

NASBA

National Association of State Boards of Accountancy

EXPOSURE DRAFT

Additions and Modifications to

**Uniform Accountancy Act
Model Rules**

October 2006

COMMENTARY

The rules presented in this exposure draft are designed to be used to implement the Uniform Accountancy Act as last revised in December 2005. They were developed to give the accountancy boards guidance in many areas including compliance assurance and peer review, required ethics continuing professional education, ascertaining “good moral character,” and providing for a model code of conduct. In addition, some new definitions are being proposed and we are recommending the deletion of rules that cover areas which most states have in their administrative procedures act.

State boards are asked to consider these rules from the standpoint of changes which could make them adoptable in their jurisdiction, and then to inform the NASBA UAA Committee of those suggested alterations by Monday, April 30, 2007.

Opportunity for Public Comment

Interested persons are encouraged to submit their views to the NASBA UAA Committee. Written comments should be sent to the UAA Committee, National Association of State Boards of Accountancy, 150 Fourth Avenue North – Suite 700, Nashville, TN 37219-2417. Comments may also be submitted by e-mail to lhaberman@nasba.org. All comments should refer to UAA Rules ED in the subject or reference line and should be received by the Committee no later than 5:00 p.m. EDT on April 30, 2007.

ISSUED BY THE NASBA UNIFORM ACCOUNTANCY ACT COMMITTEE

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October 27, 2006

UAA RULES REVISIONS
NASBA COMMITTEE RECOMMENDATIONS
October 2006

ARTICLE 3 – DEFINITIONS

Recommendation 1: Delete Rules 3-2, 3-3, 3-4

Objective: Eliminate extraneous and duplicative rules.

Explanation: These terms are already defined in UAA Statute. Also, the Rule definition of “Report” differs from the current definition in the UAA Statute.

Rule 3-2 – Manager.

~~“Manager” when used in these Rules has the same meaning as the term “manager” in a limited liability company.~~

Rule 3-3 – Member.

~~“Member” when used in these Rules has the same meaning as the term “member” in a limited liability company.~~

Rule 3-4 – The statutory term “report.”

~~This term, as defined in Section 3(p) of the Act and used in Section 14(a) of the Act, and in these Rules, includes forms of language contained in a report which refers to financial statements, when such forms of language express or deny any assurance as to the reliability of the financial statements to which it refers. Among the possible sources of such forms of language are pronouncements by authoritative bodies describing the work that should be performed and/or the responsibilities that should be assumed, for specified kinds of professional engagements, and in addition prescribing the form of report which should be issued upon completion of such engagements. A form of report prescribed by such a pronouncement will ordinarily constitute a form of language which is conventionally understood as implying assurance and expertise. For this reason, as provided in Section 14 of the Act, the term “report” includes the issuance of reports using the forms of language set out in the AICPA’s Statement on Standards for Accounting and Review Services No. 1 (SSARS 1), for reports with respect to both “reviews” of financial statements, and also compilations of financial statements, as well as the forms of language for “special reports” set out in the AICPA’s Statement on Auditing Standards No. 14, No. 35 and No. 62 (SAS 14, 35 and 62) or successor pronouncements.~~

Recommendation 2: Adopt New Rule 3-2

Objective: Add a definition of “Agreed upon procedure.”

Explanation: The term not used in UAA, but part of “attest” per SSAE. [Derived from AT201.03 and AT201.04].

Rule 3-2 Agreed-Upon Procedures Engagement

An “agreed-upon procedures engagement” is one in which a Licensee is engaged to issue a written finding(s) that (i) is based on specific procedures that the specified parties agree are sufficient for their purposes, (ii) are restricted to the specified parties, and (iii) do not provide an opinion or negative assurance.

Recommendation 3: Adopt New Rule 3-3

Objective: Add a definition of “Audit.”

Explanation: The NASBA UAA Committee recommends including a definition of “audit” in the Rules. The term is used throughout the UAA but nowhere defined. The Committee received input from technical experts who recommended a broader definition that would focus more on “process” rather than “examination,” would emphasize “reasonable assurance,” and would include the opinions based upon individual balance sheets. Per AICPA: “After discussion, the position by the AICPA would be to respectfully decline to offer alternative language. This position is based upon the belief that the various changes have improved some of the most obvious issues of the original proposed definition but it is still fundamentally deficient. It would appear that on this item we must agree to disagree.”

Rule 3-3 Audit

“Audit” means the procedures performed in accordance with applicable auditing standards for the purpose of expressing or disclaiming an opinion on the fairness with which the historical financial information is presented in conformity with generally accepted accounting principles, another comprehensive basis of accounting, or basis of accounting described in the report.

Recommendation 4: Adopt New Rule 3-4

Objective: Add a definition of “Professional engagement.”

Explanation: The term “Engagement” is used throughout the UAA but nowhere defined. The NASBA UAA Committee based its recommendation on extant state board rules.

Rule 3-4 "Professional engagement"

"Professional engagement" means an agreement between a client and a licensee relative to the performance of professional services.

ARTICLE 4 - STATE BOARD OF ACCOUNTANCY

Recommendation 5: Revise the Comment to Rule 4-5

Objective: Add Comments to clarify the self-disclosure and notice requirements to make them consistent and to make compliance simpler.

