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ESTABLISHING THE SEMI-INDEPENDENT STATE BOARD OF ACCOUNTANCY

**Papers approved by the
NASBA Board of Directors
in support of the establishment of a
semi-independent State Board of Accountancy**

NASBA State Board Relevance and Effectiveness Committee

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NATIONAL ASSOCIATION OF STATE BOARDS OF ACCOUNTANCY

Position Paper:

**Semi-Independent State
Boards of Accountancy**

Submitted by:

The State Board Relevance & Effectiveness Committee

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Semi-Independent State Boards of Accountancy

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Semi-Independent State Boards of Accountancy

EXECUTIVE SUMMARY

The National Association of State Boards of Accountancy (NASBA)'s mission is to enhance the effectiveness of its member boards, the State Boards of Accountancy (Accountancy Boards). A significant concern of NASBA, that is shared by Accountancy Boards, state and federal governmental agencies, individual CPAs and other parties, is the consistent and effective enforcement of states' accountancy statutes and regulations.

NASBA has developed this position paper because it is deeply concerned that the authority, the resources, and the reporting relationship to the state legislature and Governor are inappropriate or inadequate for many Accountancy Boards. If an Accountancy Board is not able to satisfy its public protection responsibility because it lacks financial resources or operational autonomy, ordinary citizens and business owners can incur economic loss and financial distress. As a consequence, the state legislature and Executive Branch, along with the Accountancy Board, become subject to public criticism.

The attest services provided by CPAs are an integral part of creating trust in the financial system – not just in the critically important capital markets – but also in financial, banking and credit transactions where financial statements are relied upon every day by banks, insurance companies, investment funds, governments, private individuals, equipment and inventory suppliers and other grantors of capital and credit. Additionally, the income tax and broad array of advisory services provided by CPAs have a tremendous impact on a state's economic health and its citizens in terms of a state's GDP and tax collections. Thus, the public has a vital interest in the competence of CPAs and their adherence to Accountancy Board statutes and rules, rules of professional conduct, and standards of practice.

The dramatic collapse of prominent publicly-held companies in the early 2000s and, more recently, high-profile investment frauds, testify to the importance of high ethical and professional standards and Accountancy Boards' vigilance in protecting the public.

Accountancy Boards regulate the accountancy profession to fulfill their public protection mandate and to protect the credibility, validity and reliability of the CPA license on which the public relies - particularly the U.S. financial system. These objectives are met through determining initial qualifications and licensing, rule making, determining continued competency and compliance, and taking enforcement actions against CPAs who harm the public by violating these statutes and rules.

The proper and timely adjudication of enforcement cases is critical to protecting the public. Unfortunately, enforcement activity is not uniformly rigorous across the states due to a lack of resources and various other impediments, including:

- Reporting to, and having its authority usurped by, an umbrella agency that can include numerous regulatory boards as diverse as barbers, wrestlers, morticians, contractors, realtors, engineers as well as CPAs.
- Not having the authority to make personnel decisions consistent with state personnel policies and needs of the Board. The most important determinant of an Accountancy Board's success in carrying out its public protection responsibilities, in addition to an effective enabling legislative act, is the competency, responsiveness and dedication of the Executive Director and Accountancy Board staff.
- Being part of the state appropriation process and thus subject to having the Accountancy Board's funds spent for other general fund purposes rather than the purposes for which the applicants and licensees paid fees.
- Lacking the authority for financial and operational management of the Accountancy Board, such as setting fees, determining the expenditures needed for successful operations, deciding whether to use staff or outsource certain functions, budgeting, etc.
- Being subject to an arduous and excessively time-consuming process to adopt statute and rule changes.
- Not having Accountancy Board members with the appropriate backgrounds and experience needed to deal with the wide variety of services provided by CPAs and the complexity of the underlying practice standards, statutes and rules.

Mobility, which is a significant advancement in the ability of CPAs to practice anywhere in the United States without obtaining a license in every state, is predicated upon the ability of all states to actively regulate their licensees. If states do not have the resources to investigate and enforce Accountancy Board statutes and rules, rules of professional conduct, and standards of practice, the willingness of other states to continue with mobility will be undermined.

An Umbrella Agency may serve a purpose under certain circumstances such as: the Board's regulations are not complex; there is an insufficient number of exam applicants and licensees to generate the fees necessary to maintain its operations; the Board's functions are closely interrelated with one or more other boards; the professions are similar, involved in a common trade or industry; and/or homogeneous in their goals and services. In these circumstances, sharing services, information, and resources may make these Boards more efficient or effective.

However, Accountancy Boards have distinct differences in regulatory complexity, goals, licensee services, and in qualification and competency requirements than other boards that are generally grouped under an Umbrella Agency. The CPA profession is the only one with accountability to third parties and the general public who are dependent upon audited financial

information in order to make investing, financial planning, and lending decisions. The Certified Public Accountant has ethical obligations of independence, integrity, and objectivity that directly relate to serving the public interest. The word “Public” is even embedded in the CPA title. Furthermore, most Accountancy Boards have sufficient licensees to support their own staff and generate the financial resources to operate in a self-governing, self-supporting manner.

NASBA believes it is essential for Accountancy Boards to have a high level of autonomy in operational and financial matters and the *authority* to operate at a level that is commensurate with their *responsibility* to act in the public interest (referred to as semi-independent). This view is supported by the U.S. Department of the Treasury, which has urged “the states to create greater financial and operational independence of their state boards of accountancy.”

This position paper has been prepared by NASBA, whose express mission and purpose is to enhance the effectiveness of its member boards – the individual State Boards of Accountancy. This paper sets forth the facts and the rationale that make the compelling case that “semi-independent” Accountancy Boards are essential for the protection of the public.

NASBA strongly urges state administrations and legislatures to embrace the concept of a semi-independent board and to enact legislation that provides its Accountancy Board with an appropriate reporting relationship and operational and financial independence.

