does not reference Business and Professions Code Section 148, the section of the Business and Professions Code authorizing the adoption of regulations related to the issuance of citations and fines for unlicensed practice. This proposal would revise Section 95.6 by adding a reference to Business and Professions Code Section 148 to make the statutory references in the section more complete.

Current Section 95.6 authorizes the issuance of fines between \$100 and \$2,500 for unlicensed practice. This section is similar to Section 95.2 in that it has not been updated to reflect the maximum fine amount currently authorized by Business and Professions Code Section 125.9. While the Board very seldom issues fines under this section, this revision is necessary for consistency with Section 95.2 and to give the

Board the option of issuing a fine of up to \$5,000 for unlicensed practice should it be warranted.

**Underlying Data:**

Technical, theoretical or empirical studies or reports relied upon (if any): None

**Business Impact:**

This regulation will not have a significant adverse economic impact on businesses.

With regard to the proposed amendment to Section 30, extending the time period during which the safe harbor provision remains operative will have no adverse impact on businesses.

With regard to the amendments to the citation and fine regulations, the Board estimates an increase in revenue from citations and fines of approximately five percent. While it is anticipated that most fines will remain at or near the current level, some licensees who are issued a citation may be required to pay a higher fine amount.

**Specific Technologies or Equipment**

These regulations do not mandate the use of specific technologies or equipment.

**Consideration of Alternatives**

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Board would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected.

The Board originally considered amending Sections 95.2 and 95.6 to permit the maximum fine amount per violation. This alternative was rejected in favor of the proposal that continues the historic practice of setting the maximum fine amount based on each investigation, even if the investigation identified more than one violation. The Board noted that if a licensee had numerous violations, it would be more practical to go forward with an accusation rather than a citation and fine. (See Attachment 1 for the text.)

## ATTACHMENT 1

### s 95.2. Fines.

The executive officer of the Board shall assess fines in accordance with the following schedule: provided, however, in no case shall the total exceed \$2,500 for each investigation. The amount of the administrative fine assessed by the Executive Officer pursuant to this article shall not be less that \$100 or more than \$5,000 for each violation.

Rule*	Description	Range of Fines
3	Notification of Change of Address	\$100 to \$1,000
5	Observance of Rules	200 to 2,000
52	Response to Board Inquiry	200 to 2,000
52.1	Failure to Appear	200 to 2,000
53	Discrimination Prohibited	200 to 2,000
54.1	Disclosure of Confidential Information Prohibited	200 to 2,000
54.2	Recipients of Confidential Information	200 to 2,000
56	Commissions Basic Disclosure Requirement	500 to 2,500
56.1	Commissions Professional Services Provided to the Client	500 to 2,500
57	Incompatible Occupations/Conflict of Interest	200 to 2,000
58	Accountant's Report	200 to 2,000
62	Contingent Fees	150 to 2,000
63	Advertising	100 to 2,000
65	Independence	300 to 2,500
67	Approval of Use of Fictitious Name	100 to 2,000
68	Retention of Client's Records	150 to 2,000
68.1	Working Papers Defined; Retention	500 to 2,500
69	Certification of Applicant's Experience	150 to 2,000
75.11	Certificate of Registration; Continuing Validity	100 to 1,000
80	Inactive License Status	150 to 2,000
87	Basic Requirements	100 to 2,000
87.1	Return to Active Status Prior to Renewal	100 to 2,000
87.5	Additional Continuing Education Requirements	100 to 2,000
87.6	Records Review Continuing Education Requirements	100 to 2,000
87.7	Continuing Education in the Accountancy Act, Board Rules, and Other Rules of Professional Conduct	100 to 2,000
89	Control and Reporting	100 to 1,000
89.1	Review of Financial Statements	100 to 1,000
90	Exceptions and Extensions	100 to 2,000

94 Failure to Comply 150 to 2,000

\*References for Rules are to sections of Title 16 of the California Code of Regulations.

~~Business and Professions Code Section~~

123	Subversion of the Licensing Examination	\$100 to \$1,000
490	Conviction of a Crime Substantial Relationship Required	200 to 2,000
496	Violation of Exam Security	100 to 1,000
5027	Continuing Education Regulations	100 to 2,000
5037	Ownership of Accountants' Work Papers	150 to 2,000
5050	Practice Without a Valid Permit: Temporary Practice, Out of State Licensee	150 to 2,000
5055	Title of Certified Public Accountant	150 to 2,000
5056	Title of Public Accountant	150 to 2,000
5058	Use of Confusing Titles or Designations Prohibited	100 to 2,000
5060	Name of Firm	100 to 1,000
5061	Commissions	500 to 2,500
5062	Reports on Financial Statement Required Report Conforming to Professional Standards	200 to 2,500
5063	Reportable Events	100 to 1,000
5071	Restriction on Practice as Partnership	100 to 1,000
5072	Requirements for Registration as a Certified Public Accountant Partnership	150 to 2,000
5076	Termination of Partnership	150 to 2,000
5078	Offices Not Under Personal Management of a Certified Public Accountant or Public Accountant; Supervision	100 to 2,000
5079	Non Licensee Ownership	100 to 2,000
5081	Requirements for Admission To Certified Public Accountant Examination	100 to 1,000
5081.1	Educational Requirements	100 to 1,000
5100	Discipline in General (a) through (j)	500 to 2,500
5101	Discipline of Partnership	100 to 2,000
5104	Relinquishment of Certificate or Permit	100 to 2,000
5105	Delinquency in Payment of Renewal Fee	100 to 2,000
5151	Application for Registration as Corporation	100 to 1,000
5152	Corporation Reports	100 to 1,000
5152.1	Accountancy Corporation Renewal of Permit to Practice	100 to 1,000
5154	Directors, Shareholders and Officers Must Be Licensed	100 to 1,000

~~5155 Disqualified Shareholder Non-participation 100 to 1,000~~  
~~5156 Unprofessional Conduct 200 to 2,000~~  
~~5158 Practice of Public Accountancy; Management 100 to 2,000~~

s 95.6. Unlicensed, Unregulated Practice.

The executive officer of the board may issue citations, in accordance with Section 125.9 and 148 of the Business and Professions Code, against any person defined in Business and Professions Code Section 5035 who is acting in the capacity of a licensee under the jurisdiction of the Board. Each citation may contain an assessment of an administrative fine, an order of abatement fixing a reasonable period of time for abatement of the violation, or both an administrative fine and an order of abatement. Administrative fines shall be in a range from \$100 to ~~\$2,500~~ \$5,000 for each ~~investigation~~ violation. Any sanction authorized for activity under this section shall be separate from and in addition to any other civil or criminal remedies.

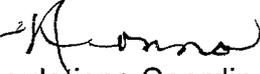
## Memorandum

CPC Agenda Item II  
May 10, 2007

Board Agenda Item IX.C.3  
May 10-11, 2007

To : CPC Members  
Board Members

Date: April 30, 2007  
Telephone : (916) 561-1788  
Facsimile : (916) 263-3674  
E-mail: awong@cba.ca.gov

From : Aronna Wong   
Legislation/Regulations Coordinator

Subject : Cross-Border Practice and the Amended Exposure Draft, Proposed Revisions to AICPA/NASBA Uniform Accountancy Act Sections 23, 7, and 14

Attached for your consideration is a staff analysis of the Exposure Draft proposing amendments to the Uniform Accountancy Act (UAA) to address issues related to cross-border practice (Attachment 1) and a copy of the Exposure Draft itself – Amended Exposure Draft, Proposed Revisions to AICPA/NASBA Uniform Accountancy Act Sections 23, 7, and 14 (Attachment 2). The staff analysis includes an introduction, an overview of California's current cross-border practice provisions, a summary describing the problem of mobility and the UAA solution, and a more thorough discussion of the proposed amendments to the UAA.

The Exposure Draft is before the CPC and the Board at this time for the purpose of considering possible comments to be provided to the AICPA and NASBA and for the purpose of determining whether to further explore pursuing amendments to the California Accountancy Act to facilitate cross-border practice.

Attachments

**OVERVIEW AND DISCUSSION  
OF THE AMENDED EXPOSURE DRAFT – PROPOSED REVISIONS  
TO THE AICPA/NASBA UNIFORM ACCOUNTANCY ACT SECTIONS 23, 7, AND 14.**

**INTRODUCTION**

Facilitating cross-border practice while continuing to protect consumers has been a key issue for the regulation of the accountancy profession in recent years. At its March 2007 meeting, the Board heard presentations by David Costello, President and CEO of the National Association of State Boards of Accountancy (NASBA), Ken Bishop, Chair of the NASBA CPA Mobility Task Force, and Michael Ueltzen, a member of the American Institute of Certified Public Accountants (AICPA) Special Committee on Mobility. They discussed the need to address problems related to mobility and cross-border practice and a proposed solution to those problems contained in the Exposure Draft proposing revisions to Uniform Accountancy Act (UAA) Sections 23, 7, and 14.

Following that presentation, Board President David Swartz assigned to the CPC the task of further analyzing the Exposure Draft and developing recommendations for consideration by the Board. This document is provided to assist the CPC in its deliberations. It looks at the contents of the Exposure Draft and relevant current California law from a conceptual standpoint rather than from the standpoint of details and specific language.

The Exposure Draft merits consideration for two reasons. One reason is to determine whether the Board wants to submit any comments either of support or concern related to the Exposure Draft to NASBA and the AICPA (the comment deadline is May 15, 2007). A second reason is to determine if the Board wishes to pursue changes to California law in response to the difficulties involved in cross-border practice articulated at the March 2007 meeting. If the CPC and the Board make a policy determination regarding possible amendments to the California Accountancy Act, draft language can be provided for consideration at an upcoming meeting.

As background information, it should be noted that the UAA is a model accountancy act developed jointly by the American Institute of Certified Public Accountants (AICPA) and the National Association of State Boards of Accountancy (NASBA). The UAA is given consideration by most state boards of accountancy, and many state boards have adopted some or most of its provisions. Historically, California law has incorporated some of the concepts in the UAA, but has not included the UAA language because it was not drafted in a style consistent with California law.

**OVERVIEW OF CURRENT CALIFORNIA LAWS RELATED TO PRACTICE  
PRIVILEGE AND CROSS-BORDER PRACTICE**

**The Practice Privilege Program:**

The development of the Practice Privilege Program was a significant undertaking for the Board. The practice privilege statutes were enacted in 2004 with a implementation date

of January 1, 2006 (Chapter 921, Statutes of 2004.). During its deliberations related to practice privilege, decisions were reached in the following policy areas: substantial equivalency (discussed in detail below), jurisdiction, administrative suspension, discipline, continuing education, attest services, safe harbor, reportable events, and disqualifying conditions. These policy decisions are reflected in the statutes and regulations implementing the program.

Current California practice privilege requirements make cross-border practice available to licensees of other states who meet one of three requirements: 1) the licensee is from a state considered by the Board to be "substantially equivalent"; 2) the licensee individually has met licensure requirements "substantially equivalent" to California's pathway to licensure requiring 150 semester units of education (Business and Professions Code Section 5093); or 3) the licensee has practiced public accountancy for four of the last ten years. (See Business and Professions Code Sections 5096 through 5096.15.)

California practice privilege requires notification, and there is a notification form that can be completed and submitted on-line. Completing the form not only provides the Board with information identifying the practice privilege holder, but also informs the practice privilege holder of his or her responsibilities, including the responsibility to comply with California laws and regulations. During 2006, the first year of the Practice Privilege Program, the Board received 5,067 notifications.

There is an annual fee for practice privilege which supports the cost of administering the program. The fee is \$100 for practice privilege with an authorization to sign attest reports and \$50 for practice privilege without an authorization to sign attest reports. If the fee were eliminated, California licensees would bear the cost of any practice privilege or related enforcement activities.

For the majority of practice privilege holders, who do not report a "disqualifying condition," practice rights begin immediately upon notification. An individual whose license has been disciplined, who has a criminal conviction, or who is the subject of an investigation must obtain Board approval before beginning practice under a California practice privilege. As of April 20, 2007, the Board had received 103 notifications that required review and approval before the practitioner could begin practice. After Board review, these individuals received practice privileges.

