



**TO:** Full Board

**FROM:** Frank Muñoz

**SUBJECT:** Proposed Amendments to the Rules of the Board of Regents and the Regulations of the Commissioner of Education Relating to the Definition of Unprofessional Conduct and Licensure and Practice Requirements for Certified Public Accountants

**DATE:** September 1, 2009

**STRATEGIC GOAL:** Goal 3

**AUTHORIZATION(S):**

### **SUMMARY**

#### **Issue for Decision (Consent Agenda)**

Should the Board of Regents amend section 29.10 of the Rules of the Board of Regents and section 52.13 of the Regulations of the Commissioner of Education and repeal and add a new Part 70 to the Regulations of the Commissioner of Education, relating to the education, examination and experience requirements for licensure of certified public accountants; endorsement of out-of-state licenses or foreign licenses; the issuance of foreign limited permits or temporary practice permits; registration of accounting firms; continuing education requirements and the definition of unprofessional conduct?

#### **Reason(s) for Consideration**

Required by State statute and Review of policy.

#### **Proposed Handling**

The proposed amendment is being presented to the Full Board for adoption as a second emergency measure at the September 2009 Regents meeting. A second emergency adoption is necessary at the meeting to ensure that the emergency rule adopted at the June 2009 Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule. A Statement of Facts and Circumstances Which Necessitate Emergency Action is attached.

## Procedural History

On January 27, 2009, the Governor signed Chapter 651 of the Laws of 2008, which makes extensive amendments to the laws relating to the practice of public accountancy, which became effective on July 26, 2009. The implementing rules and regulations were presented for emergency action in June in order to implement the legislation before it became effective. A Notice of Proposed Rule Making was published in the State Register on July 1, 2009 and a Notice of Emergency Adoption was published in the State Register on August 12, 2009.

## Background Information

Oversight by the Board of Regents has historically been limited to professional services in the areas of audit and attestation services. Under the new law, however, the Board of Regents is responsible for the oversight of all professional accounting services rendered by certified public accountants (CPAs) and public accountants (PAs).

Discussion at the May and June Professional Practice Committee meetings focused on proposed regulations in the following areas of professional licensure or practice impacted by the new accountancy law:

- Experience for licensure
- Competency requirement
- Education for Licensure
- Examination for Licensure
- Temporary Practice Permits
- Endorsement of Out-of-State CPA License
- Endorsement of a Foreign License, Certificate or Degree
- Commission and Referral Fees
- Firm Registration
- Continuing Professional Education ("CPE")
- Registration and Use of Professional Title
- Non-attest Services Performed by Out-of-State Licensed CPAs

The public comment period ended on August 17, 2009. The Department is currently reviewing the comments received and may be revising the proposed amendment in the near future to reflect those comments. In the interim, a second emergency adoption of the proposed amendment is necessary to ensure that the proposed amendment remains continuously in effect while revisions are considered and until the proposed amendment, with any revisions, can be adopted as a permanent rule.

## Recommendation

Staff recommends that the Board of Regents take the following action:

VOTED: That paragraphs (13) and (14) of subdivision (a) and subdivisions (h) and (i) of section 29.10 of the Rules of the Board of Regents be added; that paragraph (1) of subdivision (b) of section 52.13 of the Regulations of the Commissioner of Education be amended; and that sections 70.1 through 70.7 of the Regulations of the Commissioner of Education be repealed and new sections 70.1 through 70.9 be added, as submitted, effective October 20, 2009, as an emergency action upon a finding by the Board of Regents that such action is necessary to preserve the general welfare in order to ensure that the emergency rule adopted at the June 2009 Regents meeting, remains continuously in effect until the effective date of its adoption as a permanent rule to avoid disruption of the implementation of Chapter 651 of the Laws of 2008.

## Timetable for Implementation

If adopted at the September 2009 Regents meeting as an emergency measure, the proposed amendment will become effective on October 20, 2009. If confirmed at the November 2009 Regents meeting, the effective date will be December 10, 2009.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6501, 6504, 6506, 6507, 6508, 7401, 7401-a, 7402, 7403, 7404, 7406, 7406-a, 7407, 7408, and 7409 of the Education Law and Chapter 651 of the Laws of 2009.

1. New paragraphs (13) and (14) are added to subdivision (a) of section 29.10 of the Rules of the Board of Regents, effective October 20, 2009, as follows:

(13) failing to meet the competency requirements of this paragraph when supervising attest or compilation services or signing or authorizing someone to sign an accountant's report on the financial statements of a firm.

(i) Applicability of the requirement. Any licensee who supervises attest or compilation services or signs or authorizes someone to sign an accountant's report on the financial statements of a firm shall meet the competency requirements in subparagraph (ii) of this paragraph.

(ii) Competency. Any licensee that performs the services prescribed in subparagraph (i) of this paragraph shall have the following competencies:

(a) at least 1,000 hours of experience within the last five years in the preparation or review of financial statements or reports on financial statements gained through employment in government, private industry, public practice or an educational institution; and

(b) at least 40 hours of continuing education in the area of accounting, auditing or attest during the three years immediately prior to the performance of such services; and

(c) the licensee shall maintain the level of education, experience and professional conduct required by generally accepted accounting standards as described in paragraph (7) of this subdivision, relating to the attest or compilation services performed.

(14) failing to maintain an active registration with the Department in accordance with the requirements of this paragraph when a licensee engages in the practice of public accountancy pursuant to Education Law section 7401 or uses the title “certified public accountant” or the designation “CPA” or the title “public accountant” or the designation “PA”.

