





TO: The Professional Practice Committee

FROM: Douglas E. Lentivech


SUBJECT: Proposed Amendment of Section 29.10 of the Rules of the Board of Regents and Sections 70.7, 70.8 and 70.10 of the Regulations of the Commissioner of Education Relating to the Mandatory Quality Review Program in Public Accountancy

DATE: November 8, 2017

AUTHORIZATION(S):  

SUMMARY

Issue for Decision

Should the Board of Regents adopt, as an emergency action, the proposed amendment of subdivision (a) of section 29.10 of the Rules of the Board of Regents and subdivision (a) of section 70.7, subdivision (f) of section 70.8, and section 70.10 of the Regulations of the Commissioner of Education relating to the mandatory quality review program in public accountancy?

Reason for Consideration

Required by State statute (L. 2017, Chapter 364) and review of policy.

Proposed Handling

The proposed amendment will be presented to the Professional Practice Committee for recommendation and to the Full Board for adoption as an emergency action at the November 2017 meeting of the Board of Regents. A copy of the proposed rule and Statement of Facts and Circumstances Which Necessitate Emergency Action are attached.

Procedural History

A Notice of Proposed Rule Making and Emergency Adoption will be published in the State Register on November 29, 2017. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

Chapter 364 of the Laws of 2017 (“Chapter 364”) amended the Education Law to eliminate the exemption from the mandatory quality review requirement for sole proprietorship firms and firms with two or fewer accounting professionals, effective October 23, 2017. Chapter 364 also replaces the word “quality” with the word “peer” in Education Law §§7408 and 7410, thus, the mandatory quality review program is now referred to as the mandatory peer review program.

Prior to Chapter 364, sole proprietorship firms and firms with two or fewer accounting professionals were not required to undergo a mandatory quality review of their firms’ attest services every three years as a condition of renewal of their registrations. New York State was the only state that had an exemption from the mandatory quality/peer review requirement for these types of firms. Chapter 364 ensures that all firms, regardless of their size, that perform audit and attest services are required to undergo a mandatory quality/peer review. Mandatory quality/peer review furthers public protection by improving the dependability of information used for guidance in financial transactions by ensuring that all certified public accounting firms follow best practices, which assists in maintaining adequate quality control.

The proposed amendment to subdivision (a) of 29.10 of the Rules of the Board of Regents relates to the requirement that a firm meet the competency requirements by receiving a “pass” or “pass with deficiency” in its peer review report. Under the previous law, those firms that were exempt from the peer review program or received a “fail” on the peer review report were still required to maintain competency. It required the licensees to demonstrate competency by requiring the licensee to have 1,000 hours of experience within the previous five years providing attest services or reporting on the financial statements. As such, the rule must be amended to make the peer review a requirement, rather than an option. For firms that receive a “fail” on the peer review report, the 1,000 hours of experience will still be required.

The proposed amendment to subdivision (a) of section 70.7 and subdivision (f) of section 70.8 of the Regulations of the Commissioner of Education replace the word “quality” with the word “peer.”

The proposed amendment to section 70.10 of the Regulations of the Commissioner of Education replaces the word “quality” with the word “peer,” as nationally and internationally the term “peer review” is widely used for the peer review program of public accountancy firms.

The proposed amendment also makes various conforming and other changes based on a review of policy. Since the program's inception in 2012, the policy changes reflect the program's operations that have taken place over the past five years.

Related Regents Items

October 2017: Proposed Amendment of Section 70.10 of the Regulations of the Commissioner of Education Relating to the Mandatory Quality Review Program in Public Accountancy.

Recommendation

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

VOTED: That subdivision (a) of section 29.10 of the Rules of the Board of Regents and subdivision (a) of section 70.7, subdivision (f) of section 70.8 and section 70.10 of the Regulations of the Commissioner of Education be amended, as submitted, effective November 14, 2017, as an emergency action upon a finding by the Board of Regents that such action is necessary for the preservation of the public health and general welfare in order to timely implement the requirements of Chapter 364 of the Laws of 2017, which eliminate the exemption from the mandatory quality review requirement for sole proprietorship firms and firms with two or fewer accounting professionals.