Explanation: There are different disclosure dates within the Rules. Rule 4-5 requires notification of changes within 30 day. Previously, Rule 11-2 Mandated Reporting Convictions, Judgments, and Administrative Proceedings within 45 days. The NASBA UAA Committee recommends a standard period of 30 days within which matters ranging from notices of address changes to disclosures of civil/criminal/agency actions must be communicated to Boards. Rule 4-5 would not change. The Comment to Rule 4-5 would be revised to simply cross reference Rule 11, and Rule 11 should be changed to 30 days.

Rule 4-5 - Obligation of licensees to notify the Board of changes of address and other information.

Each licensee shall notify the Board in writing within thirty (30) days of any change of address or, in the case of individual licensees, change of employment.

Comment: See also the reporting requirements set out in Rule 11-2.

ARTICLE 5 – CERTIFIED PUBLIC ACCOUNTANTS

Recommendation 6: Adopt New Rule 5-11

Objective: Clarify the manner in which Boards determine applicant ineligibility due to lack of good moral character.

Explanation: UAA § 5 (b) defines “good moral character” to mean “propensity to provide professional services in a fair, honest, and open manner.” The NASBA UAA Committee recommends that the UAA should include a rule with more specifics regarding the meaning of “good moral character” as well as how an applicant can document it, and factors a state board may consider in ascertaining the lack of good moral character and rehabilitation. This proposal has been arranged to flow in logical progression. Elements of rules from California and other states have been added. Comments have been added since the terms “revoke” and “revocation” have different meanings in some states.

UAA Rule 5-11 - Good Moral Character

- (a) Applicants have the burden of demonstrating good moral character as defined by UAA Section 5(b) in the manner specified by the Board in its application forms.**
- (b) Prima facie evidence of a lack of good moral character includes, but is not limited to:**
- (1) any deferred prosecution agreement involving an admission of wrongdoing, or any criminal conviction, including conviction following a guilty plea or plea of *nolo contendere*, for any felony or any crime, an essential element of which is fraud, dishonesty, or deceit, or any other crime which evidences an unfitness of the applicant to practice public accountancy in a competent manner and consistent with the public safety;**
 - (2) revocation of any license or other authority to practice by or before any state, federal, foreign or other licensing or regulatory authority;
or**
 - (3) any act which would be grounds for revocation or suspension of a license if committed by a licensee of the Board.**
- (c) Factors which the Board may consider in determining rehabilitation of moral character include, but are not limited, to the following: Completion of criminal probation, restitution, community service, military or other public service, the passage of time without the commission of any further crime or act demonstrating a lack of moral character under subsection (b), the expungement of any conviction or reduction of a conviction from a felony to misdemeanor.**

Comments: Most states use the term “revoke” or “revocation” to refer to removing a license on disciplinary grounds. However, state boards should be aware that some jurisdictions use the term “revoke” to refer to forfeitures for administrative infractions such as failure to renew or CPE compliance.

**ARTICLE 6 - ISSUANCE OF CERTIFICATES AND RENEWAL OF
CERTIFICATES AND REGISTRATIONS, CONTINUING PROFESSIONAL
EDUCATION AND RECIPROCITY**

Recommendation 7: Amend Rule 6-4

Objective: Add an ethics CPE requirement.

Explanation: The proposed revision could establish a model norm that would enhance standards without unduly restricting licensee mobility.

Rule 6-4 Continuing professional education requirements for renewal of the certificate or registration.

(a) An applicant seeking renewal of a certificate or registration shall show that the applicant has completed no less than 120 hours of continuing professional education, including a minimum of four hours in ethics, complying with these Rules during the three-year period preceding renewal. A program in ethics includes topics such as ethical reasoning, state-specific statutes and rules, and standards of professional conduct, including those of other applicable regulatory bodies. A minimum of 20 CPE hours shall be completed each year. An applicant seeking renewal of a certificate or registration shall demonstrate participation in a program of learning meeting the standards set forth in the Statement of Standards for Continuing Professional Education (CPE) Programs jointly approved by NASBA and AICPA.

Recommendation 8: Amend Rule 6-5

Objective: Revise Rule 6-5 so that the ethics CPE requirement does not unduly impair mobility.

Explanation: Even though Rule 6-5(c) seems to already cover the issue, the Task Force was concerned that differences among the states regarding new ethics continuing education requirements could pose problems for mobility.

Rule 6-5

[No change to (a) or (b)]

(c) A non-resident licensee seeking renewal of a certificate in this state shall be determined to have met the CPE requirement (including the requirements of Rule 6-4(a)) of this rule by meeting the CPE requirements for renewal of a certificate in the state in which the licensee's principal office-place of business

is located.

- (1) Non-resident applicants for renewal shall demonstrate compliance with the CPE renewal requirements of the state in which the licensee's principal office is located by signing a statement to that effect on the renewal application of this state.
- (2) If a non-resident licensee's principal office state has no CPE requirements for renewal of a certificate, the non-resident licensee must comply with all CPE requirements for renewal of a certificate in this state.

Comments: Continuing Education on ethics may include credit for state-specific statutes and rules, but state-specific statutes and rules course requirements should be primarily required of licensees whose principal place of business is in the state requiring continuing education credits in state-specific statutes and rules. Otherwise, multistate practice could be greatly constrained and the other objectives of continuing education (such as continuing technical competence) could be displaced by an inordinate concentration on the local accountancy rules of numerous jurisdictions.