(i) Applicability of the requirement. Effective July 26, 2009, all certified public accountants and public accountants licensed in New York State who are either engaged in the practice of public accountancy pursuant to Education Law section 7401 of the Education Law or use the title “certified public accountant” or “public accountant” shall register with the Department.

(ii) Any certified public accountant or public accountant licensed in New York State who is not practicing public accountancy pursuant to Education Law section 7401 and does not use the title “certified public accountant” or the designation “CPA” or the title “public accountant” or designation “PA” may request an inactive status and will not be required to register with the Department.

(iii) Definition: As used in this paragraph:

(a) inactive status shall mean that a certified public accountant or public accountant has requested, and the Department has approved, an inactive status because the certified public accountant or public accountant does not use the title “certified public accountant” or the designation “CPA” or the title “public accountant” or designation “PA” nor does he or she practice public accountancy pursuant to Education Law section 7401.

(b) use of the title “certified public accountant” or “public accountant” or designation “CPA” or “PA” shall mean any representation that a person

holds a license as a certified public accountant or public accountant, provided that representation is made by the licensee, or by someone associated with the licensee who the licensee has knowingly allowed to make such representation, or by someone serving as the licensee's agent who the licensee has knowingly allowed to make such representation.

(c) A representation shall include, but not be limited to, any oral, electronic, or written communication within the control of the licensee, indicating that the person holds a license, including without limitation the use of titles or designations on letterheads, reports, business cards, brochures, resumes, office signs, telephone directories, websites, the Internet, or any other advertisement, news article, publication, listing, tax return signature, signature on experience certifications for licensure applicants, the display of licenses as a certified public accountant or public accountant from this or any other jurisdiction, or the display of certificates or licenses from other organizations which have the designation "CPA" or "PA" or use of the title "certified public accountant" or "public accountant" with the licensee's name.

2. A new subdivision (h) is added to section 29.10 of the Rules of the Board of Regents, effective October 20, 2009, as follows:

(h) Unprofessional conduct in the practice of public accountancy shall include any willful or grossly negligent failure to comply with

substantial provisions of Federal, State or local laws, rules or regulations governing the practice of the profession, by a certified public accountant licensed in another state or any firm that employs such certified public accountant to perform non-attest services pursuant to Education Law section 7406-a. Any certified public accountant licensed by another state, who performs non-attest services pursuant to Education Law section 7406-a, and any firm that employs such certified public accountant to provide such services in New York State, is subject to the disciplinary authority of the Board of Regents pursuant to Education Law section 7406-a.

3. A new subdivision (i) is added to section 29.10 of the Rules of the Board of Regents, effective October 20, 2009, as follows:

(i) (1) Definition.

(i) As used in this subdivision, commission shall mean any remuneration paid by a third party to the licensee and the public accounting firm that employs such licensee, including any fee calculated as a percentage of the total sale of a product or service that is paid by a third party to the licensee and/or the public accounting firm employing such licensee.

(2) It shall be unprofessional conduct in the practice of public accountancy for:

(i) a licensee or the public accountancy firm employing such licensee to directly or indirectly, offer, give, solicit, or receive or agree to receive, a commission for the referral of any product or service to a client if the licensee is performing any of the following services:

(a) audit or review of a financial statement;

(b) compilation of a financial statement when the licensee expects, or reasonably might expect that a third party will rely upon the financial statements and the licensee's compilation report does not disclose a lack of independence; or

(c) an examination of prospective financial information;

(d) and/or any other service that may require a licensee to utilize independent judgment.

(ii) except as otherwise provided in this subdivision, a licensee to receive a commission for recommending the products or services of a third party to his/her client without providing a written disclosure to the client to notify the client of the receipt of a commission in accordance with the provisions of paragraph (5) of this subdivision.

(3) This subdivision does not prohibit the receipt of a payment by a licensee or firm for the purchase of a public accounting practice or retirement payments paid to individuals presently or formerly engaged in the practice of public accountancy or payments to their heirs or estates.

(4) These prohibitions apply during the period in which the licensee is engaged to perform any of the services described in subparagraph (i) of paragraph (2) of this subdivision and the period covered by any financial, accounting or related statements involved in such services.

(5) A licensee who is not performing any of services described in subparagraph (i) of paragraph (2) of this subdivision for the client, but is performing other professional services for that client, may accept a commission for recommending the products or services of a third party to the client, provided that the licensee discloses the receipt of the commission to the client by way of a written disclosure statement in 12 point type or larger containing the following information:



(i) a description of the product(s) or services(s) which the licensee is recommending to the client, the identity of the third party that is expected to provide the product or service, the business relationship between the licensee and the third party, a description of any commission which may be received by the licensee and/or the licensee's firm. Where the product(s) or service(s) cannot be specifically identified at the time of the initial disclosure, this information shall be included in a supplemental disclosure which the licensee must provide to the client within 30 days of receipt of the commission; and

(ii) the dollar amount or value of the commission or the basis on which such commission shall be computed.

(6) The written disclosure statements prescribed in paragraph (5) of this subdivision shall be on letterhead of the licensee, if a sole proprietor, or otherwise on the letterhead of the firm authorized to practice public accountancy that employs the licensee, and shall be signed by the licensee. The disclosure statement shall be signed and dated by the client and contain an acknowledgment by the client that the client has read and understands the information contained in the disclosure. Any supplemental disclosures described in subparagraph (i) of paragraph (5) of this subdivision are not required to be signed by the client or by the licensee. The licensee shall retain disclosure statements for a period of seven years and shall provide copies to clients upon request.

(7) The provisions of this section do not apply to licensees who perform accounting, management advisory, financial advisory, consulting or tax services for an entity that is not required to register with the department under Education Law section 7408.

(8) This subdivision shall apply in lieu of section 29.1(b)(3) of this Part.

