# WHITE PAPER

# **CPA FIRM NAMES**

# **April 2009 – Working Draft**

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# **PREFACE & NOTICE TO READERS**

This White Paper is considered non-authoritative and has been prepared by the CPA Firm Name Study Group for use by state boards of accountancy and other interested parties when considering the issue of CPA firm names.

### **CPA Firm Name Study Group**

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#### Objective

The purpose of this White Paper is to assist in providing transparency to the users of CPA firm services and the public at large regarding a CPA firm's identity, by promoting uniformity among the various state boards of accountancy regarding their rules on CPA firm names, and where appropriate, recommend revisions to the Uniform Accountancy Act (UAA) with respect to its rules concerning firm names.

#### **Executive Summary**

- In September 2008, the AICPA Professional Ethics Executive Committee and the National Association of State Boards of Accountancy formed a joint study group to study CPA firm names.
- Inconsistent guidance and practice currently exists among the state boards of accountancy surrounding the use of permissible CPA firm names. This inconsistency has made it increasingly difficult for CPA firms to register under the same firm name in some states, thus failing to promote transparency to users and the public at large regarding a firm's identity. To assist state boards and CPAs in assessing what would be considered a permissible CPA firm name, the CPA Firm Name Study Group has proposed the non-authoritative guidance contained in this White Paper.
- The proposed guidance included in this White Paper focuses on whether the use of a CPA firm name is misleading, and the Study Group has provided criteria and examples of what might be considered to be a misleading firm name.
- The Study Group held extensive discussions and deliberations in arriving at the conclusions and recommendations contained in this White Paper. Where appropriate, this White Paper includes the rationale for the conclusions reached by the Study Group.
- The White Paper, where appropriate, includes recommendations to amend certain rules of the UAA.

#### Background

In September 2008, the American Institute of CPAs (AICPA) Professional Ethics Executive Committee (PEEC) and the National Association of State Boards of Accountancy (NASBA) formed a joint study group (the "Study Group") to study the issue of misleading CPA firm names. Although both PEEC and NASBA acknowledged that some guidance on this issue existed in the AICPA Code of Professional Conduct (the "Code"), the UAA, and various rules and regulations of state boards of accountancy, it appeared that several state boards were reaching different conclusions on the appropriateness of certain CPA firm names when firms filed for registration in those states. Accordingly, the PEEC and NASBA believed it would be appropriate for the Study Group to issue a White Paper addressing the various issues concerning misleading CPA firm names and recommend positions to be considered by state boards when addressing such issues. The Study Group hopes its efforts will help promote uniformity of CPA firm name rules among the state

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boards of accountancy, thereby assisting in providing transparency to the users of CPA firm services and the public at large regarding the firm's identity. This in turn would promote a greater understanding on the part of users of CPA firm services about a firm's professional affiliation with other firms and the closeness of that affiliation, depending in part on whether the firms use the same or similar names. The implementation of uniform rules would also allow CPA firms that practice in multiple states to register their firms in each state with greater certainty and in a manner consistent with current AICPA and NASBA's initiatives supporting interstate mobility practice efforts under Section 23 of the UAA.

The UAA provisions relating to the use of firm names are covered in Section 14(i), dealing with *Unlawful Acts* and contains guidance thereon in Rule 14-1 - *Misleading CPA firm names*, and Rule 14-2 - *Fictitious firm names*. Most state boards of accountancy have also adopted rules and/or regulations that address the issue of CPA firm names. In addition to guidance contained in the UAA and specific state rules and/or regulations, the AICPA Code, applicable to all AICPA members, contains guidance in Rule 505 – *Form of Organization and Name*, as well as various interpretive ethics rulings that support the rule.

