

Exposure Draft

Uniform

Accountancy Act

Seventh Edition

_____, 2013

Revised Definitions

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[Note: Material being deleted is stricken. New material is underlined.]

(Comments must be received by October 17, 2013.)

EXPOSURE DRAFT OF UNIFORM ACCOUNTANCY ACT

This exposure draft contains revisions to the UAA, which are designed to incorporate a change in the definition of “attest.”

The needs of clients and the marketplace, and scope of services, are changing. Historically, even as little as five years ago, assurance and attestation services were discussed in the context of, and generally limited to, audits and reviews of historical financial statements and the UAA so defined the term “attest.” These services are the most important to the public because third parties rely on the licensee’s report concerning financial statements. As a result, they are the only professional accounting services that are reserved to licensees.

Despite this targeted focus in the UAA, the scope of the definition of attest can be impacted through a change in the referenced standards, as happened when SAS 70 was reissued as SSAE 16. Further was the question of whether other SSAE engagements should be incorporated into the definition of attest. Such a change would make the Act flexible enough so major amendments would not be needed as future developments occur in assurance standards or in marketplace demands for assurance services.

In recent years, CPAs have increasingly been asked to report on representations other than historical financial statements. Some non-CPAs have stepped in and provided such services, in some cases using CPA standards of practice to perform services, giving the impression to the public that they are as qualified as CPAs.

To deal with this issue, the proposal is to change the definition of “attest” in the UAA to include all services performed in accordance with the Statements on Standards for Attestation Engagements (“SSAEs”). This is accomplished by adding those services to the attest definition as a separate subsection in the definition, apart from the examinations of prospective financial information already covered in the definition. By so doing, we minimize changes in the provisions governing individual and firm mobility.

The exposure draft includes a more detailed explanation of the proposed revisions, as well as the text of the affected UAA statutory sections that are recommended for addition or change. Statutory provisions are in **BOLD** type. New language is underlined and language that would be deleted is stricken. To see the entire UAA and Model Rules, you may view them electronically at www.aicpa.org or www.nasba.org.

The AICPA and NASBA UAA Committees welcome your comments on the proposed revisions. **The exposure period will end on Thursday, October 17, 2013.** Please send your comments to definitionofattest@aicpa.org and lhaberman@nasba.org.

The UAA Committee plans to release in the coming weeks an Exposure Draft on firm mobility.

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July 17, 2013

1 **SECTION 3**
2 **DEFINITIONS**

3
4 **When used in this Act, the following terms have the meanings indicated:**
5

6

7
8 **(b) “Attest” means providing the following ~~financial statement~~ services:**
9

10 (1) any audit or other engagement to be performed in accordance with the Statements
11 on Auditing Standards (SAS);

12
13 (2) any review of a financial statement to be performed in accordance with the
14 Statements on Standards for Accounting and Review Services (SSARS);

15
16 (3) any examination of prospective financial information to be performed in
17 accordance with the Statements on Standards for Attestation Engagements
18 (SSAE); **and**

19
20 (4) any engagement to be performed in accordance with the standards of the
21 PCAOB; **and**

22
23 (5) any examination, review, or agreed upon procedures engagement to be
24 performed in accordance with the SSAE, other than an examination described
25 in subsection (3).

26
27 **The standards specified in this definition shall be adopted by reference by the**
28 **Board pursuant to rulemaking and shall be those developed for general**
29 **application by recognized national accountancy organizations, such as the**
30 **AICPA, and the PCAOB.**

31
32 *COMMENT:* Subject to the exceptions set out in Section 7, 14, and 23 (a)(4), these services are
33 restricted to licensees and CPA firms under the Act and licensees can only perform the attest
34 services through a CPA firm. Individual licensees may perform the services described in Section
35 3(f) as employees of firms that do not hold a permit under Section 7 of this Act, so long as they
36 comply with the peer review requirements of Section 6(j). Other attestation-professional services
37 are not restricted to licensees or CPA firms; however, when licensees perform those services
38 they are regulated by the state board of accountancy. See also the definition of Report. The
39 definition also includes references to the Public Company Accounting Oversight Board
40 (PCAOB) which make it clear that the PCAOB is a regulatory authority that sets professional
41 standards applicable to engagements within its jurisdiction.