A key consumer protection feature of California's Practice Privilege Program is a licensee look-up feature with a link to the state of the practitioner's principal place of business so that consumers can check on the practitioner's license status.

#### **Other Cross-Border Practice Provisions:**

Since enactment of the practice privilege statutes in 2004, two additional provisions related to cross-border practice have been added to California law. In 2005, Section 5054 was added to the Business and Professions Code to create a narrow exception from licensure, practice privilege, and firm registration requirements for out-of-state

CPAs who prepare tax returns for natural persons or for the estates of natural persons who were clients at the time of death. These practitioners may not physically enter California, solicit any California clients, or assert or imply that they are licensed in California. (Chapter 658, Statutes of 2005.)

In 2006, as part of the revisions contained in AB 1868, Section 5050 of the Business and Professions Code was amended to permit temporary and incidental practice. While the practitioner is allowed to physically enter California under this provision, soliciting California clients and/or or asserting or implying licensure in California is prohibited, as is the sale of abusive tax shelters. (Chapter 458, Statutes of 2006.)

AB 1868 also added critical provisions to clarify the Board's jurisdiction over any act that is the practice of public accounting in California. Under California law, notification is not required for jurisdiction. (See Business and Professions Code Sections 5050.1 and 5050.2)

In addition, AB 1868 added provisions to allow an out-of-state firm to practice through a practice privilege holder and to require that the practice privilege holder's notification include identifying information about the firm. (See Business and Professions Code Sections 5096.12 and 5096.13.)

(The complete text of the laws referenced above and also the Practice Privilege Regulations may be found at [www.dca.ca.gov/cba](http://www.dca.ca.gov/cba).)

## **SUMMARY OF THE PROBLEM AND THE UAA SOLUTION**

The representatives from NASBA and the AICPA who spoke at the March 2007 meeting communicated their views that there are serious problems related to the operation of state laws providing for cross-border practice, including California's Practice Privilege Program. While each presenter shared a slightly different perspective, the problem they presented can be summarized as follows: to meet the needs of their clients, CPAs need to practice in multiple states, and the current state-based system of regulation makes this very difficult. The absence of uniformity makes mobility challenging and costly.

The NASBA and AICPA representatives expressed the view that consumer protection and mobility are compatible goals. They indicated that they believe the solution to the problem is contained in the Exposure Draft. It was described as "no notice, no fee, and no escape."

It provides for cross-border practice by practitioners who qualify for "substantial equivalency" with no notification and no fee. It also provides for cross-border practice by firms. Under the provisions related to firms, in most instances, the firm can perform the full range of financial statement services in the visited state without giving notification or paying a fee as long as the firm participates in a peer review program and complies with the provisions in the UAA governing licensee/nonlicensee ownership of firms. Registration in the visited state is only required in those instances in which the

4

firm is providing specified attest services to a client that has its "home office" in the visited state.

The "no escape" element is provided by the provision that says that by practicing in the visited state the individual and the firm employing that individual consent to the jurisdiction of the state board of that state. Further, the UAA requires a state board to investigate any complaint by a state board of another state.

(For more details regarding the presentation at the March 2007 Board meeting related to mobility, please see the minutes of that meeting – Board Agenda Item II.A.)

### **KEY PROVISIONS OF SECTION 23: "NO NOTIFICATION AND NO FEE"**

#### **Overview:**

A key component of the Exposure Draft is the amendment to Section 23 to eliminate the requirement that licensees engaged in cross-border practice provide notification to the state board of the visited state.

The Exposure Draft retains the requirements related to substantial equivalency requiring the practitioner either to be from a state determined to have licensure requirements substantially equivalent to the licensure requirements in the UAA or individually to have met licensure requirements substantially equivalent to those in the UAA. It also retains the requirement that a licensee engaged in cross-border practice consents to the jurisdiction of the visited state board, agrees to comply with the visited state's statutes and rules, and appoints the board of the state that issued his or her license as agent for service of process. In addition, the Exposure Draft retains the provision making the practitioner subject to discipline in the home state for acts committed in the visited state, and requires the home state board to investigate a complaint made by the state board of the visited state.

The Exposure Draft adds a provision whereby the practitioner agrees to stop cross-border practice if the license in the state of his or her principal place of business is no longer valid. It fails to address discipline that restricts, but does not revoke, the license or discipline or revocation of a license issued by a state other than the state of principal place of business.

#### **Discussion:**

The presenters at the March 2007 Board meeting expressed support for eliminating notification. Some of the arguments advanced in favor of this approach were:

- To be responsive in today's business environment and to facilitate consumer choice, there is a need to ease the restrictions on cross-border practice created by the current system of state-based regulation.

- Because of the lack of uniformity among states and the fees involved, notification is burdensome for practitioners.
- Notification is not necessary to protect consumers since enforcement activities are complaint-driven and the consumer knows the identity of the CPA who caused harm and can communicate this information to the state board. (“Back-end controls.”)
- Notification is not necessary for jurisdiction, which is automatic under the proposed revisions to the UAA (and also under California law).
- Notification adds to the workload of state boards and is unnecessary record-keeping. Without notification, staff can be redirected to enforcement functions which are more important for consumer protection.
- State boards that permit cross-border practice without notification have not had problems taking disciplinary action. (The Missouri experience was provided as an example by Ken Bishop at the March 2007 Board meeting.)
- When the Board permitted temporary/incidental practice prior to enactment of the practice privilege requirements, there was a lack of evidence of consumer harm.
- State boards should trust their counterparts in other states to appropriately license and appropriately discipline. When state boards trust one another, notification is nothing more than unnecessary paperwork.
- Specific to California, eliminating the notification requirement would also obviate the need for the exceptions to the practice privilege requirements that have been confusing to apply – temporary practice (Business and Professions Code Section 5050(b) and tax returns for natural persons (Business and Professions Code Section 5054).

At the March 2007 Board meeting as well as earlier when the Practice Privilege Program was being developed, several arguments were advanced in support of requiring notification:

- Notification is necessary so that the state board of the visited state can check and make sure a practitioner engaged in cross-border practice is duly licensed and has not been disciplined or convicted of a crime. This “front end” control is essential for consumer protection.
- Notification is necessary so that consumers, by looking on a board’s Website or otherwise contacting the board, are informed regarding a practitioner’s qualifications and can make an informed decision.
- Notification is necessary because the notification form and the on-line updating process provide a mechanism for self-reporting. Enforcement actions in California are initiated based on self-reported information as well as consumer complaints.

Eliminating the notification process would impact the ability of the Enforcement Program to receive and utilize this information for consumer protection.

- Notification is necessary so that practitioners engaged in cross-border practice are informed regarding the laws and requirements of the visited state. Compliance with the laws and rules of the visited state is required under Section 23 and California law. California's notification form lays out the requirements and also provides the Board with contact information so that additional information can be communicated to practice privilege holders. Without notification, licensees engaged in cross-border practice would bear the full burden of educating themselves regarding the requirements of each of the states in which they practice.
- Notification is necessary because state boards cannot rely fully on "back end" controls for consumer protection. The jurisdiction provisions are largely untried and untested, and implementing procedures have not yet been developed.
- Eliminating notification would not allow this Board to re-direct practice privilege staff to enforcement activities as has been suggested. California's budgeting procedures require that when a program is eliminated the staffing for that program is also eliminated.
- The absence of complaint data related to the old temporary/incidental practice provision in California does not demonstrate an absence of consumer harm. At that time, because of the lack of clear jurisdiction, consumers were generally directed to register their complaints with the state board of the practitioner's home state.
- When the Board proposed the Practice Privilege Program to the Legislature, the old temporary/incidental practice provision was characterized as a weakness in the law because it allowed an out-of-state CPA to temporarily practice without the knowledge and outside the disciplinary authority of the Board. The Practice Privilege Program was developed to address this concern.

Many of these arguments were presented and discussed at the March 2007 Board meeting. In addition, an alternative to the "no notification" approach was described by Board member Ronald Blanc. This option involves the creation of central database of practitioners engaged in cross-border to be developed and maintained by NASBA. Under this proposal, practitioners interested in cross-border practice could give notice to NASBA and list the states where they want to practice. Because there would be only one annual notice, the burden of complying with different requirements in different states would be eliminated. At a minimum, such a database would provide a state board with the identity of practitioners interested in practicing there. It could also meet the needs of consumers by giving them access to a database of information about practitioners. This database would be especially useful to state boards if NASBA would assume responsibility for determining that each practitioner was duly licensed and qualified to practice and had not been disciplined or convicted of a crime.

A slightly different approach for modifying the proposal would be to permit cross-border practice without notification, but only for practitioners who have not been convicted of a crime or been disciplined by a state board or other regulatory authority within a specified period of time (for example the last three years). This speaks to the concern that the “No notification” approach would enable unqualified practitioners to practice legally in other states. The Exposure Draft adds a provision that requires a practitioner to cease practice under a practice privilege if the license issued by the state of principal place of business is no longer valid, however it does not cover discipline of other licenses or authorizations to practice held by the practitioner. This option would address that concern.

In evaluating the proposed revisions to Section 23 and the other options before it, the CPC and the Board may want to consider the following questions:

- Is the current problem of mobility of sufficient magnitude to warrant changes to the UAA and/or to California law?
- Is there sufficient consumer protection in the “No Notice” approach to make it a viable alternative to the current Practice Privilege Program?
- Should consideration be given to either of the alternatives described above for inclusion in the UAA or amendment into California law.
- Are there other alternatives or modifications that should be considered in order to improve consumer protection?

## **KEY PROVISIONS OF SECTION 23: SUBSTANTIAL EQUIVALENCY**

### **Overview:**

The Exposure Draft proposes no changes to the “substantial equivalency” provision in Section 23. However, since the section is being revised, there may be an opportunity to propose other changes. With this in mind, the CPC and the Board may want to consider if revisions to the “substantial equivalency” provision would further enhance mobility.

As discussed above, Section 23 provides that to qualify for “substantial equivalency” the licensee must either be from a “substantially equivalent” state or individually have met licensure requirements substantially equivalent to those in the UAA. To be “substantially equivalent” a state needs to have education, examination, and experience requirements substantially equivalent to those requirements in the UAA. The UAA provides for 150 semester units of education including a baccalaureate or higher degree (referred to as the “150 hour requirement”), passage of the Uniform CPA Examination, and one year of experience. The UAA also provides for practitioners to qualify for substantial equivalency based on individual qualifications. To qualify for substantial equivalency, an individual would have to have met the education, examination, and experience requirements described above. The UAA rules provide that individuals who

qualify for licensure prior to 2012 shall be deemed to be substantially equivalent without completing 150 semester units of education.

As discussed above, current California practice privilege requirements make cross-border practice available to practitioners who meet one of three requirements: 1) the practitioner is from a state considered by the Board to be "substantially equivalent;" 2) the practitioner individually has met licensure requirements "substantially equivalent" to the California's pathway to licensure requiring 150 semester units of education (Business and Professions Code Section 5093); or 3) the practitioner has practiced public accountancy for four of the last ten years.

### **Discussion:**

The reason "substantial equivalency" was added to the UAA a decade ago was to provide for uniformity among state in order to ease cross-border practice. During previous discussions of practice privilege, it was suggested that "substantial equivalency" may now be having the opposite effect and becoming an impediment to cross-border practice. It was also suggested that holding a valid license (without disqualifying conditions such as license discipline or conviction of a crime) should be sufficient to qualify a CPA to engage in cross-border practice. Below are some arguments in favor of deleting the substantial equivalency requirement:

- All states require passage of the Uniform CPA Examination and generally require at least a baccalaureate degree. It has been argued that the "150 hour requirement" that requires a baccalaureate degree with an additional 30 units of education in unspecified subjects does little to enhance an individual's fitness to practice.
- Even in "substantially equivalent" states, there are many CPAs who do not have 150 semester units of education because they were licensed before it was required.
- One of the overarching principles in the Exposure Draft is that state boards need to trust other state boards to appropriately license and appropriately discipline. Requiring that a state's laws include specific provisions in order to qualify its licensees for mobility may be inconsistent with this principle of trust.
- Deleting the substantial equivalency provision would enhance mobility. For example, if the UAA were revised to no longer require substantial equivalency and if California were to follow suit, it would make it easier for CPAs from other states to come to California. Currently some CPAs with current, valid licenses do not qualify for a California practice privilege because they are not from a "substantially equivalent" state and do not have the 150 semester units of education required to be substantially equivalent as an individual.

