

The State Board of Accountancy (Board) hereby amends §§ 11.1, 11.4, 11.5, 11.7, 11.8, 11.16, 11.55, 11.56, 11.63, 11.81, and 11.82, and adds §§ 11.23a and 11.57 (relating to competence to supervise attest services; and education requirements for CPA certification) to read as set forth in Annex A.

Effective date

The final-form rulemaking is effective **January 1, 2018**.

Statutory Authority

Section 3(a)(12) of the CPA Law (act) (63 P.S. § 9.3(a)(12)) authorizes the Board to promulgate and enforce regulations as necessary and proper to carry into effect the provisions of the act. **Section 3(a)(11) of the act authorizes the Board to promulgate and amend rules of professional conduct, and section 3(a)(10) of the act authorizes the Board to promulgate and enforce rules and regulations consistent with the act establishing requirements of continuing education and peer review.**

Description and Need for the Rulemaking

The act of July 9, 2008 (P.L. 954, No. 73) (Act 73) amended the act in a number of significant ways. Act 73 provided for practice in this Commonwealth under substantial equivalence by persons licensed in other states. Act 73 also provided new education and experience standards for licensure. In addition, Act 73 increased from \$1,000 to \$10,000 the maximum civil penalty that the Board could levy in a disciplinary action and authorized the Board to assess the costs of investigation and made other technical revisions to the language of the act. Because the Board's existing regulations prohibit unlicensed practice with no mention of substantial equivalency and address what experience and education is acceptable, the Board concluded that it should amend its regulations to implement Act 73. Therefore, the Board proposed rulemaking that, in addition to other revisions, would provide that those practicing under provisions of substantial equivalency would be permitted to use of designations such as "CPA" or "PA" without having a current license issued by the Board and would set the required experience standards for licensure.

The act of June 19, 2013 (P.L. 46, No. 15) (Act 15) also amended the act. Previously, a candidate was required to have at least 1 year of experience that, among other things, included at least 400 hours of experience in attest activity in public accounting, as an internal auditor meeting certain standards, or as an auditor with a unit of the Federal, state or local government. Act 15 replaced this with a requirement that the candidate's year of experience include "providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting skills, which were gained through employment in government, industry, academia or public practice." Additionally, a candidate had been required to have the experience "supervised by an individual with a current license to practice public accounting as a certified public accountant or public accountant in this Commonwealth or another state." Act 15 amended this provision to require only that the experience be "verified by" a qualified individual. Because the Board's existing regulations address what experience is

acceptable and set standards for the supervisor of that experience, the Board also concluded that it should amend its regulations to implement Act 15. The Board proposed rulemaking that, in addition to other revisions, would set competence standards for those supervising attest services or signing an accountant's report and would revise the minimum continuing professional education (CPE) requirements.

Summary of Comments to the Proposed Rulemaking and the Board's Response

The Board published notice of proposed rulemaking at 45 Pa.B. 2878 (June 13, 2015) with a 30-day public comment period. The Board received comments from the Pennsylvania Institute of Certified Public Accountants (PICPA) and from William J. Park, CPA. The Board received no other comments from the public. The Board received comments from the House Professional Licensure Committee (HPLC) and the Independent Regulatory Review Commission (IRRC) as part of their review of proposed rulemaking under the Regulatory Review Act (71 P.S. §§ 745.1-745.15). The Board did not receive any comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC).

Mr. Park indicated that he was overall in agreement with the proposed regulations, with certain exceptions. With the pace of change in the accounting profession and the increased importance of the attest function, he believes it would be prudent to require more than 80 hours in each year of experience before a CPA is permitted to sign an audit opinion, whereas proposed § 11.23a(b)(1) (relating to competence to supervise attest services) would require only 400 hours of experience in the previous 5 years in providing attest services. IRRC asked the Board to explain how its proposal sufficiently protects the public. Prior to the Act 15 amendments, a candidate was required to have at least 400 hours of experience in attest activity during the prior 5 years to qualify for a license; there were no additional qualifications required to supervise attest activity once licensed. This rulemaking returns to the minimum level of experience required for licensure prior to Act 15 and it exceeds the prior standard by requiring ongoing experience always within the immediately preceding five years and requiring 24 – not just 16 – hours of CPE within the prior 24 months and for every biennial renewal period, in addition to maintaining the level of education, experience and professional conduct required by applicable generally accepted professional standards as described in § 11.27 (relating to auditing standards and other technical standards). These standards are generally consistent with those applicable to certified public accountants in other states. For example, in New York one who supervises attest services or signs or authorizes someone to sign an accountant's report on financial statements shall have maintained the level of education, experience and professional conduct required by generally accepted professional standards, have completed at least 40 hours of continuing education in the area of accounting, auditing or attest during the prior three calendars, and either have at least 1,000 hours of experience within the previous five years in providing attest services or reporting on financial statements or be employed by a firm that has undergone a satisfactory peer review. 8 CRR-NY 29.10(a)(13)(ii). And in California a certified public accountant must complete a minimum of 500 hours of experience in attest services to be authorized to sign reports on attest engagements. Cal.Bus.&Prof. Code § 5095(a). The Board recognizes that, to Mr. Park's point, its experience requirement is less than that of New York though similar to that of California. However, the Board believes that the standards it is setting are both necessary and sufficient without being burdensome. Similarly, IRRC questioned why proposed § 11.23a(c) should exempt an accountant licensed