42
43 Regarding SSAE engagements, subsection 3(b)(3) only includes SSAE engagements pertaining
44 to the examination of prospective financial information, while subsection 3(b)(5) expressly
45 includes other SSAE engagements. Thus, like other services included in this definition of
46 “Attest,” they are all restricted to licensees and CPA firms.

1
2 However, Sections 7, 14 and 23 also mandate that certain types of “Attest” services must be
3 rendered only through licensed CPA Firms. Specifically, Section 7(a)(1)(C) requires licensure of
4 an out-of-state firm even if it does “not have an office in this state but performs attest services
5 described in Section 3(b)(1), (3) or (4) of this Act for a client having its home office in this
6 state.”

7
8 By identifying the other SSAE services (that is, other services but not “examinations of
9 prospective financial information”) in a different subsection (5), they, along with the services
10 described in subsections 3(b)(2) (reviews of financial statements according to SSARS), are
11 “Attest” services restricted to CPAs, but out-of-state CPA Firms rendering these services do not
12 have to obtain a permit in every state in which they provide that type of Attest service. Hence,
13 although both 3(b)(3) and 3(b)(5) SSAE services are “Attest” services, only those SSAE services
14 included in 3(b)(3) must be rendered through CPA Firms licensed in every state in which the
15 services are provided. The differentiation between these two categories of SSAE services
16 therefore reduces the burden of multistate licensure and enhances mobility for individual
17 licensees as well as CPA Firms.

18
19 This definition of “attest” includes both examinations of prospective financial information to be
20 performed in accordance with the Statements on Standards for Attestation Engagements (SSAE)
21 as well as any examination, review, or agreed upon procedures engagement to be performed in
22 accordance with SSAE.

23
24

25
26 (s) **“Report,” when used with reference to financial statements any attest or**
27 **compilation service, means an opinion, report, or other form of language that states**
28 **or implies assurance as to the reliability of any the attested information or compiled**
29 **financial statements and that also includes or is accompanied by any statement or**
30 **implication that the person or firm issuing it has special knowledge or competence**
31 **in accounting or auditing. Such a statement or implication of special knowledge or**
32 **competence may arise from use by the issuer of the report of names or titles**
33 **indicating that the person or firm is an accountant or auditor, or from the language**
34 **of the report itself. The term “report” includes any form of language which**
35 **disclaims an opinion when such form of language is conventionally understood to**
36 **imply any positive assurance as to the reliability of the attested information or**
37 **compiled financial statements referred to and/or special competence on the part of**
38 **the person or firm issuing such language; and it includes any other form of language**
39 **that is conventionally understood to imply such assurance and/or such special**
40 **knowledge or competence.**

41
42 *COMMENT:* As has been explained in the introductory comments, the audit function, which this
43 term is intended to define, is the principal kind of professional accounting service for which a
44 license would be required under the Uniform Act. The term has its most important operative use
45 in section 14(a) of the Act, which prohibits persons not licensed from performing that function as
46 well as any attest or compilation services as defined above.

1
2 It is a point of fundamental significance that the audit function is defined, not in terms of the
3 work actually done, but rather in terms of the issuance of an opinion or a report--that is, the
4 making of assertions, explicit or implied--about work that has been done. It is such reports, or
5 | assertions, upon which persons using ~~financial statements~~ attested information (whether clients
6 or third parties) rely, reliance being invited by the assertion, whether explicit or by implication,
7 of expertise on the part of the person or firm issuing the opinion or report. Thus, this definition is
8 sought to be drawn broadly enough to encompass all those cases where either the language of the
9 report itself, or other language accompanying the report, carries both a positive assurance
10 | regarding the reliability of the ~~financial~~ information in question, and an implication (which may
11 be drawn from the language of the report itself) that the person or firm issuing the report has
12 special competence which gives substance to the assurance.
13