Semi-Independent State Boards of Accountancy

INTRODUCTION

The National Association of State Boards of Accountancy (NASBA)'s mission is to enhance the effectiveness of its member boards, the State Boards of Accountancy (Accountancy Boards). A significant concern of NASBA, that is shared by Accountancy Boards, state and federal governmental agencies, individual CPAs and other parties, is consistent and effective enforcement of states' accountancy statutes and regulations.

NASBA has developed this position paper because it is deeply concerned that the authority, the resources, and the reporting relationship to the state legislature and Governor are inappropriate or inadequate for many Accountancy Boards. If an Accountancy Board is not able to satisfy its public protection responsibility because it lacks financial resources or operational autonomy, ordinary citizens and business owners can incur economic loss and financial stress. As a consequence, the legislature and Executive Branch, along with the Accountancy Board, become subject to public criticism.

Accountancy Boards are responsible for regulating the accountancy profession to fulfill their public protection mandate. By fulfilling this responsibility, they enhance the credibility, validity and reliability of services provided by CPAs upon which the public and U.S. financial system rely. Our commercial world depends upon reliable public accounting and financial reporting.

Over the years, it has become apparent that an Accountancy Board's capacity to satisfy its public protection responsibilities is critically affected by its degree of financial and operational independence.

NASBA believes it is essential for Accountancy Boards to have a high level of autonomy in operational and financial matters and the *authority* to operate at a level that is commensurate with their *responsibility* to act in the public interest. This position is supported by the U.S. Department of the Treasury's Advisory Committee on the Auditing Profession. (See the OTHER ADVOCATES FOR FINANCIALLY AND OPERATIONALLY INDEPENDENT ACCOUNTANCY BOARDS section below.)

THE NEED FOR EFFECTIVE AND EFFICIENT ACCOUNTANCY BOARDS

PUBLIC NEED – ACCOUNTANCY BOARD ROLE IS ESSENTIAL TO COMMERCE AND THE EFFECTIVE FUNCTIONING OF THE U.S. FINANCIAL SYSTEM

Individuals, businesses and other organizations depend on CPAs for many services, including financial statement audits, income tax services, and a broad array of advisory services. These services have a tremendous impact on a state's commerce, economic health, and citizens in terms of a state's GDP and a state's tax collections. The attest services provided by CPAs are an integral part of creating public trust in the financial system – not just in the critically important

capital markets – but also in financial, banking and credit transactions where financial statements are relied upon every day by banks, insurance companies, investment funds, governments, private individuals, equipment and inventory suppliers and other grantors of capital and credit. Capital investment and commercial loans for large and small entities are based, in large part, on the ability of providers of capital and loans to trust the information they use to make decisions. When this trust is misplaced or lacking, commerce is impeded and the financial system operates less efficiently, which raises the costs of capital and borrowing.

The need for continued public trust in our financial systems has been amply demonstrated by the dramatic collapse of prominent publicly-held companies in the early 2000s, recent high-profile investment frauds, and the most recent economic recession, all of which testify to the importance of high ethical and professional standards and Accountancy Boards' vigilance in protecting the public.

Because CPAs are an integral part of creating the public trust, the public has a vital interest in the competence of CPAs and their adherence to professional standards, as well as Accountancy Board statutes and regulations. Thus, states empower Accountancy Boards to ensure that persons entering the profession are competent and those holding the CPA credential maintain high standards of personal conduct and competency and are held publicly accountable for their actions.

POTENTIAL IMPACT ON MOBILITY AND MULTI-STATE PRACTICE

The significant advancement in the mobility of CPAs to practice anywhere in the United States without obtaining a license in every state is predicated upon the ability of all states to actively regulate their licensees. If states do not have the resources to investigate and enforce accounting standards, then the willingness of other states to continue with mobility will be undermined.

ACCOUNTANCY BOARD DUTIES AND RESPONSIBILITIES

In order to effectively protect the public, an Accountancy Board must perform many duties. Typical powers and duties include the following:

Initial Qualifications and Licensing

- Establish the qualifications of applicants for licensure that are necessary to ensure competence and integrity.
- Examine the qualifications of each applicant for licensure, including the preparation, administration and grading of the Uniform CPA Examinations (CPA Exam).
- Issue licenses to CPAs and CPA firms.
- Ensure compliance with recurring licensing requirements.

Rule Making

- Promulgate rules and regulations necessary to prevent deceptive or misleading practices by practitioners, discourage discreditable conduct, and effectively administer the regulatory system.
- Establish applicable standards of conduct and practice for licensees.
- Establish continuing professional education requirements as a condition for issuance or renewal of a license.
- Establish peer review requirements, or other quality assurance program, for firms as a condition for issuance or renewal of a firm permit.

Continued Competency and Compliance with Statute and Rules

- Determine compliance with continuing professional education requirements.
- Ensure compliance with peer review requirements, or other quality assurance programs, for firms to ensure that firms are conducting their practices in accordance with the standards of conduct and practice adopted by the Board and in the best interest of the public.

Enforcement

- Initiate or receive and investigate complaints concerning the conduct of persons and firms licensed by the Accountancy Board, as well as persons and entities violating the laws or rules of the state regarding the practice of public accounting (such as practicing without a license) and take appropriate remedial or disciplinary action as warranted.
- Revoke, suspend, restrict or not renew a certificate or license for just cause.
- Levy civil penalties.

Accountancy Board Operations

- Levy and collect CPA Exam fees and fees for licensure and renewal that are sufficient to cover the expenses for the administration and operation of the Accountancy Board.
- Levy special assessments on licensees when necessary to cover extraordinary expenses (e.g. complex enforcement case).

- Employ legal counsel, board staff, clerical and technical assistance, determine compensation, and incur such other expenses, including employee benefits, as may be necessary for the performance of their duties.
- Enter into contracts necessary or beneficial for carrying out the provisions of the Accountancy Act or the functions of the Accountancy Board.
- Perform other duties necessary to carry out the statutes and regulations adopted for and by the Accountancy Board.