4. Paragraph (1) of subdivision (b) of section 52.13 of the Regulations of the Commissioner of Education is amended, effective October 20, 2009, as follows:

(1) Definitions. As used in this subdivision:

(i) *Professional accountancy content area* shall mean curricular content in professional accountancy that includes but is not limited to each of the [following] subjects identified in clauses (a) through (d) of this subparagraph and may also include but need not be limited to the subjects identified in clauses (e) through (g) of this subparagraph:

(a) financial accounting [theory and principles] and reporting;

(b) cost or managerial accounting;

(c) [tax accounting] taxation; and

(d) auditing and [computer auditing] attestation services[.];

(e) fraud examination;

(f) internal controls and risk assessment; and

(g) accounting information systems.

(ii) *General business content area* shall mean curricular content [that includes] relating to the development of knowledge in traditional business principles and technical skills. Curricular content in general business may include but is not limited to each of the following subjects:

(a) business statistics;

(b) [commercial] business law;

(c) computer science;

(d) economics; [and]

(e) finance[.];

(f) management;

(g) marketing;

(h) operations management;

(i) organizational behavior;

(j) business strategy;

(k) quantitative methods; and

(l) information technology and systems.

5. Sections 70.1 through 70.9 of the Regulations of the Commissioner of Education are repealed and new sections 70.1 through section 70.8 are added to the Regulations of the Commissioner of Education, effective October 20, 2009, as follows:

§70.1 Definition of practice of public accountancy.

Pursuant to Education Law section 7401, the practice of public accountancy is defined as:

(a) offering to perform or performing attest and/or compilation services, as defined in Education Law section 7401-a of this Article;

(b) incident to the services described in subdivision (a) of this section, offering to perform or performing professional services for clients, in any or all matters relating to accounting concepts and to the recording, presentation, or certification of financial information or data; or

(c) offering to perform or performing, for other persons one or more types of the following services including but not limited to accounting, management advisory, financial advisory, and tax exclusive of services within subdivisions (a) and (b) of this section, which involve use of the professional skills or competencies described in paragraph (1) of this subdivision of the licensed accountant, including professional services rendered to one's employer not required to register under section Education Law section 7408, in any and all matters related to accounting concepts and to the recording of financial data or the preparation or presentation of financial statements.

(1) Professional skills and competencies. The practice of public accountancy shall include accounting, management advisory, financial advisory, and tax exclusive of services within subdivisions (a) and (b) of this section, which involve, but shall not be limited to, use of the following professional skills or competencies:

(i) Application of accounting skills, which shall include:

(a) preparation of financial statements and note disclosures;

(b) analysis of the effects of transactions on account balances;

(c) analysis of account balances;

(d) calculation of key financial ratios and interpretation of the results of such calculations; and

(e) application of appropriate generally accepted accounting principles in practice.

(ii) Application of transaction processing cycles and the control environment, which shall include:

(a) development of a flow chart to explain operational processes;

(b) identification of potential weaknesses in a company's internal control structure, including computer information systems controls; and

(c) evaluation of corporate governance and structure.

(iii) Application of auditing procedures, including:

(a) evaluation of statements or representations made by management and others;

(b) application of appropriate current generally accepted auditing standards;

(c) comparison of the quality of different types of audit evidentiary matter.

(iv) Identification of potential violations of ethical behavior;

(v) Fraud detection and deterrence;

(vi) Application of business law and laws related to fraud, including:

(a) cognizance of the fundamental legal principles associated with contracts, civil and criminal matters, social goals associated with the legal system and the role of the justice system;

(b) recognition of the advantages and disadvantages of the different forms of business organization;

(c) recognition of the ethical duties and legal responsibilities associated with confidentiality; and

(d) familiarization with legal restrictions, privacy laws, and rights of individuals in gathering evidence of embezzlement, money laundering, and other issues related to fraud.

(vii) Application of tax law:

(a) application of current federal income tax laws for individuals and businesses;

(b) application of current state and local income tax laws for individuals and businesses;

(c) application of financial planning concepts to current gift and estate tax laws;

(d) calculation of payroll taxes; and

(e) calculation of sales and use taxes;

(viii) Application of government and not-for-profit accounting principles,

including:

(a) analysis of the differences between financial reporting for a business enterprise and a government or not-for-profit entity; and

(b) preparation of financial statements for a governmental and a not-for-profit organization by applying appropriate accounting concepts.

(ix) Application of management accounting concepts, including:

(a) evaluation of data to support decision-making; and

(b) analysis of expenses to reduce a company's costs and improve profitability.

(x) Application of finance concepts, including:

(a) calculation of the time value of money;

(b) analysis of debt versus equity in business financing decisions; and

(c) evaluation of investment opportunities using discounted cash flow, net present value, and risk analysis.

§70.2 Professional study of public accountancy.

(a) For purposes of this section, acceptable accrediting agency shall mean an organization accepted by the Department as a reliable authority for the purpose of accreditation of accountancy programs, having accreditation standards that are substantially equivalent to the requirements for programs registered pursuant to section 52.13 of this Title, and applying its criteria for granting accreditation in a fair, consistent, and nondiscriminatory manner.

(b)(1) To meet the professional educational requirements for licensure, the applicant shall present satisfactory evidence of completion of a baccalaureate or higher degree program in accountancy that is registered by the Department pursuant to section 52.13 of this Title, or a baccalaureate or higher degree program in accountancy that is accredited by an acceptable accrediting agency, or a baccalaureate or higher degree program, or its foreign equivalent, that is deemed to be the substantial equivalent of a registered or accredited program, as determined by the Department.

