



TO: The Honorable the Members of the Board of Regents

FROM: Sarah S. Benson *Sarah S. Benson*

SUBJECT: Proposed Amendment to Section 70.4 of the Regulations of the Commissioner of Education Relating to Licensing Examinations in the Profession of Public Accountancy

DATE: July 2, 2020

AUTHORIZATION(S): *[Signature]* *Sharon L. Tabor*

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt, as a second emergency action, the proposed amendment to section 70.4 of the Regulations of the Commissioner of Education relating to licensing examinations in the profession of public accountancy?

Reason(s) for Consideration

Review of policy.

Proposed Handling

The proposed amendment will be presented to Full Board and for adoption as an emergency rule at the July 2020 meeting of the Board of Regents. A copy of the proposed rule and a statement of facts and circumstances justifying emergency action are attached.

Procedural History

The proposed amendment was presented to the Professional Practice Committee for recommendation and to the Full Board for adoption as an emergency action at the June 2020 meeting of the Board of Regents, effective July 1, 2020. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on June 24, 2020. Because the June emergency action will expire on September 6, 2020 a second emergency action is necessary to ensure the emergency rule remains continuously in effect until it can be permanently adopted at the September 2020 Regents meeting and take effect as a permanent rule. To date the Department has not received

any comments on the proposed rule. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

Section 70.4 of the Regulations of the Commissioner of Education was last amended in 2009 to conform it to then recent amendments to the Education Law. Currently, Section 70.4 of the Regulations of the Commissioner of Education is quite restrictive in setting forth the rules for the licensure examination requirements for the profession of public accountancy, which include provisions on a passing score, retention of credit, and transfer of licensure examination credit from another jurisdiction. As the national licensing examination standards continue to evolve, these provisions do not provide the Board of Regents and/or the Department with sufficient flexibility to easily implement changes that occur with the Uniform CPA Examination (CPA exam) on a national level without having to amend the regulation each time any such changes occur. As discussed below, the proposed amendment to section 70.4 of the Regulations of the Commissioner of Education is designed, in part, to provide the Department with more flexibility in adapting to and implementing changes in national standards relating to the CPA exam, which is the licensure examination for the profession of public accountancy.

The American Institute of Certified Public Accountants¹ (AICPA) and the National Association of State Boards of Accountancy² (NASBA) have adopted the model Uniform Accountancy Act³ to provide candidates for CPA licensure with the opportunity to test year-round under a continuous testing model. The CPA exam currently consists of four sections: (1) Auditing and Attestation; (2) Business Environment and Concepts; (3) Financial Accounting and Reporting; (4) and Regulation. The four sections are four hours each and may be taken in any order. Under the new continuous testing model, after candidates receive their scores from a previous exam attempt, they will have the opportunity to retake the section without restriction. This change eliminates the concept of a testing window, the three-month period of a quarter, that limited the candidates to take the CPA exam only one time during a testing window. The AICPA and NASBA notified the State Boards of Accountancy that this national CPA exam change will take effect on July 1, 2020.

The proposed amendment to 70.4 of the Regulations of the Commissioner of Education is necessary to conform the regulation to the national CPA licensing exam standards, by, inter alia, eliminating the quarterly testing window provisions and revising the retention of credit provisions for CPA exam scores to properly calculate the time frame for passing all parts of it.

¹ The AICPA, among other things, sets the ethical standards for certified public accountants (CPAs) and the United States auditing standards for private companies, non-profit organizations, federal, state, and local governments. It also develops and grades the Uniform CPA Examination.

² NASBA serves as a forum for the United States' 55 State Boards of Public Accountancy, which administer the Uniform CPA Examination, license CPAs and regulate the practice of public accountancy in the United States.

³ In 1984, AICPA and NASBA established the Uniform Accountancy Act, which is an "evergreen" model licensing law developed to provide a uniform national approach to regulating the public accountancy profession.

Additionally, the Certified Public Accountant (CPA) Evolution, a joint effort, by the AICPA and NASBA is currently in the process of transforming the CPA licensure model, including revising the sections of the CPA exam and the content tested in those sections. In anticipation of those changes, which are expected to be effective sometime in the fall of 2020, the proposed amendment to section 70.4 eliminates the content provisions that specifically describe the subject matter content that must be included in the CPA exam. The proposed amendment replaces these provisions with language stating that the examination shall consist of a written examination that tests the knowledge and skills required for licensure as a CPA as determined by the Department, and the Department may accept an examination as recommended by the State Board for Public Accountancy. This proposed amendment language will give the Department the flexibility it needs to implement the impending CPA Evolution changes without having to amend the regulation again.