Timetable for Implementation

If adopted at the November 2017 Regents meeting, the emergency rule will become effective on November 14, 2017 and expire on February 11, 2018. It is anticipated that an additional emergency action will be presented for adoption at the January 2018 Regents meeting to keep the rule continuously in effect until it can be adopted as a permanent rule, effective February 28, 2018.

It is further anticipated that the proposed rule will be presented to the Board of Regents for permanent adoption at the February 2018 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 45-day public comment period required under the State Administrative Procedure Act.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 6509, 7408, and 7410 of the Education Law and Chapter 364 of the Laws of 2017

1. Subdivision (a) of section 29.10 of the Rules of the Board of Regents is amended, as follows:

(a) Unprofessional conduct in the practice of public accountancy shall include all conduct prohibited by section 29.1 of this Part, except as provided in this section, and shall also include the following:

(1) . . .

(i) . . .

(ii) . . .

(iii) . . .

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(2) . . .

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(i) . . .

(ii) . . .

(4) . . .

(i) . . .

(ii) . . .

(iii) . . .

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(7) . . .

(i) . . .

- (ii) . . .
- (8) . . .
- (i) . . .
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- (iv) . . .
- (a) . . .
- (b) . . .
- (c) . . .
- (d) . . .
- (e) . . .

(v) . . .

(12) . . .

(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 client for such services.

(i) [Applicability of the requirement. Effective July 26, 2009, each licensee shall be subject to 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 client for such services, unless the certified public accountant or public accountant was licensed in New York State prior to July 26, 2009. For certified public accountants or public accountants licensed prior to July 26, 2009, the licensee shall be subject to the competency requirements of this paragraph beginning January 1, 2011.

(ii) Any licensee who supervises attest services or signs or authorizes someone to sign an accountant's report on the financial statements of a client for such services shall:

(a)

[(1) have at least 1,000 hours of experience within the previous five years in providing attest services or reporting on financial statements gained through employment in government, private industry, public practice or an educational institution satisfactory to the State Board for Public Accountancy; or

(2) be employed by a firm registered with the department pursuant to section 70.8 of this Title that has undergone a peer review satisfactory to the department which indicates that the firm has received a rating of pass or pass with deficiencies in its most recent peer review within the last three years; and

(b) . . .

(c) have maintained the level of education, experience and professional conduct required by generally accepted professional standards as described in paragraph (7) of this subdivision, relating to the attest services performed.

(ii) Provided that, in addition to meeting the requirements set forth in clauses (b) and (c) of subparagraph (i) of this paragraph, any licensee who supervises attest services or signs or authorizes someone to sign an accountant's report on the financial statements of a client for such services who is employed by a firm registered with the department pursuant to section 70.8 of this Title that has undergone a peer review satisfactory to the department which indicates that the firm has received a peer review rating of "fail," must maintain competency by having at least 1,000 hours of experience within the previous five years in providing attest services or reporting on financial statements gained through employment in government, private industry, public practice or an educational institution satisfactory to the State Board for Public Accountancy.

(iii) Any licensee who supervises a compilation engagement or signs or authorizes someone to sign an accountant's report on financial statements of a client for such compilation [services] engagements shall:

(a) . . .

(b) . . .

2. Subdivision (a) of section 70.7 of the Regulations of the Commissioner of Education is amended, as follows:

(a) Practice by certain out-of-state firms.

(1) . . .

(2) . . .

(3) A firm may register and perform services pursuant to this subdivision only if:

(i) . . .

(ii) the firm complies with the department's mandatory [quality] peer review program pursuant to section 7410 of the Education Law; and

(iii) . . .