While the UAA, most state rules and/or regulations, and the AICPA Code all prohibit the use of misleading firm names, there is limited interpretive guidance to help CPAs comply with its restrictions on the use of misleading firm names and many state boards of accountancy have issued their own interpretations of what would and would not be considered misleading. As a result, inconsistent practice exists among the states in determining the use of permissible CPA firm names. This makes it difficult for CPA firms to register under the same firm name in some jurisdictions, thereby contributing to a tendency to confuse the public by failing to promote transparency to users of the firm's services and the public at large regarding the firm's identity. For example, it is unclear when users engage the firm whether the firm's resources are confined solely to that firm versus a firm whose name more clearly conveys that it is a firm of greater breadth and larger scope than suggested merely by its size in a particular jurisdiction. In some cases, this has also resulted in CPA firms being unable to effectively and efficiently service clients with operations in some states and therefore, is not in the public interest.

The Study Group believes that in order to achieve transparency, users of CPA firm services and the public at large, should have the ability to recognize a firm's true identity. In cases where a CPA firm's name does not achieve transparency, it may be considered misleading or have a tendency to confuse the public. In order to protect the public and users of CPA firm services, the Study Group has focused its efforts, and the contents included in this White Paper, on determining guidelines on when the use of a CPA firm name would be misleading or have a tendency to confuse the public, and has provided criteria and examples of what might be considered to be a misleading firm name.

For summaries of existing guidance contained in the UAA, state boards of accountancy and AICPA; please refer to Appendices 1, 2, and 3 of this White Paper.

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#### **Issues and Conclusions**

The Study Group deliberated numerous issues on the subject of CPA firm names. These issues and the Study Group's conclusions are set forth below. In developing this guidance, the Study Group adopted the following overarching principle that underlies the conclusions reached in this White Paper.

**Overarching Principle:** A CPA firm's name should allow the users of the firm's services, and the public at large, the ability to recognize the firm's identity. In order to achieve this transparency a CPA should not be permitted to practice under a firm name that would be misleading or would have a tendency to confuse the public.

### Misleading CPA Firm Names

### What is a misleading name?

In determining whether a firm name is misleading, the Study Group recommends the following criteria be considered:

Misleading firm names are names that:

- Contain any representation that would be likely to cause a reasonable person to misunderstand or be confused about the legal form of the firm, about who are the owners or members of the firm, or about any other matter;
- Create false or unjustified expectations of favorable results or capabilities; or
- Imply the ability to influence any regulatory or similar body.

## What are some examples of a misleading name?

The following are examples of CPA firm names that would be considered to be misleading:

- The CPA firm name implies the existence of a corporation when the firm is not a corporation (e.g., Smith & Jones, P.C.);
- The CPA firm name implies the existence of a partnership when there is not a partnership (e.g., Smith & Jones LLP);
- The CPA firm name includes the name of a person who is not a CPA if the title "CPAs" is included in the firm name.

The above examples contain representations about the legal form of the firm or about the persons who are owners of the firm that may cause a reasonable person to misunderstand or be confused.

Other examples that may be considered to be misleading include:

• The CPA firm name implies certain favorable results can be achieved or creates unjustified expectations (e.g., Maximum Refunds, LLP).

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- The CPA firm name implies the provision of a service that is not provided by the firm or certain expertise that the firm does not possess (e.g., a firm whose expertise and services are limited to accounting and tax services practices under the name Litigation Services, LLP).
- The CPA firm name implies or exaggerates actual available resources, size or geographical reach.

# Would it be misleading to have a firm name that does not include at least one of the names of present or former owners, or that includes the name of non-owners?

The Study Group believes firm names that do not include the names of present or former owners, or includes the names of non-owners, would not, in and of itself, be misleading. However, in cases where the firm name does not include the name of present or former owners, the Study Group recommends that state boards ensure that at least one firm owner's name be included in the firm registration and that the public has access to information that would allow them to identify an owner of the firm.

# Would it be misleading to include the names of former firm owners in the firm name indefinitely?

The Study Group believes that the continued use of names of former owners in the name of the firm or its successor would not be misleading.