14 The definition includes disclaimers of opinion when they are phrased in a fashion which is
15 conventionally understood as implying some positive assurance, because authoritative
16 accounting literature contemplates several circumstances in which a disclaimer of opinion in
17 standard form implies just such assurances. The same reasoning that makes it appropriate to
18 include disclaimers of opinion in conventional form within the definition of this term makes it
19 appropriate to apply the prohibition on the issuance by unlicensed persons of reports, as so
20 defined, on "reviews" and "compilations" and other communications with respect to
21 "compilations" within the meaning of the AICPA's Statements on Standards for Accounting and
22 Review Services (SSARS), when the language in which the report or other compilation
23 communication is phrased is that prescribed by SSARS. This is done in section 14(a). These
24 prohibitions, again, do not apply to the services actually performed--which is to say that there is
25 no prohibition on the performance by unlicensed persons of either reviews or compilations, in
26 the sense contemplated by SSARS, but only on the issuance of reports or other compilation
27 communications asserting or implying that their author has complied or will comply with the
28 SSARS standards for such reviews and compilations and has the demonstrated capabilities so to
29 comply.
30

31
32

33 SECTION 7

34 FIRM PERMITS TO PRACTICE, ATTEST AND COMPILATION COMPETENCY AND PEER 35 REVIEW

36
37 (a) **The Board shall grant or renew permits to practice as a CPA firm to applicants that
38 demonstrate their qualifications therefor in accordance with this Section.**
39

40 (1) **The following must hold a permit issued under this Section:**
41

42 (A) **Any firm with an office in this state performing attest services as
43 defined in Section 3(b) of this Act; or,**
44

45 (B) **Any firm with an office in this state that uses the title "CPA" or "CPA
46 firm;" or,**

1
2 (C) Any firm that does not have an office in this state but performs attest
3 services described in Section 3(b)(1), (3) or (4) of this Act for a client
4 having its home office in this state.
5

6 (2) A firm which does not have an office in this state may perform services
7 described in subsections 3(b)(2), 3(b)(5) or 3(f) for a client having its home
8 office in this state and may use the title “CPA” or “CPA firm” without a
9 permit issued under this Section only if:

10
11 (A) it has the qualifications described in subsections 7(c) [ownership] and
12 7(h) [peer review], and

13
14 (B) it performs such services through an individual with practice
15 privileges under Section 23 of the Act.
16

17 (3) A firm which is not subject to the requirements of 7(a)(1)(C) or 7(a)(2) may
18 perform other professional services while using the title “CPA” or “CPA
19 firm” in this state without a permit issued under this Section only if:

20
21 (A) it performs such services through an individual with practice
22 privileges under Section 23 of the Act, and,

23
24 (B) it can lawfully do so in the state where said individuals with practice
25 privileges have their principal place of business.
26

27
28

29 (c) An applicant for initial issuance or renewal of a permit to practice under this
30 Section shall be required to show that:

31
32 (1) Notwithstanding any other provision of law, a simple majority of the
33 ownership of the firm, in terms of financial interests and voting rights of all
34 partners, officers, shareholders, members or managers, belongs to holders of a
35 certificate who are licensed in some state, and such partners, officers,
36 shareholders, members or managers, whose principal place of business is in
37 this state, and who perform professional services in this state hold a valid
38 certificate issued under Section 6 of this Act or the corresponding provision of
39 prior law or are public accountants registered under Section 8 of this Act.
40 Although firms may include non-licensee owners the firm and its ownership
41 must comply with rules promulgated by the Board. For firms of public
42 accountants, at least a simple majority of the ownership of the firm, in terms of
43 financial interests and voting rights, must belong to holders of registrations
44 under Section 8 of this Act. An individual who has practice privileges under
45 Section 23 who performs services for which a firm permit is required under

1 **Section 23(a)(4) shall not be required to obtain a certificate from this state**
2 **pursuant to Section 6 of this Act.**

3
4 *COMMENT:* The limitation of the requirement of certificates to partners, officers, shareholders,
5 members and managers who have their principal place of business in the state is intended to
6 allow some latitude for occasional visits and limited assignments within the state of firm
7 personnel who are based elsewhere. If those out-of-state individuals qualify for practice
8 privileges under Section 23 and do not have their principal places of business in this state, they
9 do not have to be licensed in this state. In addition, the requirement allows for non-licensee
10 ownership of licensed firms.