3. Subdivision (f) of section 70.8. of the Regulations of the Commissioner of Education is amended, as follows:

(f) In accordance with Education Law section 7408 and the rules of the Board of Regents, 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 the same manner and to the same extent as is provided with respect to individuals licensed pursuant to article 149 of the Education Law, 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 upon proof of the following:

(1) . . .

(2) . . .

(3) . . .

(4) . . .

(i) . . .

(ii) . . .

(iii) . . .

(iv) . . .

(v) . . .

(5) Effective January 1, 2012, a firm seeking to re-register with the department shall submit a copy of its most recently completed [quality] peer review report performed

in accordance with the provisions of Education Law section 7410, with its application for re-registration.

4. Section 70.10 of the Regulations of the Commissioner of Education is amended, as follows:

§70.10. Mandatory [quality] peer review program

(a) Establishment of [quality] peer review program. Except as otherwise provided in this section, pursuant to section 7410 of the Education Law, effective January 1, 2012, the department establishes a mandatory [quality] peer review program, requiring all applicants seeking a firm registration or a renewal of such registration[, other than sole proprietorships or firms with two or fewer accounting professionals,] to participate in a [quality] peer review of the firm's attest services.

(b) Definitions. For purposes of this section:

(1) [Accounting professional means a certified public accountant, as defined in Education Law section 7401-a(2), or a public accountant, as defined in Education Law section 7401-a(6).

(2) Quality] Peer review report means a formal report issued by a reviewer and accepted by a sponsoring organization in accordance with this section.

[(3)] (2) Review means a review conducted under the mandatory [quality] peer review program prescribed in this section.

[(4)] (3) Review team means an individual or individuals assisting the team captain in conducting a review under this section.

[(5)] (4) Reviewer means the team captain or a member of a review team, if any, approved by the sponsoring organization to conduct a review.

[(6)] (5) Sponsoring organization means an entity approved by the department in accordance with subdivision (e) of this section to oversee and facilitate [quality] peer reviews performed by a reviewer in accordance with the provisions of this section.

[(7)] (6) Team or review captain means a person approved by a sponsoring organization to supervise and conduct a peer review under this section and to be responsible for the work performed by the review team.

(c) Participation in mandatory [quality] peer review program.

(1) Pursuant to section 7410 of the Education Law, an applicant seeking a renewal of its firm registration[, with the exception of a sole proprietorship firm or a firm with two or fewer accounting professionals,] that performs attest services, shall undergo, no more frequently than once every three years, except pursuant to a disciplinary action brought under section 7408 of the Education Law, a [quality] peer review of the firm's attest services in accordance with the provisions of this section.

(2) Any firm[, including a firm organized as a sole proprietorship or a firm with two or fewer accounting professionals,] that performs attest services for any of the following, [New York State or municipal department, board, bureau, division, commission, committee, public authority, public corporation, council, office, or other governmental entity performing a governmental or proprietary function for New York State or any one or more municipalities thereof, or performs attest services specifically required to be performed pursuant to New York State law] shall be required to undergo an external peer review[,]:

(i) New York State or municipal department, board, bureau, division, commission, committee, public authority, public corporation, council, office, or other governmental entity performing a governmental or proprietary function for New York State or any one

or more municipalities thereof, or performs attest services specifically required to be performed pursuant to New York State law; or

(ii) Federal governmental entities pursuant to Federal Law, in conformity with [g]Generally [a]Accepted [g]Government [a]Auditing [s]Standards issued by the Comptroller General of the United States.

(3) [Except as otherwise provided in paragraph (2) of this subdivision, sole proprietorship firms or firms with two or fewer accounting professionals may voluntarily undergo a quality review.

(4) Any firm registered with the department that is not required to participate in a [quality] peer review program under this section shall submit an annual written notification of the basis for such non-participation as part of the firm's submission of its annual report as required in Education Law section 7408(3)(e).