# Would it be misleading to include a common brand name, such as a CPA firm association name, as part of the firm name?

The Study Group believes the use of a common brand name, such as a CPA firm association name, in and of itself, would not be considered misleading provided the firm is affiliated with or a member of the association and the firm name has been registered with and approved by the state board. In reaching this conclusion, the Study Group considered the recently adopted PEEC guidance on "network firms" wherein the "use of a common brand name as part of the firm name" is a characteristic of a network firm. The guidance provides specific criteria on when a firm that is a member of an association would be considered part of a network, and implicitly acknowledges that the use of such a name occurs in practice. Accordingly, based on the application of the PEEC guidance, the Study Group concluded that use of a common brand name, such as a CPA firm association name, would not be misleading to the public assuming that a "network" relationship actually exists among the firms using the association name.

# Would it be misleading to use a common brand name, such as a CPA firm association name, as the entire firm name?

The Study Group believe that the use of a common brand name, such as a CPA firm association name, as the entire firm name would not be considered misleading provided the firm is affiliated with or a member of the association and the name has been registered with and approved by the state board. As noted above in the discussion of use of a common brand name as *part of* the firm name, the Study Group concluded that use of a CPA firm association name as the entire firm name would not be misleading to the public since a "network" relationship does exist among the firms using the association name. Finally, the Study Group considered whether disclosure of the

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relationship (e.g., with the association) should be required and concluded it was unnecessary. Specifically, the Study Group did not believe disclosure would be helpful to the public and might confuse the public about the relationship that exists between firms using the association name.

#### Fictitious Names

#### Should the term *fictitious* and guidance on fictitious names included in the UAA be eliminated?

The UAA Rule 14-2- *Fictitious firm names*, currently defines a fictitious name as one not consisting of the names or initials of one or more present or former partners, members or shareholders. The UAA Rule further states that such names may not be used by a CPA firm unless the name has been registered with and approved by the state board as not being false or misleading. The Study Group agreed that use of such names should be permitted provided they are not false or misleading and concluded that guidance on the use of fictitious names was unnecessary since the focus should be on whether the name is misleading. The Study Group therefore recommends that guidance on fictitious names be deleted from the UAA and comparable state board rules and regulations.

In reaching this recommendation, the Study Group agreed that the term "fictitious" on its face suggests that the name may be deceiving or fraudulent. However, just because a name does not include the names or initials of one or more present or former partners, members, or shareholders may not necessarily make it fictitious. In addition, the underlying goal is to achieve transparency and ensure that the firm does not practice under a misleading name. The Study Group also noted that there are currently many states that explicitly permit the use of fictitious or artificial names, as long as they are not false or misleading. Accordingly, the Study Group concluded that a specific rule addressing fictitious names is unnecessary.

#### Recommendations

The Study Group respectfully recommends deleting the following UAA rules based upon the discussion and conclusions set forth in this White Paper.

Rule 14-1 *Misleading CPA firm name*, Category (c), and Rule 14-2, *Fictitious Firm Names* 

The Study Group further recommends that state boards of accountancy consider deleting or revising state rules and/or regulations, as necessary, to achieve consistency with the proposed revisions to the UAA.

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# **APPENDIX 1**

The following comparison highlights (from left to right) the AICPA's Rules and Interpretations compared to the UAA Statute and Rules.

AICPA Rules and Interpretations	UAA Statute and Rules	<u>Comparison</u>
Rule 505—Form of organization and nameA member may practice public accounting only in a form of organization permitted by law or regulation whose characteristics conform to resolutions of Council. (see resolution below)A member shall not practice public accounting under a firm name that is misleading. Names of one or more past owners may be included in the firm name of a successor organization.A firm may not designate itself as "Members of the American Institute of Certified Public Accountants" unless all of its CPA owners are members of the Institute. [As amended January 14, 1992 and October 28, 1997. Revised May 15, 2000]Also see Council Resolution Concerning Rule 505—Form of Organization and Name_at http://www.aicpa.org/about/code/et_app_b.html	Statute Section 14-3 (i) No person holding a certificate or registration or firm holding a permit under this Act shall use a professional or firm name or designation that is misleading about the legal form of the firm, or about the persons who are partners, officers, members, managers or shareholders of the firm, or about any other matter, provided, however, that names of one or more former partners, members, managers or shareholders may be included in the name of a firm or its successor.	The AICPA rules provide detailed guidance on what would be considered misleading. Fictitious names would be permitted provided they are not misleading. Under the UAA, fictitious names can only be used if registered with and approved by the state board
Ethics Rulings Under Rule 505 134. Association of Accountants Not Partners Question—Two members who are not partners share an office, have the same employees, have a joint bank account, and work together on each other's engagements. Would it be proper to have a joint letterhead showing both names, "Certified Public Accountants," and their addresses?	RulesRule 14-1 - Misleading CPAfirm namesA CPA firm name ismisleading within themeaning of Section 14(i) ofthe Act if, among otherthings:(a) The CPA firm nameimplies the existence of acorporation when the firm is	

