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National Association of State Boards of Accountancy

Position Paper

Semi-Independent State Boards of Accountancy

Submitted by

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CONTENTS

EXECUTIVE SUMMARY

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 fund, 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 income 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, a high-profile investment fraud, 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 United States 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. These impediments include:

- 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 is the competency 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 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 is necessary or may be helpful 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 operations and, thus, needs to share services with other boards; the boards' functions are closely interrelated with one or more other boards; the professions are similar, involved in a common trade or industry; homogeneous in their goals and services. Sharing services, information, and resources may make these boards more efficient or effective because of the natural links and relationships in the qualifications and requirements of licensees and/or the similarity of their services to the public.

However, Accountancy Boards have distinct differences in regulatory complexity, goals, licensee services, and in qualification and competency requirements. 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, Accountancy Boards have sufficient licensees to support their own staff and generate the financial resources to operate in a self-governing manner.

NASBA believes Accountancy Boards need 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. The Governor and legislature would approve statute and rule changes and maintain an appropriate degree of fiscal oversight through annual reports from the Accountancy Board.

This position paper has been prepared by the National Association of State Boards of Accountancy, whose express mission and purpose is to enhance the effectiveness of its member boards – the individual state boards of accountancy. The U.S. Department of Treasury has recommended that NASBA take steps to ensure that the state boards of accountancy have operational and financial independence for the benefit of our nation's financial system. 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, where appropriate, to enact legislation that provides its Accountancy Board with operational and financial independence.

Semi-Independent State Boards of Accountancy

INTRODUCTION

The National Association of State Boards of Accountancy (NASBA) has prepared this position paper in furtherance of its mission to enhance the effectiveness of State Boards of Accountancy (Accountancy Board(s)). 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 and U.S. financial system rely.

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 Accountancy Boards need 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. In the *Report of the Advisory Committee on the Auditing Profession* issued October 6, 2008 by the U.S. Department of the Treasury (ACAP Report), the U.S. Department of the Treasury urged "the states to create greater financial and operational independence of their state boards of accountancy." (See the OTHER ADVOCATES FOR FINANCIALLY AND OPERATIONALLY INDEPENDENT ACCOUNTANCY BOARDS section below.)

NASBA has developed the model Accountancy Board organization described in this paper for states to consider and emulate. This model is fully consistent with the recommendation of the ACAP Report.

MEANING OF SEMI-INDEPENDENT ACCOUNTANCY BOARDS

A number of Accountancy Boards are semi-independent with the authority described below. Such Accountancy Boards are sometimes referred to as "independent", "stand-alone", "self-governing", "self-directed", or "semi-independent" boards. The term "semi-independent" is used in this position paper.

As used in this document, semi-independent Accountancy Board means a board that operates as a separate state agency and has self-directed decision making authority relating to Accountancy Board responsibilities, including but not limited to, the authority to make personnel decisions, determine licensing fees to be paid by the licensed Certified Public Accountants (CPAs) and public accounting firms (CPA firms) within that state, determine budgets, hold the operating funds in their own accounts, employ and manage their personnel, enter into contracts, and promulgate and enforce rules within the regulatory parameters set by the Governor or legislature.

Semi-independent does not mean that an Accountancy Board is not subject to constraints and oversight. They still have an appropriate degree of fiscal and rulemaking oversight from their state's Governor and legislature. Independent agency statutes would require the agency to provide annual reports to the Governor and legislature. (See the REPORTING RELATIONSHIP AND OVERSIGHT section below).

THE FUNCTIONS OF STATE BOARDS

PUBLIC NEED – STATE BOARD ROLE ESSENTIAL TO EFFECTIVE FUNCTIONING OF 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 economic health and its citizens in terms of a state's GDP and income 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 and lending for large and small entities are based, in large part, on the ability of providers of capital and loans to trust the data they use to make decisions. When this trust is misplaced or lacking, the financial system operate 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, a recent high-profile investment fraud, 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.

As an example of this reliance, the U.S. Government Accountability Office (GAO) in March 2009 responded to the concerns of the President's Council on Integrity and Efficiency (PCIE) related to the accountability mechanisms over the proper use of federal funding by entities that received these awards. The PCIE had found that a high percentage of sampled audits of these entities were severely deficient. The GAO endorsed NASBA's response that it would work with Accountancy Boards to help ensure appropriate action and follow-up by poorly performing auditors.