Currently, all candidates must pass the four sections of the CPA exam within an 18-month, rolling condition period. However, there may be extenuating circumstances that could prohibit a candidate from passing the CPA exam within the 18-month condition period, including, but not limited to, testing centers being closed for extended periods of time due to the COVID-19 health crisis. The candidates who have an extenuating circumstance must go through a formal, three level review process that takes several months to complete before a determination is made as to whether to approve their requests for an extension of the 18-month condition requirement. However, by the time candidates find out that their extension requests have not been approved, they have lost several months of testing ability, as well as possibly losing credit for another section or sections of the exam that they have already passed. To address these issues, the proposed amendment will permit candidates' extenuating circumstance extension requests to be processed by the Department, which will minimize the length of time applicants are waiting for determinations on their requests. The proposed amendment will further decrease the number of formal Committee on the Professions proceedings regarding the 18-month condition requirement.

Finally, the proposed amendment also eliminates a now obsolete December 2003 provision relating to a transitional period for going from paper-based testing to computer-based testing.

Related Regents Items

April 2020: [Proposed Amendments to Sections 52.3, 52.21, 57-4.5, 70.4, 74.6, 75.2, 75.5, 76.2, 79-9.3, 79-10.3, 79-11.3, 7912.3, 80-1.13, 80-1.5, 80-3.15, 80-4.3, 83.5, 87.2, 87.5, 100.2, 100.4, 100.5, 100.6, 100.10, 100.21, 119.1, 119.5, 125.1, 151-1.4, 154-2.3, 175.5, 200.4, 200.5, 200.7, 200.20 and 275.8 and addition of Section 279.5 to the Regulations of the Commissioner of Education Relating to Addressing the COVID-19 Crisis: \(http://www.regents.nysed.gov/common/regents/files/420bra6.pdf\)](http://www.regents.nysed.gov/common/regents/files/420bra6.pdf)

June 2020: [Proposed Amendment to Section 70.4 of the Regulations of the Commissioner of Education Relating to Licensing Examinations in the Profession of Public Accountancy \(https://www.regents.nysed.gov/common/regents/files/620bra5.pdf\)](https://www.regents.nysed.gov/common/regents/files/620bra5.pdf)

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That section 70.4 of the Regulations of the Commissioner of Education be amended, as submitted, effective, September 7, 2020, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the general welfare to immediately conform the Regulations of the Commissioner of Education to the national licensing examination standards in the profession of public accountancy and to ensure that the emergency action taken at the June meeting remains in effect until the proposed rule can be permanently adopted.

Timetable for Implementation

If adopted at the July 2020 Regents meeting, the emergency rule will become effective, September 7, 2020, which will ensure that the Regulations of the Commissioner of Education continue to conform with the new national licensing examination standards in the profession of public accountancy, which became effective July 1, 2020, until the proposed rule is permanently adopted at the September 14-15, 2020 Regents meeting. It is anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the September 2020 Regents meeting, after the publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act.

Attachment A

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 7401 and 7404 of the Education Law

1. Section 70.4 of the Regulations of the Commissioner of Education is amended, as follows:

Section 70.4 Licensing examinations

(a) Content. The licensing examination shall consist of an examination designed to test the knowledge and skills required for licensure as a certified public accountant as determined by the Department. The Department may accept an examination to become a licensed certified public accountant as recommended by the State Board for Public Accountancy. [the following sections:

- (1) financial accounting and reporting;
- (2) business environment and concepts;
- (3) regulation; and
- (4) auditing and attestation.]

(b) Passing score. [The passing score in each section shall be 75.0] The Department shall determine a passing score, in consultation with the State Board for Public Accountancy, on an examination accepted pursuant to subdivision (a) of this section.

(c) Retention of credit. [A candidate shall be subject to the retention of credit requirements of paragraph (1) of this subdivision, unless the candidate passed two or more sections of the paper-and-pencil version of the examination administered prior to December 4, 2003 in which case the candidate shall be subject to the retention of credit requirements of paragraph (2) of this subdivision.

(1) For purposes of this paragraph, examination window means a three-month period in which the examination is available within a quarter of the year, the beginning and ending of which shall be established by the examination provider. A candidate may take the required sections of the examination individually and in any order. Credit for any section passed shall not be valid for more than 18 months, calculated from the last day of the examination window in which the candidate sat for such section of the examination. A candidate must pass all four sections of the examination within a rolling 18-month period, which begins on the last day of the examination window in which the candidate sat for any section of the examination that the candidate passed. A candidate may not retake a failed section of the examination in the same examination window.

(2) Transitional retention period. A candidate who has acquired credit for passing two or more sections of the paper-and-pencil version of the examination administered prior to December 4, 2003 shall be allowed a transitional retention period to obtain a passing score on the remaining sections of the computer-based format of the examination. The transitional retention period shall consist of the three-year period in which the candidate was required to pass all sections of the paper-and-pencil examination, extended to the last day of the month in which the three-year period ends, provided that such period shall terminate before the end of such three-year period as extended, if the candidate has exhausted six opportunities to pass the remaining sections of the licensing examination in whatever format before the end of that period. In that case, the transitional retention period shall terminate on the date the candidate has exhausted the six opportunities. A candidate may not retake a failed section of the examination in the same examination window, meaning a two-month period in which the examination is available within a quarter of the year.

