

Rules Comment Deadline Extended

The NASBA Uniform Accountancy Act Committee has extended its deadline for comments on the Model Rules for Continuing Professional Education until June 30, 2017. The format for the Model Rules has been significantly changed from the previous version and new forms of education are covered by these proposed rules. To assist Boards in their review and discussion of the proposed CPE Model Rules, a video related to the new instructional delivery methods of nano learning and blended learning has been placed on NASBA's website. Among the other changes included in the proposed Rules is the requirement for licensees to complete 50 percent of their CPE requirements in technical fields of study. Another rule calls for completion of an average of no fewer than 40 credits of qualified CPE, including an average of two credits of ethics, for each annual period included in the CPE reporting period. The new rules would allow participation in professional committees that meet prescribed qualifications to be awarded CPE credit. The proposed CPE Model Rules are directed to licensees, as distinct from the Statement on Standards for CPE Programs, which are aimed at guiding program developers and sponsors.

Comments are also being requested on edits to the Uniform Accountancy Act, in preparation for its Eighth Edition, which is expected to be released in the fourth quarter of 2017. Some of these changes are meant to standardize capitalization or get rid of reference

to "stenographers," while others are intended to update to current practice. For example: a definition of "preparation of financial statements" is being added and reference to the period of adoption prior to the 150-hour requirement is being deleted. The NASBA Model Code of Conduct is being deleted from the Model Rules, since State Boards are being encouraged to adopt or reference the AICPA Code of Professional Conduct as State Board participation in the AICPA's Professional Ethics Executive Committee, which oversees the Code of Conduct, has been increased. "Appendix A – Legislative Policy (Annotated)" is being deleted from the document, as this is not a joint policy. Comments on these clean ups are requested by June 1, but will be accepted through June 30, 2017.

"The Uniform Accountancy Act is intended to be an evergreen document," NASBA UAA Committee Chair Coalter Baker (TX) explained. "Our Committee strives to introduce statutes and rules that result in effective and responsive regulation. We must be ready for changes to the profession and to the global marketplace. The primary goal is always to support State Boards of Accountancy and their mission to protect the public."

The exposure drafts for both the new Model Rules for continuing professional education and the clean-up of the seventh edition of the UAA can be found on www.nasba.org. Please send all comments to lhaberman@nasba.org no later than June 30, 2017. ♦

Bishop Heralds More Transparent MRAs

The NASBA/AICPA International Qualifications Appraisal Board is developing more transparent recognition agreements for international professionals, NASBA President Ken L. Bishop told the ACAUS (Association of Chartered Accountants in the U.S.) annual meeting on March 1 in New York City. While the forthcoming edition of the Uniform Accountancy Act will include changes that would permit unilateral recognition of international professionals, the U.S. has not given up on developing and renewing mutual recognition agreements, he assured the ACAUS gathering. "If we are very far apart in coming up with a mutual recognition agreement, then we will include in current agreements what we would like to achieve in the next agreement. The agreements will identify goals and say when we expect to achieve them," he explained.

The United Kingdom's anticipated departure from the European Union has impacted the outlook for mutual recognition agreements, President Bishop observed. He predicted agreements with professional bodies from two countries will be signed by NASBA's 2017 Annual Meeting in October. Mr. Bishop and NASBA Chair Telford Lodden (IA), past chair of the NASBA/AICPA International Qualifications Appraisal Board, have been meeting with the leaders of the Chartered Accountants in Ireland and the Institute of Chartered Accountants

of Scotland to clear the way for agreements with those bodies. Talks have been going on sporadically with those organizations for over a decade, but the NASBA leaders are confident.

CAI President Pat Costello, who will be retiring this year, told the ACAUS meeting that he appreciated the work that Messrs. Lodden and Bishop have done. He said there are challenges ahead, certainly with Brexit, but he maintains the accounting profession is "in the business of trust." ♦

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Regional Calls Completed

Regional Directors for all eight of NASBA's Regions held conference calls since the January Board of Directors' meeting to bring the member Boards news of what the Board is planning, NASBA's activities, and what is happening legislatively, as well as to gather information from the Boards on what is currently happening in their states. The Regional Directors, State Board Chairs and Executive Directors were joined on their calls by NASBA Vice President – State Relations Dan Dustin and Director of Legislative and Governmental Affairs John Johnson for an overview of state house and federal legislative trends. Regions will have an opportunity for face-to-face meetings at the June Regional Meetings and the next group of conference calls will be held following the July Board of Directors meeting.

Among the activities the Boards' representatives mentioned during the calls were:

- **Georgia** – With the assistance of the NASBA Communications Department, the Board launched its first newsletter in several years.
- **Iowa** – The Board is adopting by reference the AICPA Code of Professional Conduct.
- **Maryland** – The Board has redesigned its website to be more user-friendly.
- **Montana** – The Board passed firm mobility legislation.
- **Nebraska** – The Board is now accepting more elective courses from junior colleges to meet the 150-hour requirement.
- **North Carolina** – The Board has added an electronic complaint form to its website.