11
12 **(2) Any CPA or PA firm as defined in this Act may include non-licensee owners**
13 **provided that:**

14
15 **(A) The firm designates a licensee of this state, or in the case of a firm which**
16 **must have a permit pursuant to Section 23(a)(4) a licensee of another**
17 **state who meets the requirements set out in Section 23(a)(1) or in Section**
18 **23(a)(2), who is responsible for the proper registration of the firm and**
19 **identifies that individual to the Board.**

20
21 **(B) All non-licensee owners are active individual participants in the CPA or**
22 **PA firm or affiliated entities.**

23
24 **(C) The firm complies with such other requirements as the board may impose**
25 **by rule.**

26
27 **(3) Any individual licensee and any individual granted practice privileges under**
28 **this Act who is responsible for supervising attest or compilation services and**
29 **signs or authorizes someone to sign the accountant's report ~~on the financial~~**
30 **~~statements~~ on behalf of the firm, shall meet the competency requirements set**
31 **out in the professional standards for such services.**

32
33 **(4) Any individual licensee and any individual granted practice privileges under**
34 **this Act who signs or authorizes someone to sign the accountants' report ~~on the~~**
35 **~~financial statements~~ on behalf of the firm shall meet the competency**
36 **requirement of the prior subsection.**

37
38 *COMMENT:* Because of the greater sensitivity of attest and compilation services, professional
39 standards should set out an appropriate competency requirement for those who supervise them
40 and sign attest or compilation reports. However, the accountant's report in such engagements
41 may be supervised, or signed, or the signature authorized for the CPA firm by a practice
42 privileged individual.

43
44

1 **SECTION 14**
2 **UNLAWFUL ACTS**

3
4 **(a) Only licensees and individuals who have practice privileges under Section 23 of this**
5 **Act may issue a report on financial statements of any person, firm, organization, or**
6 **governmental unit or offer to render or render any attest or compilation service, as**
7 **defined herein. This restriction does not prohibit any act of a public official or**
8 **public employee in the performance of that person’s duties as such; or prohibit the**
9 **performance by any non-licensee of other services involving the use of accounting**
10 **skills, including the preparation of tax returns, management advisory services, and**
11 **the preparation of financial statements without the issuance of reports thereon.**
12 **Non-licensees may prepare financial statements and issue non-attest transmittals or**
13 **information thereon which do not purport to be in compliance with the Statements**
14 **on Standards for Accounting and Review Services (SSARS).**
15

16 | *COMMENT:* This provision, giving application to the definition of [attest in section 3\(b\) and](#)
17 | report in section 3(s) above, is the cornerstone prohibition of the Uniform Act, reserving the
18 | performance of those professional services calling upon the highest degree of professional skill
19 | and having greatest consequence for persons using [financial—statements attested](#)
20 | [information](#)--namely, the audit function and other attest and compilation services as defined
21 | herein -- to licensees. It is so drafted as to make as clear and emphatic as possible the limited
22 | nature of this exclusively reserved function and the rights of unlicensed persons to perform all
23 | other functions. ~~This wording addresses concerns that this exemption could otherwise, by~~
24 | ~~negative implication, allow non-licensees to prepare any report on a financial statement other~~
25 | ~~than a SSARS—i.e., other attestation standards.~~ Consistent with Section 23, individuals with
26 | practice privileges may render these reserved professional services to the same extent as
27 | licensees [in this state](#).
28

29 This provision is also intended to extend the reservation of the audit function to other services
30 that also call for special skills and carry particular consequence for users of ~~financial statements~~
31 [attested information](#), albeit in each respect to a lesser degree than the audit function: namely, the
32 performance of compilations and reviews of financial statements, in accordance with the
33 AICPA’s Statements on Standards for Accounting and Review Services, which set out the
34 standards to be met in a compilation or review and specify the form of communication to
35 management or report to be issued [and attestation engagements performed in accordance with](#)
36 [Statements on Standards for Attestation Engagements which set forth the standards to be met and](#)
37 [the reporting on the engagements enumerated in the SSAEs](#). The subsection is intended to
38 prevent issuance by non-licensees of reports or communication to management using that
39 standard language or language deceptively similar to it. Safe harbor language which may be used
40 by non-licensees is set out in Rule 14-2.
41

