

# 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**

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# 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):**

Deletes “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:

(~~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,~~

(~~Cc~~) 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

(~~Ded~~) 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).

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<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.

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- 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.*

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- 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.

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- 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.

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**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.

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**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.

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**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.