Among the more important duties listed above are qualifying individuals to enter the CPA profession, administering the CPA Exam, monitoring licensees' continued ability to serve the public, and adjudicating alleged violations of professional standards and a state's accountancy statutes and regulations. These duties are critical to protecting the public because they ensure that only those individuals who have demonstrated their competency are permitted to practice public accountancy, and the public is protected by prompt adjudication of alleged violations of professional standards and rules.

ACCOUNTANCY BOARD'S REPORTING RELATIONSHIP, AUTHORITY AND RESOURCES NOT COMMENSURATE WITH ITS DUTIES AND RESPONSIBILITIES

Fulfilling the duties and responsibilities enumerated above requires Board members and administrative staff with the appropriate backgrounds and the financial and operational means to fulfill the Board's purpose as set forth in statute by the state legislature. *It is absolutely essential that Accountancy Board members not only have the responsibility but also the operational authority and personnel and financial resources required to perform their duties in a responsive and timely manner.*

Unfortunately, too many Accountancy Boards have inappropriate reporting relationships and severe restrictions on their authority and resources. This places Board members in the untenable position of having the responsibility to adopt and enforce accountancy laws to protect the public but not having the authority and resources to determine and enforce compliance with these laws. Inadequate enforcement not only leaves the state's citizens vulnerable to economic loss, it subjects the Accountancy Board, the Accounting profession, legislature and Executive Branch to public criticism.

RECOMMENDATIONS - REPORTING RELATIONSHIP, AUTHORITY AND RESOURCES

Accountancy Boards must have an appropriate reporting relationship, control over their financial and personnel resources as well as full, decision-making authority. The following sections describe the impediments to successful Accountancy Board operations and set forth the recommended reporting relationship, authority and resources.

Reporting Relationship and Oversight

Some Accountancy Boards are part of a state agency that can include numerous regulatory boards as diverse as barbers, wrestlers, morticians, contractors, realtors, engineers and CPAs (Umbrella Agency). Umbrella Agencies were created by state legislatures to provide administrative services for these boards. However, at least in some states, the Umbrella Agency goes beyond providing administrative services and assumes an oversight role that usurps the Accountancy Board's authority over its licensees and regulatory processes and makes decisions that should be made by the Accountancy Board. An Umbrella Agency may serve a purpose under certain circumstances such as: the Board's regulations are not complex; there is an insufficient number of exam applicants and licensees to generate the fees necessary to sustain its operations; the natural links and relationships in the qualifications and requirements of licensees; the professions are involved in a common trade or industry; and/or homogeneous in their goals and services. In these circumstances, sharing services, information, and resources may make these boards more efficient or effective.

In contrast, Accountancy Boards have distinct differences in regulatory complexity, licensee services, and in qualification and competency requirements than other boards that are generally grouped under an Umbrella Agency. The CPA profession is the only one with accountability to third parties and the general public who are dependent upon audited financial information in order to make investing, financial planning, and lending decisions. The Certified Public Accountant has ethical obligations of independence, integrity, and objectivity that directly relate to serving in the public interest. The word "Public" is even embedded in the CPA title. Furthermore, most Accountancy Boards have sufficient licensees to support their own staff and generate the financial resources to operate in a semi-independent manner.

RECOMMENDATION

An Accountancy Board should not be part of an Umbrella Agency. Rather, the Accountancy Board should be a separate agency with annual reporting requirements directly to the Governor and the legislature.

Annually or biennially, the Accountancy Board should provide written reports to the Governor and the legislature that provide information that can be used by the Governor and the legislature to evaluate the effectiveness and efficiency of the Accountancy Board's operations. Examples of information that could be submitted include: financial reports; descriptions of changes in licensing fees; the number and changes in the number of CPA Exam applicants, licensees, official complaints received involving licensed and unlicensed activity, disciplinary actions taken against licensees and non-licensees, licenses suspended or revoked; and the substance of changes to the accountancy statute and regulations since the last report.

Semi-independent board does not mean that an Accountancy Board is not subject to constraints and oversight. For example, consider that:

- The Accountancy Board annually reports to the Governor and legislature as described above.

- The Governor and/or the legislature appoint the Accountancy Board members.
- Accountancy Board meetings are subject to various state acts such as open meetings act, due process and review, freedom of information act, and administrative procedures act.
- Statute changes must be approved by the legislature and the Governor.
- The Accountancy Board's financial statements are audited by the State Auditor or a qualified CPA firm according to state requirements.
- Licensees and the CPA profession have a vested interest in the regulatory process and generally monitor the Accountancy Board's meetings and other activities.

Personnel Management

In addition to an effective enabling legislative act, the most important determinant of an Accountancy Board's success in carrying out its public protection responsibilities is the competency and dedication of the Executive Director and staff. The relevant knowledge and leadership ability of the Executive Director is particularly critical to an Accountancy Board fulfilling its mission of protecting the public. The Accountancy Board's authority, and hence its ability to protect the public, is diminished when, due to either being part of an umbrella organization or through other state requirements, it lacks the ability to make employment decisions or lacks final authority related to the hiring and retention of the Executive Director and Accountancy Board staff.

The absence of direct reporting of staff to the Accountancy Board has many adverse effects. These adverse effects are likely to be exacerbated when the Accountancy Board is administered by another agency (e.g. Umbrella Agency). For example:

- The Umbrella Agency determines which employees will work for the Accountancy Board.
- The Accountancy Board cannot employ, evaluate and compensate staff needed to match the requirements of the tasks. The body of knowledge used by CPAs is technical and comprehensive, as are the accountancy statutes and regulations. As result, enforcement cases can be exceedingly complex, thereby requiring staff with a significant level of education, professional knowledge and experience in order to understand the significance of violations of professional standards.
- The assignment of staff to the Accountancy Board may be based on hiring or placement criteria another agency head believes are important, but which may not be appropriate or adequate for the Accountancy Board's needs. Individuals can be competent for other state needs, but may not have the required technical competencies (e.g. sufficient knowledge and experience with difficult accounting and auditing issues) to serve the Accountancy Board.

- The employees' goals are aligned with those of the state or hiring agency, which can be quite different from the goals of the Accountancy Board.
- The state or hiring organization, not the Accountancy Board, sets the staff's priorities rather than the Accountancy Board.
- The employees' allegiance is to the hiring agency – not the Accountancy Board.