(2) An applicant who applies to the Department for licensure on or after August 1, 2009 shall be required to have satisfactorily completed a curriculum of at least 150 semester hours in a program described in paragraph (1) of this subdivision, except that an applicant who applies for licensure on or after August 1, 2009 and was licensed in another state prior to August 1, 2009 may meet the education requirements by having satisfactorily completed a curriculum of at least 120 semester hours in a program described in paragraph (1) of this subdivision.

(3) An applicant who applies to the Department for licensure prior to August 1, 2009 shall be required to have satisfactorily completed a curriculum of at least 120 semester hours in a program prescribed in paragraph (1) of this subdivision prior to

August 1, 2009 and have submitted the required application forms for licensure to the Department prior to August 1, 2009.

(c) In lieu of meeting the education requirements prescribed in subdivision (b) of this section and the experience requirements prescribed in section 70.3 of this Part, the applicant may meet the following requirement: at least 15 years of full-time experience in the practice of public accountancy satisfactory to the State Board.

§ 70.3 Experience requirements.

(a) An applicant who has satisfied the requirements as to education shall meet the experience requirement for licensure as a certified public accountant by submitting documentation, satisfactory to the Board of Regents, of completion of the following experience requirements:

(1) One year of acceptable full-time experience, or the equivalent thereof, shall be required for an applicant who has met the professional education requirements for licensure in section 70.2 of this Part through completion of a curriculum of at least 150 semester hours in a baccalaureate or higher degree program in accountancy, or its foreign equivalent, in accountancy that is registered by the Department pursuant to section 52.13 of this Title, accredited by an acceptable accrediting agency, or determined by the Department to be the substantial equivalent of a registered or accredited program.

(2) Two years of acceptable experience, or the equivalent thereof, shall be required for an applicant who has met the professional education requirements for licensure in section 70.1 of this Part through completion of a curriculum of at 120 semester hours in a baccalaureate or higher degree program in accountancy, or its foreign equivalent, that is registered by the Department pursuant to section 52.13 of this

Title, accredited an acceptable accrediting agency, or determined by the Department to be the substantial equivalent of a registered or accredited program.

(3) For purposes of this subdivision, one year of full-time experience shall mean an aggregate total of twelve calendar months of full-time employment. Full-time shall be defined as a five-day work week, with at least 35 hours of experience per week, excluding overtime. The State Board for Public Accountancy may also credit an applicant for part-time experience in the amount of one week of experience for every two weeks of acceptable part-time experience earned. Part-time shall be defined as at least 20 hours of experience per week.

(4) Such experience shall be attested to by a certified public accountant licensed in New York or in another political subdivision of the United States or by a public accountant licensed in New York, provided that such certified public accountant or public accountant acted in a supervisory capacity to the applicant in the employing organization.

(b) Acceptable experience in the practice of public accountancy shall be limited to experience in providing accounting services or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting skills under the supervision of a certified public accountant licensed in the United States or a public accountant licensed in New York.

(c) Acceptable experience in the practice of public accountancy shall be earned through employment in public practice, government, private industry or an educational institution.

(d) For purposes of subdivision (a), if the experience was earned more than ten years after the applicant passed the certified public accountant licensing examination, a



license will not be issued until the applicant completes a satisfactory amount of continuing professional education, as is deemed appropriate by the State Board.

#### § 70.4 Licensing examinations.

(a) Content. The examination shall consist of 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.

(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.

(d) 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. Candidates shall complete a minimum of 120 semester hours of study in 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.

§70.5 Licensure by endorsement.

(a) Endorsement of licenses of other states. A license to practice certified public accountancy issued by another state of the United States may be endorsed by the Department for practice in New York State if the applicant:

(1) is either:

(i) licensed by a state that has significantly comparable licensure standards to New York. For purposes of this section, states that have significantly comparable licensure standards shall mean those states that are recognized by a national professional accounting organization acceptable to the Department as having licensure requirements for certified public accountants that are significantly comparable to New York State; or

(ii) licensed by a state that has not been recognized as having significantly comparable licensure standards to New York, provided that the Department has determined that the applicant has completed licensure requirements significantly comparable to the licensure requirements for certified public accountants in New York State; and

(2) presents satisfactory evidence to the State Board of at least four years of professional experience in the practice of public accountancy following initial licensure and within the 10 years immediately preceding application for licensure by endorsement;

(3) received acceptable grades on a professional competency examination acceptable to the State Board; and

(4) submits a completed application, on a form prescribed by the Department, which shall include, but need not be limited to, the following information:

(i) certification by the applicant of good moral character;

(ii) verification of the applicant's licensure status in his/her initial state of licensure and, if different, verification of the applicant's licensure status in the state of the applicant's principal place of business;

(iii) verification by the applicant of the location of his or her principal place of business;

(iv) certification by the applicant that he or she has completed the continuing education requirements of the state where the applicant's principal place of business is located in the year prior to submission of the application form; and

(v) certification of satisfactory completion of the required education and professional experience in the practice of public accountancy, as required in paragraphs (1) and (2) of this subdivision.