before August 18, 2013, from the specific requirements of § 11.23a(b) otherwise required to show competence to supervise attest services or sign an accountant’s report. In proposing the exemption, it appeared to the Board that one licensed before the Act 15 amendments would have already equally demonstrated competence through prior experience and ongoing CPE. However, having previously obtained that experience and completed appropriate CPE would not provide justification to waive the ethical requirement to maintain the level of education, experience and professional conduct required by generally accepted professional standards. Accordingly, upon further consideration, the Board has determined that it should completely remove this proposed exemption from § 11.23a. Those licensed before Act 15 will be required to demonstrate competence to the same extent as later-licensed accountants to supervise the provision of attest services or sign an accountant’s report for attest services.

Additionally, because the CPA Law defines “attest activity” in a way that **he believes could** only be performed in public accounting or to a lesser extent in government, Mr. Park suggested that industry and academia be deleted from the settings of § 11.23a(b)(1)(i) in which experience may be acquired to show competence in attest services. **The Board disagrees that the definition of “attest activity” in section 2 of the CPA Law necessarily excludes experience obtained in industry or academia. As defined, “attest activity” requires the issuance of a report expressing an opinion as part of the provision of any of various services, including audits in accordance with Statements on Auditing Standards, a review of a financial statement performed in accordance with Statements on Standards for Accounting and Review Services, an engagement performed in accordance with Statements on Standards for Attestation Engagements, an audit performed in accordance with government auditing standards issued by the Comptroller General of the United States or any other engagement performed in accordance with attestation standards established by an organization such as the American Institute of Certified Public Accountants or the Public Company Accounting Oversight Board. Nowhere does this definition limit the setting in which these services may be provided. Section 4.2(d)(2) of the CPA Law (relating to requirements for issuance of certificate) requires an applicant for certification to have appropriate experience “providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting skills, which were gained through employment in government, industry, academia or public practice.” 63 P.S. § 9.4b(d)(2) (emphasis supplied). By reading these two provisions together, the Board believes that the General Assembly intended that appropriate experience in any type of professional services should be utilized to demonstrate competence regardless of the venue in which it was gained.** Because a candidate or CPA might actually obtain attest experience in industry or academia, whether it is readily foreseeable, the Board believes that the provision should remain. Finally, Mr. Park objected to § 11.55(c)(10) including teaching in the experience that qualifies one for certification, as the Board should assure that CPAs have real-life hands-on experience. The Board has not revised this provision, as it believes that teaching experience may also contribute to a candidate’s own education and competence to practice public accounting.

PICPA objected to the Board’s proposed requirement in § 11.55(a) (relating to experience requirements for CPA certificate) that each year of experience must include at least 1,600 hours of qualifying experience acquired over a period of not less than 12 months to satisfy the statutory requirement of at least 1 year of experience completed within 60 months prior to application. To illustrate its concern, PICPA hypothesized a tax preparer who works full-time through the first 4

months of the year acquiring over 2,000 hours of experience in 3 years, but would not have at least 1,600 hours in any 12-month period. The HPLC agreed with PICPA's comments, and IRRC agreed with the HPLC's and PICPA's concern and recommended that the Board amend its requirement or explain why it is needed and reasonable. As PICPA alludes, the Board does not intend to keep part-time workers from qualifying for licensure. This provision was not intended to require a candidate to obtain 1,600 hours of experience in each 12-month period. Instead, the Board proposed this requirement to prevent those who gather more than 30 hours of experience each week from meeting the 1600-hour requirement in less than the statutory 1 year. The comments demonstrate that the Board's language was not sufficiently clear. Accordingly, it has revised this provision to require 1,600 hours of qualifying experience that must be acquired over a period of not less than 12 months.