Vesting the Accountancy Board with the authority and responsibility for personnel matters enables it to ensure that staff competencies and levels meet the operational needs of the Accountancy Board and that the employees' allegiance and goals are aligned with those of the Accountancy Board.

RECOMMENDATION

The Accountancy Board needs to have the discretion to make personnel decisions consistent with state personnel policies. Specifically, the Accountancy Board should have the authority to:

- Decide who qualifies for an available position
- Evaluate personnel performance
- Determine promotions
- Determine compensation
- Set personnel policies (e.g. job descriptions, tenure, pensions, healthcare) other than those uniformly applicable to all state employees.

The Accountancy Board should employ an Executive Director who serves at its pleasure. The Executive Director in turn employs the staff responsible for carrying out the Accountancy Board's duties and responsibilities.

This authority ensures the alignment of the Executive Director's and staff's goals with the Accountancy Board's goals and encourages dedication to meeting those goals. Also, this authority ensures that these individuals have the requisite backgrounds to proactively and effectively identify and understand issues and draft responses to those issues (e.g. changes to regulations; communications to licensees). This is particularly important with respect to an Accountancy Board's investigators. Furthermore, having employees that are properly matched to their jobs increases the Accountancy Board's effectiveness and efficiency.

Though the Accountancy Board and the Executive Director make the personnel decisions, the employees are state employees and eligible to participate in the state's benefit plans.

Financial and Operational Management

Appropriation Process; Use of CPA Exam and Licensing Fees for Other State Purposes

Most Boards of Accountancy collect fees from their licensees that are sufficient to cover their operating costs and, thus, are self-supporting. Even so, they are oftentimes subject to the annual appropriation process. This allows legislators to use an Accountancy Board's unrestricted net

assets in their determination of overall state needs or lends itself to state-wide appropriation reductions which may hinder the Accountancy Board's operations.

In tight economic times, it is not uncommon for a state to sweep an Accountancy Board's funds for other endeavors without considering that the funds have been accumulated over a period of time to cover contingencies (e.g. an expensive enforcement case) or that should be used to reduce CPA Exam and licensing fees. In other states, the Accountancy Board is under an Umbrella Agency that uses the fees from CPA Exam applicants and CPAs to subsidize the Umbrella Agency's overhead and the operating costs of other boards.

Such actions may require the Accountancy Board to increase its fees resulting in double taxation for the Accountancy Board's CPA Exam applicants and licensees. More important is the negative impact on the Accountancy Board's ability to effectively perform their responsibilities. For example, there are a number of Accountancy Boards that do not have adequate staff (no staff in at least one state) to carry out their enforcement responsibilities. Thus, achieving a most basic Accountancy Board responsibility is hindered and a state's citizens may not be appropriately protected from unethical and unprofessional CPA conduct. This is an unsound situation for the Accountancy Board, the state and its citizens.

RECOMMENDATION

If an Accountancy Board is self-supporting, it should be removed from the cost of state government and should be excluded from the appropriation process yet retain responsibility to annually report to the Governor and legislature. Accountancy Board revenue should not be used for other state purposes. Similarly, no costs for the operations of the Accountancy Board should be borne by other state funds.

Separate Bank Account

Cash kept in the state treasury makes it appear that an Accountancy Board is not self-supporting and increases the likelihood that such funds will be subject to appropriation for other state purposes.

RECOMMENDATION

An Accountancy Board's cash should be maintained under its sole control in federally insured banks separate from the state treasury.

Revenue; Fee Setting Process

Accountancy Board funding comes primarily from three sources: fees from CPA Exam candidates; fees assessed on license applications and renewals; and disciplinary cost recoveries and fines.

States charge CPAs and CPA firms a fee to cover the cost of their regulation. It is logical and sound policy to obtain the funds for regulation from the licensees and to ensure that funds from licensing and enforcement are used only to support the mission of the Accountancy Board.

It is also important for the Accountancy Board to have the ability to raise fees under unusual circumstances, such as funding for a large, complex enforcement case.

RECOMMENDATION

To provide adequate resources, Accountancy Boards must have the authority to set fees and fines that are reasonable and necessary to cover operating costs and build reasonable surpluses that can be used for complex enforcement cases. Since fees represent a charge to CPA Exam applicants and licensees for the operation of the Accountancy Board, fees should be adjusted upward and downward from time to time so that CPA Exam applicants and licensees are paying the cost of the Accountancy Board, but not fees in excess of such costs.

Expenditures; Restrictions on Expenditures

Accountancy Boards often find that they do not have the flexibility to use their resources in the most cost effective and efficient manner. For example, a state imposes requirements (e.g. “one size fits all” requirements) that are not relevant to the Accountancy Board, imposes restrictions that reduce the efficiency and effectiveness of the Accountancy Boards (e.g. requiring use of certain office space, exercising undue influence over IT decisions, prohibiting travel, limiting an Accountancy Board’s right to employ its own IT staff or legal counsel as appropriate and necessary, and requiring an Accountancy Board to use certain state services).

RECOMMENDATION

The Accountancy Board must have the authority to determine expenditures needed for its successful operations.

There are numerous administrative functions of an Accountancy Board, such as receiving and disbursing cash, processing applications to sit for the CPA Exam, IT development, IT processing, accounting, financial reporting and employing legal counsel. The Accountancy Board needs the authority to determine whether to perform these functions using Accountancy Board staff or to outsource one or more of these functions to other state agencies or private vendors. For example, as of July, 2010 approximately 30 Accountancy Boards find it advantageous to outsource the administration of the CPA Exam process.

An Accountancy Board should not be subject to state-wide actions, such as restrictions on attending meetings that are necessary to keep abreast of new developments and issues. The Accountancy Board should have the authority to determine which members, staff, legal counsel, etc., should attend meetings significant to its mission.