(b) Endorsement of foreign licenses. A certified public accountancy license, or its foreign equivalent, that is issued by a foreign country in which licensure or registration is regulated by an authority responsible for the regulation of the practice of public accountancy in such foreign jurisdiction and acceptable to the Board of Regents, may be accepted by the Department for licensure in New York State if the applicant:

(1) (i) presents satisfactory evidence of a license in certified public accountancy, or its foreign equivalent, from a foreign jurisdiction that is recognized by the Department or a national professional accounting organization acceptable to the Department, as having significantly comparable licensure standards to New York; or

(ii) presents satisfactory evidence of a license in certified public accountancy, or its foreign equivalent, from a foreign jurisdiction that has not been recognized as having

significantly comparable licensure standards to New York, provided that the Department has determined that the applicant has completed licensure requirements significantly comparable to the licensure requirements for certified public accountants in New York State;

(2) presents satisfactory evidence to the State Board of at least four years of professional experience in the practice of public accountancy following initial licensure and within the 10 years immediately preceding application for licensure by endorsement;

(3) received acceptable grades on a professional competency examination acceptable to the State Board; and

(4) submits a completed application, on a form prescribed by the Department, which shall include, but not be limited to:

(i) certification by the applicant of good moral character;

(ii) verification of the applicant's licensure status in his/her initial country of licensure and if different, verification of the applicant's licensure status in the state of the applicant's principal place of business;

(iii) verification of acceptable grades on a professional competency examination acceptable to the State Board;

(iv) certification of completion of the required education for licensure as a certified public accountant; and

(v) certification of completion of four years of satisfactory professional experience in public accountancy, as required in paragraph (2) of this subdivision.

#### §70.6 Limited permits.

(a) Pursuant to the provisions of Education Law section 7406(1) and upon the recommendation of the State Board, the Department will consider applications for

limited permits, following receipt from the appropriate authority in the foreign country, of documentation which establishes or sets forth:

(1) the licensing standards and processes applied by the licensing authority of that country;

(2) the certificate, license, or degree which is recognized in the foreign country as qualification to perform the acts specified in Education Law section 7401; and

(3) that the foreign country grants equal authority to certified public accountants or public accountants licensed in the United States.

(b) Upon receipt of an application and supporting evidence, and upon recommendation of the State Board, the Department will issue a limited permit to an applicant who holds a degree, certificate or license specified in subdivision (a) of this section from a foreign country which has complied with said subdivision, if the applicant:

(1) demonstrates that he or she has professional qualifications which are determined by the State Board to be significantly comparable of those required for New York licensure;

(2) evidences proficiency in the use of generally accepted accounting principles and auditing standards as practiced in New York;

(3) demonstrates that the applicant resides or has a place for the regular transaction of business within New York State;

(4) is of good moral character; and

(5) has paid an application fee of \$250 for issuance of a limited permit.

(d) A limited permit issued pursuant to these provisions:

(1) shall be valid for a period of two years;

(2) may be renewed on recommendation of the State Board upon reapplication, payment of a renewal fee of \$250 and a demonstration that the purposes intended to be served by the original permit have not been accomplished;

(3) shall authorize the holder to use only the titles or designations used in the foreign country, followed by the name of the country from which he or she received his or her certificate, license or degree; and

(4) shall subject the holder to the jurisdiction of the Department and the Board of Regents in matters relating to the regulation of professional misconduct under the provisions of Article 130 of the Education Law and regulations promulgated under authority of such law.

#### §70.7 Temporary practice permits.

(a) Pursuant to the provisions of Education Law section 7406(2) and upon recommendation of the State Board, the Department may issue, to a certified public accountant who holds a valid license or certificate to practice public accountancy issued by another state and is in good standing and practices public accountancy in another state that is his or her principal place of business, a temporary practice permit to temporarily perform the public accountancy services described in Education Law section 7401(1) and (2), provided that the applicant meets the following requirements:

(1) (i) the applicant is licensed by another state that the Board of Regents has determined has significantly comparable licensure requirements to New York. For purposes of this section, states that have significantly comparable licensure requirements shall mean those states that are recognized by a national professional accounting organization, including, but not limited to, the National Association of State Boards for Public Accountancy's National Qualification Appraisal Board, to have



licensure standards that are significantly comparable to the licensure requirements in New York State; or

(ii) the applicant is licensed by another state that has not been determined to have significantly comparable certified public accountant licensure requirements, provided that the applicant's individual licensure qualifications are verified by the Department to be significantly comparable to the licensure requirements in New York State.

(2) the applicant submits a completed application, on a form prescribed by the Department, which shall include the following information:

(i) verification by the applicant of his or her residence, principal place of business and his/her state(s) of licensure;

(ii) certification by the applicant of good moral character;

(iii) certification by the applicant that he or she has met the continuing education requirements of the state of his or her principal place of business in the year prior to submission of the application form; and

(iv) payment of a \$125 fee for the issuance of a temporary practice permit.

(b) A temporary practice permit issued pursuant to these provisions:

(1) shall be valid for an aggregate total of 180 days during the twelve month period beginning on the effective date of the permit;

(2) may be renewed by the Department upon reapplication and payment of a renewal fee of \$125, up to three times such that an individual shall practice for no more than four years within a five year time period. Such renewals may be granted upon receipt of written notice from the permit holder, provided that the applicant remains in good standing in this state and his or her state(s) of licensure and is in compliance with

all laws, rules and regulations governing the practice of public accountancy in New York State.

(c) An applicant may practice in this state once the Department renders an initial determination that the information submitted under paragraph two of subdivision (a) of this section, including payment of the temporary permit fee, has been received.

(d) An applicant shall immediately cease the practice of public accountancy upon notification by the Department that his or her application for a temporary practice permit under this section has been denied.

(e) An individual, licensed as a certified public accountant in another state, who is practicing public accountancy in this state pursuant to this section may use the title "certified public accountant" or the designation "CPA" if the individual identifies his or her state of principal place of business in parentheses following his or her title or designation.