In evaluating this issue, the CPC and the Board may want to consider the following questions:

- Is this an appropriate time to consider the substantial equivalency requirements in the UAA?
- Should the substantial equivalency requirements in the UAA be modified or deleted?
- Should the substantial equivalency provisions in California law be modified or deleted?

## **KEY PROVISIONS OF SECTION 23: JURISDICTION**

### **Overview:**

The UAA provides that an individual practicing under a practice privilege consents to the personal and subject matter jurisdiction and disciplinary authority of the board in the visited state. The Exposure Draft modified that provision to include the firm. Also, as discussed above, the Exposure Draft adds a provision that requires a practitioner to cease practice under a practice privilege if the license in the state of principal place of business is no longer valid. It does not address discipline that restricts but does not revoke the license or discipline or revocation of a license issued by a state other than the state of principal place of business. In addition, the UAA includes a provision that makes a practitioner subject to discipline in the home state for acts committed in the visited state. It also requires a board to investigate any complaint made by another state board.

California has a comparable provision related to consent to jurisdiction for individuals (Business and Professions Code Section 5096) and for firms (Business and Professions Code Section 5096.12). California also has a provision indicating that the Board has jurisdiction over any act that is the practice of public accountancy in California (Business and Professions Code 5050.1) and providing for discipline (Business and Professions Code Section 5050.2). Because all of these provisions are relatively new, they have not yet been tested in actual disciplinary matters and procedures for their application have not yet been developed.

### **Discussion:**

Even though the jurisdictional provisions in the UAA are not as detailed or as comprehensive as the comparable provisions in California law, it appears that they will strengthen the ability of state boards to protect consumers and enhance the consumer protection aspects of the UAA.

Section 10 of the UAA (not in the Exposure Draft) indicates that discipline of a license or practice privilege by another state board is grounds for discipline. Business and Professions Code Section 5100 contains a similar provision as do the accountancy acts in many jurisdictions. During the discussion at the March 2007 Board meeting, the question was brought up regarding whether a state board should be required to discipline one of its licensees based on discipline by the state board of a visited state. Legal counsel has advised that making discipline mandatory would be problematic. Not

only would it eliminate the Board's discretion in the matter, there could also be due process and jurisdictional concerns.

One potential concern is that the UAA Rules allow practitioners to self-designate their "principal place of business." This makes it possible for a licensee to select as his or principle place of business a state in which he or she seldom practices. California law does not include a definition of principal place of business but instead relies on the common meaning of the word based on the facts and circumstances of the licensee's professional activities. Under the UAA definition, if the state selected by a practitioner as his or her principal place of business has a weak enforcement process, it may be difficult to restrict of that practitioner's ability to practice in other states.

In evaluating this issue, the CPC and the Board may want to consider the following questions:

- Should the CPC and the Board communicate support for provisions in the Exposure Draft strengthening jurisdiction and public protection?
- Should the UAA be modified to restrict cross-border practice in the event the license in the state of principal place of business is disciplined but not revoked or another license held by the practitioner is disciplined or revoked? Is allowing licensees to self-designate their state of principal place of business appropriate?

## **KEY PROVISIONS OF SECTION 7: FIRM REGISTRATION.**

### **Overview:**

In addition to providing for cross-border practice for individuals, the Exposure Draft also provides for firms to be able to engage in cross-border practice and offer most, but not all, public accounting services in a visited state without registration or notification. In many instances, the only requirement for a firm to be able to provide services in the visited state is that the firm can lawfully provide those same services in the state of principal place of business. However, if the firm wants to perform an audit or other engagement in accordance with the Statements on Auditing Standards (SAS) for a client that does not have its home office in the visited state or perform compilation or review services for a client that has its home office in the visited state, there is the additional requirement that the firm participate in a peer review program and comply with the provisions in the UAA governing licensee/nonlicensee ownership of firms.

**The one exception to the "no notification, no registration" approach is that the firm does need to register if it performs specified types of attest engagements for an entity having its home office in the visited state.** The following types of engagements require firm registration: audit engagements in accordance with SAS, examinations of prospective financial information in accordance with Statements on Standards for Accounting and Review Services (SSAE), or engagements performed in accordance with standards issued by the Public Company Accounting Oversight Board

(PCAOB). The Exposure Draft also proposes to delete the provisions specific to firm practice privilege currently in the UAA.

California takes a very different approach to cross-border practice by firms. California law permits firms to practice through a practice privilege holder and requires that specific identifying information about the firm (name, address, phone number, and federal tax payer identification number) be included in the practice privilege holder's notification. (Business and Professions Code Section 5096.12 and 5096.13.) Both California law and the UAA include a provision for the firm to consent to the jurisdiction of the state board of the visited state.

### **Discussion:**

In general, many of the arguments related to "no notice, no fee" discussed above also apply to the Exposure Draft provision related to firms. There are also additional complexities. The UAA appears to set up three levels of qualifications for firm cross-border practice – one level only requires the firm to be authorized to provide the service in the state of principal place of business; a second level requires the firm to complete peer review and comply with licensee/non-licensee ownership provisions; and a third level requires actual registration in the visited state. It appears that the objective of this approach is to protect critical financial statement services by requiring that, at a minimum, the firms providing these services participate in a peer review program and comply with the UAA provisions related to licensee/non-licensee ownership including the requirement that the firm have a majority of licensee owners.

One of the challenges in evaluating this proposed change to the UAA is that California and the UAA take different approaches to firm registration. The UAA currently requires registration if a firm performs attest services in the state or uses the title "CPA" or "CPA firm" in the name of the firm. The Exposure Draft would modify this provision to require registration by a firm with an office in the state performing attest services, or a firm using the title "CPA" or "CPA firm," or a firm that does not have an office in the state when it performs the attest services described above for a client with its home office in the state.

For a firm to be registered under the UAA's requirements it must comply with the licensee/nonlicensee ownership provision in the UAA; register each office of the firm within this state; show that each attest or compilation engagement is under the charge of a licensee of this or another state; provide identifying information about the firm and keep it updated; pay a fee; and participate in a peer review program.

While California law also permits non-licensee ownership, other aspects of California law related to firm registration diverge from the UAA. California currently does not mandate peer review. On the other hand, California law requires that all firms performing public accounting services register with the Board, not just firms performing attest services or using the CPA title. This reflects a policy decision by the Board at the time when the UAA was first evaluated in 1998-2000. California firms organizing as limited liability partnerships or professional corporations must also file with the Secretary

of State which can be a time-consuming process. In addition, California law requires a California licensed partner or shareholder. California law also requires that offices in California be managed by a California licensee. The requirement that there be a California licensed partner or shareholder and the time involved in filing with the Secretary of State were the key stumbling blocks to cross-border practice that led to enactment of California's current firm cross-border provisions.

Another difference between California law and the UAA is that California law permits accountancy firms to organize as partnerships (including limited liability partnerships) and professional corporations, but not as limited liability companies (LLCs). The UAA is silent with regard to firm organization. Many states permit accountancy firms to organize as LLCs. To address this discrepancy, the law changes permitting firms to practice through practice privilege holders included a provision that, for the purpose of practicing through a practice privilege holder or for temporary/incidental practice, a firm is defined as any entity that is authorized to practice public accountancy as a firm under the laws of another state (Business and Professions Code Section 5035.5).

Because of these significant differences, it would be very difficult to make California law match with the UAA provisions. Consequently, it may be more practical for the CPC and the Board to evaluate the public policy merits and drawbacks of the proposed revisions to the UAA. In addition to the arguments related to "no notice, no fee" above, the CPC and the Board may want to consider the following questions:

- Does the CPC and the Board believe that the proposal draws the line between "registration" and "no registration" in the right place? Are there other instances in which firm registration or some sort of notification should be required? For example should registration or notification be required if the client being audited has significant operations in the visited state even though its "home office" is elsewhere? Should registration or notification be required if the entity being audited is a school district or government agency? Should registration or notification of some form always be required regardless of the services being performed?
- Does the CPC and the Board believe compliance with licensee/nonlicensee ownership requirements and participation in a peer review program are important for firms performing audits for a company that does not have its home office in the visited state or for compilation and review services for companies headquartered in the visited state? Should these requirements apply to providing services for other entities as well, for example to audits of government agencies? Should there also be other requirements the firm must meet in order to provide these services?
- Is the meaning of "home office" as it is used in the Exposure Draft sufficiently clear? Should a definition be added? During the discussion at the March 2007 Board meeting, it was noted that a company could have multiple home offices, and it was unclear if the term "home office" meant the headquarters of the parent company, the controlling division, or some other segment of the company. It was also unclear how the term would be applied to foreign companies which may only have a subsidiary in the United States.

- Are the CPC and the Board concerned about the complexity of the UAA provisions related to firms? Could the complexity of these provisions make them difficult for state boards to understand and state legislatures to enact? Could this complexity be a barrier to uniformity and improved mobility?
- As an alternative, the CPC and the Board may want to consider recommending that the UAA include a version of California's current approach to cross-border practice for firms.

### **KEY PROVISIONS OF SECTION 14 – UNLAWFUL ACTS (CONFORMING AMENDMENTS)**

The Exposure Draft revises Section 14 of the UAA to be consistent with the changes to Sections 23 and 7 discussed above. It reflects no policy changes.

### **CONCLUSION:**

The questions posed in the "discussion" sections above were prepared to assist the CPC and the Board in reaching conclusions related to the policy issues and questions posed by the Exposure Draft.

While this analysis was prepared with an interest in focusing on concepts rather than on specific language, it should be noted that the inconsistent terminology in the UAA statutes sometimes makes it difficult to identify the concept the drafters had in mind. For example in Section 23(a)(3) it is unclear if the license referenced in the phrase "license from state of the individual's principal place of business" (paragraph (C)) is the same license referenced in the phrase "State Board which issued their license" (paragraph (D)). The CPC and the Board may wish to consider commenting on how enhancing the clarity and consistency of the terminology in the UAA could facilitate a better understanding of the concepts it contains.

If the CPC and the Board make a determination regarding comments on the Exposure Draft to be communicated to NASBA and the AICPA, a letter incorporating those comments can be drafted, and after review and approval by the Board President, submitted via e-mail to meet the May 15, 2007, deadline. If the CPC and the Board conclude that any of the concepts contained in the Exposure Draft are appropriate for amendment into California law, draft statutory language can be provided at a future meeting.

# AMENDED EXPOSURE DRAFT

## PROPOSED REVISIONS TO AICPA/NASBA UNIFORM ACCOUNTANCY ACT SECTIONS 23, 7 and 14

(Including Background and Commentary Related to Enhancing  
Licensee Mobility While Protecting the Public)

March 2007

### AICPA UAA Committee

William Strain, CPA – Chair  
Thomas J. Baumgartner, CPA  
Kevin E. Currier, CPA  
Dennis M. Echelbarger, CPA  
William F. Ezzell, Jr., CPA  
Neal J. Harte, CPA  
Grady Hazel, CPA  
Richard E. Jones, CPA  
Allen G. Katz, CPA  
Stephen S. McConnel, CPA  
Harold S. Shultz, CPA

### NASBA UAA Committee

Andrew L. DuBoff, CPA – Chair  
Robert N. Brooks  
Marcela E. Donadio, CPA  
Ellis M. Dunkum, CPA  
Michael R. Granen, Esq.  
J. Dwight Hadley, CPA  
Thomas J. Mulligan, CPA  
Robert A. Pearson, CPA  
Laurie J. Tish, CPA  
Michael D. Weatherwax, CPA  
Michael Weinschel, CPA

**Please submit comments by May 15, 2007 to:**

Sheri Bango Cavaney – [sbango@aicpa.org](mailto:sbango@aicpa.org)  
and  
Louise Dratler Haberman – [lhaberman@nasba.org](mailto:lhaberman@nasba.org)

## TABLE OF CONTENTS

Introduction.....	page 3
Explanation of Amended Revisions	
History	
Why Now?	
Summary of Proposed Statute Revisions.....	page 7
Text of Proposed Statute Revisions by Section .....	page 10
Why This Approach Will Work .....	page 27
From the Legal Perspective	
From the Licensee's Perspective	
From the Board's Perspective	
Potential Issues .....	page 30
Potential Loss of Revenues	
Ability to Locate Licensees	
Elimination of Written Notification	
Trusting Others to Investigate and Enforce Complaints	
Common Questions.....	page 32
Exhibit I – When Registration Is Required .....	page 34
Exhibit II – Why the Notice Requirement Is Broken.....	page 37

# Revisions to Uniform Accountancy Act Sections 23, 7 and 14

## INTRODUCTION

The revisions to Section 23 of the Uniform Accountancy Act (UAA) and conforming changes to Sections 7 and 14 provide a comprehensive system for permitting licensee mobility while making explicit the boards' authority to regulate all who offer or render professional services within their jurisdiction regardless of how those services are being provided. These changes achieve the goals of enhancing public protection, facilitating consumer choice and supporting the efficient operation of the capital markets.