In times of economic stress, it is important for the Accountancy Board to contain expenditures. However, since an Accountancy Board is self-supporting and has public protection responsibilities that should be met consistently and timely, the Accountancy Board should not be subject to “across the board” budget cuts, expenditure restrictions or sweeping of fund balances.

In order to carry out its objectives, an Accountancy Board needs the ability to enter into contracts such as leasing or purchasing real and personal property that are necessary for the administration of its affairs and attainment of its purposes.

Budgets

Without authority over fee setting, use of the resulting revenue and control over its expenditures, it is impossible for an Accountancy Board to prepare budgets that accurately reflect its needs and plans for the future. Further, the lack of such authority severely limits its ability to respond to change.

RECOMMENDATION

In order to ensure adequate revenue, provide for necessary expenditures, and plan for the future, an Accountancy Board must have authority over its budget.

Adopting Regulations

Some states have arduous, unproductive processes for the adoption of new or revised regulations. This can be caused by a review process that involves other state agencies or departments that have no direct knowledge of the accounting profession, but nevertheless create a time-consuming review process that does not add value.

State administrative procedures for rule making should provide an orderly process for public notice of proposed rules with adequate time to respond, the submission of comments from the public and from licensees, public hearings on the proposed regulations, and the consideration of these comments and final deliberations by the Accountancy Board. However, to effectively serve the public interest, the overall time period for final promulgation of Accountancy Board rules need not, and should not, be excessive.

Some states prohibit Board members from appearing before legislative committees to explain their rationale for proposed changes to the statute. This deprives the legislators from hearing the rationale for changes from the most informed sources.

RECOMMENDATION

Statutory changes are, of course, the purview of the legislature and the Executive Branch. All regulations must be adopted within the constraints of the statutes. Accountancy Boards should promulgate regulations using appropriate due process procedures (e.g. issuing exposure drafts to all stakeholders, providing sufficient time for comment, holding hearings).

Boards should be allowed to adopt regulations without the intervention of other state agencies or departments that are not familiar with the accounting profession. The administrative procedures should provide an overall timeline and also include a reasonable time period for other government agencies, departments, or branches to review proposed rules. Inaction by a reviewing party within the time period allotted results in *de facto* approval. Accountancy Board members should not be prohibited from testifying before the legislature.

Accountancy Board Composition and Appointment Process

Another important aspect of an Accountancy Board's effectiveness and efficiency relates to the competency and backgrounds of individual Accountancy Board members. The CPA profession provides widely diverse services with attest (e.g. audit and review engagements) and tax services being the most important from a public protection standpoint. The effectiveness of an Accountancy Board is impaired when members are appointed who do not have the required knowledge and experience.

RECOMMENDATION

The appointment process should be open and transparent. Irrespective of whether Accountancy Board members are appointed by the Governor, the legislature or some combination of the two, it is important that those selecting the Accountancy Board members consider the following:

- Experience of the appointees – Effective licensing, rulemaking, enforcement, etc., must be managed based upon an understanding of the issues. An Accountancy Board needs CPA members with tax experience, accounting and auditing experience with large and small companies.
- Due to the nature of their responsibilities and the complexity of accountancy statutes and regulations, at least a majority of the Accountancy Board members should be CPAs.
- Non-CPA members – As an added protection to the public, the Accountancy Board should include one or more non-CPA members. The non-CPA members should have sufficient and relevant business and financial experience to enable them to understand the services provided by CPAs and the high ethical and practice standards to which they are held.

Because of the special role that CPAs play in protecting the public interest and supporting the health of the overall financial system through their attest function, it is especially important that the Board of Accountancy include a sufficient number of CPAs with substantial knowledge and experience in that practice area. With respect to the source of Accountancy Board nominations, it is important for the nominees to emanate from various sources (primarily the profession), backgrounds and experiences in an open and transparent process. Also, current Accountancy Board members can be a valuable resource in the nomination and evaluation of nominees, as they are in the best position to know the type of background that is most needed at any given time.

OTHER ADVOCATES FOR FINANCIALLY AND OPERATIONALLY INDEPENDENT ACCOUNTANCY BOARDS

U.S. Department of Treasury

It is important to note that the “Report of the Advisory Committee on the Auditing Profession” issued October 2008 by the U.S. Department of Treasury (ACAP Report) recognized the importance of financially and operationally independent Boards. The following recommendation was emphasized in the ACAP report (see pages VII:7-VII:8 of that report):

“(c) Urge the states to create greater financial and operational independence of their state boards of accountancy.

The Committee is concerned about the financial and operational independence of state boards of accountancy from outside influences, such as other state agencies, and the possible effect on the regulation and oversight of the accounting profession. A number of state boards are under-funded and lack the wherewithal to incur the cost of investigations leading to enforcement. In addition, some state boards fall under the centralized administrative ‘umbrella’ of other state agencies and lack control of financial resources and/or operational independence necessary to carry out their mandate of public protection. In some cases, board members are nominated by private associations whose constituencies are not necessarily focused on the protection of the public.

The Committee believes that greater independence of state boards of accountancy would enhance their regulatory effectiveness. The Committee recommends that, working with NASBA, states evaluate and develop means to make their respective state boards of accountancy more operationally and financially independent of outside influences. The Committee notes that this Recommendation to ensure the independence of state boards of accountancy is not meant to limit in any way the efforts of regulators and other governmental enforcement bodies to coordinate their regulatory and enforcement activities as recommended in Recommendation 2(b).”

CONCLUSION

The Introduction section above states: “NASBA believes it is essential for Accountancy Boards to have a high level of autonomy in operational and financial matters and the *authority* to operate at level that is commensurate with their *responsibility* to act in the public interest.” It is NASBA’s belief that the facts and rationale set forth above are compelling and that semi-independent Accountancy Boards are essential for the protection of the public in all states and territories of the U.S.

Accordingly, if a state’s Accountancy Board does not have the financial and operational independence described above, NASBA urges the state administrations and legislatures to embrace and advocate the concept of a semi-independent Accountancy Board and the enactment of legislation to provide operational and financial independence.