[(5)] (4) Any firm that begins providing attest services as described in Education Law section 7401-a or otherwise becomes subject to mandatory participation in the [quality] peer review program shall:

(i) notify the department of its change in status within 30 days and provide the department with evidence of enrollment in an acceptable [quality] peer review program [within one year of either the date of the firm's initial registration or the firm's initial performance of services requiring a quality review under this section,]; and

(ii) the firm shall have a [quality] peer review completed within 18 months of the date such services were first provided.

(d) [Quality] Peer Review Oversight Committee. The department establishes a [quality] peer review oversight committee [(QROC)] (PROC) to oversee the mandatory [quality] peer review program and to perform the functions described in paragraph (2) of this subdivision.

(1) Composition of [quality] peer review oversight committee. The [QROC] PROC shall be comprised of [five] six members appointed by the Board of Regents. Members of the [QROC] PROC shall be appointed by the Board of Regents for five-year terms[, except that the terms of those first appointed shall be arranged so that as nearly as possible an equal number of such terms shall terminate annually]. A vacancy occurring during a term shall be filled by an appointment by the Board of Regents for the unexpired term. At least five m[M]embers of the [QROC] PROC must be licensed certified public accountants in New York State and hold current registrations with the department, and may not be members of the State board for public accountancy or one of its committees. [QROC] PROC members shall be compensated in accordance with Education Law section 6506(4).

(2) Responsibilities of the [QROC] PROC. The [QROC] PROC shall:

(i) receive and approve the [quality] peer review administration plans from entities applying to be sponsoring organizations in accordance with subdivision (e) of this section;

(ii) at least annually monitor sponsoring organizations to provide reasonable assurance that the sponsoring organization is providing an acceptable level of oversight over reviewers, review teams and firms participating in the [quality] peer review program administered by the sponsoring organization and to ensure that such reviews are conducted and reported on in accordance with the [quality] peer review standards set forth in subdivision (i) of this section;

(iii) inform the department of any issues and/or problems relating to the [quality] peer review program which may require the department's intervention;

(iv) . . .

(v) annually assess the effectiveness of the [quality] peer review program;

(vi) annually report to the department on any recommended modifications to the [quality] peer review program;

(vii) review each [quality] peer review report submitted by a firm, as part of its registration or renewal of its registration, to determine whether the firm is complying with applicable professional standards;

(a) if the results of [QROC's] PROC's review indicate that a firm is complying with applicable professional standards and has received a [quality] peer review report issued by a reviewer approved by the department without deficiencies, the [QROC] PROC shall recommend to the department that it accept the firm's [quality] peer review report;

(b) [I]f the results of the [QROC's] PROC's review reveal that a firm's [quality] peer review report from a reviewer approved by the department includes deficiencies, or indicates that the firm was not in compliance with applicable professional standards, and if the [QROC] PROC finds that the report warrants disciplinary action, the [QROC] PROC may refer the firm to the Office of Professional Discipline pursuant to Education Law section 6510; and

(viii) . . .

(e) Approval of sponsoring organizations. To qualify as a sponsoring organization, an entity shall submit a [quality] peer review administration plan to the department for review and approval by the [QROC] PROC. The plan of administration shall:

(1) establish committees, as needed, and provide assurances that there is sufficient professional staff for the operation of the [quality] peer review program overseen by the sponsoring organization;

(2) provide assurances that the sponsoring organization will notify firms and reviewers participating in the [quality] peer review program of the latest developments in

[quality] peer review standards and the most common deficiencies in [quality] peer reviews conducted by the sponsoring organization;

(3) establish procedures for resolving any disagreement between the firm and the reviewer which may arise out of the performance of a [quality] peer review;

(4) acknowledge that the sponsoring organization is subject to evaluations by the department or the [QROC] PROC to periodically assess the effectiveness of the [quality] peer review program under its charge;

(5) establish procedures to evaluate and document the performance of each reviewer, and to disqualify a reviewer who does not meet the standards for [quality] peer reviews set forth in subdivision (i) of this section;

(6) establish procedures such that the sponsoring organization will provide the [QROC] PROC timely access to [quality] peer review reports;

(7) . . .