Recommendation 9: Amend Rule 6-9

Objectives: Re Rule 6-9(a), the NASBA UAA Committee recommends that the rules should be updated and strengthened regarding international mobility by adding a reference to the IQAB's Mutual Recognition Process. Deference to Mutual Recognition Agreements should be premised upon an enhanced IQAB review. Re Rule 6-9(d), (e) & (f), the rules should be amended to clarify and improve Boards' ability to take enforcement actions re those using reciprocal licenses or practice privileges if they have received discipline from a foreign regulatory authority.

Explanations: No change has been proposed for Rule 6-9(b) or (c).

The changes to Rule 6-9(a) were developed by the Mobility Task Force. With increased foreign reciprocity, there is a need for state boards to be able to more readily determine whether a foreign credential is substantially equivalent. One way to do that is to defer to the Mutual Recognition Agreements approved by NASBA.

The changes to Rule 6-9(d), (e) and (f) were developed by the Enforcement Task Force. Increased international practice of accountancy warrants improvements in the ability of state boards to deal with foreign practitioners in the state who have been disciplined in foreign jurisdictions. A key to using foreign disciplinary actions as a basis for state discipline is the assurance that the foreign discipline occurred in the context of reasonable due process and

fairness. The NASBA UAA Committee recommends that if a foreign jurisdiction is approved for a Mutual Recognition Agreement, a state board should be able to presume that the foreign jurisdiction observed due process and fairness. The additional Comments reflect the fact that some states separately approve MRAs.

Rule 6-9 – International Reciprocity

- (a) **The Board may designate a professional accounting credential or professional registration issued in a foreign country as substantially equivalent to a CPA ~~certificate~~ license.**
- (1) **The Board may rely on the International Qualifications Appraisal Board for evaluation of foreign credential equivalency;**
- (2) **The Board may accept a foreign accounting credential in partial satisfaction of its domestic credentialing requirements if:**
- (A) **the holder of the foreign accounting credential met the issuing body’s education requirement and passed the issuing body’s examination used to qualify its own domestic candidates; and**
- (B) **the foreign credential is valid and in good standing at the time of application for a domestic credential.**
- (3) **If the foreign jurisdiction that granted the foreign accounting credential to a foreign applicant is party to a currently valid Mutual Recognition Agreement (MRA) with NASBA the credential holder may be presumed to be substantially equivalent (and subject to other qualifying requirements as provided in the MRA).**

[No changes to (b) or (c)]

- (d) **The holder of a license or practice privilege ~~CPA certificate~~ issued or granted by this Board in reliance on a foreign accounting credential or license shall report any investigations undertaken, or sanctions imposed, by a foreign credentialing or licensing body against the CPA’s foreign credential or license, or any discipline ordered by any other regulatory authority having jurisdiction over the holder’s conduct in the practice of accountancy.**
- (e) **Suspension or revocation of, or refusal to renew, the CPA’s foreign accounting credential by the foreign credentialing body may be evidence of conduct reflecting adversely upon the CPA’s fitness to retain the certificate and may be a prima facie basis for Board action, subject to the following;**
- (f) **The Board may presume procedural due process and fairness if the foreign jurisdiction is a party to a current Mutual Recognition Agreement that NASBA [this State] has adopted.**

Comments: If your state separately ratifies MRAs, you should add “and this State have adopted” to subsection (f).

ARTICLE 7 – PERMITS TO PRACTICE – FIRMS

Recommendation 10: Amend Rules 7-2 through 7-5 (Compliance Assurance)

Objective: To enhance State Boards' ability to protect the public by implementing a Compliance Assurance program that is more transparent and more directly accountable to the Boards.

Explanation: The NASBA UAA Committee recommends these changes which are based upon revisions developed by NASBA's Compliance Assurance Committee, in light of recent accounting scandals, the adoption of the Sarbanes Oxley Act and establishment of the Public Company Accounting Oversight Board. The rules use the term "compliance assurance programs," which include "peer reviews" and other comparable programs, to underscore the objectivity of the board-mandated programs.

Rule 7-2 - Notification of changes by firms.

- (a) A firm registered pursuant to Section 7 of the Act shall file with the Board a written notification of any of the following events concerning the practice of public accountancy within this State within thirty (30) days after its occurrence:
- (1) Formation of a new firm;
 - (2) Addition of a partner, member, manager or shareholder;
 - (3) Retirement, withdrawal or death of a partner, member, manager or shareholder;
 - (4) Any change in the name of the firm;
 - (5) Termination of the firm;
 - (6) Change in the management of any branch office in this State;
 - (7) Establishment of a new branch office or the closing or change of address of a branch office in this State;
 - (8) Initial offering of attest services;
 - (9) Issuance of the firm's first issued financial statements and accountant's reports for each level of service described in Rule 7-3; or
 - (10) The occurrence of any event or events which would cause such firm not to be in conformity with the provisions of the Act or these Rules.
- (b) In the event of any change in legal form of a firm, such new firm shall within thirty (30) days of the change file an application for an initial permit in accordance with these Rules and pay the fee required by these Rules.
- (c) The firm shall submit for review its first issued financial statement and accountant's report for each level of service described in Rule 7-3.