(f) Any certified public accountant who practices in New York State pursuant to Education Law section 7406(2), and any firm that employs such certified public accountant to provide such services in New York State, shall consent to all of the following as a condition of the exercise of such temporary practice privilege:

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

(2) to comply with Article 149 of the Education Law and the Rules of the Board of Regents and the Regulations of the Commissioner of Education; and

(3) to the appointment of the Secretary of State or other public official acceptable to the Department, in the certified public accountant's state of licensure or the state in which the firm has its principal place of business, as the certified public accountant or

firm's agent upon whom process may be served in any action or proceeding by the Department against such certified public accountant or firm.

(g) A certified public accountant licensed by another state and in good standing, who obtains a temporary practice permit under this section and files an application for licensure under Education Law section 7404 on or before the expiration date of such temporary practice may continue to practice under such permit for a period coterminous with the period during which his or her application for licensure remains pending with the Department.

§70.8 Registration of a firm.

(a) Pursuant to the provisions of Education Law section 7408, a firm shall register with the Department if:

(1) the firm is established for the business purpose of lawfully engaging in the practice of public accountancy pursuant to Education Law section 7401(1) and (2); or,

(2) the firm uses the title “CPA” or “CPA firm” or the title “PA” or “PA firm.”

(b) A firm of certified public accountants or public accountants engaged in the practice of public accountancy pursuant to Education Law section 7401(3), but not engaged in the practice of public accountancy pursuant to Education Law section 7401(1) and (2), may register with the Department under this section.

(c) An application for registration of a firm shall include:

(1) a list of all offices within this state, including the name of the person(s) in charge of such offices;

(2) a list of all states in which the firm has applied for or holds registrations, licenses, or permits as a public accounting firm;

(3) a list of any past denial, revocation, or suspension of a license, registration or permit by any other state or jurisdiction within the last three years;

(4) a list of all partners, owners or shareholders of the firm, including state(s) of licensure;

(5) a list of all certified public accountants or public accountants whose principal place of business is New York or who are otherwise authorized to practice in New York and who are responsible for supervising attest or compilation services or signing or authorizing someone to sign the accountant's report on financial statements on behalf of the firm;

(6) affirmation by the firm that the individuals listed pursuant to paragraph (5) of this subdivision meet the following competency requirements:

(i) have at least 1,000 hours experience within the last five years in the preparation or review of financial statements or reports on financial statements gained through employment in government, industry, academia or public practice; and

(ii) have at least 40 hours of continuing education in the area of accounting, auditing or attest during the three years immediately prior to the performance of such service; and

(iii) maintain the level of education, experience and professional conduct set forth in the professional general accounting standards governing the attest or compilation services performed.

(7) confirmation that the firm is appropriately authorized to do business in New York State by the Department of State;

(8) confirmation of the name of at least one partner of a partnership or limited liability partnership, member of a limited liability company or shareholder of a professional service corporation or the sole proprietor that is licensed or otherwise authorized to practice under Article 149 of the Education Law and that his or her license to practice is not currently suspended, annulled or revoked in any jurisdiction and he or she is regularly engaged in practice on behalf of the firm within the state;

(9) affirmation that the firm has not violated the provisions of Article 149 of the Education Law, any other applicable laws and such other requirements that the Department may impose; and

(10) payment of a firm registration fee pursuant to subdivision (d) of this section.

(d) The fee for a firm registration shall be:

(1) \$50 for each office of the firm located in New York; and an additional

(2) \$10 for the sole proprietor or each general partner of a partnership or limited liability partnership, member of a limited liability company or shareholder of a professional service corporation whose principal place of business is New York or who is otherwise authorized to practice in New

York through a temporary practice permit issued pursuant to section 70.7 of this Part.

(e) A firm offering or rendering professional services via a website shall provide the address of the firm's principal place of business, the firm's principal state of licensure or registration and a means to contact the person in charge of the firm regarding complaints, questions, or regulatory compliance on the firm's homepage of their website.

(f) In accordance with Education Law section 7408, the Board of Regents may revoke a registration issued under this section or take other action pursuant to a consent order or surrender of registration in accordance with this Title and the Rules of the Board of Regents, in the same manner and to the same extent as is provided with respect to individuals licensed pursuant to this Article, or pursuant to a settlement in which the firm neither admits nor denies the allegations of professional misconduct, or after a hearing conducted in accordance with the procedures set forth in Education Law section 6510 of this Title upon proof of the following:

(1) that the registration was obtained by either misrepresentation or suppression of any material fact;

(2) that the license or authorization to practice of any sole proprietor, partner of a partnership or limited liability partnership, member of a limited

liability company or shareholder of a professional service corporation is suspended, annulled or revoked in any jurisdiction;

(3) that any sole proprietor, partner of a partnership or limited liability partnership, member of a limited liability company or shareholder of a professional service corporation in such firm is or has been engaged in the practice of public accountancy in this state who is not licensed or otherwise authorized to practice in this state;

(4) that the firm failed to file annually on or before the anniversary of the date of the firm's first registration, written notification of:

(i) any admission of a partner, member or shareholder,

(ii) any resignation, termination, retirement or death of a partner, member or shareholder,

(iii) any termination of a firm,

(iv) any change in the number or location of offices within this state and any change in the identity of the persons in charge of such offices, or

(v) any occurrence of any event or events which would eliminate as to such firm conformity with the applicable requirements of this section.

(5) Effective January 1, 2012, a firm seeking to re-register with the Department shall submit a copy of its most recently completed quality review report performed in accordance with the provisions of Education Law section 7410, with its application for re-registration.



§70.9 Continuing Education.

(a) Applicability of requirement.

(1) All licensees engaged in the practice of public accountancy in this State, as defined in Education Law section 7401, either full time or part time, and required under Article 130 of the Education Law to register triennially with the Department, shall complete the continuing education requirements in accordance with this section, except those licensees exempt from the requirement pursuant to paragraph (2) of this subdivision.