The recommendations for changes to Section 23 are based on recognition by the American Institute of CPAs and the National Association of State Boards of Accountancy that the revisions will enhance the ability of CPAs to meet the needs of their clients and the capital markets while strengthening the ability of state boards of accountancy to regulate all who practice within their jurisdiction. Professionals are being asked daily to cross state lines, via travel or electronic communication, to serve the needs of clients who are not restricting their business to a single state and to provide expert technical resources to perform all levels of accounting services, including effective audits. However, state boards of accountancy continue to be responsible for protecting the people in their jurisdiction from those who incompetently practice public accountancy, irrespective of the state in which they have their principal place of business. Consequently, while a system of regulation that depends on multiple diverse notification procedures is difficult to justify in the name of public protection, a system that does not provide a mechanism for the board to act against those who harm its state's citizens is not meaningful.

## EXPLANATION OF AMENDED REVISIONS TO SECTIONS 23, 7 AND 14 MARCH 2007

The December 11, 2006 Exposure Draft revisions to the UAA represented a bold step toward greater CPA mobility by proposing the grant of "no notice, no fee" practice privileges to qualified individuals. Still, it was argued by some that there remained UAA provisions which could affect mobility as a result of a broad interpretation of CPA firm registration requirements.

The AICPA and NASBA leadership concluded that mobility could be enhanced and the public protected if an out-of-state firm with no office in a state were required to obtain a

permit only if it were providing an audit, examination of prospective financial information, or a PCAOB engagement to a client having a home office in that state (A).

Under the proposed amendment to the December 11 exposure draft, an out-of-state firm without a permit could provide other attest and compilation services through individuals with practice privileges, but would, nevertheless, be subject to state board A's jurisdiction. The firm would have to meet the qualifications for state A's firm permit, including its ownership and peer review requirements if the firm provided other attest or compilation services for a client having its home office in state A. Individuals with practice privileges could provide services related to attest and compilation services for clients that do not have their home office in state A, could provide non-attest services in state A, and their firm could use the CPA title in the firm's name in state A, so long as their firm could do so in its home state (thus addressing the situation of firms from states that do not register sole proprietors as CPA firms).

## HISTORY OF SUBSTANTIAL EQUIVALENCY

In May 1997 the AICPA/NASBA Joint Committee on Regulation of the Profession concluded a year-long study with the issuance of their report including suggestions for improving the state-based regulatory system. They cited a number of current environmental factors affecting the profession and its regulation which still apply: (1) globalization of business; (2) information and electronic technology; (3) expansion of services; (4) challenges to the current regulatory system; and (5) demographic shifts in the profession. Based on those suggestions, the Third Edition of the Uniform Accountancy Act was released. Its most significant change from prior versions was the concept of “substantial equivalency.”

Under the concept of substantial equivalency in the existing Section 23 of the UAA, if a CPA has a license in good standing from a state that utilizes CPA certification criteria that are essentially those outlined in the UAA (*i.e.* 150 hours of education, passing the Uniform CPA Examination and at least one year of experience), then the CPA would be qualified to practice in another state that is not the CPA’s principal place of business. The UAA drafters seriously considered omitting any formal notification requirement, but ultimately agreed to provide for a simple “notification of intent.” Should licensees change their principal place of business to another state, they would need to get a reciprocal license or, if a firm opens an office in another jurisdiction, it would need a license from that jurisdiction; however, gaining practice privileges was to only require notification to the accountancy board of one’s intent to enter their state.

In order for Section 23 to effectively impact mobility and the ability of CPAs to serve clients across state lines, as well as give state boards the ability to protect the public, each state needed to enact and implement the provision in a manner similar to what appeared in Section 23. Substantial equivalency remains the foundation of Section 23 in the proposed revision; however, the “notice” requirement has been eliminated in this proposal as an unnecessary and costly barrier to practice across state lines.

Unfortunately, the mobility and enhanced enforcement goals which are the foundation for the existing Section 23 have not been achieved. This is in large part due to practical difficulties, including the lack of uniformity in the notice requirement as implemented by the states. While the basic requirements for licensure are probably more uniform than ever (as of November 2006, there are 47 jurisdictions that have initial licensing criteria that are equivalent to the UAA’s), and while at least 31 jurisdictions have enacted some version of Section 23 to provide for a practice privilege, no two states have implemented it in exactly the same way. As states implemented differing versions of the provision, obstacles resulted that were often difficult for CPAs and CPA firms to navigate. One of the most significant obstacles that has been identified is how the notification requirements differ and vary from state to state.

## WHY NOW?

Rather than the streamlined process envisioned, jurisdictions have set up different forms and requirements for notification. Some charge a fee and some do not; some calculate the fee per engagement, some by type of service and some on an annual basis; some have a short form and others a long form; some require no notice for their definition of “temporary or incidental practice” but do require notification for engagements that go beyond that, etc. [See Exhibit I – Why the Notice Requirement is Broken.] Professionals practicing beyond the state of their principal place of business find it difficult to comply with state laws and some states have questioned how practically they can discipline CPAs from other states. Some states have recognized the problems that their licensees are having in efficiently obtaining practice privileges in other states.

It has been almost ten years since the Joint Group highlighted the development of the global economy, and globalization has continued to move rapidly forward. Effective American participation in the global economy requires efficient access to the specialized expertise of CPAs across state lines with a minimum of cost, delay and paperwork. Time-consuming, complex and costly procedures for gaining such access cannot be considered as being in the public’s best interest. Compliance costs may be passed on to the public (businesses and consumers) in the form of higher costs for services.

These proposed changes provide the right balance of trust and protection. Removing notification is being coupled with automatic jurisdiction. By removing boundaries to practice within the United States, individuals and businesses will have easier access to appropriate expertise and there will be greater competition and lower future compliance costs to provide services. At the same time, the board’s ability to discipline under the proposal is based on the CPA’s and the CPA’s firm’s performance of public accounting activity, either physically, electronically or otherwise, within the state, rather than restricting the board’s authority to only those holding a state’s license or a practice privilege. This proposal gives the board expanded jurisdiction and authority over all CPAs practicing directly or indirectly in a state.

As has been frequently stated, problems arise with those who seek to avoid the board’s rules, rather than those who seek to comply. In simplifying procedures for cross-border practice, the boards would be recognizing that the vast majority of CPAs are law-abiding licensees who are trying to serve their clients’ business needs that seldom stop at the state line.

A few states have already moved forward with the elimination of notification and automatic consent to enforcement, such as Missouri, Ohio, Virginia and most recently Wisconsin, and they have proved that the concept can work. In fact, both Ohio and Virginia have an over five-year history with no notification requirement, without any documented lapse in public protection.

## SUMMARY OF PROPOSED STATUTE REVISIONS

Below is a description of the revisions that are being proposed for both the December 2006 and the March 2007 amendments. Revisions that appeared in the December 2006 document appear in normal type, while amended revisions to the revised March 2007 document appear in **BOLD**.

1. Removal of the notification requirement within Section 23:

Consistent language is added to Section 23 (a) (1) and (2) for both state and individual substantial equivalency: “Notwithstanding any other provision of law, an individual who offers or renders professional services...shall be granted practice privileges in this state and no notice or other submission shall be provided by any such individual. Such an individual shall be subject to the requirements in 23(a) (3).”

2. Addition of explicit language that gives a Board of Accountancy automatic jurisdiction over a CPA and the CPA firm employing them:

Subsection 23(a) (3) is intended to allow state boards to discipline licensees from other states that practice in their state under a substantial equivalency practice privilege. New language is added to clarify that if an individual licensee is using these practice privileges to render professional services in the state on behalf of a CPA firm, then automatic jurisdiction of the state board is also asserted over the firm.

3. In addition, a new provision is added to 23 (a) (3)(c) that enhances state board authority over unauthorized practice by requiring a licensee to cease performing services in the substantial equivalency practice privilege state if the license from his or her principal place of business is no longer valid.

4. Deletion of Sections 7(i) and 7 (j) – firm substantial equivalency:

As a result of the elimination of any notification requirement under Section 23, former subsections 7(i) and 7(j) are also being deleted. These provisions provided for substantial equivalency on a firm wide basis. These provisions were added to the 4th Edition, released in 2005, but would no longer be necessary with the elimination of notification.

5. Section 23(a)(3):

Delétes “CPA” in front of the word “firm” in two places because “CPA firm” is defined in Section 3(g) as a firm holding a permit in this state.

6. Sections 23(a)(4) and 7(a):

The combined objective of these new subsections is to clarify under what circumstances a firm would need to obtain a firm permit when an individual (or individuals) within the firm was operating in the state under a substantial equivalency practice privilege. The effects of these revisions are described further in the attached table:

7. Section 7(c)(1):

Out-of-state individuals with practice privileges would not be required to be licensed in this state.

8. Section 7(c)(2):

An individual with practice privileges could be designated by an out-of-state CPA firm as responsible for the firm’s registration compliance.

9. Section 7(c)(3) & (4):

Practice privileged individuals could supervise, or sign, or authorize the signature of accountant reports on behalf of a firm if they meet the competency requirements prescribed in the applicable professional standards.

10. Section 14(a), (b) & (c):

Practice privileged individuals could provide attest services and use the CPA title without being licensed in another state, but must provide the services pursuant to applicable professional standards.

11. Section 14(p):

A conforming provision is being added to Section 14 which provides that as long as an out-of-state firm complies with the relevant requirements of new Section 7(a)(2) or 7(a)(3), it could do so through practice privileged individuals without a CPA firm permit from this state.

### When a Firm Permit is Not Required

<b>What an individual with practice privileges can do as an employee of a firm from another state but without a firm permit in this state:</b>
<b>Perform a SSARS review or compilation for a client that has its home office in this state.*</b>
<b>Perform a financial statement audit or other engagement or other SAS services in this state for a client that does NOT have its home office in this state.*</b>
<b>Perform an examination of prospective financial information to be performed in accordance with SSAE for a client that does NOT have its home office in this state.**</b>
<b>Perform an engagement to be performed in accordance with PCAOB standards for a client that does NOT have its home office in this state**</b>
<b>Perform a SSARS review for a client that does NOT have its home office in this state.**</b>
<b>Offer or render any other professional service as a firm while using the title “CPA” or “CPA firm” in this state.**</b>

\* So long as the out-of-state firm meets the Section 7 ownership and peer review requirements.

\*\* So long as the out-of-state firm could lawfully do so in its home state.

### When a Firm Permit is Required

<b>What the same individual <i>cannot</i> do:</b>
<b>Perform an audit or other engagement in accordance with SAS for any entity with its home office in this state.**</b>
<b>Perform an examination of prospective financial information to be performed in accordance with SSAE for any entity with its home office in this state.**</b>
<b>Perform an engagement to be performed in accordance with PCAOB standards for any entity with its home office in this state.**</b>

\*\* However, the accountant's report may be supervised, or signed, or the signature authorized for the firm by a practice privileged individual.