Rule 7-3 – Peer-review-Successful completion of an approved Compliance Assurance Program as a condition for renewal of permit.

- (a) **In furtherance of its duty to protect the public regarding attest services, the Board requires all CPA firms offering or rendering such services to successfully complete a well-administered, transparent compliance assurance program approved by the Board. As used herein, the term “Compliance Assurance Program” includes but is not limited to “peer review” programs or other comparable programs which have been approved by the Board in accordance with the requirements set forth below.**
- (b) **The peer-review-Compliance Assurance functions may be performed by a committee established by the Board, qualified contractors approved by the Board or substantially equivalent peer-reviews programs [such as the peer review program administered by the AICPA] acceptable to the Board.**

The Board may establish procedures to perform the following functions:

- (1) Review of financial statements and the reports of licensees thereon, to assess their compliance with applicable professional standards;
 - (2) Improvement of reporting practices of licensees through education and remediation;
 - (3) Referrals to the Board of cases requiring further investigation by the Board or its designees;
 - (4) Verification that individuals in the firm responsible for supervising compilation or attest services and signing the accountants’ report on financial statements on behalf of the firm meet the competency requirement set out in applicable professional standards.
 - (5) Verification that a certificate holder who issues compilation reports for the public other than through a CPA firm, who supervises such services and/or signs the compilation report on such financial statements, meets the competency requirements set out in applicable professional standards; and,
 - (6) Such other functions as the Board may assign to its designees.
- (c) On and after _____, each applicant for renewal of a certificate under Section 6 of the Act in the case of a certificate holder who issues compilation reports to the public other than through a CPA firm and each applicant for renewal of a firm permit to practice under Section 7 of the Act shall furnish in connection with their application, with respect to each office maintained by the applicant in this State, one copy of each of the following kinds of reports, together with their accompanying financial statements, issued by the certificate holder or office during the twelve month period next preceding the date of application, if any report of such kind was issued during such period:
- (1) A compilation report;
 - (2) A review report;

- (3) An audit report;**
 - (4) A report of the examination of prospective financial information.**
- (d) The Board may also solicit for review reports of licensees and related financial statements from clients, public agencies, banks, and other users of financial statements.**
- (e) Any documents submitted in accordance with subsection (b) may have the name of the client, the client's address and other identifying facts omitted, provided that the omission does not render the type or nature of the enterprise undeterminable. The identities of the sources of financial statements and reports received by the Board from other than the licensees who issued the reports shall be preserved in confidence. Reports submitted to the Board pursuant to subsection (b), and comments of reviewers and of the Board on such reports or workpapers relating thereto, also shall be preserved in confidence except that they may be communicated by the Board to the licensees who issued the reports.**
- (f) The review of financial statements and reports of the licensees thereon shall be directed toward the following:**
 - (1) Presentation of financial statements in conformity with generally accepted accounting principles;**
 - (2) Compliance by licensees with generally accepted auditing standards;**
 - (3) Compliance by licensees with other professional standards; and**
 - (4) Compliance by licensees with the Rules of the Board and other regulations relating to the performance of compilation and attest services as herein defined.**
- (g) The reviews of the financial statements and the reports of the licensees shall be conducted as follows:**
 - (1) Compilation level services will be subject to a desk review**
 - (2) Review level services will be subject to a field review in the offices of the licensee**
 - (3) Audit level services and reports of examination of prospective financial information will be subject to a field review in the offices of the licensee**
 - (4) Additional reports and financial statements may be selected during the performance of a desk review or an on-premise field review based upon the size and complexity of the reviewed firm as judged by the Board or its designee to adequately assess the quality of the reviewed firm's professional attest practice.**
- (h) A firm's review may result in one of four findings:**
 - (1) Acceptable**
 - (2) Acceptable with comments**
 - (3) Unacceptable, remedial action required, supervision recommended**
 - (4) Unacceptable, immediate Board action recommended.**

- (i) In any instance where the Board finds a deficiency in the professional work of a licensee, it shall advise the licensee in writing of the deficiency. The Board may request the licensee to meet with it to discuss deficiencies. If the Board determines that a report is substandard or seriously questionable, the Board may direct that a review of the workpapers be conducted by an independent reviewer other than the person who performed the review of the report. The findings of any such review of the workpapers shall be transmitted by the reviewer to the Board.
- (j) In gathering information about the professional work of licensees, the Board may make use of investigators, either paid or unpaid, who are not members of the Board.
- (k) The results of the reviews will be transmitted to the Board's office within 45 days after acceptance of any review report and posted on a publicly accessible Web site.

Rule 7-4 - Equivalent reviews as a condition for renewal of a permit.