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 license maintain high standards of personal conduct and competency and are held publicly accountable for their actions.

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 Uniform CPA Examinations (CPA Exam).

- Issue licenses to CPAs and CPA firms.

Rule Making

- Promulgate rules and regulations necessary to ensure continued competency, 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 competent continuing professional education requirements as a condition for issuance or renewal of a license.

Continued Competency and Compliance with Statute and Rules

- Determine compliance with continuing professional education requirements.

- Establish requirements for peer reviews of public accounting practices or for other quality assurance programs established to ensure that firms are conducting their practice in accordance with the standards of conduct and practice adopted by the Board.

  Assure effective functioning of the peer review process in its role of assuring competent performance of services by CPA firms.

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.

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, fix the compensation therefore, 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 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.

Meeting these requirements requires a board and staff with the appropriate backgrounds and the financial and operational means to carry out their state regulated purposes. However, there are a number of factors that prevent Accountancy Boards from being able to efficiently and effectively carry out their mandated programs.

THE ISSUE

AUTHORITY NOT COMMENSURATE WITH DUTIES AND RESPONSIBILITIES

The duties and responsibilities to the public require Accountancy Board members who possess extensive accounting, tax and auditing knowledge and experience. In order to fulfill these responsibilities and meet public expectations, 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 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.

SUPPORTING ENFORCEMENT

An overarching concern of NASBA, Accountancy Boards, CPAs, governmental agencies and other parties is providing effective enforcement in all states. For example, when the President's Council on Integrity and Efficiency released the results of its "National Single Audit Sampling Project" in 2007, the effectiveness of Accountancy Boards' regulation over licensees performing audits required by Federal agencies was questioned. In response, NASBA created a government referral process to help ensure that referrals from government agencies receive proper attention. Members of Accountancy Boards are frustrated when they don't have the operational and financial independence needed to fulfill their responsibilities – particularly as such independence relates to enforcement.

IMPACT ON MOBILITY

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 accounting standards, then the willingness of other states to continue with mobility will be undermined.

RATIONALE FOR CHANGE

IMPEDIMENTS TO AN ACCOUNTANCY BOARD'S ABILITY TO PROTECT THE PUBLIC EFFICIENTLY AND EFFECTIVELY

The more important impediments result from Accountancy Boards' not having control over their financial and personnel resources and not having full, decision-making authority. These and other impediments to successful Accountancy Board operations are discussed below.

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 cases, the Umbrella Agency goes beyond providing administrative services and assumes an oversight role that usurps or reduces the Accountancy Board's authority over its licensees and regulatory processes and makes decisions that should be made by the Accountancy Board for greater effectiveness and efficiency.

An Umbrella Agency is necessary or may be helpful 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 operations and, thus, needs to share services with other boards; the boards' functions are closely interrelated with one or more other boards; the professions are similar, involved in a common trade or industry; homogeneous in their goals and services. Sharing services, information, and resources may make these boards more efficient or effective because of the natural links and relationships in the qualifications and requirements of licensees and/or the similarity of their services to the public.

However, Accountancy Boards have distinct differences in regulatory complexity, goals, licensee services, and in qualification and competency requirements. 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, Accountancy Boards have sufficient licensees to support their own staff and generate the financial resources to operate in a semi-independent manner.

PERSONNEL MANAGEMENT

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 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. 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 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, and 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.

FINANCIAL AND OPERATIONAL MANAGEMENT

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

Even though an Accountancy Board may be self funded, it is oftentimes subject to the annual appropriation process. This allows legislators to use any Accountancy Board surplus 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 appropriate an Accountancy Board's funds for other endeavors. For example:

- A state legislature uses the fees to fund unrelated purposes.

- A state sweeps a surplus that an Accountancy Board has built up 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.

- 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.

Revenue; Fee Setting Process

Accountancy Board funding comes primarily from two sources: fees assessed on license applications and renewals; cost recovery; and fines or costs imposed as a result of disciplinary actions.

States charge CPAs and CPA firms a fee to cover the cost of their regulation. Licensees expect to pay this cost because it is necessary to protect the public interest and the value of the CPA credential. Enforcement revenue comes from CPAs and CPA firms who have not complied with one or more laws, regulations, rules of conduct, or practice standards. 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.