(8) provide for annual reports to the [QROC] PROC on the results of the sponsoring organization's [quality] peer review program, which shall include information on completed reviews, including the most common deficiencies noted by reviewers and, with respect to the [quality] peer review program:

(i) . . .

(ii) . . .

(iii) . . .

(iv) . . .

(f) Approval of team and review captains and review teams.

(1) Each approved sponsoring organization shall develop and provide a list of reviewers to the department, and from such lists the department will [develop] monitor [a roster] the list of approved reviewers for the [quality] peer review program.

(2) . . .

(i) . . .

(ii) . . .

(3) Each approved sponsoring organization shall develop and implement procedures to assure that each team or review captain:

(i) . . .

(ii) meets the following competencies prior to commencing a [quality] peer review:

(a)

(1) each team captain performing a [quality] peer review of a firm's system of quality control over its attest services, shall within the last five years, have experience performing attest services on behalf of a firm as a sole proprietor, partner of a partnership or limited liability partnership, member of a limited liability company or shareholder of a professional service corporation;

(2) each [team] review captain performing a [quality] peer review to evaluate that a firm's engagements were performed and reported in conformity with applicable professional standards, shall within the last five years, have experience performing attest services on behalf of a firm as a sole proprietor, partner of a partnership or limited liability partnership, member of a limited liability company or shareholder of a professional service corporation, manager or person with equivalent supervisory responsibilities;

(b) has either:

(1) completed at least 16 hours of introductory training acceptable to the department relating to the performance of [quality] peer reviews if the team captain will be issuing a report expressing an opinion on the firm's system of quality control; or

(2) has completed at least eight hours of introductory training acceptable to the department relating to the performance of [quality] peer reviews if the team captain will be issuing a report that only evaluates engagements submitted for review without expressing an opinion on the firm's system of quality control;

(c) subsequent to the team captain's completion of an introductory reviewer training course pursuant to clause (b) of this subparagraph and within each successive triennial period as a team captain, the team captain shall complete a minimum of eight hours of reviewer training acceptable to the department relating to the performance of [quality] peer reviews; and

(d) . . .

(g) . . .

(1) . . .

(2) . . .

(h) Effect of substandard reviews. Any firm that receives a [quality] peer review report indicating that the firm has failed to design a system of quality control over its attest services or comply with its system of quality control over its attest services, or that receives a [quality] peer review report indicating that the firm has failed to perform and report on engagements in conformity with applicable professional standards in material respects, may be referred by the [QROC] PROC for disciplinary action under Education Law section 6510.

(i) Standards for [quality] peer reviews.

(1) Any sponsoring organization that administers [quality] peer reviews under this section and/or any reviewer performing a [quality] peer review under this section shall utilize standards for performing and reporting on [quality] peer reviews promulgated by a recognized national accountancy organization whose standards are generally accepted

by other regulatory authorities in the United States and are acceptable to the department, including but not limited to the American Institute of Certified Public Accountants Standards for Performing and Reporting on Peer Reviews.

(2) . . .

(j) Access to results of [quality] peer reviews.

(1) Any firm required to participate in the mandatory [quality] peer review program pursuant to section 7410 of the Education Law shall submit the following documents, as applicable, to the department:

(i) a [quality] peer review report issued by a reviewer approved by the department;

(ii) . . .

(iii) . . .

(iv) . . .

(v) . . .