42 **(b) Licensees and individuals who have practice privileges under Section 23 of this Act**
43 **performing attest or compilation services must provide those services in accordance**
44 **with applicable professional standards.**
45

46 **(c) No person not holding a valid certificate or a practice privilege pursuant to Section**
47 **23 of this Act shall use or assume the title “certified public accountant,” or the**

1 **abbreviation “CPA” or any other title, designation, words, letters, abbreviation,**
2 **sign, card, or device tending to indicate that such person is a certified public**
3 **accountant.**

4
5 *COMMENT:* This subsection prohibits the use by persons not holding certificates, or practice
6 privileges, of the two titles, “certified public accountant” and “CPA,” that are specifically and
7 inextricably tied to the granting of a certificate as certified public accountant under section 6.

8 **(d) No firm shall provide attest services or assume or use the title “certified public**
9 **accountants,” or the abbreviation “CPAs,” or any other title, designation, words,**
10 **letters, abbreviation, sign, card, or device tending to indicate that such firm is a**
11 **CPA firm unless (1) the firm holds a valid permit issued under Section 7 of this Act,**
12 **and (2) ownership of the firm is in accord with this Act and rules promulgated by**
13 **the Board.**

14
15 *COMMENT:* Like the preceding subsection, this one restricts use of the two titles “certified
16 public accountants” and “CPAs,” but in this instance by firms, requiring the holding of a firm
17 permit to practice. It also restricts unlicensed firms from providing attest services.

18
19 **(e) No person shall assume or use the title “public accountant,” or the abbreviation**
20 **“PA,” or any other title, designation, words, letters, abbreviation, sign, card, or**
21 **device tending to indicate that such person is a public accountant unless that person**
22 **holds a valid registration issued under Section 8 of this Act.**

23
24 *COMMENT:* This subsection, and the one that follows, reserve the title “public accountant” and
25 its abbreviation in the same fashion as subsections (c) and (d) do for the title “certified public
26 accountant” and its abbreviation. The two provisions would of course only be required in a
27 jurisdiction where there were grandfathered public accountants as contemplated by section 8.

28
29 **(f) No firm not holding a valid permit issued under Section 7 of this Act shall provide**
30 **attest services or assume or use the title “public accountant,” the abbreviation**
31 **“PA,” or any other title, designation, words, letters, abbreviation, sign, card, or**
32 **device tending to indicate that such firm is composed of public accountants.**

33
34 *COMMENT:* See the comments following subsections (d) and (e).

35
36 **(g) No person or firm not holding a valid certificate, permit or registration issued under**
37 **Sections 6, 7, or 8 of this Act shall assume or use the title “certified accountant,”**
38 **“chartered accountant,” “enrolled accountant,” “licensed accountant,” “registered**
39 **accountant,” “accredited accountant,” or any other title or designation likely to be**
40 **confused with the titles “certified public accountant” or “public accountant,” or use**
41 **any of the abbreviations “CA,” “LA,” “RA,” “AA,” or similar abbreviation likely to**
42 **be confused with the abbreviations “CPA” or “PA.” The title “Enrolled Agent” or**
43 **“EA” may only be used by individuals so designated by the Internal Revenue**
44 **Service.**

1 *COMMENT:* This provision is intended to supplement the prohibitions of subsections (c)
2 through (f) on use of titles by prohibiting other titles that may be misleadingly similar to the titles
3 specifically reserved to licensees or that otherwise suggest that their holders are licensed.
4

5 | **(h)(1) Non-licensees may not use language in any statement relating to the ~~financial~~ affairs**
6 **of a person or entity which is conventionally used by licensees in reports on financial**
7 **statements or on any attest service as defined herein. In this regard, the Board shall**
8 **issue safe harbor language non-licensees may use in connection with such financial**
9 **information.**