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<ul> <li>Answer—In these circumstances the public would assume that a partnership existed. If any reports were to be issued under the joint heading, rule 505 [ET section 505.01] would be violated.</li> <li>Members should not use a letterhead showing the names of two accountants when a partnership does not exist.</li> <li>135. Association of Firms Not Partners</li> <li>Question—Three CPA firms wish to form an association—not a partnership—to be known as "Smith, Jones &amp; Associates." Is there any impropriety in this?</li> <li>Answer—The use of such a title is not permitted since it might mislead the public into thinking a true partnership exists. Instead, each firm is advised to use its own name on its letterhead, indicating the other two as correspondents.</li> <li>136. Audit with Former Partner</li> <li>Question—A member's firm consisting of one certified and one noncertified partner has been dissolved. One account was retained which the two practitioners plan to continue to service together. Should the audit report be submitted on partnership stationery?</li> <li>Answer—It would appear proper for the audit to be carried out jointly by the two former partners. The opinion should be presented on plain percentified and one senouted as follower.</li> </ul>	not a corporation; (b) The CPA firm name implies existence of a partnership when there is not a partnership (as in "Smith & Jones, C.P.A.s"); (c) The CPA firm name includes the name of a person who is neither a present nor a past partner, member or shareholder of the firm; or (d) The CPA firm name includes the name of a person who is not a CPA if the title "CPAs" is included in the firm name. <u>Rule 14-2 - Fictitious firm names</u> A fictitious CPA firm name (that is, one not consisting of the names or initials of one or more present or former partners, members or shareholders) may not be used by a CPA firm unless such name has been registered with and approved by the Board as not being false or misleading.	
together. Should the audit report be submitted on partnership stationery? <i>Answer</i> —It would appear proper for the audit to be carried out jointly by the two former partners. The opinion should be presented on plain paper and signed somewhat as follows:	by the Board as not being	
John Doe, Certified Public Accountant		
Richard Roe, Accountant		
Such a signature would leave no doubt as to whether a partnership existed, and the client and others would have the assurance that both accountants participated in the audit.		

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## 137. Nonproprietary Partners

*Question*—A member's firm wishes to institute the designation "nonproprietary partner" to describe certain high-ranking staff who were former partners of merged firms who did not qualify for partnership in the merging firm. With this title, they would be eligible to participate in the firm's pension plan. In holding themselves out to the public they would be required to use this designation. Is there any impropriety in the proposed title?

Answer—The use of the designation "partner" should be restricted to those members of the firm who are legally partners. Those who are not parties to the partnership agreement should not hold themselves out in any manner which might lead others to believe that they are partners. The use of the designation "nonproprietary partner" by one who is not in fact a partner is considered misleading and therefore is not permitted.

## 138. Partner Having Separate Proprietorship

*Question*—May a member be a partner of a firm of public accountants, all other members of which are noncertified, and at the same time retain for himself a practice of his own as a CPA?

Answer—Rule 505 [ET section 505.01] would not prohibit such a practice. However, clients and others interested should be advised about the dual position of the member to prevent any misunderstanding or misrepresentation.

### 144. Title: Partnership Roster

*Question*—Is there any prohibition in the Code to the use of an established firm name in a different state where there is some difference in the roster of partners?

Answer—It would be proper for the firm to use

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the established name in different states even though the roster of partners differed as long as the firm otherwise complies with rule 505 [ET section 505.01].