- (a) The requirements of Rule 7-3 shall not apply with respect to any firm or certificate holder which within the three years immediately preceding the application had been subjected to a ~~satisfactory~~ substantially equivalent peer review program approved by the Board.
- (b) An ~~Peer-Review~~ oversight committee shall may be appointed by the Board to monitor the substantially equivalent review programs and report to the Board that the programs meet the requirements set out in the Act and these Rules. The oversight committee shall may:
 - (1) ~~be composed of~~ include individuals who are not members of the Board;
 - (2) have full access to the review process which is subject to oversight;
 - (3) provide the Board with the names of those certificate holders and firms which have undergone and have had accepted an equivalent review as well as whether such certificate holders and firms are meeting the terms, conditions, and remedial actions, if any, required by the reviewing organization; ~~and~~
 - (4) ~~along with the Board,~~ establish, as directed by the Board, procedures designed to ensure confidentiality of documents furnished or generated in the course of the review.
 - (5) coordinate oversight functions conducted within the state with national oversight objectives and procedures adopted by the NASBA Compliance Assurance Review Board (CARB).
- (c) The Board shall establish procedures and take all action necessary to ensure that the above materials remain privileged as to any third parties, except those materials subject to public disclosure as provided herein.

Rule 7-5 – Submission of Peer-Review Compliance Assurance Reports to the Board.

- (a) Firms qualifying for exemption from compliance assurance review as provided by the provisions of Rule 7-4 shall notify and affirmatively request the administering entity performing the qualifying substantially equivalent reviews [such as peer reviews administered by the AICPA] to transmit the reports directly to the Board within 45 days after the administering entity's acceptance of any review report and post the results on a publicly accessible Web site.
- ~~(a) Regarding peer reviews conducted pursuant to these rules, the reviewed firm or individual must submit to the Board:~~
- ~~(1) — each adverse peer review report, and~~
- ~~(2) — each second consecutive peer review report that is adverse or modified, including a report review report that contains significant comments.~~
- (b) Regarding any ~~peer review report~~ required to be submitted to the Board pursuant to this rule, the reviewed firm must retain, for a period of seven (7) years from the date of the report acceptance, all of the following: peer review Compliance Assurance report [or “peer review report”], letter of comments, letter of response, acceptance letter signed by the reviewed firm agreeing to take corrective actions and letter of completion indicating that the firm's peer Compliance Assurance review is complete. Upon request of the Board, the reviewed firm or individual shall timely submit such documentation to the Board;
- (c) The objective of this reporting rule is primarily to reinforce the Board's efforts to ensure that only appropriately qualified CPA firms are engaged in the offering and rendering of services subject to Compliance Assurance ~~peer~~ review. Based upon its review of the reports submitted pursuant to this rule, the Board may consider, pursuant to hearing or by consent, additional corrective actions such as probation, practice limits, additional continuing education, pre-issuance reviews, more frequent ~~peer~~ reviews, and other measures, including, in severe cases, discipline against the reviewed firm and any individual licensees employed or contracted by the reviewed firm.

Recommendation 11: Amend Rule 7-7

Objective: Revise Rules 7-7 and 7-8 on Documentation and retention to reflect current applicable Professional Standards.

Explanation: NASBA's UAA Committee is recommending general deference to applicable standards but a reduction in the number of years of retention in any engagement for which the PCAOB or SEC standards do not include a

documentation retention period. To accomplish that objective, Rules 7-7 and 7-8 could be combined and reworded.

Rule 7-7 - Attest Documentation and Retention.

(a) Licensees shall comply with all professional standards for attest documentation applicable to particular engagements, including, but not limited to standards adopted by recognized standards setting bodies such as the Public Company Accounting Oversight Board (PCAOB), the Comptroller General of the United States, and the Auditing Standards Board.

~~Rule 7-8 – Retention Period for Attest Documentation.~~

(b) ~~The retention period shall be;~~ If the applicable standards do not otherwise specify, the retention period for attest documentation shall be seven (7) five (5) years and shall be measured from the report date.

(c) If attest documentation is required to be kept for longer than provided in the applicable standards or Rule 7-7(b) ~~seven (7) years~~ because of a pending Board investigation or disciplinary action, attest documentation shall not be destroyed until the licensee has been notified in writing by the Board of the closure of a Board investigation or disciplinary proceeding.

ARTICLE 10 - ENFORCEMENT ACTIONS AGAINST LICENSEES

Recommendation 12: Amend Rule 10-1

Objective: Update Article 10 to comport with recent changes to Section 10 of the UAA Statute and clarify the language regarding willful failure to file.

Explanation: Some of these revisions simply make the rule’s language consistent with the recently revised UAA statutory language. These revisions also include a clarification of “incompetence” and enhancement of the provision on willful failure to file by making an appropriate finding of such by another agency or regulatory authority prima facie evidence of a violation.

Note: subsections that are not being changed have been omitted.

Rule 10-1 Grounds for enforcement actions against licensees

The grounds for revocation and suspension of certificates, registrations and permits, and other disciplinary action against licensees and individuals with privileges under Section 23, are set out in Section 10 of the Act in both specific and general terms.

The general terms of that provision of the Act include the following particular grounds for such disciplinary action:

(a) **Dishonesty, fraud, or deceit** in obtaining a certificate, registration or permit, within the meaning of Section 10(a)(1) of the Act, includes the submission to the Board of any knowingly false or forged evidence in, or in support of, an application for a certificate, registration or permit, and cheating on an examination as defined in these Rules.

(b) **Dishonesty, fraud, deceit or gross negligence**, within the meaning of Section 10(a)(5) of the Act, include knowingly, or through gross negligence, making misleading, deceptive or untrue representations in the performance of services.