(2) Exemptions and adjustments in the requirement.

(i) New licensees shall be exempt from mandatory continuing education requirements for the triennial registration period in which they are first licensed by the Department. A new licensee shall become subject to the mandatory continuing education requirements on the first January 1 that falls in his or her second registration period.

(ii) Licensees who are not engaged in the practice of public accountancy as defined in Education Law section 7401 and who have filed a written statement with the Department declaring such status shall be exempt from the mandatory continuing education requirement.

(iii) Adjustments to the mandatory continuing education requirement may be made by the Department for good cause acceptable to the Department which prevents compliance with all or part of the requirement. Good cause shall include personal illness certified by a

physician, military service and extreme hardship which makes it impossible to comply with the requirement in a timely manner. Good cause shall not include family or business commitments, except for unforeseen serious family problems occurring during the last six months of the calendar year.

(b) Minimum continuing education requirement.

(1) For licensees whose triennial registration period ends prior to January 1, 2009, for each calendar year, other than those that are exempt from the continuing education requirements pursuant to paragraph (2) of subdivision (a) of this section shall have the option of:

(i) completing a minimum of forty contact hours of acceptable formal continuing education in the following recognized areas of study: accounting, attest, auditing, taxation, advisory services, specialized knowledge and applications related to specialized industries, and such other areas appropriately related to the practice of accounting as may be acceptable to the Department; or

(ii) completing a minimum of twenty-four contact hours of acceptable formal continuing education concentrated in any one of the following three subject areas: auditing, accounting, or taxation.

(2) For licensees whose triennial registration period ends on or after January 1, 2009, for each calendar year beginning with the 2009 calendar year, licensees other than those that are exempt from the continuing

education requirements pursuant to paragraph (2) of subdivision (a) of this section shall have the option of:

(i) completing a minimum of forty contact hours of acceptable formal continuing education in the following recognized areas of study: accounting, attest, auditing, taxation, advisory services, specialized knowledge and applications related to specialized industries, and such other areas appropriately related to the practice of accounting as may be acceptable to the Department; or

(ii) completing a minimum of twenty-four contact hours of acceptable formal continuing education concentrated in any one of the following recognized areas of study: accounting, attest, auditing, taxation, advisory services, specialized knowledge and applications related to specialized industries, and such other areas appropriately related to the practice of accounting as may be acceptable to the Department

(3) Any licensee who supervises attest or compilation services or signs or authorizes someone to sign the accountant's report on financial statements on behalf of a firm shall be required to complete at least 40 contact hours of continuing education in audit, accounting, and/or attest during the three years immediately prior to the performance of such services. These contact hours may be counted toward the annual contact hour requirement in the calendar year that they are completed.

(4) Any acceptable continuing professional education credits earned between September 1, 2008 and December 31, 2009 may be credited toward the minimum contact hours required for the calendar year beginning January 1, 2009 and ending December 31, 2009.

(5) During each triennial registration period a registered licensee who is subject to the continuing education requirement shall be required to complete at least four contact hours in professional ethics. For registered licensees who complete the calendar year contact hour requirement in the manner described in subparagraph (i) of paragraph (1) of this subdivision, the four contact hours of professional ethics may be counted toward the annual contact hour requirement in the calendar year that they are taken. For registered licensees who complete the calendar year contact hour requirement in the manner described in subparagraph (ii) of paragraph (1) of this subdivision, the four contact hours of professional ethics may be counted toward the annual contact hour requirement in the year that they were completed if the hours in professional ethics were taken in the recognized subject area of the concentration.

(6) All licensees resuming practice during the triennial registration period or re-registering from an inactive status, except as provided in paragraph (7) of this subdivision, shall notify the Department and shall document 24 hours of continuing education completed in the 12-month

period prior to return to public practice. Following re-entry into the practice, the licensee shall complete a pro rata portion of the mandated yearly requirement for the option selected pursuant to paragraph (1) of this subdivision on the basis of one-half of the number of hours required under the option selected for each full six-month period from the date of reentry to the end of the current reporting year.

(7) Any licensee who is not registered and submits an application to reactivate his or her registration between February 1, 2009 and July 31, 2010 shall not be required to document 24 hours of continuing education completed in the 12 month-period prior to his or her return to practice. Such a licensee shall register with the Department and complete the annual continuing education requirements set forth in paragraphs (1) and (2) of this subdivision for the calendar year in which he or she re-registers and in each subsequent calendar year.

(c) Eligible Programs.

(1) As used in this section, acceptable formal continuing education shall mean formal programs of learning which contribute to professional practice, maintain or increase professional knowledge and which meet the requirements of this subdivision.

(2) Except as otherwise provided in paragraphs (3) or (4) of this subdivision, to be acceptable to the Department, recognized continuing

education areas of study shall consist of instruction conducted by sponsors approved pursuant to subdivision (e) of this section in the following subjects only: accounting; attest; auditing; taxation; advisory services; and specialized knowledge and applications related to specialized industries, professional ethics and such other areas related to the practice of accounting as may be acceptable to the Department. The types of formal programs which may be accepted by the Department shall include:

(i) any courses taken for academic credit at a regionally accredited college or university, as reflected on an official transcript, and that fall within one or more of the recognized subject areas;

(ii) other organized educational and technical programs which contribute to growth in the professional knowledge and professional competence of the licensee and meet standards approved by the Department.