## TEXT OF PROPOSED STATUTE REVISIONS BY SECTION

Note: The material set out below is the proposed statutory text and commentary of the impacted UAA provisions. The text of the statutory provisions is in **BOLD** type. The proposed language to be added that appeared in the December 2006 exposure draft is underlined, and proposed deleted language is stricken-through. The March 2007 additions are double-underlined and deletions are double-stricken-through.

### SECTION 23 SUBSTANTIAL EQUIVALENCY

- (a)(1) An individual whose principal place of business is not in this state and who holds having a valid ~~certificate or~~ license as a Certified Public Accountant from any state which the NASBA National Qualification Appraisal Service has verified to be in substantial equivalence with the CPA licensure requirements of the AICPA/NASBA Uniform Accountancy Act shall be presumed to have qualifications substantially equivalent to this state's requirements and shall have all the privileges of ~~certificate holders and~~ licensees of this state without the need to obtain a ~~certificate or permit~~ license under Sections 6 or 7. ~~However, such individuals shall notify the Board of their intent to enter the state under this provision. Notwithstanding any other provision of law, an individual who offers or renders professional services, whether in person, by mail, telephone or electronic means, under this section shall be granted practice privileges in this state and no notice or other submission shall be provided by any such individual. Such an individual shall be subject to the requirements in 23(a) (3).~~
- (2) An individual whose principal place of business is not in this state and who holds having a valid ~~certificate or~~ license as a Certified Public Accountant from any state which the NASBA National Qualification Appraisal Service has not verified to be in substantial equivalence with the CPA licensure requirements of the AICPA/NASBA Uniform Accountancy Act shall be presumed to have qualifications substantially equivalent to this state's requirements and shall have all the privileges of ~~certificate holders and~~ licensees of this state without the need to obtain a ~~certificate or permit~~ license under Sections 6 or 7 if such individual obtains from the NASBA National Qualification Appraisal Service verification that such individual's CPA qualifications are substantially equivalent to the CPA licensure requirements of the AICPA/NASBA Uniform Accountancy Act. ~~However, such individuals shall notify the Board of their intent to enter the state under this provision.~~ Any individual who passed the Uniform CPA Examination and holds a valid license issued by any other state prior to January 1, 2012 may be exempt

from the education requirement in Section 5(c)(2) for purposes of this Section 23 (a)(2). Notwithstanding any other provision of law, an individual who offers or renders professional services, whether in person, by mail, telephone or electronic means, under this section shall be granted practice privileges in this state and no notice or other submission shall be provided by any such individual. Such an individual shall be subject to the requirements in 23(a) (3).

(3) Any individual licensee of another state exercising the privilege afforded under this section and the CPA firm which employs that licensee hereby simultaneously consents, as a condition of the grant of this privilege:

(A) to the personal and subject matter jurisdiction and disciplinary authority of the Board;

(B) to comply with this Act and the Board's rules; ~~and,~~

(C) that in the event the license from the state of the individual's principal place of business is no longer valid, the individual will cease offering or rendering professional services in this state individually and on behalf of a CPA firm; and

(D) ~~to the appointment of the State Board which issued their license as their agent upon whom process may be served in any action or proceeding by this Board against the licensee.~~

(4) An individual who has been granted practice privileges under this section who, for any entity with its home office in this state, performs any of the following services:

(A) any financial statement audit or other engagement to be performed in accordance with Statements on Auditing Standards;

(B) any examination of prospective financial information to be performed in accordance with Statements on Standards for Attestation Engagements; or

(C) any engagement to be performed in accordance with PCAOB standards;

May only do so through a firm which has obtained a permit issued under Section 7 of this Act.

(b) A licensee of this state offering or rendering services or using their CPA title

**in another state shall be subject to disciplinary action in this state for an act committed in another state for which the licensee would be subject to discipline for an act committed in the other state. Notwithstanding Section 11(a), the Board shall be required to investigate any complaint made by the board of accountancy of another state.**

*COMMENT:* Subsection 23(a)(3) is intended to allow state boards to discipline licensees from other states that practice in their state. If an individual licensee is using these practice privileges to offer or render professional services in this state on behalf of a CPA firm, Section 23(a)(3) also facilitates state board jurisdiction over the CPA firm as well as the individual licensee even if the firm is not required to obtain a permit in this state. Under Section 23(a), State Boards could utilize the NASBA National Qualification Appraisal Service for determining whether another state's certification criteria are "substantially equivalent" to the national standard outlined in the AICPA/NASBA Uniform Accountancy Act. If a state is determined to be "substantially equivalent," then individuals from that state would have ease of practice rights in other states. Individuals who personally meet the substantial equivalency standard may also apply to the National Qualification Appraisal Service if the state in which they are licensed is not substantially equivalent to the UAA.

Individual CPAs who practice across state lines or who service clients in another state via electronic technology would not be required to obtain a reciprocal certificate or license if their state of original certification is deemed substantially equivalent, or if they are individually deemed substantially equivalent. ~~Under Section 23, the CPA merely must notify the Board of the state in which the service is being performed.~~ However, licensure is required in the state where the CPA has their principal place of business. If a CPA relocates to another state and establishes their principal place of business in that state then they would be required to obtain a certificate in that state. See Section 6(c)(2). Likewise, if a firm opens an office in a state or if a firm performs any of the services described in Section 23(a)(4), they would be required to obtain a license in that state. As a result of the elimination of any notification requirement combined with the automatic jurisdiction over any firm that has employees utilizing practice privileges in the state, former subsections 7(i) and 7(j) have been deleted. See also Sections 7(i) and 7(j) which allow the use of substantial equivalency on a firm wide basis.

Unlike prior versions of this Section, the revised provision provides that practice privileges shall be granted and that there shall be no notification. With the addition of a stronger Consent requirement (subsection 23(a)(3)), there appears to be no need for individual notification. As it relates to the notification requirement, states should consider the need for such a requirement since (i) the nature of an enforcement complaint would in any event require the identification of the CPA, (ii) online licensee databases have greatly improved, and (iii) both the individual a CPA practicing on the basis of substantial equivalency as well as the individual's CPA firm employer will be subject to enforcement action in any state under Section 23 (a)(3) regardless of a notification

requirement. Implementation of the “substantial equivalency” standard and creation of the National Qualification Appraisal Service will make a significant improvement in the current regulatory system and assist in accomplishing the goal of portability of the CPA title and mobility of CPAs across state lines.

Section 23(a)(4) clarifies situations in which the individual could be required to provide services through a CPA firm holding a permit issued by the state in which the individual is using practice privileges.

Section 23(a)(4) in conjunction with companion revisions to Sections 7 and 14, still provide that an individual with practice privileges cannot do the following as an employee of a firm unless the firm holds a CPA firm permit from this state:

- perform an examination of prospective financial information in accordance with SSAE for any entity with its home office in this state
- perform an engagement in accordance with PCAOB standards for any entity with its home office in this state
- perform an audit or other engagement in accordance with SAS for any entity with its home office in this state

In order to be deemed substantially equivalent under Section 23(a)(1), a state must adopt the 150-hour education requirement established in Section 5(c)(2). A few states have not yet implemented the education provision. In order to allow a reasonable transition period, Section 23(a)(2) provides that an individual who has passed the Uniform CPA examination and holds an active license from a state that is not yet substantially equivalent may be individually exempt from the 150-hour education requirement and may be allowed to use practice privileges in this state if the individual was licensed prior to January 1, 2012.

SECTION 7

FIRM PERMITS TO PRACTICE, ATTEST AND COMPILATION  
COMPETENCY AND PEER REVIEW

~~(a) The Board shall grant or renew permits to practice as a CPA firm to entities that make application and demonstrate their qualifications therefor in accordance with the following subsections of this Section, or to CPA firms originally licensed in another state that establish an office in this state. A firm must hold a permit issued under this Section in order to provide attest services as defined or to use the title "CPAs" or "CPA firm"~~

(a) The Board shall grant or renew permits to practice as a CPA firm to applicants that demonstrate their qualifications therefor in accordance with this Section.

(1) The following must hold a permit issued under this Section:

(A) Any firm with an office in this state performing attest services as defined in Section 3(b) of this Act; or,

(B) Any firm with an office in this state that uses the title "CPA" or "CPA firm;" or,

(C) Any firm that does not have an office in this state but performs attest services described in Section 3(b)(1), (3) or (4) of this Act for a client having its home office in this state.

(2) A firm which does not have an office in this state may perform services described in subsections 3(b)(2) or 3(f) for a client having its home office in this state and may use the title "CPA" or "CPA firm" without a permit issued under this Section only if:

(A) it has the qualifications described in subsections 7(c) [ownership] and 7(h) [peer review], and

(B) it performs such services through an individual with practice privileges under Section 23 of the Act.

(3) A firm which is not subject to the requirements of 7(a)(1)(C) or 7(a)(2) may perform other professional services while using the title "CPA" or "CPA firm" in this state without a permit issued under this Section only if:

(A) it performs such services through an individual with practice privileges under Section 23 of the Act, and,

**(B) it can lawfully do so in the state where said individuals with practice privileges have their principal place of business.**

*COMMENT:* This Uniform Act departs from the pattern of some accountancy laws now in effect in eliminating any separate requirement for the registration of firms and of offices. The information-gathering and other functions accomplished by such registration should be equally easily accomplished as part of the process of issuing firm permits under this section. The difference is, again, one of form more than of substance but one that should be kept in mind if consideration is given to fitting the permit provisions of this Uniform Act into an existing law.

As pointed out in the comment following section 3(g), above, because a CPA firm is defined to include a sole proprietorship, the permits contemplated by this section would be required of sole practitioners as well as larger practice entities. To avoid unnecessary duplication of paperwork, a Board could, if it deemed appropriate, offer a joint application form for certificates and sole practitioner firm permits.

This provision also makes it clear that firms with an office in this state may not provide attest services as defined, or call themselves CPA firms without a license in this state. Certified Public Accountants are not required to offer services to the public, other than attest services, through a CPA firm. CPAs may offer non-attest services through any type of entity they choose and there are no requirements in terms of a certain percentage of CPA ownership for these types of entities as long as they do not call themselves a "CPA firm" or use the term "CPA" in association with the entity's name. These non-CPA firms are not required to be licensed by the State Board.

Out-of-state firms without an office in this state may provide attest services other than those described in Section 23(a)(4) for a client which has its home office in this state, and call themselves CPA firms in this state without having a permit from this state so long as they do so through a licensee or individual with practice privileges and so long as they are qualified to do so under the requirements of Section 7.

Depending on the services provided, and if the firm calls itself a CPA firm, such a firm is subject to the requirements described in revised subsection 7(a)(2)(A) or subsection 7(a)(3)(B), whichever is applicable.

**(b) Permits shall be initially issued and renewed for periods of not more than three years but in any event expiring on [specified date] following issuance or renewal. Applications for permits shall be made in such form, and in the case of applications for renewal, between such dates as the Board may by rule specify, and the Board shall grant or deny any such application no later than \_\_\_\_\_ days after the application is filed in proper form. In any case where the applicant seeks the opportunity to show that issuance or renewal of a**

permit was mistakenly denied or where the Board is not able to determine whether it should be granted or denied, the Board may issue to the applicant a provisional permit, which shall expire ninety days after its issuance or when the Board determines whether or not to issue or renew the permit for which application was made, whichever shall first occur.

*COMMENT:* See the comment following section 6(b) regarding the renewal period.

(c) **An applicant for initial issuance or renewal of a permit to practice under this Section shall be required to show that:**

- (1) **Notwithstanding any other provision of law, a simple majority of the ownership of the firm, in terms of financial interests and voting rights of all partners, officers, shareholders, members or managers, belongs to holders of a certificate who are licensed in some state, and such partners, officers, shareholders, members or managers, whose principal place of business is in this state, and who perform professional services in this state hold a valid certificate issued under Section 6 of this Act or the corresponding provision of prior law or are public accountants registered under Section 8 of this Act. Although firms may include non-licensee owners the firm and its ownership must comply with rules promulgated by the Board. For firms of public accountants, at least a simple majority of the ownership of the firm, in terms of financial interests and voting rights, must belong to holders of registrations under Section 8 of this Act. An individual who has practice privileges under Section 23 who performs services for which a firm permit is required under Section 23(a)(4) shall not be required to obtain a certificate from this state pursuant to Section 6 of this Act.**

*COMMENT:* The limitation of the requirement of certificates to partners, officers, shareholders, members and managers who have their principal place of business in the state is intended to allow some latitude for occasional visits and limited assignments within the state of firm personnel who are based elsewhere. If those out-of-state individuals do not have their principal places of business in this state and qualify for practice privileges under Section 23, they do not have to be licensed in this state. In addition, the requirement allows for non-licensee ownership of licensed firms.