(c) **Violations of the Act or of Rules promulgated under the Act**, within the meaning of Section 10(a)(6) of the Act, include-

[No changes to (c)(1) or (c)(2)]

(3) Making any false, ~~or misleading,~~ **or deceptive** statement, in support of an application for a ~~certificate, registration or a permit~~ **license** filed by another;

(d) **Conduct reflecting adversely upon the licensee's fitness to perform services**, within the meaning of Section 10(a)(10) of the Act, includes:

(1) Adjudication as mentally incompetent;

(2) Incompetence, including but not limited to:

a. Gross negligence, recklessness, or repeated acts of negligence in the licensee's record of professional practice; or

b. Mental or physical disability or addiction to alcohol or drugs so as to endanger the public by impairing skill and care in providing professional services.

(3) Presenting as one's own a ~~certificate, registration or permit~~ **license** issued to another;

(4) Concealment of information regarding violations by other licensees of the Act or the Rules thereunder when questioned or requested by the Board; and

(5) Willfully failing to file a report or record required by state or federal law; willfully impeding or obstructing the filing of such a report or record, or inducing another person to impede or obstruct such filing by another; and the making or filing of such a report or record which one knows to be false.

A finding, adjudication, consent order or conviction by a federal or state court, agency or regulatory authority or the PCAOB that a licensee has willfully failed to file a required report or record shall be prima facie evidence of a violation of this rule.

Recommendation 13: Adopt New Rule 10-3

Objective: Add express references to applicable standards in the Rules.

Explanation: Many, but not all, states are obliged to expressly adopt applicable standards by reference. This version is based upon several states' rules including Virginia's approach.

Rule 10-3 - Applicable Standards

A licensee shall follow the standards, as applicable under the circumstances and at the time of the services, set forth in this section in providing professional services. In addition to the applicable standards set forth below, a licensee shall follow standards issued by other professional or governmental bodies including international standards setting bodies with which a licensee is required by law, regulation or the terms of engagement to comply. A licensee shall comply with all applicable standards, including but not limited to the following:

- (a) A licensee shall not render services subject to the authority of the SEC or PCAOB unless the licensee has complied with the applicable standards and rules adopted and approved by the PCAOB and SEC.**
- (b) A licensee shall not render auditing services unless the licensee has complied with the applicable generally accepted auditing standards.**
- (c) A licensee shall not render accounting and review services unless the Licensee has complied with the standards for accounting and review services issued by the AICPA, including subsequent amendments and editions.**
- (d) A licensee shall not permit the licensee's name to be associated with governmental financial statements for a client unless the licensee has complied with the standards for governmental accounting issued by the GASB, including subsequent amendments and editions.**
- (e) A licensee shall not render attestation services unless the licensee has complied with the Statements on Standards for Attestation Engagements issued by the AICPA, including subsequent amendments and editions.**
- (f) A licensee shall not render management consulting services unless the licensee has complied with the standards for management consulting services (including the definition of such services) issued by the AICPA, including subsequent amendments and editions.**

- (g) A licensee shall not render services in the area of taxation unless the licensee has complied with the standards for tax services issued by the AICPA, including subsequent amendments and editions.
- (h) A licensee shall not permit the licensee's name to be used in conjunction with any forecast of future transactions in a manner which may lead to the belief that the licensee vouches for the achievability of the forecast, and shall not render services associated with prospective financial statements unless the licensee has complied with the standards for accountants' services on prospective financial information issued by the AICPA, including subsequent amendments and editions.
- (i) A licensee shall not express an opinion on financial statements unless the licensee complies with the Statements of Financial Accounting Standards, together with those Accounting Research Bulletins and Accounting Principles Board Opinions which are not superseded by action of the FASB, including subsequent amendments and editions.

Recommendation 14: Adopt New Rule 10-

Objective: To implement the NASBA Model Code of Conduct.

Explanation: The NASBA UAA Committee, pursuant to guidance from the NASBA Board of Directors, recommends that the UAA Rules adopt the proposed Model Code of Conduct, as a broad principles-based code to which all licensees should adhere. This Code was developed over a number of years. The Committee has suggested a few changes to the Model Code to make it clear that other professional standards may also be applicable, including interpretations and rulings of the Code of Professional Conduct adopted by the AICPA as well as other authorities.

Rule 10-4 – Model Code of Conduct

A licensee shall to comply with the principles contained in the appended Model Code of Conduct. All changes in the NASBA Model Code of Conduct shall automatically be made a part of these rules unless specifically rejected by the Board.

NASBA Model Code of Conduct

PREAMBLE

The public places trust and confidence in the profession and the services it provides; consequently, licensees have a duty to conduct themselves in a manner that will be beneficial to the public and which fosters such trust and confidence. This Model Code of Conduct identifies seven fundamental principles of conduct, six of which are intended to govern licensees' professional performance whether they are in public practice, industry, not-for-profit organizations, government, education or other professional endeavors. The seventh principle, independence, applies only to those professional services where it is required by professional standards. This Model Code of Conduct defines the conduct that the public has a right to expect of the licensee, as well as all persons or entities the licensee has the authority or capacity to control.