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, exercises undue influence over IT decisions, prohibiting travel, limits an Accountancy Board's right to employ its own IT staff or legal counsel as appropriate and necessary, and requires an Accountancy Board to use certain state services).

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, it severely limits its ability to respond to change.

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. Many states accomplish this by citing and limiting the time period for each step of the rulemaking process. The administrative procedures in such states 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 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 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.

RECOMMENDED APPROACH

For the reasons described above, an Accountancy Board needs the requisite authority and the attributes described below in order to effectively and efficiently perform its public protection mandate.

REPORTING RELATIONSHIP AND OVERSIGHT

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, 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-licenses, licenses suspended or revoked; and the substance of changes to the accountancy statute and regulations during the past year or period.

Furthermore, semi-independent does not mean that an Accountancy Board is not subject to constraints and oversight. 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 members serve at the pleasure of those who appoint them in accordance with applicable laws.

- The Accountancy Board has an annual reporting relationship to the Governor and the legislature.

- Changes to statute, regulations, and fees are formulated pursuant to due process procedures.

- Statute changes must be approved by the legislature and the Governor.

- Accountancy Boards are subject to the ethics rules and statutes of the state.

- 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.

- Accountancy Boards are generally represented by state Attorneys General and the attorney assigned to an Accountancy Board frequently attends meetings and thus are involved as appropriate in enforcement proceedings.

- 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.

- In some states, consumer groups regularly attend Accountancy Board meetings.

PERSONNEL MANAGEMENT

The Accountancy Board needs the authority to make personnel decisions consistent with state personnel policies. Vesting the Accounting Board with the authority and responsibility for personnel matters allows the board to ensure that staff competencies and levels meet the operational needs of the Accountancy Board and that employees' goals are aligned with those of the Accountancy Board.

An Accountancy Board should employ an Executive Director who serves at the pleasure of the Accountancy Board. 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 makes 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

Since the Accountancy Board is self-funded, 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 shall be borne by other state funds.

Fees received by the Accountancy Board should be deposited in a separate account under the Accountancy Board's sole control and should not be used for purposes other than for the operations of the Accountancy Board.

Revenue; Fee Setting Process

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

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, quite a few 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 Accountancy Board members, staff, legal counsel, etc., should attend meetings of significance to their 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

In order to ensure adequate revenue, provide for necessary expenditures, and plan for the future, an Accountancy Board must have authority over its budget. Oversight by the Governor and legislature through the annual reporting process provides an appropriate level of “checks and balances” to ensure that self-governance comes with an appropriate level of oversight.

ADOPTING REGULATIONS

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.

ACCOUNTANCY BOARD COMPOSITION AND APPOINTMENT PROCESS

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 small companies, and accounting and auditing experience with large 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.

- Source of Accountancy Board nominations – It is important the nominees emanate from various sources, 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

It is important to note that the ACAP Report referred to in the Introduction section above recognized the importance of financially and operationally independent boards and made the following recommendation (See Pages VII:7-VII:8):

> "(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 attest services provided by CPAs are essential to preserving trust in the financial system. Audited financial statements must be relied upon every day by investors and creditors comprising the capital markets, business owners and corporate boards, local banks and loan officers, government grantors and private donors, suppliers of commercial equipment and inventories, state retirement plans and private company 401(k) plan participants.

The income tax compliance services and broad array of business advisory services provided by CPAs also have a tremendous impact on a state's economic health and its citizens in terms of a state's GDP and state and local government's tax collections.

Thus, the public has a vital interest in the competence of CPAs and their adherence to Accountancy Board statutes and regulations, rules of professional conduct, and standards of practice. 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 and United States financial system rely. Inadequate and ineffective regulation over CPAs diminishes public trust and the health of the entire financial system. The dramatic collapse of prominent publicly-held companies in the early 2000s and, more recently, a high-profile investment fraud, testify to the importance of high ethical and professional standards and Accountancy Boards' vigilance in protecting the public.

The Introduction section above states: "NASBA believes Accountancy Boards need 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 and self-supporting Accountancy Board and the enactment of legislation to provide operational and financial independence.