- **North Dakota** – The Board is discussing making a change to address non-CPA credentials.
- **Oklahoma** – The State continues to discuss consolidation of boards.
- **Oregon** – The Board released clarification on what work "retired" and "inactive" CPAs can do.
- **West Virginia** – The Board named the NASBA International Evaluation Service (NIES) to be its exclusive provider of international experience evaluation.
- **Wyoming** – The Board is looking for a new vendor for a licensing management support system.

Messrs. Dustin and Johnson reported to each Region on the trends in legislation occurring in their neighboring states and the nation. They thanked all for sharing their information on the calls. Representatives of the NASBA Communications Committee spoke during the calls inviting all State Boards to take advantage of the free services they can provide. Currently 26 Boards have newsletters prepared by the Communications Department and others use them for e-mail blasts, videos and public service ads.

Moderating the calls were: Catherine Allen (NY), Northeast Regional Director; J. Coalter Baker (TX), Southwest Regional Director; Maria E. Caldwell (FL), Southeast Regional Director; Sheldon Holzman (IL), Great Lakes Regional Director; Stephanie S. Saunders (VA), Middle Atlantic Regional Director; Sharon A. Jensen (MN), Central Regional Director; Edwin G. Jolicoeur (WA), Pacific Regional Director; and Nicola Neilon (NV), Mountain Regional Director. ♦

New FTC Economic Liberty Task Force

Acting Federal Trade Commission Chairwoman Maureen Ohlhausen has created the Economic Liberty Task Force to focus on occupational licensing regulations. Speaking on February 23 to George Mason University's Law School, Ms. Ohlhausen reported that one of the first things the new Task Force will do is create a "special area of the FTC website focused on economic liberty." The group will be seeking to partner with stakeholders, "including state elected leaders and other officials, to eliminate and narrow overbroad occupational licensing restrictions that are not narrowly tailored to satisfy legitimate health and safety goals." She said she hopes to create "a new level of partnership with Governors, state Attorneys General, state legislative leaders and other state and local officials, to integrate competition considerations into their decision-making process."

States mentioned by Ms. Ohlhausen as giving her optimism that such partnerships would be developed based on actions already taken by those states' leaders included: Arizona, Iowa, Indiana, Missouri, Nebraska and Wisconsin. Among the reforms she cited that help remove barriers to entry and competition were those that promote reciprocity among states and that "credit work experience in place of additional educational requirements" especially for military families and veterans.

Ms. Ohlhausen's action was reflected in President Donald Trump's joint address to Congress on February 28 when he said, "We have undertaken a historic effort to massively reduce job-crushing regulations, creating a deregulation task force inside of every government agency."

"Active market participants still control many state boards that impose licensing restrictions," Ms. Ohlhausen observed. "Thus, the question revolves around whether the state is actively supervising the

board actions that displace competition. When warranted, the FTC will bring enforcement actions in appropriate cases. But advocacy and partnership will be the primary work of the FTC's Economic Liberty Task Force."

NASBA's June Regional Meetings will include a panel session moderated by NASBA Director of Legislative and Governmental Affairs John Johnson on how various groups are promoting legislation that challenges professional regulation. Representatives of states that have experienced such activity will be panelists and meeting attendees will be encouraged to share reports on efforts in their own states.

See NASBA's monthly *Legislative E-News* on www.nasba.org for details of recent activities in the legislative arena. ♦

PCAOB Public Auditor Database Up

By mid-April 2017 the Public Company Accounting Oversight Board anticipates having available to the public its complete database of engagement partners and audit firms participating in audits of U.S. public companies. Some information can already be found there. The data is collected from the *Form AP: Auditor Reporting of Certain Audit Participants*, filed by firms registered with the PCAOB for each audit report issued by a public company, as required by the PCAOB's rules adopted in December 2015. The requirement for filing Form AP for engagement partner names became effective on January 31, 2017 and will come into effect on June 30, 2017 for other accounting firms that participated in the audit.

The database allows users to find the name of the engagement partner of a specific audit. The user can also learn the name, location and extent of participation of the audit firms on the engagement. ♦

PRESIDENT'S MEMO

The Sky Is Not Falling

I have avoided writing about the infamous “North Carolina Dental Board case” for some time, in the belief that not spotlighting the topic while NASBA was working on practical solutions to the consequences of the case was the best strategy. I still believe that would be the right approach, but as others have resurrected the discussion with articles, which have been quickly picked up and reprinted or posted on various blogs, I have to speak up.

In my view, this case and the related rulings have often been misinterpreted, misapplied and exaggerated, including in some recently published articles. That being said, the fact that NASBA is spending tens of thousands of dollars working for legislative and other remedies to the threats associated with the case is indicative that we are taking it seriously. Just look at our webpage (<https://nasba.org/mc/legislativesupport/north-carolina-dental-case/>). I will admit that NASBA participated in building concern about this case as it slowly worked its way through the legal system. Early on we communicated at conferences that the court and the Federal Trade Commission had gotten it wrong based on the perceived immunity implications. Perhaps we should have been placing greater scrutiny on the conduct that led to the rulings. As our webpage shows, we have since tried to remedy that.