(2) [Quality] Peer review documents required in subparagraphs (1)(i) through (iii) of this subdivision shall be made available to the department via a website address provided by the sponsoring organization within 30 days of the date on the acceptance letter from the sponsoring organization. The [quality] peer review document required in subparagraph (1)(iv) of this subdivision shall be made available to the department within 30 days of the date that the firm signs such letter. The document required in subparagraph (1)(v) of this subdivision shall be made available to the department within 30 days of the date of the letter from the sponsoring organization notifying the reviewed firm that the required actions have been appropriately completed. If a sponsoring organization cannot provide access to the [quality] peer review documents required in subparagraphs (1)(i) to (v) of this subdivision via a website, the firm shall provide copies

of the [quality] peer review documents by mail or facsimile within 10 days of receipt of the applicable document, except for the [quality] peer review document required in subparagraph (1)(iv) of this subdivision which shall be submitted within 10 days of the date the firm signs such letter.

(3) Equivalent [quality] peer review reports submitted in accordance with subdivision (m) of this section shall be made available to the department via a website provided by the entity administering the [quality] peer review, in accordance with the requirements of paragraph (2) of this subdivision. If the entity that administered the [quality] peer review cannot provide access to the equivalent [quality] peer review documents via a website, the firm shall provide copies of the equivalent [quality] peer review documents by mail or facsimile in accordance with the requirements of paragraph (2) of this subdivision.

(k) Retention of documents.

(1) . . .

(2) The documents described in paragraph (1) of this subdivision shall be retained by the reviewer for a period of time corresponding to the retention period of the sponsoring organization, and shall be made available upon request of the [QROC] PROC. In no event shall the retention period be less than 120 days from the date of acceptance of the review by the sponsoring organization.

(l) . . .

(m) Equivalent [quality] peer review reports. The department may, in its discretion, accept from a firm a review report which the department deems to be the substantial equivalent of a [quality] peer review report issued under this section. A review report will be deemed substantially equivalent provided such reviews are conducted and reported on in accordance with the [quality] peer review standards set

forth in subdivision (i) of this section. Peer reviews administered by entities located outside the State of New York acceptable to the department and any affiliated administering entities may be accepted as substantially equivalent of a [quality] peer review report issued under this section.

8 NYCRR §§29.10, 70.7, 70.8, and 70.10

STATEMENTS OF FACTS AND CIRCUMSTANCES
WHICH NECESSITATE EMERGENCY ACTION

The proposed rule is necessary to implement Chapter 364 of the Laws of 2017, which became effective October 23, 2017. Chapter 364 of the Laws of 2017 (“Chapter 364”) amended the Education Law to eliminate the exemption from the mandatory quality review requirement for sole proprietorship firms and firms with two or fewer accounting professionals. Chapter 364 also replaces the word “quality” with the word “peer” in Education Law §§ 7408 and 7410, thus, the mandatory quality review program is now referred to as the mandatory peer review program.

Prior to Chapter 364, sole proprietorship firms and firms with two or fewer accounting professionals were not required to undergo a mandatory quality review of their firms’ attest services every three years as a condition of renewal of their registrations. New York State was the only state that had an exemption from the mandatory quality/peer review requirement for these types of firms. Chapter 364 ensures that all firms, regardless of their size, that perform audit and attest services are required to undergo a mandatory quality/peer review. Mandatory quality/peer review furthers public protection by improving the dependability of information used for guidance in financial transactions by ensuring that all certified public accounting firms follow best practices, which assists in maintaining adequate quality control. Therefore, it is imperative that all firms be subject to the mandatory peer review requirements as soon as possible.

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for adoption, after expiration of the required 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the February 12-13, 2018 Regents meeting. Furthermore, pursuant to

SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the February meeting, would be February 28, 2018, the date a Notice of Adoption would be published in the State Register.

Therefore, emergency action is necessary at the November 2017 Regents meeting for the preservation of the public health and general welfare in order to enable the State Education Department to immediately establish requirements to timely implement Chapter 364, which is already in effect, so that all firms will be subject to the mandatory peer review requirements.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the February 12-13, 2018 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act for State agency rule makings.