With the exception of independence, these principles are universal and apply to all services and activities performed by the licensee in all aspects of his or her professional conduct. Independence, however, is a unique principle that applies only to those professional services where it is required in accordance with professional standards. This Model Code of Conduct is not intended to replace professional standards applicable to specific engagements. In applying any of the principles of this Model Code of Conduct to deliberations in disciplinary or other proceedings, the Board may consider as persuasive, but not necessarily conclusive, and/or adopt by reference applicable interpretations and rulings of the Code of Professional Conduct adopted by the American Institute of Certified Public Accountants, as well as similarly applicable interpretations and rulings issued by other authorities such as the Securities and Exchange Commission, the Government Accountability Office and the Public Company Accounting Oversight Board.

Users of the licensee's services draw confidence from the knowledge that the profession is bound to a framework which requires continued dedication to professional excellence and commitment to ethical behavior that will not be subordinated to personal gain.

I. PRINCIPLE: PUBLIC INTEREST

The grant of a license indicates that an individual has met the criteria established by state boards of accountancy to perform services in a manner that protects the public interest. The licensee must, therefore, have a keen consciousness of the public interest. The public consists of clients, credit grantors, governments, employers, investors, the business and financial community, and others who use the services of

licensees. Services provided by licensees support and facilitate many societal needs, including the orderly functioning of commerce and the capital markets.

Because the licensee is seen as a representative of the profession by the public who retains or employs him or her or uses his or her services, the licensee should avoid conduct that might conflict with the public interest or erode public respect for, and confidence in, the profession.

II. PRINCIPLE: INTEGRITY

Integrity is a character trait demonstrated by acting honestly, candidly, and not knowingly misrepresenting facts, accommodating deceit, or subordinating ethical principles. Acting with integrity is essential to maintaining credibility and public trust. It incorporates both the spirit and substance in the application of the ethical and technical standards that govern the profession, or in the absence thereof, what is just and right.

A licensee should act with integrity in the performance of all professional activities in whatever capacity performed.

III. PRINCIPLE: OBJECTIVITY

Objectivity is a distinguishing feature of the accounting profession and is critical to maintaining the public's trust and confidence. It is a state of mind that imposes the obligation to be impartial and free of bias that may result from conflicts of interest or subordination of judgment. Objectivity requires a licensee to exercise an appropriate level of professional skepticism in carrying out all professional activities.

Although a licensee may serve multiple interests in many different capacities, objectivity must be maintained. This requires a careful assessment of the effects on objectivity of all professional relationships and activities.

A licensee should maintain objectivity in the performance of all professional activities in whatever capacity performed.

IV. PRINCIPLE: DUE CARE

Due care imposes the obligation to perform professional activities with concern for the best interest of those for whom the activities are performed and consistent with the profession's responsibility to the public. It is essential to preserving the public's trust and confidence. Due care requires the licensee to discharge professional

responsibilities with reasonable care and diligence and to adequately plan and supervise all professional activities for which he or she is responsible.

A licensee should act with due care in the performance of all professional activities in whatever capacity performed.

V. PRINCIPLE: COMPETENCE

Competence is derived from a combination of education and experience. It begins with a mastery of the common body of knowledge, skills, and abilities, and requires a commitment to lifelong learning and professional improvement. A licensee should possess a level of competence, sound professional judgment, and proficiency to ensure that the quality of his or her activities meets the high level of professionalism required by these Principles. A licensee is responsible for assessing his or her own competence, which includes evaluating whether education, experience, and judgment are adequate for the responsibility assumed.

A licensee should be competent in the performance of all professional activities, in whatever capacity performed, and comply with applicable professional standards.

VI. PRINCIPLE: CONFIDENTIALITY

A licensee has an obligation to maintain and respect the confidentiality of information obtained in the performance of all professional activities. Maintaining such confidentiality is vital to the proper performance of the licensee's professional activities.

A licensee shall not use or disclose, or permit others within the licensee's control to use or disclose, any confidential client or employer information without the consent of the client or employer. This obligation continues after the termination of the relationship between the licensee and the client or employer and extends to information obtained by the licensee in professional relationships with prospective clients and employers.

This principle shall not be construed to prohibit a licensee from disclosing information as required to meet professional, regulatory or other legal obligations.

VII. PRINCIPLE: INDEPENDENCE

Independence, where required by professional standards, is essential to establishing and maintaining the public's faith and confidence in, and reliance on, the information reported on by the licensee.

A licensee in the practice of public accounting should be independent in fact and appearance when engaged to provide services where independence is required by professional standards. Independence in fact is the state of mind that permits a licensee to perform an attest service without being affected by influences that compromise professional judgment, thereby allowing the licensee to act with integrity and exercise objectivity and professional skepticism. Independence in appearance is the avoidance of circumstances that would cause a reasonable and informed third party, having knowledge of all relevant information, to reasonably conclude that the integrity, objectivity or professional skepticism of a licensee had been compromised.

ARTICLE 11 - ENFORCEMENT PROCEDURES - - INVESTIGATIONS

Recommendation 15: Amend Rule 11-2

Objective: Adapt the self-reporting obligation rule to reflect the new provisions in the UAA for confidentiality of investigative materials, and to make the reporting period consistent with other reporting deadlines in the rules (see Rule 4, above).

Explanation: Self-reporting facilitates state board enforcement. Currently, some degree of self-reporting requirement has been implemented in most states. However, in some states the self-reported material might be deemed public records even though the subject of the self-report is still pending. In order to provide a form of self-reporting that advances public protection without spreading unresolved allegations from contested matters or private disputes on the public record, the NASBA UAA Committee recommends including the safeguards from recent amendments to the UAA statutes.