I am often accused of attempting to practice law, so I would caution any reader to remember that I am not a lawyer. However, I am a strong believer in trying to clearly understand intent and, as importantly, doing what is right. I am reporting based on my research, not on any legal expertise.

From the start, I began to read everything I could get my hands on coming from this case including testimony, evidence and commentary by the Justices. It was eye-opening. While I am not a legal expert, I have probably attended more Board of Accountancy meetings across the United States in the past dozen years, or so, than anyone in the country. As I read the case’s materials, I quickly realized that I had rarely, if ever, seen any U.S. Accountancy Board demonstrate or permit the type of behavior that was cited in this case. And yet, like other conscientious regulatory boards, Accountancy Boards were caught up and equally impacted by these rulings.

Let me discuss my (non-lawyer) interpretation of the Federal Trade Commission’s and the Supreme Court’s ultimate decisions. I recognize the common sense in their rulings, their logical conclusions and, most importantly, that the rulings were relatively narrow as to what regulatory boards do and the rulings were primarily focused on antitrust matters and immunity. This certainly does not eliminate the threat to boards or board members, but it does allow consideration of ways to mitigate those threats.

It is critically important to consider some of the commentary by the Supreme Court. As this was a 6 – 3 ruling, I was particularly interested in the dissenting opinions. Justice Samuel Alito began his ruling by noting “there is nothing new about the structure of the North Carolina Board” and that “self-serving by such boards is, likewise, not new.” Remembering that Justice Alito was a dissenter, I am more concerned by his comments than the technical arguments of the majority. I would argue that very few, if any, Accountancy Boards are structured as was the board in this case. In the rare instances when I have heard an Accountancy Board member raise anything close to self-serving or competitive arguments, he or she was quickly admonished by other Board members.

Real threats resulting from some of the recent articles are that they could scare away some highly qualified individuals from serving on state boards, or firms may decide not to allow their members to serve. Those would be horrible outcomes. For more than one hundred years, CPAs have stepped up to provide a balanced and fair regulatory system that results in rulings based solely on public protection and interpretation of statutes and rules. A very small percentage of those cases have anti-trust implications, but in a post North Carolina Dental Board case environment there needs to be enhanced caution and scrutiny as to how such cases are handled. NASBA has provided guidance in that area and will continue to provide support as needed to you and your counsel.

NASBA is working both unilaterally and in a coalition of other high quality regulatory associations to find remedies that provide not only protection, but also peace of mind to our volunteers who play such an important role in the regulation of the profession. In the meantime, be smart, be cautious, but remember what you do for the public and profession is critically important -- and the sky is not falling!

Semper ad meliora (Always toward better things).



Ken L. Bishop
President & CEO


— Ken L. Bishop
President & CEO

NY First in Cybersecurity Regulation

As of March 1, New York became the first state to have in effect cybersecurity regulations to protect the state's financial services industry and consumers from the threat of cyberattacks. Banks, insurance companies and other financial services institutions that are regulated by the New York Department of Financial Services are now required to establish and maintain a cybersecurity program. The regulation encourages firms to keep up with technological changes, but it also sets regulatory minimum standards including:

- Controls relating to the governance framework of the cybersecurity program (funding, staffing, oversight management, and periodic reporting to senior governing body);
- Risk-based minimum standards for technology systems (access controls, data protection, penetration testing);
- Required minimum standards to help address cyber breaches (incident response plan, preservation of data, notice to DFS of material events);
- Required identification and documentation of material deficiencies, remediation plans and annual certifications of regulatory compliance to DFS.

AICPA President Barry Melancon met with the CPA and Accountants Caucus (Rep. Michael Conaway (R-TX), Rep. Collin Peterson (D-MN), Rep. Tom Rice (R-SC) and Rep. Brad Sherman (D-CA)), on February 2 to provide an overview of the future of the CPA profession, including its efforts in cybersecurity.

Late in 2016, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency and the

Federal Deposit Insurance Corporation issued a joint advance notice of proposed rulemaking on enhanced cyber risk management standards for entities under their supervision and their service providers. On February 17, the National Association of Insurance Commissioners sent a letter in response to the notice outlining the steps they have taken to enhance data security and reporting they are working toward developing an Insurance Data Security Model Law. In concluding their comments the NAIC leaders state: "We recognize that cybersecurity and associated regulatory concerns stretch beyond the insurance sector and we encourage coordination among financial regulators as we develop strategies to protect the financial infrastructure of this country." ♦

2017 Regional Meetings

Mark your calendar for NASBA's 2017 Regional Meetings:

Western Regional Meeting – June 6-8 in Coeur d'Alene, Idaho

Eastern Regional Meeting – June 27-29 in Newport, Rhode Island.

The meetings will feature interactive sessions that allow Accountancy Board members to have time to exchange information with those from other states facing similar issues. Topics to be addressed include: professional skepticism in the age of data analytics and artificial intelligence; progress of the accreditation task force; understanding voices that oppose professional regulation; overseeing peer review program.

Registration and the meetings' details will be posted on www.nasba.org in April. ♦