A Legislative Template for Semi-Independent Boards of Accountancy

Submitted by:

State Board Relevance and Effectiveness Committee

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Introduction

The broad goals of the Template Subcommittee have been to provide a roadmap on how to implement a self-directed, semi-independent Board of Accountancy. To that end the Template Subcommittee has divided its work into three tasks.

First, the subcommittee developed a comprehensive list of duties, powers and accountability of a self-directed, semi-independent State Board of Accountancy. This initial list was developed in consultation with the Rationale Subcommittee, and with reference to the Uniform Accountancy Act (UAA) and the North Carolina and Texas Statutes that support a self-directed, semi-independent board. This process served to determine the unique qualities of a self-directed, semi-independent board of accountancy.

Second, the subcommittee prepared a draft bill that can be used by a State Board of Accountancy when petitioning a legislature for powers as a Self-Directed, Semi-Independent Board of Accountancy. This draft bill is included in Appendix A. It should be noted that many of the duties and powers are currently included in the empowering legislation for a State Board of Accountancy. As a result, the template subcommittee felt that there was no need to repeat many of the items included in the comprehensive list of duties and powers in the draft legislation. The draft legislation is intended to focus on the powers needed to stand alone as a self-directed, semi-independent regulatory board. Consequently, it attempts to minimize any issues that might open up the enabling legislation associated with the regulation of CPAs and CPA firms. The following discussion and draft legislative template are written with a focus on CPAs and CPA firms. In some states this should be modified to recognize licensed public accountants and licensed public accountant firms.

Third, the committee compared the comprehensive list with the UAA. The purpose of this phase of the project was to provide insights into how the UAA might better support the establishment and operation of self-directed, semi-independent Boards of Accountancy. The result of this task is reported in Appendix B.

Comprehensive List of Duties, Powers and Accountability of a Self-Directed, Semi-Independent State Board of Accountancy.

Following is the comprehensive list of duties, powers and accountability of a self-directed, semi-independent State Board of Accountancy that was prepared in consultation with the Rationale Subcommittee, and with reference to the UAA and the Texas and North Carolina Statutes that support a self-directed, semi-independent board.

Appointment of the State Board of Accountancy (The Board)

1. The Board shall be appointed by the Governor.

General Duties and Powers of the State Board of Accountancy

1. The Board shall have the power to elect officers from its members.
2. The Board members shall be immune from personal liability for actions taken in good faith in the discharge of the Board's responsibilities.
3. The Board members shall receive per diem and reimbursement for travel and expenses.
4. The Board shall have the power to adopt rules for the governance of the Board.

Determination of Qualifications to License Individual CPAs and CPA Firms

1. The Board shall have the authority to administer examinations (written, oral or computer based examinations, or methods permitted or required by state statute) of applicants to practice as CPAs and determine whether candidates have attained a qualifying score.
2. The Board shall have the authority to issue CPA licenses to qualified applicants who meet education, examination and experience requirements to ensure competency and integrity of CPAs.
3. The Board shall have the authority to issue CPA licenses to qualified applicants with valid and unrevoked licenses of other jurisdictions that are substantially equivalent to the requirements of the state.
4. The Board shall have the authority to require renewal of an individual license to practice public accountancy.
5. The Board shall have the authority to license CPA firms engaged in the practice of public accountancy.
6. The Board shall have the authority to require renewal of a CPA firm license to practice public accountancy.
7. The Board shall have the authority to formulate rules necessary to ensure continued competency of all persons holding the certificate of certified public accountant, including continuing professional education, to prevent incompetence and deceptive or misleading practices by practitioners, to prevent discreditable conduct, and to effectively administer the regulatory system.
8. The Board shall have the authority to formulate rules and regulations for report review and peer review of audits, reviews, compilations and other reports issued on financial information in the practice of public accountancy of all firms and to obtain the peer review documents of any firm located or practicing in the state.
9. The Board shall have the authority to assure effective function of the peer review process in its role of assuring competent performance of services by CPA firms.
10. The Board shall have the authority to adopt rules of professional ethics and conduct to be observed by certified public accountants in the state.

Note: These powers were addressed in the template in a very general way to avoid raising questions about the underlying enabling legislation. The powers referred to immediately above should be supported in the underlying enabling legislation in the form of the accountancy act.

Enforcement

1. The Board shall have the authority to initiate or receive and investigate complaints concerning the conduct of persons and firms it licenses, as well as any person or entity violating the laws or rules of the state regarding the practice of public accountancy (such as practicing without a license) and take appropriate disciplinary action, including the ability to revoke, suspend, restrict or fail to renew a certificate or license for just cause. In any such proceeding the Board may also require the respondent licensee to pay the cost of the proceeding.

2. The Board shall have the power to assess a civil penalty in accordance with state statute for any one or combination of the following causes:
 - (a) Conviction of a felony under the laws of the United States or of any state or territory of the United States.
 - (b) Conviction of any crime, an essential element of which is dishonesty, deceit or fraud.
 - (c) Fraud or deceit in obtaining a certificate as a certified public accountant.
 - (d) Dishonesty, fraud or gross negligence in the public practice of accountancy.
 - (e) Violation of any rule of professional ethics or professional conduct adopted by the Board.
3. The Board shall have the authority to apply to the courts, in its own name, for injunctive relief to prevent violations of accountancy statutes or violations of any rules adopted pursuant to accountancy statutes. Any court may grant injunctive relief regardless of whether criminal prosecution or any other action is instituted as a result of the violation. A single violation is sufficient to invoke the injunctive relief.
4. The Board shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents; to administer oaths, to take testimony, to cooperate with the Public Company Accounting Oversight Board (PCAOB) and the appropriate state and federal regulatory authorities having jurisdiction over the professional conduct in question in investigation and enforcement concerning violations of the accountancy statute and comparable statutes of other states; to cooperate in enforcement with appropriate foreign regulatory authorities in instances which have or may result in criminal conviction, loss of license or suspension, admonishment or censure, and to receive evidence concerning all matters within the scope of the accountancy statute.