(2) **Any CPA or PA firm as defined in this Act may include non-licensee owners provided that:**

- (A) **The firm designates a licensee of this state, or in the case of a firm which must have a permit pursuant to Section 23(a)(4) a licensee of another state who meets the requirements set out in Section**

23(a)(1) or in Section 23(a)(2), who is responsible for the proper registration of the firm and identifies that individual to the Board.

- (B) All non-licensee owners are active individual participants in the CPA or PA firm or affiliated entities.
- (C) The firm complies with such other requirements as the board may impose by rule.
- (3) Any individual licensee and any individual granted practice privileges under this Act who is responsible for supervising attest or compilation services and signs or authorizes someone to sign the accountant's report on the financial statements on behalf of the firm, shall meet the competency requirements set out in the professional standards for such services.
- (4) Any individual licensee and any individual granted practice privileges under this Act who signs or authorizes someone to sign the accountants' report on the financial statements on behalf of the firm shall meet the competency requirement of the prior subsection...

*COMMENT:* Because of the greater sensitivity of attest and compilation services, professional standards should set out an appropriate competency requirement for those who supervise them and sign attest or compilation reports. However, the accountant's report in such engagements may be supervised, or signed, or the signature authorized for the CPA firm by a practice privileged individual.

- (d) An applicant for initial issuance or renewal of a permit to practice under this Section shall be required to register each office of the firm within this State with the Board and to show that all attest and compilation services as defined herein rendered in this state are under the charge of a person holding a valid certificate issued under Section 6 of this Act or the corresponding provision of prior law or some other state.
- (e) The Board shall charge a fee for each application for initial issuance or renewal of a permit under this Section in an amount prescribed by the Board by rule.
- (f) An applicant for initial issuance or renewal of permits under this Section shall in their application list all states in which they have applied for or hold permits as CPA firms and list any past denial, revocation or suspension of a permit by any other state, and each holder of or applicant for a permit under this Section shall notify the Board in writing, within 30 days after its occurrence, of any change in the identities of partners, officers, shareholders,

members or managers whose principal place of business is in this State, any change in the number or location of offices within this State, any change in the identity of the persons in charge of such offices, and any issuance, denial, revocation, or suspension of a permit by any other state.

- (g) Firms which fall out of compliance with the provisions of the section due to changes in firm ownership or personnel, after receiving or renewing a permit, shall take corrective action to bring the firm back into compliance as quickly as possible. The State Board may grant a reasonable period of time for a firm to take such corrective action. Failure to bring the firm back into compliance within a reasonable period as defined by the Board will result in the suspension or revocation of the firm permit.
- (h) The Board shall by rule require as a condition to renewal of permits under this Section, that applicants undergo, no more frequently than once every three years, peer reviews conducted in such manner as the Board shall specify, and such review shall include a verification that individuals in the firm who are responsible for supervising attest and compilation services and sign or authorize someone to sign the accountant's report on the financial statements on behalf of the firm meet the competency requirements set out in the professional standards for such services, provided that any such rule --
- (1) shall be promulgated reasonably in advance of the time when it first becomes effective;
  - (2) shall include reasonable provision for compliance by an applicant showing that it has, within the preceding three years, undergone a peer review that is a satisfactory equivalent to peer review generally required pursuant to this subsection (h);
  - (3) shall require, with respect to any organization administering peer review programs contemplated by paragraph (2), that it be subject to evaluations by the Board or its designee, to periodically assess the effectiveness of the peer review program under its charge, and
  - (4) \*may require that organizations administering peer review programs provide to the Board information as the Board designates by rule; and
  - (5) \*shall require with respect to peer reviews contemplated by paragraph (2) that licensees timely remit such peer review documents as specified by Board Rule or upon Board request and that such documents be maintained by the Board in a manner consistent with Section 4(j) of this Act.

\* Due to its 1988 commitment to its members, the AICPA cannot support this provision at this time.

*COMMENT:* The AICPA and NASBA both agree that periodic peer reviews are an important means of maintaining the general quality of professional practice.

In the interests of providing flexibility where appropriate or desirable, this provision would give the Board latitude when to require reviews. Paragraph (2) is intended to recognize that there are other valid reasons besides state regulation for which firms may undergo peer reviews (for example, as a condition to membership in the AICPA). It is also intended to avoid unnecessary duplication of such reviews, by providing for the acceptance of peer reviews performed by other groups or organizations whose work could be relied on by the Board. If a peer review requirement is established by the Board, paragraph (3) requires that the Board assure that there is an evaluation of the administration of the peer review program(s) which is accepted by the Board, which is performed either by the Board or its designee. Paragraph (4) would require the administering entities of peer review programs to provide the Board information, as required by rule. Paragraph (5) requires that licensees remit peer review documents to the Board, as specified by rule, and that these documents would be maintained subject to the confidentiality provision in Section 4(j) of the Act.

Paragraphs (4) and (5) primarily address the ability of the Board to have direct access to peer review results. Previous editions of the UAA contained language that could have been interpreted to either not permit or to limit state boards' access to results of the peer review process. Language that restricted the Board's ability to access the results of peer review was consistent with the AICPA's commitment to its membership to maintain the confidentiality of peer review materials that were generated through the AICPA peer review program. However, in response to regulatory concerns it was determined that new language was needed to provide for greater transparency. At its spring 2004 meeting, AICPA's governing Council approved a resolution in support of increased transparency in the peer review process. However, as a result of the AICPA's 1988 commitment to its membership to maintain the confidentiality of peer review results, the AICPA's Council will not act on its resolution without a vote of the AICPA's membership. The AICPA will not pursue a vote of its membership until the membership has fully considered the issues surrounding this matter. Until that time, a solution for the UAA was crafted that recognized the authority of state boards of accountancy to take action and at the same time allowed the Institute to keep its commitment to the AICPA membership on confidentiality of peer review materials. For that reason, paragraphs (4) and (5) are marked with an asterisk (\*) that states "Due to its 1988 commitment to its members, the AICPA cannot support this provision at this time."

The term "peer review" is defined in section 3(n).

~~(i)(1) Any CPA firm with a permit in this state may perform services through its individuals licensed in another state whose principal places of business are not in this state and who meet the requirements in Section 23 of this Act. However, the CPA firm:~~

~~(A) Shall provide name(s) of such individuals to the Board of Accountancy~~

~~upon request~~

~~(B) Shall, by utilizing the privileges granted under this provision, consent on its own behalf and for the individual licensees to:~~

~~(i) cooperate in any Board investigation regarding any of the individual licensees of the CPA firm even if the individual is no longer an owner or employed by the CPA firm;~~

~~(ii) accept service of process from the Board on its own behalf and for the licensees;~~

~~(iii) be subject to the administrative jurisdiction of the state board regarding enforcement matters arising out of or pertaining to the use of the practice privileges provided under this subsection; and~~

~~(iv) comply with the state's accountancy laws and rules while using practice privileges under this subsection.~~

~~(2) An individual licensee whose CPA firm has complied with the preceding subsection shall not be required to file the notice required under Section 23 of this Act only as long as said individual licensee remains an employee or owner of the CPA firm.~~

~~(j) A CPA firm with a permit in another state which does not have an office in this state may provide professional services in this state through individuals that meet the requirements set out in Section 23 and such individuals shall be exempt from the notice requirement set out in Section 23 if the CPA firm:~~

~~(1) has filed a master notice, which shall be renewed not more frequently than annually, to all participating substantially equivalent jurisdictions, including this Board, by giving notice to the NASBA Qualifications Appraisal Board (or other comparable service designated by the Board); provided the information as maintained by NASBA (or such other comparable service) is accessible to this Board and includes the address of the firm and the name of the individual licensee responsible for filing the master notice.~~

~~(2) maintains a system of records reasonably designed to record for each calendar year the name, certificate number, state of licensure and principal place of business of each individual licensee who has used practice privileges in this state pursuant to Section 23 of this Act.~~

~~(3) has affirmed in its master notice that it consents in its own behalf and for the individual licensees to the requirements set forth in Section 7(i)(1)(B).~~

**SECTION 14  
UNLAWFUL ACTS**

- (a) Only licensees and individuals who have practice privileges under Section 23 of this Act may issue a report on financial statements of any person, firm, organization, or governmental unit or offer to render or render any attest or compilation service, as defined herein. This restriction does not prohibit any act of a public official or public employee in the performance of that person's duties as such; or prohibit the performance by any non-licensee of other services involving the use of accounting skills, including the preparation of tax returns, management advisory services, and the preparation of financial statements without the issuance of reports thereon. Non-licensees may prepare financial statements and issue non-attest transmittals or information thereon which do not purport to be in compliance with the Statements on Standards for Accounting and Review Services (SSARS).

*COMMENT:* This provision, giving application to the definition of report in section 3(r) above, is the cornerstone prohibition of the Uniform Act, reserving the performance of those professional services calling upon the highest degree of professional skill and having greatest consequence for persons using financial statements--namely, the audit function and other attest and compilation services as defined herein -- to licensees. It is so drafted as to make as clear and emphatic as possible the limited nature of this exclusively reserved function and the rights of unlicensed persons to perform all other functions. This wording addresses concerns that this exemption could otherwise, by negative implication, allow non-licensees to prepare any report on a financial statement other than a SSARS - i.e., other attestation standards. Consistent with Section 23, individuals with practice privileges may render these reserved professional services to the same extent as licensees.

This provision is also intended to extend the reservation of the audit function to other services that also call for special skills and carry particular consequence for users of financial statements, albeit in each respect to a lesser degree than the audit function: namely, the performance of compilations and reviews of financial statements, in accordance with the AICPA's Statements on Standards for Accounting and Review Services, which set out the standards to be met in a compilation or review and specify the form of communication to management or report to be issued. The subsection is intended to prevent issuance by non-licensees of reports or communication to management using that standard language or language deceptively similar to it. Safe harbor language which may be used by non-licensees is set out in Rule 14-3.

- (b) **Licenses and individuals who have practice privileges under Section 23 of this Act performing attest or compilation services must provide those services in accordance with applicable professional standards.**
- (c) **No person not holding a valid certificate or a practice privilege pursuant to Section 23 of this Act shall use or assume the title “certified public accountant,” or the abbreviation “CPA” or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant.**

*COMMENT:* This subsection prohibits the use by persons not holding certificates, or practice privileges, of the two titles, “certified public accountant” and “CPA,” that are specifically and inextricably tied to the granting of a certificate as certified public accountant under section 6.

- (d) **No firm shall provide attest services or assume or use the title “certified public accountants,” or the abbreviation “CPAs,” or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such firm is a CPA firm unless (1) the firm holds a valid permit issued under Section 7 of this Act, and (2) ownership of the firm is in accord with this Act and rules promulgated by the Board.**

*COMMENT:* Like the preceding subsection, this one restricts use of the two titles “certified public accountants” and “CPAs,” but in this instance by firms, requiring the holding of a firm permit to practice. It also restricts unlicensed firms from providing attest services.

- (e) **No person shall assume or use the title “public accountant,” or the abbreviation “PA,” or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a public accountant unless that person holds a valid registration issued under Section 8 of this Act.**

*COMMENT:* This subsection, and the one that follows, reserve the title “public accountant” and its abbreviation in the same fashion as subsections (c) and (d) do for the title “certified public accountant” and its abbreviation. The two provisions would of course only be required in a jurisdiction where there were grandfathered public accountants as contemplated by section 8.

- (f) **No firm not holding a valid permit issued under Section 7 of this Act shall provide attest services or assume or use the title “public accountant,” the abbreviation “PA,” or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such firm is**

composed of public accountants.

*COMMENT:* See the comments following subsections (d) and (e).