10
11 **(2) No person or firm not holding a valid certificate, permit or registration issued under**
12 **Sections 6, 7, or 8 of this Act shall assume or use any title or designation that**
13 **includes the words “accountant,” “auditor,” or “accounting,” in connection with**
14 **any other language (including the language of a report) that implies that such**
15 **person or firm holds such a certificate, permit, or registration or has special**
16 **competence as an accountant or auditor, provided, however, that this subsection**
17 **does not prohibit any officer, partner, member, manager or employee of any firm or**
18 **organization from affixing that person’s own signature to any statement in**
19 **reference to the financial affairs of such firm or organization with any wording**
20 **designating the position, title, or office that the person holds therein nor prohibit**
21 **any act of a public official or employee in the performance of the person’s duties as**
22 **such.**

23
24 *COMMENT:* This provision clarifies the language and titles that are prohibited for non-
25 licensees. Like the preceding subsection, subsection (h)(2) of this provision is intended to
26 supplement the prohibitions of subsections (c) through (f), by prohibiting other titles which may
27 be misleadingly similar to the specifically reserved titles or that otherwise suggest licensure. In
28 the interest of making the prohibition against the issuance by unlicensed persons of reports on
29 audits, reviews, ~~and~~ compilations and reports issued under the SSAE as tight and difficult to
30 evade as possible, there is also some overlap between this provision and the prohibitions in
31 subsection (a). Safe harbor language is set out in Rule 14-2.
32

33 **(i) No person holding a certificate or registration or firm holding a permit under this**
34 **Act shall use a professional or firm name or designation that is misleading about the**
35 **legal form of the firm, or about the persons who are partners, officers, members,**
36 **managers or shareholders of the firm, or about any other matter, provided,**
37 **however, that names of one or more former partners, members, managers or**
38 **shareholders may be included in the name of a firm or its successor. A common**
39 **brand name, including common initials, used by a CPA Firm in its name, is not**
40 **misleading if said firm is a Network Firm as defined in the AICPA Code of**
41 **Professional Conduct (“Code”) in effect July 1, 2011 and, when offering or**
42 **rendering services that require independence under AICPA standards, said firm**
43 **must comply with the Code’s applicable standards on independence.**
44

45 *COMMENT:* With regard to use of a common brand name or common initials by a Network
46 Firm, this language should be considered in conjunction with Rules 14-1 (c) and (d), which
47 provide further clarity and guidance.

- 1
2 (j) None of the foregoing provisions of this Section shall have any application to a
3 person or firm holding a certification, designation, degree, or license granted in a
4 foreign country entitling the holder thereof to engage in the practice of public
5 accountancy or its equivalent in such country, whose activities in this State are
6 limited to the provision of professional services to persons or firms who are
7 residents of, governments of, or business entities of the country in which the person
8 holds such entitlement, who performs no attest or compilation services as defined
9 and who issues no reports as defined in this Act with respect to the information
10 financial statements of any other persons, firms, or governmental units in this State,
11 and who does not use in this State any title or designation other than the one under
12 which the person practices in such country, followed by a translation of such title or
13 designation into the English language, if it is in a different language, and by the
14 name of such country.
15

16 *COMMENT:* The right spelled out in this provision, of foreign licensees to provide services in
17 the state to foreign-based clients, looking to the issuance of reports only in foreign countries, is
18 essentially what foreign licensees have a right to do under most laws now in effect, simply
19 because no provision in those laws restricts such a right. The foreign titles used by foreign
20 licensees might otherwise run afoul of standard prohibitions with respect to titles (such as one on
21 titles misleadingly similar to “CPA”) but this provision would grant a dispensation not found in
22 most laws now in force.
23

- 24 (k) No holder of a certificate issued under Section 6 of this Act or a registration issued
25 under Section 8 of this Act shall perform attest services through any business form
26 that does not hold a valid permit issued under Section 7 of this Act.
27

28 *COMMENT:* See the comments following Sections 6(a), 7(a) and 8.
29

- 30 (l) No individual licensee shall issue a report in standard form upon a compilation of
31 financial information through any form of business that does not hold a valid permit
32 issued under Section 7 of this Act unless the report discloses the name of the
33 business through which the individual is issuing the report, and the individual:

- 34
35 (1) signs the compilation report identifying the individual as a CPA or PA,
36
37 (2) meets the competency requirement provided in applicable standards, and
38
39 (3) undergoes no less frequently than once every three years, a peer review
40 conducted in such manner as the Board shall by rule specify, and such review
41 shall include verification that such individual has met the competency
42 requirements set out in professional standards for such services.
43

- 44 (m) Nothing herein shall prohibit a practicing attorney or firm of attorneys from
45 preparing or presenting records or documents customarily prepared by an attorney
46 or firm of attorneys in connection with the attorney’s professional work in the
47 practice of law.