Note: The template refers generally to the ability of a State Board of Accountancy to adopt rules related to issuance, renewal, suspension, revocation and restoration of licenses. The powers referred to immediately above should be supported in the underlying enabling legislation in the form of the accountancy act.

Financial and Operational Management

1. The Board shall adopt a budget for revenues and expenditures annually, subject to the appropriate due process procedures, using generally accepted accounting principles. The budget shall be reviewed and approved only by the agency's governing Board notwithstanding any other provision of law. The budget shall be reviewed and approved only by the agency's governing Board notwithstanding any other provision of law. The Board shall adopt or modify its budget only after public hearing thereon. The Board must give notice of the hearing to all licensees of the Board prior to holding a hearing on the adoption or modification of any fee. No revenues shall be derived from and no costs shall be incurred by the State general revenue fund.¹ The agency shall be responsible for all costs, both direct and indirect.
2. The Board shall have the authority to charge fees for:
 - (a) The CPA Examination.
 - (b) An initial CPA license.

¹The Committee took the position that no revenues should be derived from the State general fund and that no costs should be incurred by the State general fund. This committee saw this as the ideal for a self-directed, semi-independent Board of Accountancy. However, the committee recognized that in some states it may be appropriate or necessary for State Boards of Accountancy to modify the legislation where there is a history of licensee fees supporting the State General Fund.

- (c) The renewal of an individual license to practice public accountancy sufficient to cover all the expenses for the administration and operation of the agency.
 - (d) The annual registration of each firm and an annual registration fee for each of the firm's offices in the state sufficient to cover all the expenses for the administration and operation of the agency.
 - (e) The expenses of a Board's quality review program, peer review or peer review oversight program, or other expenses directly related to the administration of the regulation of the practice of public accountancy.
 - (f) The reproduction of its documents.
3. Fees collected by the Board shall be dedicated to the regulation of licensed CPAs and CPA firms.²
 4. The Board shall have the authority to suspend or revoke a license to practice public accountancy for the failure of the holder to renew the same and to pay the renewal fee therefore to the Board within 30 days after demand for such renewal fee shall have been made by the Board.
 5. The Board shall have the power and authority to:
 - (a) Have its own bank accounts and earn interest on its deposits.³
 - (b) Acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board.
 - (c) Sue and be sued in its own name.
 - (d) To assess civil penalties in accordance with state statute.
 - (e) The Board shall have the power to enter into contracts necessary or convenient for carrying out the provisions of the Accountancy Act or the functions of the Board.
 - (f) The Board shall have the power to employ an executive director, staff, clerical and technical assistance, and to incur such other expenses, including employee benefits, as may be deemed necessary in the performance of its duties.
 - (g) Retain its own counsel to advise and assist it in addition to such advice and assistance as is provided by the Attorney General of this State
 - (h) Retain other investigative, specialized knowledge, or other technical services under contract as may be needed to regulate the practice of public accountancy or conduct its operations.

Reporting Relationship and Oversight

1. Annually, the Board shall provide written reports to the Governor and the legislature that include: financial reports; descriptions of changes in licensing fees; the number and changes in the number of CPA Exam candidates, licensees, official complaints received involving licensed and unlicensed activity, disciplinary actions taken against licensees and non-licensees,

² The Committee took the position that fees collected by a Board of Accountancy should be dedicated to the regulation of licensed CPAs and CPA firms. If fees are dedicated in statute for this purpose, it should minimize the risk of fund sweeps that result in using licensee fees for other state general fund purposes.

³ The Committee recognized that some State Boards of Accountancy do not have their own bank accounts. However, if a Board is going to be truly self-directed and semi-independent, the Committee concluded that the Board of Accountancy should be able to have its own bank account and it should be able to earn interest on its own funds.

licenses suspended or revoked; and the substance of changes to the accountancy statute and regulations during the past year [or period if the state uses, for example a two-year reporting period].

2. The Board's financial statements shall be audited annually by the State Auditor or a qualified CPA firm according to state requirements.
3. The Board shall be subject to the ethics rules and statutes of the state.
4. The Board shall keep a complete record of all its proceedings.
5. The meetings of the Board shall be subject to various state acts such as open meetings, due process and review, and administrative procedures acts.
6. Changes to the public accountancy statute, regulations of the Board, and fees levied by the Board shall be formulated pursuant to due process procedures of the state.

Appendix A.
Self-Directed, Semi-Independent Agency Act

Short Title

Sec. 1. This Act shall be known as the Self-Directed, Semi-Independent Agency Act.

Agency Participation

Sec. 2. The _____ State Board of Accountancy shall be modified by this Act.

Definition

Sec. 3. In this Act, “agency” means the _____ State Board of Accountancy listed in Section 2 of this act.

Sec. 4. (a) Notwithstanding any other provisions of the law, the _____ State Board of Accountancy shall become a self-directed, semi-independent agency as specified in this Act.

(b) The agency shall continue to be a state agency, as that term is defined in state statute.

Appointment of the _____ State Board of Accountancy

Sec. 5. The members of the _____ State Board of Accountancy shall be appointed by the Governor.

General Duties and Powers of the _____ State Board of Accountancy.

Sec. 6. In addition to the duties and powers enumerated in the enabling legislation specifically applicable to the agency, it shall have the duties and powers prescribed by sections 6 through 18 of this Act.

- (a) The Board shall have the power to elect officers from its members.
- (b) The Board members shall be immune from personal liability for actions taken in good faith in the discharge of the Board’s responsibilities.
- (c) The Board members shall receive per diem and reimbursement for travel and expenses.
- (d) The Board shall have the power to adopt rules for the governance of the Board.

Determination of Qualifications to License Individual Certified Public Accountants and Certified Public Accounting firms.

Sec. 7. The _____ State Board of Accountancy shall have the power to formulate rules regarding the qualifications of applicants to practice as licensed Certified Public Accountants (CPAs), or to practice as a licensed CPA firm, to protect the credibility, validity and reliability of the CPA license on which the public relies, consistent with the enabling legislation for the _____ State Board of Accountancy.