- (g) No person or firm not holding a valid certificate, permit or registration issued under Sections 6, 7, or 8 of this Act shall assume or use the title "certified accountant," "chartered accountant," "enrolled accountant," "licensed accountant," "registered accountant," "accredited accountant," or any other title or designation likely to be confused with the titles "certified public accountant" or "public accountant," or use any of the abbreviations "CA," "LA," "RA," "AA," or similar abbreviation likely to be confused with the abbreviations "CPA" or "PA." The title "Enrolled Agent" or "EA" may only be used by individuals so designated by the Internal Revenue Service.

*COMMENT:* This provision is intended to supplement the prohibitions of subsections (c) through (f) on use of titles by prohibiting other titles that may be misleadingly similar to the titles specifically reserved to licensees or that otherwise suggest that their holders are licensed.

- (h)(1) Non-licensees may not use language in any statement relating to the financial affairs of a person or entity which is conventionally used by licensees in reports on financial statements. In this regard, the Board shall issue safe harbor language non-licensees may use in connection with such financial information.

- (2) No person or firm not holding a valid certificate, permit or registration issued under Sections 6, 7, or 8 of this Act shall assume or use any title or designation that includes the words "accountant," "auditor," or "accounting," in connection with any other language (including the language of a report) that implies that such person or firm holds such a certificate, permit, or registration or has special competence as an accountant or auditor, provided, however, that this subsection does not prohibit any officer, partner, member, manager or employee of any firm or organization from affixing that person's own signature to any statement in reference to the financial affairs of such firm or organization with any wording designating the position, title, or office that the person holds therein nor prohibit any act of a public official or employee in the performance of the person's duties as such.

*COMMENT:* This provision clarifies the language and titles that are prohibited for non-licensees. Like the preceding subsection, subsection (h)(2) of this provision is intended to supplement the prohibitions of subsections (c) through (f), by prohibiting other titles which may be misleadingly similar to the specifically reserved titles or that otherwise suggest licensure. In the interest of making the prohibition against the issuance by unlicensed persons of reports on audits, reviews, and compilations as tight and difficult to

evade as possible, there is also some overlap between this provision and the prohibitions in subsection (a). Safe harbor language is set out in Rule 14-3.

- (i) **No person holding a certificate or registration or firm holding a permit under this Act shall use a professional or firm name or designation that is misleading about the legal form of the firm, or about the persons who are partners, officers, members, managers or shareholders of the firm, or about any other matter, provided, however, that names of one or more former partners, members, managers or shareholders may be included in the name of a firm or its successor.**

*COMMENT:* This prohibition with regard to misleading firm names reflects a provision commonly found in ethical codes.

- (j) **None of the foregoing provisions of this Section shall have any application to a person or firm holding a certification, designation, degree, or license granted in a foreign country entitling the holder thereof to engage in the practice of public accountancy or its equivalent in such country, whose activities in this State are limited to the provision of professional services to persons or firms who are residents of, governments of, or business entities of the country in which the person holds such entitlement, who performs no attest or compilation services as defined and who issues no reports with respect to the financial statements of any other persons, firms, or governmental units in this State, and who does not use in this State any title or designation other than the one under which the person practices in such country, followed by a translation of such title or designation into the English language, if it is in a different language, and by the name of such country.**

*COMMENT:* The right spelled out in this provision, of foreign licensees to provide services in the state to foreign-based clients, looking to the issuance of reports only in foreign countries, is essentially what foreign licensees have a right to do under most laws now in effect, simply because no provision in those laws restricts such a right. The foreign titles used by foreign licensees might otherwise run afoul of standard prohibitions with respect to titles (such as one on titles misleadingly similar to “CPA”) but this provision would grant a dispensation not found in most laws now in force.

- (k) **No holder of a certificate issued under Section 6 of this Act or a registration issued under Section 8 of this Act shall perform attest services through any business form that does not hold a valid permit issued under Section 7 of this Act.**

*COMMENT:* See the comments following Sections 6(a), 7(a) and 8.

- (l) No individual licensee shall issue a report in standard form upon a compilation of financial information through any form of business that does not hold a valid permit issued under Section 7 of this Act unless the report discloses the name of the business through which the individual is issuing the report, and the individual:
  - (1) signs the compilation report identifying the individual as a CPA or PA,
  - (2) meets the competency requirement provided in applicable standards, and
  - (3) undergoes no less frequently than once every three years, a peer review conducted in such manner as the Board shall by rule specify, and such review shall include verification that such individual has met the competency requirements set out in professional standards for such services.
- (m) Nothing herein shall prohibit a practicing attorney or firm of attorneys from preparing or presenting records or documents customarily prepared by an attorney or firm of attorneys in connection with the attorney's professional work in the practice of law.
- (n)(1) A licensee shall not for a commission recommend or refer to a client any product or service, or for a commission recommend or refer any product or service to be supplied by a client, or receive a commission, when the licensee also performs for that client,
  - (A) an audit or review of a financial statement; or
  - (B) a compilation of a financial statement when the licensee expects, or reasonably might expect, that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence; or
  - (C) an examination of prospective financial information.

This prohibition applies during the period in which the licensee is engaged to perform any of the services listed above and the period covered by any historical financial statements involved in such listed services.

- (2) A licensee who is not prohibited by this section from performing services for or receiving a commission and who is paid or expects to be paid a commission shall disclose that fact to any person or entity to whom the licensee recommends or refers a product or service to which the commission relates.
  - (3) Any licensee who accepts a referral fee for recommending or referring any service of a licensee to any person or entity or who pays a referral fee to obtain a client shall disclose such acceptance or payment to the client.
- (o)(1) A licensee shall not:
    - (A) perform for a contingent fee any professional services for, or receive such a fee from a client for whom the licensee or the licensee's firm performs,

- (i) an audit or review of a financial statement; or
  - (ii) a compilation of a financial statement when the licensee expects, or reasonably might expect, that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence; or
  - (iii) an examination of prospective financial information; or
- (B) Prepare an original or amended tax return or claim for a tax refund for a contingent fee for any client.
- (2) The prohibition in (1) above applies during the period in which the licensee is engaged to perform any of the services listed above and the period covered by any historical financial statements involved in any such listed services.
- (3) Except as stated in the next sentence, a contingent fee is a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. Solely for purposes of this section, fees are not regarded as being contingent if fixed by courts or other public authorities, or, in tax matters, if determined based on the results of judicial proceedings or the findings of governmental agencies. A licensee's fees may vary depending, for example, on the complexity of services rendered.

*COMMENT:* Section 14(n) on commissions is based on Rule 503 of the AICPA Code of Professional Conduct. Section 14(o) on contingent fees is based on Rule 302 of the AICPA Code of Professional Conduct.

**(p) Notwithstanding anything to the contrary in this Section, it shall not be a violation of this Section for a firm which does not hold a valid permit under Section 7 of this Act and which does not have an office in this state to provide its professional services in this state so long as it complies with the requirements of Section 7(a)(2) or 7(a)(3), whichever is applicable.**

COMMENT: Section 14(p) has been added along with revisions to Sections 23 and 7, to provide that as long as an out-of-state firm complies with the requirements of new Section 7(a)(2) or 7(a)(3), whichever is applicable, it can do so through practice privileged individuals without a CPA firm permit from this state.

# WHY THIS APPROACH WILL WORK

## FROM THE LEGAL PERSPECTIVE

At least 23 states already have some form of automatic consent to jurisdiction embedded in their accountancy laws or regulations. So far all of these have worked and none have been challenged in the courts. The new proposed version of Section 23, that underscores the automatic acceptance of jurisdiction once an individual offers accounting services in a state, strengthens what states already have and would make it clear to all that wherever someone practices they are subject to discipline by the local board of accountancy.

This approach is not unique to the accounting profession. Comparable automatic consent to jurisdiction provisions can be found in other uniform acts such as the Uniform Securities Act (USA) – 2002 Version.<sup>1</sup> Insurance regulation has a similar provision in the Uniform Insurers Liquidation Act, covering consent to service of process and court jurisdiction which has been upheld in state cases dealing with due process issues.<sup>2</sup> Comparable automatic consents to jurisdiction can be found in other contexts and have been upheld in court<sup>3</sup>.

The legal questions surrounding implementation of a no-notice practice by out-of-state CPAs in a state generally turn on three different aspects of jurisdiction, which are dictated in part by state statutes and are also limited by the federal and state constitutions. These are: (1) personal jurisdiction (the ability of the board to require the individual to defend an administrative action before the board); (2) subject matter jurisdiction (the requirement that an out-of-state CPA comply with another state's accountancy laws and rules); and (3) enforcement jurisdiction (a practical jurisdiction that pertains to whether a board can effectively enforce discipline over an out-of-state licensee even if there is personal and subject matter jurisdiction).

---

<sup>1</sup> The 2002 version has been enacted by Hawaii, Idaho, Missouri, Oklahoma, Iowa, Kansas, Maine, Minnesota, South Carolina, South Dakota, US Virgin Islands and Vermont and prior versions of the USA with similar consent to jurisdiction provisions were adopted by at least 37 states. This USA provision has not been successfully challenged.

<sup>2</sup> “*Conduct constituting appointment of agent for service.* If a person, including a nonresident of this state, engages in an act, practice, or course of business prohibited or made actionable by this chapter or rule adopted or order issued under this chapter and the person has not filed a consent to service of process under subsection (a), the act, practice or course of business constitutes the appointment of the director as the person's agent for service of process in a noncriminal action or proceeding against the person or the person's successor or personal representative.”

<sup>3</sup> *Arnold Cahit, Ltd. V. La Metropolitana, Compania Nacional De Seguros* 26 Misc. 2d 751, 207 NYS2d 22 (1960) affirming provision in New York Insurance law that was based upon the Uniform Insurers Liquidation Act.

For example, the US Supreme Court upheld as a valid exercise of police power of the State a nonresident bus operator consenting to the appointment of the New York Secretary of State as its agent to accept service of process.

In the context of the practice of a profession, where there is a requirement that one comply with local laws when rendering professional services in a state, there is a strong argument that one has "availed oneself of the benefits of the laws of that state." If, on the other hand, the law is silent or allows temporary practice but does not require consent to personal jurisdiction, the out-of-state individual might be subject to the state's statutory requirement but not personally subject to the board's jurisdiction. Consequently, the revised language being proposed for Section 23 is both needed and beneficial to state boards of accountancy.

### **FROM THE LICENSEE'S PERSPECTIVE**

Serving the needs of clients outside of an individual CPA's principal place of business has become reality in today's business world. Everyday, CPAs and CPA firms are faced with navigating a complex set of varying regulations and procedures that will grant them practice privileges in other jurisdictions. In order for the capital market system to continue to prosper and grow, we need to ensure that we have a mobility system in place that will allow CPAs and their firms, as professional service providers, to serve the needs of American business, while at the same time ensuring that the public is adequately protected. In other words, we need a system that allows the right CPA to be in the right place at the right time -- without unnecessary obstacles that do not add to the protection of the public's interest.

### **FROM THE BOARD'S PERSPECTIVE**

Under the proposal, not only the individual, but also the firm consents to the jurisdiction and disciplinary authority of the board. Thus, if locating a CPA is difficult, the firm will be inclined to help locate the individual because it is in the firm's best interest to cooperate with the board. This approach benefits the firm because it eliminates the cost of notice compliance and avoids firms having CPAs who are not in compliance despite a firm's best efforts to be in compliance.

During the course of the year, there are literally thousands of CPAs crossing state lines to perform a portion of an entity's audit in numerous locations. Also, in today's electronic world, CPAs are offering advice to clients in other states on a regular basis or filing tax returns for their clients in other states without ever physically entering the states. State boards will rarely need to locate any of these CPAs for enforcement purposes. In this regard, it is noteworthy that: a) Ohio has had a no notice/ no fee approach for 45 years and, in the past ten years, it has had only two complaints against out-of-state licensees; and (b) Virginia has had this approach for over seven years and has had only one complaint-based enforcement case against a licensee from another state. It is the experience of these states, and the expectation of states more recently embracing this approach, that it is not necessary to incur the administrative costs, and impose a compliance burden on licensees, in order to effectively protect their constituents.