1
2 **(n)(1) A licensee shall not for a commission recommend or refer to a client any product or**
3 **service, or for a commission recommend or refer any product or service to be**
4 **supplied by a client, or receive a commission, when the licensee also performs for**
5 **that client,**

6
7 **(A) an audit or review of a financial statement; or**

8
9 **(B) a compilation of a financial statement when the licensee expects, or reasonably**
10 **might expect, that a third party will use the financial statement and the**
11 **licensee's compilation report does not disclose a lack of independence; or**

12
13 **(C) an examination of prospective financial information.**

14
15 **This prohibition applies during the period in which the licensee is engaged to perform**
16 **any of the services listed above and the period covered by any historical financial**
17 **statements involved in such listed services.**

18 **(2) A licensee who is not prohibited by this section from performing services for or**
19 **receiving a commission and who is paid or expects to be paid a commission shall**
20 **disclose that fact to any person or entity to whom the licensee recommends or refers**
21 **a product or service to which the commission relates.**

22
23 **(3) Any licensee who accepts a referral fee for recommending or referring any service**
24 **of a licensee to any person or entity or who pays a referral fee to obtain a client shall**
25 **disclose such acceptance or payment to the client.**

26
27 **(o)(1) A licensee shall not:**

28
29 **(A) perform for a contingent fee any professional services for, or receive such a fee**
30 **from a client for whom the licensee or the licensee's firm performs,**

31
32 **(i) an audit or review of a financial statement; or**

33
34 **(ii) a compilation of a financial statement when the licensee expects, or**
35 **reasonably might expect, that a third party will use the financial**
36 **statement and the licensee's compilation report does not disclose a lack of**
37 **independence; or**

38
39 **(iii) an examination of prospective financial information; or**

40
41 **(B) Prepare an original or amended tax return or claim for a tax refund for a**
42 **contingent fee for any client.**

43
44 **(2) The prohibition in (1) above applies during the period in which the licensee is**
45 **engaged to perform any of the services listed above and the period covered by any**
46 **historical financial statements involved in any such listed services.**

1
2 **(3) Except as stated in the next sentence, a contingent fee is a fee established for the**
3 **performance of any service pursuant to an arrangement in which no fee will be**
4 **charged unless a specified finding or result is attained, or in which the amount of**
5 **the fee is otherwise dependent upon the finding or result of such service. Solely for**
6 **purposes of this section, fees are not regarded as being contingent if fixed by courts**
7 **or other public authorities, or, in tax matters, if determined based on the results of**
8 **judicial proceedings or the findings of governmental agencies. A licensee's fees may**
9 **vary depending, for example, on the complexity of services rendered.**

10
11 *COMMENT:* Section 14(n) on commissions is based on Rule 503 of the AICPA Code of
12 Professional Conduct. Section 14(o) on contingent fees is based on Rule 302 of the AICPA
13 Code of Professional Conduct.

14
15 **(p) Notwithstanding anything to the contrary in this Section, it shall not be a violation**
16 **of this Section for a firm which does not hold a valid permit under Section 7 of this**
17 **Act and which does not have an office in this state to provide its professional**
18 **services in this state so long as it complies with the requirements of Section 7(a)(2)**
19 **or 7(a)(3), whichever is applicable.**

20
21 *COMMENT:* Section 14(p) has been added along with revisions to Sections 23 and 7, to
22 provide that as long as an out-of-state firm complies with the requirements of new Section
23 7(a)(2) or 7(a)(3), whichever is applicable, it can do so through practice privileged individuals
24 without a CPA firm permit from this state.
25