Sec. 8. The _____ State Board of Accountancy shall adopt procedures and requirements governing the manner of making application for issuance, renewal, suspension, revocation, restoration and related activities concerning licenses that are under the jurisdiction of the Board.

Financial and Operational Management

Sec. 9. The _____ State Board of Accountancy shall adopt a budget for revenues and expenditures annually, subject to the appropriate due process procedures, using generally accepted accounting principles (or an appropriate budgeting system mandated by state statute). The budget shall be reviewed and approved only by the agency's governing Board notwithstanding any other provision of law. The Board shall adopt or modify its budget only after public hearing thereon. The Board must give notice of the hearing to all licensees of the Board prior to holding a hearing on the adoption or modification of any fee. No revenues shall be derived from and no costs shall be incurred by the State of _____ general revenue fund. The agency shall be responsible for all costs, both direct and indirect.

Sec. 10. The _____ State Board of Accountancy shall have the authority to set fees and civil penalties that are reasonable and necessary to cover the operating costs and build reasonable surpluses that can be used for complex enforcement cases. Such fees may include, but are not limited to, CPA Examination fees, license fees, firm registration fees, fees for reproduction of documents, expenses of a Board's quality review program, or other expenses directly related to the administration of the regulation of licensed CPAs and CPA firms. The Board shall also be able to impose and collect civil penalties, court costs, and attorney's fees. Fees collected by the Board shall be dedicated to the regulation of licensed CPAs and CPA firms. Fees shall not exceed the amounts that are reasonable and necessary for carrying out the functions of the Board.

Sec 11. The _____ State Board of Accountancy shall have the authority to suspend or revoke an individual CPA license or a CPA firm license for the failure of the holder to renew the same and to pay the renewal fee therefore to the _____ State Board of Accountancy within 30 days after demand for such renewal fee shall have been made by the _____ State Board of Accountancy.

Sec 12. The _____ State Board of Accountancy shall have the power and authority to:

- (a) Have its own bank accounts and earn interest on its deposits.
- (b) Acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board.
- (c) Sue and be sued in its own name.
- (d) To assess civil penalties in accordance with state statute.
- (e) The Board shall have the power to enter into contracts necessary or convenient for carrying out the regulation of licensed CPAs or CPA firms or the functions of the Board.
- (f) The Board shall have the power to employ an executive director, staff, clerical and technical assistance, and to incur such other expenses, including employee benefits, as may be deemed necessary in the performance of its duties.
- (g) Retain its own counsel to advise and assist it in addition to such advice and assistance as is provided by the Attorney General of this State.
- (h) Retain other investigative, specialized knowledge, or other technical services under contract as may be needed to regulate licensed CPAs or CPA firms or conduct its operations.

Reporting Relationship and Oversight

Sec. 13. Annually, the _____ State Board of Accountancy shall provide written reports to the Governor and the legislature that include: financial reports; descriptions of changes in licensing fees; the number and changes in the number of CPA Exam candidates, licensees, official complaints received involving licensed and unlicensed activity, disciplinary actions taken against licensees and non-licensees, licenses suspended or revoked; and the substance of changes to the accountancy statute and regulations during the past year [or period the state uses, for example a two-year reporting period].

Sec. 14. The _____ State Board of Accountancy's financial statements shall be audited annually by the State Auditor or a qualified CPA firm according to state requirements.

Sec. 15. The _____ State Board of Accountancy shall be subject to the ethics rules and statutes of the State.

Sec. 16. The _____ State Board of Accountancy shall keep a complete record of all its proceedings.

Sec. 17. The Board meetings of the _____ State Board of Accountancy shall be subject to various state acts such as open meetings, due process and review, and administrative procedures acts.

Sec. 18. Changes to the public accountancy statute, regulations of the _____ State Board of Accountancy, and fees levied by the _____ State Board of Accountancy shall be formulated pursuant to due process procedures of the state.

Appendix B

Comparison of Discussion of Duties, Powers, and Accountability of State Boards of Accountancy with the July 2007 Version of the Uniform Accountancy Act.

The Committee compared the provisions of the template to establish a self-directed and semi-independent Board of Accountancy with the provisions of the UAA. While the primary purpose of the Committee was to develop a template to enable legislation for self-directed and semi-independent Boards of Accountancy, the Committee noted certain areas where the template is not fully supported by the UAA. The Committee felt that the following items might be considered by the UAA Committee so that the UAA might better support the establishment of self-directed, semi-independent Boards of Accountancy.

1. UAA Section 4 (d) establishes accountability of a Board of Accountancy for monies collected from fees authorized by the Act. However, it does not address the ability of a self-directed, semi-independent Board of Accountancy to establish its own budget, subject to due process procedures of the state.
2. The template takes the position that fees collected by the Board shall be dedicated to the regulation of licensed CPAs and CPA firms. The Committee believes that dedicating these fees in statute will help ensure that fees are used to regulate CPAs and CPA firms and not for other general fund purposes. It would be advisable to have the dedication of such fees recognized in the UAA.
3. It is not clear that the UAA addresses the Board's ability to assess fees for peer review, quality review, the reproduction of documents, or other activities necessary to administer the regulation of the practice of public accountancy.
4. UAA Section 4 (d) states that all monies collected by the Board shall be deposited in the State Treasury to the credit of the Board. The section does not address the authority of a Board to have its own bank account and earn interest on its deposits.
5. UAA Section 4 (f) addresses the Board's authority to employ an executive director and other staff. A self-directed, semi-independent Board should also be free to negotiate compensation, including employee benefits.
6. There are a variety of reporting and oversight issues related to self-directed and semi-independent Boards that are not addressed in the UAA. It is the opinion of the Committee that a self-directed and semi-independent Board of Accountancy should:
 - Report its revenues and expenditures to the State Treasurer (or Governor).
 - Have an annual audit by the State Auditor or qualified CPA firm.
 - Be subject to the ethics rules and statutes of the State.
 - Be subject to various state acts such as open meetings, due process and review and administrative procedures acts.
 - Changes to statute, regulations and fees should be formulated pursuant to due process procedures of the state.