Under this approach, a board would be able to focus more of its human and financial resources on actual enforcement activities that protect the consumer, rather than employing administrative staff to receive and file information about the overwhelming number of CPAs who are in good standing in their home state.

Virtually all enforcement actions are the result of a person or entity filing a complaint. The complaint is generally going to be against the firm. But whether it is against the firm or an individual, the board will still receive the complaint and then contact the firm or the CPA. While Ohio and Virginia have eliminated notification, they have not had a problem in locating a CPA or CPA firm for enforcement cases.

While some states currently permit submission of a master notice to a state board, the list becomes outdated as soon as it is submitted because of frequent changes in personnel and assignments. The current proposal covers everyone and never becomes outdated.

As a practical matter, current laws limit the ability of state boards to take action against out-of-state licensees who commit unlawful acts in their state. If an out-of-state CPA practices in another state but fails to provide the required notification, the board may only be able to refer the matter to the CPA's home state board or the board may seek an injunction or pursue criminal charges. However, since the out-of-state CPA never consented to jurisdiction via the notification, the board would face the legal challenge of obtaining jurisdiction in court. Under the proposed change, in those cases which merit such an action, consent to jurisdiction is automatic – without the necessity of notification – so a board could initiate its own disciplinary proceeding against the out-of-state CPA, and impose whatever administrative discipline is appropriate. Although the board could not revoke a license issued by another state, it could revoke practice privileges. Of course, the board could also refer the case back to the licensee's principal place of business state, which would be obligated under this proposal to take the case (proposed UAA Section 23(b)). It is important to note that reliance on the principal place of business to suspend or revoke a license exists irrespective of whether states require notice.

## **POTENTIAL ISSUES**

### **POTENTIAL LOSS OF REVENUES**

Some state boards have raised loss of revenue as a possible obstacle in moving to a system that would not require notification – and fees. When all the costs of collecting and administering (including auditing compliance) for a notice-based program are considered against the revenues raised by notification, the amount of net revenue lost by foregoing notification fees, in most cases, may actually prove to be minimal.

In evaluating the significance of the net revenue loss issue, some state board members have recognized that there is a potential positive offsetting benefit to a state's own licensees. Their license holders would receive extra value by reason of possessing a license that could be used for practice privileges in most other states. Of course, reciprocal licenses would still be required when licensees change their principal place of business or open offices in other states. The possibility that a few states might be disproportionately affected by the change in revenue may require creative solutions, but the objectives to lower impediments to mobility and to enhance public protection should be the higher priorities of the UAA.

### **ABILITY TO LOCATE LICENSEES**

Virtually all enforcement actions are the result of a person or entity filing a complaint. Often times, the complaint is also made against the firm. But whether it is against the firm or an individual, the board will still receive the complaint and then contact the firm or the CPA. Although Ohio and Virginia have done away with notification, they have not had a problem in locating the firm or CPA for enforcement cases. On the other hand, the cost of state board staff verification of information supplied on a practice privilege notice form can be expensive or prohibitively costly and may require a significant increase in staff.

A California consumer group has raised the issue of having an out-of-state licensee enter a state without giving any address to the accountancy board. This does not seem to be problematic, since clients will have an address or other contact information and they in turn will be able to supply the board with that information with which to take action, if necessary. Under the no notice/automatic jurisdiction structure of revised Section 23, a licensee of another jurisdiction can be served through the home state board. The state board where the violation occurred can revoke or suspend the practice privilege of the out-of-state licensee and the home state board can use that revocation to further discipline (including revoking or suspending) the home state licensee. The decision revoking or suspending the practice privilege can be used without further investigation by the home

state board to the same extent that the home state board could use a decision of another state board revoking a reciprocal license.

### **ELIMINATION OF WRITTEN NOTIFICATION**

Many states already permit some form of no notice practice (through the concept of temporary or incidental practice). This has resulted in few, if any, enforcement problems. As described in the legal section above, different professions in various states have moved ahead without specific notification and have still been able to exercise their authority. It appears that written notification provides very little to the enforcement process. The cost, to both the state board and the practitioner, of providing notice just cannot be justified. Such resources would be best utilized by redirecting them to enforcement. Consequently, proposed Section 23 eliminates the written notice requirement.

### **TRUSTING OTHERS TO INVESTIGATE AND ENFORCE COMPLAINTS**

Some states have expressed a concern that "other states" will not discipline their licensees for acts in "our state" and that "other states" have insufficient enforcement resources. Under Section 23(b), the state board where a licensee practices under a practice privilege does not have to rely on the other licensing state to do any investigation of violations occurring in the practice privilege state. UAA Section 10(a)(2) provides that state boards can discipline their licensees based on revocation or suspension of a practice privilege by another state board for disciplinary reasons. The practice privilege board can revoke or suspend the practice privilege, and the home state board can use that decision to discipline (including revoking or suspending) the license, without any further investigation. The section permits boards to use the other state board's decision disciplining a practice privilege in the same way it currently uses discipline of a licensee by another state board.

## COMMON QUESTIONS

**“If I don’t require Notice I won’t be able to do anything to an out-of-state CPA who does bad work in my state.”**

- Under the new proposed Section 23, you can do more against the out-of-state licensee because that individual will automatically be subject to the Board’s administrative jurisdiction.
- Thus the Board can initiate a proceeding against the out-of-state individual, serve notice on the individual’s home state board, conduct the hearing (even in absentia) and discipline the individual (by reprimand, civil penalty, or even revocation of practice privileges).
- The Board can post that discipline on its website and inform the state board in the individual’s home state for further appropriate action, i.e., revocation of license issued by the home state based upon the revocation of the practice privilege.
- Almost all states make a licensee’s violation of another state’s laws an automatic violation in the home state.

**“If I don’t require Notice I won’t know who is practicing as a CPA in my state.”**

- If you require Notice you only know the people who bother to give Notice.
- If you have a Temporary Practice or Incidental Practice or your law only allows you to regulate persons engaged in the “practice of public accountancy,” there are probably already a lot of out-of-state CPAs offering or rendering professional services in your state whom you don’t know about.
- Many of those CPAs that are not giving notice are good practitioners that do not intentionally violate the law but are not knowledgeable, or merely overlook giving notice.

**“If I don’t require Notice I won’t know where an out-of-state CPA has his/her principal place of business.”**

- If your disciplinary process is primarily complaint driven, the complainant should have that information unless the individual foolishly engaged accounting services without knowing where the CPA was located. If the out-of-state CPA is operating a web-based practice, the address of the CPA can usually be obtained by virtue of the domain registration.

- Often the violation is brought to light by a governmental agency (i.e., SEC, GAO, etc.) which can provide the CPA's principal place of business.
- This can also be effectively regulated by enforcing the UAA internet practice requirement that CPAs must affirmatively disclose the address of their principal place of business and state of licensure. [See UAA Rule 7-6 (Jointly Adopted 2002)].
- This is a requirement that can be easily enforced in the state of principal place of business.

**“Can a law make an out-of-state CPA automatically consent to the Board’s jurisdiction unless the individual confirms that consent in a written notice?”**

- If you depend upon notice and an out-of-state CPA fails to give Notice, you can sue the out-of-state CPA for failing to provide notice, but you will not have administrative jurisdiction over that individual so you will have to seek an injunction or an indictment.
- Also, since you are depending upon written Notice, you will not be able to serve process on the individual via the state of the individual’s principal place of business.
- You will have to obtain service out-of-state by service upon the person..
- To prosecute criminally, you may have to seek extradition.

**“Can a state make someone practicing from out-of-state who offers or renders services into that state without physically entering the state automatically subject to that state’s laws by requiring a written notice?”**

- If you cannot lawfully require automatic consent, you probably cannot even require written notice (and written consent).
- Such automatic consents to jurisdiction have been used and upheld in several other lines of interstate commerce, including securities, insurance, interstate transportation.

# EXHIBIT I

## When Registration Is Required

- 1. A CPA from a substantially equivalent (SE) state A has an engagement in state B to provide tax services.**

Requirements:

No notification or fee is required.

The CPA must comply with the laws of state B and is subject to the jurisdiction of state B.

- 
- 2. A CPA from a non-substantially equivalent state C has an engagement in state B to provide tax services.**

Requirements:

The CPA must ascertain that he/she is SE either through NASBA's credentialing service, through the state board, or through self assessment.

No notification or fee is required if he/she is SE.\*

The CPA must comply with the laws of the state B and is subject to the jurisdiction of state B.

*\* Note: A CPA from an SE state, or who is determined to be individually SE, is considered an SE CPA for the purposes of this document.*

- 
- 3. An SE CPA from state D is a sole proprietor and has an engagement in state B to perform a review.**

Requirements:

No notification or fee required.

The CPA must comply with the laws of state B (including peer review) and is subject to the jurisdiction of state B.

- 
- 4. An SE CPA who is an employee or principle in a firm in his/her home state enters state B to perform a review.**

Requirements:

No notification or fee is required for the CPA.

No registration or fee is required for the firm.

The CPA and firm must comply with the laws of the state B (including peer review) and are subject to the jurisdiction of state B.

**5. An SE CPA who is a sole proprietor in state D has an engagement to perform an audit of financial statements in state B.**

Requirements:

The CPA must obtain a firm permit (register) and comply with laws of state B (including ownership and peer review).

The SE CPA entering state B is not required to notify or pay any additional fee, but is subject to the jurisdiction state B.

---

**6. A CPA firm in state C engages to perform a review in state B.**

Requirements:

The firm must issue the review through an SE CPA and must comply with the laws of state B (including ownership and peer review) and is subject to the jurisdiction of state B.

The SE CPA(s) entering state B are not required to notify or pay a fee, but are subject to the jurisdiction state B.

---

**7. A CPA firm in state C engages to perform an audit of financial statements in state B.**

Requirements:

The firm must issue the audit report through an SE CPA.

The firm must obtain a permit (register) including the name of an SE CPA associated with the firm.

Neither the associated CPA, nor any CPA performing the audit, is required to notify or pay a fee, but is subject to the jurisdiction of state B.

---

**8. An SE CPA employed by a non-CPA firm that is not qualified for registration (a firm permit) in his/her home state, engages to perform a review in the state B.**

Requirements:

The SE CPA must sign the review in his/her own name, and must comply with the laws of state B (including peer review).

No notification or fee is required

**9. A non-CPA firm from state D engages to perform an attest service in state B.**

Requirements:

The firm would have to first register in state D to be eligible to provide the service in state B.

The firm would have to meet the requirements described in Scenario 6 or 7.

## **EXHIBIT II**

### **WHY THE NOTICE REQUIREMENT IS BROKEN**

#### **What is “Notice”?**

**“Notice” is usually a code word for “application and fee”**

- Applications range from zero to four pages.
- Fees range from zero to \$434 to \$60 per engagement.
- Processing ranges from instant to six months.
- Forms range from online to paper only plus original transcripts.

#### **Who must provide “Notice” ?**

**It depends on how much you do - Those who must provide Notice range from:**

- Everyone who offers or renders professional services in the state
- Everyone who uses the title “CPA” in, to or through the state
- Only persons who engage in audit/attest services. (at least 5 states)
- Only persons who actually “set foot in state” (20 states)
- Only persons who do more than the following in the state
  - 10 percent of your total work
  - 12 days
  - 10 days
  - 49 percent
  - 60 days
  - “temporary or periodic accounting work incidental to a regular practice in another jurisdiction”

**It depends on what you do:**

- Individual tax returns (32 states = yes)
- Business tax returns (33 states = yes)
- Teach CPE (at least 10 states require notification for teaching CPE)
- Consulting services (At least 30 states require notice for consulting services)
- Casino audits.

**It depends on how you render the services:**

- Online (25 states = yes)
- Only if you set foot in a state (20 states = yes)
- By mail or by phone (approximately 34 states = yes).

**It depends on who you are**

- Sole practitioner (No notice required in one state)
- In a firm with an office in the state (A majority of states)
- From outside the US (Most state rules favor foreign practitioners).

**For a majority of states the current system often only protects your citizens:**

- If you received Notice
- If the CPA physically enters your state
- If the CPA practices in your state more than 10 days
- If the CPA does something other than tax services.