Rule 11-2 – Reporting Convictions, Judgments, and Administrative Proceedings.

- (a) Subject to UAA §4(j), Licensees shall notify the Board, on a form and in the manner prescribed by the Board, within thirty (30) (45) days of: . . .

[No change to remainder of 11-2]

Commentary: States should consider reducing or dropping a reporting requirement for pending matters or reports of private litigation/arbitration if complying with the request requires the disclosure of otherwise confidential information, and their state laws require such reports to be treated as public records since the potential for abuse might outweigh the regulatory interest in such information. Boards adopting this rule should also consider expunging any self-reported records of charges or allegations that are dropped or otherwise resolved in favor of the reporting licensee and which are maintained by the Board as public records. In the alternative, States should defer implementation of self-reporting of such matters until the State has

adopted Section 4(j) of the UAA Statute. See also the reporting requirements set out in Rule 4-5.

**ARTICLE 12 - ENFORCEMENT PROCEDURES –
HEARINGS BY THE BOARD**

Recommendation 16: Delete Rules 12-1, 12-2, 12-3, 12-4, 12-5

Objective: Remove extraneous and duplicative rules.

Explanation: Almost all states already have Administrative Procedures Acts that likely render these provisions unnecessary and potentially in conflict with states' laws. Such laws usually include evidentiary standards.

~~Rule 12-1 – Complaints and notices of hearing.~~

~~(a) — A complaint issued by the Board pursuant to Section 12(a) of the Act will include —~~

- ~~—— (1) — A statement of matters asserted or charged; and~~
- ~~—— (2) — References to any particular sections of the Act or of the Rules which are asserted to have been involved in unlawful conduct.~~

~~(b) — When the complaint and notice of hearing are served pursuant to Section 12(a) of the Act, they will be accompanied by —~~

- ~~—— (1) — A copy of the Board's Rules under this Article 12;~~
- ~~—— (2) — A copy of Section 12 of the Act;~~
- ~~—— (3) — A copy of any particular sections of the Act or of any Rule asserted to have been violated; and~~
- ~~—— (4) — A brief statement calling attention to the rights of the licensee or an individual with privileges under Section 23, under the Act and the Rules, to examine reports and evidence in advance of the hearing; to appear by counsel at the hearing to present evidence; and to appeal an adverse decision.~~

~~Rule 12-2 – Examination and copying of documents.~~

~~Under Section 12(b) of the Act a respondent has the right in advance of the hearing to examine and copy any report of investigation and documentary or testimonial evidence and summaries of evidence in the Board's possession relating to the subject matter of the complaint. The right of examination may be exercised by the respondent or the respondent's attorney or agent at the Board's office where the records in question are kept, during regular business hours, on three days' advance notice in writing. Copies will be promptly furnished of any documents or other~~

~~materials designated for copying, but the Board may charge a fee for such copying pursuant to these Rules.~~

~~Rule 12-3—Conduct of hearing.~~

- ~~(a) A hearing under Section 12 of the Act shall be conducted by and shall be under the control of a presiding officer appointed by the Board.~~
- ~~(b) The order of proceedings shall be as follows:
 - ~~(1) Statement and presentation of evidence supporting the complaint by the investigating officer, if any, by a Board member designated for that purpose, or by counsel.~~
 - ~~(2) Statement and presentation of evidence of the respondent, in person (or in the case of a firm through a partner, officer, director, member, manager or shareholder) and/or by counsel.~~
 - ~~(3) Rebuttal evidence in support of the complaint.~~
 - ~~(4) Surrebuttal evidence of the respondent.~~
 - ~~(5) Closing statements.~~
 - ~~(6) Board decision, which pursuant to Section 12(h) of the Act must be by written vote of a majority of the Board excluding members disqualified under Section 12(d) of the Act to sustain any charge and impose any penalty.~~~~
- ~~(c) The presiding officer, Board members, the respondent and the person presenting the complaint shall have the right to question or examine or cross-examine any witness.~~
- ~~(d) The burden of proof to support a violation of the Act or Rules rests with the Board.~~
- ~~(e) The hearing may be continued with recesses as determined by the presiding officer.~~
- ~~(f) The presiding officer may set reasonable time limits for oral presentation.~~
- ~~(g) Exhibits shall be marked, and preserved along with the stenographic transcript as part of the record of the hearing.~~

~~Rule 12-4—Evidentiary rules.~~

- ~~(a) Under Section 12(f) of the Act, the Board is not bound by technical rules of evidence, and in its discretion may consider any evidence of a kind commonly relied upon by reasonably prudent persons in the conduct of their affairs.~~
- ~~(b) All such evidence that is offered and not objected to will be received by the presiding officer unless the presiding officer determines that it is irrelevant, immaterial or unduly repetitious.~~
- ~~(c) Evidence may be received provisionally, subject to a later ruling by the presiding officer as to its admissibility; but any such ruling must be made before closing statements are heard pursuant to Rule 12-3(b)(5).~~

Rule 12-5 - Publication of decisions.

~~Decisions by the Board following hearings under Section 12 of the Act will, if they sustain any charge, be made public. Decisions that do not sustain a charge may be made public at the Board's discretion.~~