

Text of Revisions to AICPA/NASBA Uniform Accountancy Act (UAA) Statute

As approved by NASBA Board of Directors
July 27, 2007

As approved by the AICPA Board of Directors
July 12, 2007

(The material set out below is the proposed statutory text and commentary of the impacted UAA provisions. The proposed language that was present in the December 2006 and March 2007 exposure drafts is single-underlined, and the proposed deleted language is stricken-through. Language that was added by the AICPA/NASBA UAA Committees after review of the comments on May 24, 2007 is double-underlined.)

SECTION 3 DEFINITIONS

(h) “Home office” is the location specified by the client as the address to which a service described in Section 23(a)(4) is directed.

Comment: Under this provision, as a practical matter, a firm must have a permit in the state specified by the client for Section 23(a)(4) services. Thus, for example, the client may specify that a Section 23(a)(4) service for a subpart or subsidiary of an entity be directed to the location of that subpart or subsidiary. It should also be remembered that, regardless of whether or not the firm has a permit in that state, under Section 23(a)(3), a state board has administrative jurisdiction over individual licensees as well as firms offering or rendering professional services in that state.

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:

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

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

(Ce) 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

(Dee) 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 auditing 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.