Additionally, IRRC looked at the provisions to implement substantial equivalency. It first questioned how the Board would know how many out-of-state accountants or firms are practicing in Pennsylvania under substantial equivalency and what mechanism the Board would use to obtain this information. The Board will not know how many out-of-state accountants or firms are practicing in Pennsylvania under substantial equivalency. Because in enacting Act 73 the General Assembly determined that it is appropriate to permit such practice and provided no mechanism to restrict the number of persons exercising this mobility of practice, the Board has no reason to determine the numbers or take any action. IRRC further questioned who would make the important determination of substantial equivalency before services are rendered. It inquired whether all other states' requirements are substantially equivalent or, if not, whether the Board maintains a list of states whose standards are substantially equivalent that is available to the public. The National Qualification Appraisal Service of the National Association of State Boards of Accountancy has reviewed the CPA licensure required of its member jurisdictions and determined that all states of the United States, as well as the District of Columbia, Guam, and Puerto Rico, have CPA licensure requirements that are substantially equivalent to those of the Uniform Accountancy Act (a degree with 150 hours, minimum 1 year experience and successful completion of the Uniform CPA Examination). Accordingly, because the education, experience and examination requirements of every other state are comparable to those of Pennsylvania, a certified public accountant licensed in any state is presumed to have qualifications substantially equivalent to the Commonwealth's requirements and may therefore practice in Pennsylvania under substantial equivalency.

IRRC also commented on the Board's proposed revisions to §§ 11.7 and 11.8 (relating to use of the designation "public accountant" and the abbreviation "PA;" and use of the designation "certified public accountant" and the abbreviation "CPA" in the practice of public **accounting**) to exempt those practicing under principles of substantial equivalency from the prohibitions against using certain designations unless licensed. Rather than exempting them from the general rule, IRRC recommended that substantial equivalency be added as a substantive requirement, as preferred in the Pennsylvania Code & Bulletin *Style Manual*. The Board has revised §§ 11.7 and 11.8 to do so.

Finally, IRRC commented on the clarity of the rulemaking concerning the required amount of CPE. The Board proposed to revise § 11.63(a)(1) (relating to CPE subject areas; relevance to professional competence) so that instead of requiring all licensees to complete at least 16 CPE hours in accounting and attest, only those who participate in attest will be required to do so,

although the minimum will increase to 24 CPE hours in these subjects. The Board also proposed adding a note that a licensee who supervises attest services and signs an accountant's report for attest services may also need to complete additional CPE in accounting and attest to comply with newly proposed § 11.23a, which requires at least 24 CPE hours in the area of accounting, auditing or attest during the 24 months immediately preceding the issuance of the report. IRRC recommended that the Board review and amend these provisions as necessary to clarify how to comply with the CPE requirements. The Board perceives no conflict or confusion with these provisions. Licensees are required **under § 11.62(a)** to complete a total of 80 hours of CPE each biennial cycle. A licensee who participates in attest activity is required **by revised § 11.63(a)(1)** to complete at least 24 of those CPE hours in accounting and attest during each biennial renewal period. A licensee who supervises attest activity or who signs an accountant's report for attest services is required **by new § 11.23a(b)** to complete at least 24 CPE hours in accounting, auditing or attest during the 24 months immediately preceding issuance of the report. Nothing in the rulemaking suggests that a licensee who participates in attest activity by supervising attest activity or signing an account's report and who completes the required 24 hours of CPE within the 24 months prior to issuance of the report cannot also use that CPE to meet the biennial renewal requirements, so long as the CPE hours are applied to the appropriate biennium. **However, to make the regulation clearer, the Board has added an additional sentence to § 11.23a(b)(1)(i) to require that this CPE to be competent to supervise attest must comply with the general requirements for CPE and may be used to satisfy the biennial CPE obligation.**

Fiscal Impact

The rulemaking will not have a fiscal impact on the regulated community, the general public, or the Commonwealth and its political subdivisions.

Paperwork Requirements

The final-form rulemaking will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the regulated community or the private sector.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on May 29, 2015, the Board submitted a copy of the notice of proposed rulemaking, published at 45 Pa.B. 2878, to IRRC and the chairpersons of the HPLC and the SCP/PLC for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments received from IRRC, the HPLC, the SCP/PLC and the public.

On _____, 20**17**, the Board delivered final-form rulemaking to IRRC, the HPLC and the SCP/PLC. Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on _____, 20**17**, the final-form rulemaking was deemed approved by the HPLC and

by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, 2017, and approved the final-form rulemaking.

Additional Information

Further information may be obtained by contacting Sara Fox, Board Administrator, State Board of Accountancy, P.O. Box 2649, Harrisburg, PA 17105-2649, RA-accountancy@pa.gov. Please reference No. 16A-5513 (Act 73 and Act 15 amendments), when requesting information.

Findings

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law and all comments were considered.
- (3) The amendments to this rulemaking do not enlarge the scope of proposed rulemaking published at 45 Pa.B. 2878.
- (4) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the CPA Law.

Order

The Board, acting under its authorizing statute, orders that:

- (a) The regulations of the Board at 49 Pa. Code §§ 11.1, 11.4, 11.5, 11.7, 11.8, 11.16, 11.23a, 11.55, 11.56, 11.57, 11.63, 11.81, and 11.82, are amended to read as set forth in Annex A.
- (b) The Board shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as required by law.
- (c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (d) Following publication in the *Pennsylvania Bulletin*, the final-form rulemaking shall take effect January 1, 2018.

Barry M. Berkowitz, CPA, Chairman
State Board of Accountancy