(3) In addition to instruction pursuant to paragraph (2) of this subdivision, the following activities may contribute to meeting the continuing education requirement, provided that the number of contact hours allowed for such activities for any licensee shall not exceed one-half of the total number of hours of continuing education claimed during a licensee's triennial registration period:

(i) preparing and teaching a course offered by an approved sponsor, provided that the instruction is in the subjects set forth in paragraph (2) of this subdivision, further provided that such teaching shall not be accepted where the licensee has taught the course on more than one occasion without presenting new or revised material. The continuing education credits allowed will be on the basis of actual presentation hours, plus up to two additional credits for actual preparation time for each hour taught, provided that the licensee can provide satisfactory documentation that he or she was a presenter for the course; and

(ii) authoring an article published in a peer-refereed journal or a published book dealing with one of the subjects set forth in paragraph (2) of this subdivision; and

(iii) teaching a credit bearing course at a regionally accredited college or university, provided that the instruction is in the subject areas set forth in paragraph (2) of this subdivision, and further provided that such teaching shall not be accepted if the licensee has taught the course on more than one occasion without presenting new or substantially revised material. The amount of continuing education that will be awarded for teaching a course is 15 contact hours per semester or 10 contact hours per quarter credit hours.

(4) Educational programs or courses in the subjects specified in paragraph (2) of this subdivision may be accepted, in whole or part, towards the continuing education requirement provided that such courses or programs are offered and conducted in another state or country by sponsors approved by licensing authorities of that jurisdiction or the National Association of State Boards of Accountancy under standards substantially equivalent to those of the Department.

(d) Measurement of continuing education study. Continuing education credit shall be granted only for formal programs of learning that meet the requirements set forth in subdivision (c) of this section. One continuing education credit shall equal one contact hour. Contact hours shall be measured by program length, with a minimum of 50 minutes equaling one contact hour. Contact hours in one-half hour increments, equal to 25 minutes, shall be permitted after the first continuing education credit has been earned in a given program. For credit-bearing university or college courses, each semester-hour credit shall equal 15 contact hours and each quarter-hour shall equal 10 contact hours. Self-study programs shall be pretested to determine average completion time and the sponsor shall award credit on the basis of one credit per contact hour of the average pretested completion time.

(e) Sponsor approval.



(1) Persons or organizations desiring to offer programs under provisions of Education Law section 7409, shall submit, with fee as set forth in subdivision (h) of this section, an application for approval as a sponsor on forms provided by the Department. Once the application has been reviewed and approved, initial registration as a sponsor shall become effective on the first day of the month in which the application is received. Retroactive approval will not be given for programs offered prior to the initial approval date.

(2) To be approved, each applicant shall submit evidence acceptable to the Department that the applicant has and will maintain adequate resources to support all programs and will comply with the following development and presentation standards:

(i) sponsors shall assure that program developers are qualified in the subject matter and knowledgeable in instructional design;

(ii) sponsors shall assure that program materials are technically accurate, current and sufficient to meet the programs' learning objectives;

(iii) sponsors shall inform participants in advance of the programs' learning objectives, prerequisites, level of knowledge, content, specific New York States areas of study as defined in Education Law 7409(4), teaching method, recommended CPE credit, New York State sponsor identification number, and relevant administrative policies;

(iv) sponsors shall select instructors qualified with respect to both program content and teaching methods used; and

(v) sponsors shall provide a means for evaluating the quality of the program and update programs in response to the evaluations.

(3) Each approved sponsor shall maintain documentation for each program of instruction offered and retain the records for a period of not less than five years from the date each program is completed. Such documentation shall include the name and biography of the faculty, a record of individual enrollment and participation in such programs, an outline of the program materials, date and location of the program, number of contact hours recommended, summary of program evaluations and other evidence of compliance as may be required by the Department. Records shall be available to the Department upon request. In the event an approved sponsor discontinues operation, the governing body of such sponsor shall notify the Department and shall transfer all such records as directed by the Department.

(4) The Department shall determine the term of approval for each sponsor.

(5) The Department may conduct site visits or other reviews of sponsors and courses. Failure to cooperate with the Department shall be cause for revocation of a sponsor's approval.

(f) Licensee records. Each licensee subject to this section shall maintain a record of completed continuing education hours which includes the title of the program, the number of credits awarded for the program, the sponsor's name and New York State sponsor number and the date and location of the program. Documents supporting these records shall be retained by the licensee for not less than five years from completion of a course(s), and be available for review by the Department in the administration of the continuing education program.

(g) Renewal of registration.

(1) To qualify for renewal of registration, each licensee subject to the continuing education requirement shall certify on the registration application whether the minimum number of hours of continuing as required by subdivision (b) of this section has been completed. A licensee who has not satisfied the mandatory continuing education requirements shall not be issued a triennial registration certificate by the Department and shall not practice unless and until the continuing education requirement has been met, satisfactory to the Department, and a registration certificate has been issued or until a conditional registration certificate is issued as provided in this subdivision.

(2) The Department, in its discretion, may issue a conditional registration to a licensee who fails to meet the continuing education

requirements but who agrees to make up any deficiencies and take any additional education which the Department may require. The fee for such a conditional registration shall be the same as, and in addition to, the fee for the triennial registration. The duration of such conditional registration shall be determined by the Department. Any licensee who is notified of the denial of registration for failure to submit evidence, satisfactory to the Department, of completion of required continuing education and who practices without such registration may be subject to disciplinary proceedings pursuant to Education Law section 6510.

(h) Fees.

(1) A mandatory continuing education fee of fifty dollars (\$50) shall be collected from any licensee who is required under Article 130 of the Education Law to register triennially with the Department at the beginning of each triennial registration period. This fee shall be in addition to the triennial registration fee required by Education Law section 7404.

(2) Each individual and organization applying for approval from the Department to offer continuing education courses to licensees shall pay an application fee of three hundred dollars (\$300) and graduated renewal fees based on the number of different courses offered in the year prior to renewal.