145. Firm Name of Merged Partnerships

*Question*—When two partnerships merge, is it permissible for the newly merged firm to practice under a title which includes the name of a partner who had retired from one of the two firms prior to the merger?

Answer—Rule 505 [ET section 505.01] of the Code of Professional Conduct states that partnerships may practice under a firm title which includes the name or names of former partners. Since the retired partner was once a partner in one of the merged firms, it would be proper for his name to appear in the title of a newly created firm.

#### <u>179. Practice of Public Accounting Under Name</u> of Association or Group (currently under revision by PEEC)

*Question*—Several CPA firms wish to form an association or group whereby certain joint advertising, training, professional development and management assistance will take place. The firms will otherwise remain separate and distinct. Would it be proper for such firms to practice public accounting under the name of an association or group in the United States?

Answer—The practice of public accounting under such a name in the United States is not permitted since it would be likely to confuse the public as to the nature of the actual relationship which exists among the firms. Instead, each firm should practice only in its own firm name and may indicate the association or group name elsewhere on the firm stationery. Each firm may also list on its stationery the names of the other firms in the association or group.

From PEEC Informal Policy Positions:

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Firm Name	
The use of "& Company" by a sole practitioner	
is not a violation. However the use CPAs when	
the firm does not have at least two CPAs with	
the firm (not necessarily owners) would create a	
violation. (Adopted 2/93)	

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# **APPENDIX 2**

# SUMMARY OF STATE BOARD ACCOUNTANCY RULES WITH REGARD TO ADDRESSING FICTITIOUS OR MISLEADING NAMES

			-	_
State	Consistent or Similar to the UAA	State Statute\Rule\or Both attempting to addresses Fictitious Names or Misleading Firm Names	NoFor Specific Provisions Identified at All	natted: No underline
Alabama	Statute is consistent with the UAA, rules are not as specific	n/a	n/a	
Alaska	n/a	n/a	Yes	
Arizona	Similar to the UAA	n/a	n/a	
Arkansas	Consistent with the UAA	n/a	n/a	
California	n/a	Yes and there are State Board restrictions	n/a	
Colorado	n/a	Yes – attempts to address misleading firm names, Firms may assume trade names. Other designations can be used if registered with the Board, certain restrictions apply	n/a	
Connecticut	Consistent with the UAA.	n/a.	n/a	
Delaware	n/a	Yes – attempts to address misleading firm names.	n/a	-
Florida	Consistent with the UAA	n/a	n/a	
Georgia	n/a	Yes – attempts to address misleading firm names. Includes specific rules regarding deceased partners and shareholders	n/a	
Hawaii	n/a	Yes – attempts to address misleading firm names. Includes specific rules regarding deceased partners and shareholders.	n/a	
Idaho	n/a	Yes – attempts to address misleading firm names. Includes specific rules regarding deceased partners and shareholders.	n/a	
Illinois	n/a	n/a	Yes	1
Indiana	Consistent with the	n/a	n/a	1

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		State Statute\Rule\or Both attempting	No F
	Consistent or	to addresses Fictitious Names or	Specific Provisions
State	Similar to the UAA	Misleading Firm Names	Identified at All
	UAA, Rules provide		
	detail and examples		
Iowa	Consistent with the	n/a	n/a
	UAA		
Kansas	Consistent with the	n/a	n/a
	UAA, allows the use		
	of a fictitious name		
	of a firm if		
	registered with the		
	board and is not		
	otherwise		
	misleading, some		
	name restrictions		
Kentucky	apply. Consistent with the	n/a	n/a
INCHLUCKY	UAA		11/ a
Louisiana	Consistent with the	n/a	n/a
Louisiana	UAA, rules provide	in a	ii) u
	extensive detail.		
Maine	Consistent with the	n/a	n/a
	UAA		
Maryland	n/a	n/a	Yes
Massachusett	Consistent with the	n/a	n/a
	UAA		
Michigan	n/a	n/a	Yes
Minnesota	Consistent with the	n/a	n/a
	UAA		
Mississippi	n/a	n/a	Yes
Missouri	Similar to the UAA,	n/a	n/a
	includes specific		
	rules regarding		
	deceased partners		
Montana	and shareholders n/a	n/a	Yes
Nebraska	n/a	Yes – attempts to address misleading	n/a
i woraska	11/ a	firm names, allows the use of an	11/ U
		assumed name if approved by the	
		board prior to 7-17-2005, certain	
		restrictions apply.	
Nevada	Consistent with the	n/a	n/a
	UAA, Rules allow		
	the use of a fictitious		