(3) A candidate who has been awarded credit for passing a section of the licensing examination administered prior to December 4, 2003 shall receive credit for the corresponding section of the licensing examination administered after that date, as follows, provided that the candidate has met the retention of credit requirements of this subdivision:

(i) a candidate who has been awarded credit for financial accounting and reporting shall be awarded credit for financial accounting and reporting;

(ii) a candidate who has been awarded credit for business law and professional responsibilities shall be awarded credit for business environment and concepts;

(iii) a candidate who has been awarded credit for accounting and reporting shall be awarded credit for regulation; and

(iv) a candidate who has been awarded credit for auditing shall be awarded credit for auditing and attestation.]

The retention period on an examination approved pursuant to subdivision (a) of this section shall be for a period of 18-months. Such 18-month period shall be computed in a manner determined by the Department.

(1) Extension requests. The Department may in its discretion provide an applicant with an extension to the retention period prescribed in paragraph (c) of this subdivision. An extension may be granted upon a finding by the Department of extenuating circumstances outside the applicant's control. The length of an extension shall be determined by the Department as it relates to the length of the extenuating circumstances experienced by the applicant. The Department may consult with the State Board for Public Accountancy on the appropriateness of granting extension requests.

(d) Admission to the examination. [The Department shall accept passing scores on the uniform certified public accountant examination, or on an examination determined to be comparable in content, as meeting the requirement of the licensing examination, except where the Department determines that the administration, scoring, content or other comparable factors concerning such examination have affected the validity and/or integrity of such examination so as to render acceptance of such scores inappropriate.] For admission to the licensing examination as a New York State candidate, the candidate shall meet all education requirements including, but not limited to, [Candidates shall complete] completion of a minimum of 120 semester hours of study in an acceptable [a regionally] accredited college or university which shall include at least one course in each of the mandatory professional accounting content areas defined in subparagraph (i) of paragraph (1) of subdivision (b) of section 52.13 of the Regulations of the Commissioner of Education, or its equivalent as determined by the Department[, for admission to the licensing examination as a New York candidate].

(e) Transfer of examination credit. Candidates who have passed, in another state, [sections of] the licensing examination used by New York State may have their grades transferred upon application, if the requirements of this Part concerning education, and retention of credit [for sections passed] have been met. [A score of 75.0 or higher shall be considered passing for the purposes of transferring grades from another jurisdiction.]

(f) Competency. If it has been more than ten years since the applicant passed the certified public accountant licensing examination, a license shall not be issued until the applicant completes a satisfactory amount of continuing professional education, acceptable to the Department. The State Board for Public Accountancy shall recommend

to the Department the appropriateness of the continuing professional education that is to be completed to satisfy this requirement.

8 NYCRR §70.4

STATEMENT OF FACTS AND CIRCUMSTANCES

WHICH NECESSITATE EMERGENCY ACTION

The proposed amendment to section 70.4 of the Regulations of the Commissioner of Education is necessary to conform the regulation to new national licensing standards, which are effective July 1, 2020, by, inter alia, eliminating the quarterly testing window provisions and revising the retention of credit provisions for Uniform CPA Examination (CPA exam) scores to properly calculate the time frame for passing all parts of it.

The American Institute of Certified Public Accountants⁴ (AICPA) and the National Association of State Boards of Accountancy⁵ (NASBA) have adopted the model law of the Uniform Accountancy Act⁶ to provide candidates for CPA licensure with the opportunity to test year-round under a continuous testing model. The CPA exam currently consists of four sections: (1) Auditing and Attestation; (2) Business Environment and Concepts; (3) Financial Accounting and Reporting; (4) and Regulation. The four sections are four hours each and may be taken in any order. Under the new continuous testing model, after candidates receives their scores from a previous exam attempt, they will have the opportunity to retake the section without restriction. This change eliminates the concept of a testing window, the three-month period of a quarter, that limited the

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The proposed amendment also eliminates a now obsolete December 2003 provision relating to a transitional period for going from paper-based testing to computer-based testing.

The proposed amendment was presented to the Full Board for adoption as an emergency action at the June 2020 meeting of the Board of Regents, effective July 1, 2020. Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for permanent adoption, after expiration of the required 60-day comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the September 14-15, 2020 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at the September meeting would be September 30, 2020, the date the Notice of Adoption

would be published in the State Register. However, the June emergency rule will expire on September 7, 2020. If the rule were to lapse, it would impact the ability to conform the Regulations of the Commissioner of Education to the national CPA exam standards.

Therefore, a second emergency action is necessary at the July 2020 meeting for the preservation of the general welfare in order to immediately conform the Regulations of the Commissioner of Education to the national CPA exam standards, which became effective July 1, 2020, and to ensure that the emergency action taken at the June 2020 meeting remains in effect until the proposed rule can be permanently adopted.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the September 2020 Regents meeting, which is the first scheduled meeting after the 60-day public comment period prescribed in SAPA for State agency rule makings.