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		State Statute\Rule\or Both attempting	No For	matted: No underline
	Consistent or	to addresses Fictitious Names or	Specific Provisions	
State	Similar to the UAA	Misleading Firm Names	Identified at All	
	name to perform			
	professional services			
	if registered with			
	and approved by the			
	board and is not			
	otherwise			
	misleading, some			
	restrictions apply.			
New	Consistent with the	n/a	n/a	
Hampshire	UAA, includes		ii u	
	specific rules			
	regarding deceased			
	partners and			
	shareholders			-
New Jersey	Consistent with the	n/a	n/a	
	UAA			-
New Mexico	n/a	n/a	Yes	-
New York	n/a	n/a	Yes	-
North	n/a	Yes – attempts to address misleading	n/a	
Carolina		firm names, allows the use of an		
		assumed name if approved by the		
		board prior to 4-1-1999, certain		
		restrictions apply		-
North Dakota	n/a	Yes – attempts to address misleading	n/a	
		firm names		-
Ohio	n/a	n/a	Yes	-
Oklahoma	Consistent with the			
	UAA, attempts to			
	address the use of			
	misleading names,			
	allows sole			
	proprietors the use			
	of a business name			
	with using a d/b/a			
	providing the use is			
Oragon	not misleading.	n/o	Voc	4
Oregon Denneuluenie	n/a	n/a	Yes	-
Pennsylvania	n/a	n/a	Yes	4
Rhode Island	n/a	n/a	Yes	4
South	Consistent with the	n/a	n/a	
Carolina	UAA			-
South Dakota	Consistent with the	n/a	n/a	]

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		State Statute\Rule\or Both attempting	N0 Fo
	Consistent or	to addresses Fictitious Names or	Specific Provisions
State	Similar to the UAA	Misleading Firm Names	Identified at All
	UAA, includes		
	specific rules		
	regarding deceased		
	partners and		
	shareholders		
Fennessee	Consistent with the	n/a	n/a
	UAA, attempts to		
	address the use of		
	misleading and		
	fictitious names		
Texas	n/a	Yes – attempts to address misleading	n/a
		firm names	
Utah	n/a	n/a	Yes
Vermont	Consistent with the	n/a	n/a
	UAA		
Virginia	n/a	Yes – attempts to address misleading	n/a
		firm names.	
Washington	Consistent with the	n/a	n/a
	UAA		
	Consistent with the		
West Virginia		n/a	n/a
	UAA, includes		
	specific rules		
	regarding deceased		
	partners and shareholders		
Wisconsin	Similar to the UAA,		
w isconsin	includes specific	n/a	n/a
	rules regarding		
	deceased partners	V	
	and shareholders		
Wyoming	n/a	n/a	Yes
Total	25	11/a 11	14
10101	23	11	14

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# **APPENDIX 3**

The following table summarizes and compares the various state boards' rules and statutes regarding the use of fictitious and/or misleading names:

Categories	Individual States	Total	Percentage
States Consistent with or Similar to the UAA	Alabama, Arizona, Arkansas, Connecticut, Florida, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, Oklahoma, South Carolina, South Dakota, Tennessee, Vermont, Washington, West Virginia, Wisconsin	25	50%
States with Statutes\Rules\or Both attempting to address Fictitious Names or Misleading Firm Names	California, Colorado, Delaware, Georgia, Hawaii, Idaho, Nebraska, North Carolina, North Dakota, Texas, Virginia	11	22%
No Specific Provisions Identified at All	Alaska, Illinois, Maryland, Michigan, Mississippi, Montana, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Utah, Wyoming	14	28%
		50	100%

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