

Response by the Virginia Board of Accountancy to the Economic Impact Analysis by the Department of Planning and Budget of the Board's Proposed New Regulations

1. **The Conclusion and Recommendation of the Department of Planning and Budget (DPB).** In its Economic Impact Analysis (EIA) of the new regulations the Virginia Board of Accountancy (Board) is proposing:

- a. DPB concludes, "In addition to changes that are either required by statute or are discretionary but are unlikely to have net costs attached, the Board is proposing one change to these regulations that is discretionary and may have substantial costs attached." That change is in the determination of whether holders of a Virginia license (licensees) are required to obtain continuing professional education.
- b. DPB recommends that the Board amend the proposed regulations to require basing the determination solely on whether the licensee provides certain services.

2. **The Board's Response.** DPB's conclusion that the proposed change to the regulations on determining whether licensees are required to obtain continuing professional education is discretionary and may have substantial costs attached is *incorrect*, and its recommendation that the determination be based solely on whether licensees provide certain services is *inconsistent with the accountancy statutes*:

- a. The current regulations on determining whether a licensee is required to obtain continuing professional education have been superseded by the revisions to the accountancy statutes that became effective July 1, 2007. *The proposed change to the regulations is mandatory, not discretionary.*
- b. The requirements for the determination that are now prescribed by the statutes because of the 2007 revisions are *less restrictive* than the superseded requirements. *The new requirements will not increase costs, and for some licensees will reduce costs.*
- c. Because of the 2007 revisions, *the accountancy statutes do not permit basing the determination solely on services provided.*

3. **Additional Information.** Two appendixes provide additional information that may be helpful.

- a. Appendix A discusses the reasoning underlying the Board's response and presents a roadmap for determining whether continuing professional education is required.
- b. Appendix B uses a series of practical illustrations to show how to make the determination and how the new requirements are less restrictive than the superseded requirements.

The Board would welcome the opportunity to discuss any questions or concerns.

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Appendix A—The Reasoning Underlying the Board's Response

A1. The accountancy statutes (statutes) are in Chapter 44 (§ 54.1-4400 et seq.) of Title 54.1 of the Code of Virginia, and the Board regulations (regulations) are in Chapter 21 of Agency 5, Title 18 of the Virginia Administrative Code (18VAC5-21). The current regulations that address which licensees are required to obtain continuing professional education cite as their precedent two subsections of the statutes that were repealed effective July 1, 2007. The 2007 revisions to the statutes replaced the framework for determining which licensees are required to obtain continuing professional education (framework) in the superseded statutes with a new framework.

A2. The Board's mission is to protect the public, and the Board believes continuing professional education should be required when it is necessary to protect the public. Since many licensees do not provide services to the public, the framework is structured according to two categories of services—services provided to the public and services provided to an employer.

A3. Consistent with its mission of protecting the public, the Board believes licensees who provide services to the public should be required to obtain continuing professional education. However, the number of licensees who provide services to an employer in academia, government, or industry now exceeds the number of licensees who provide services to the public. Those licensees provide a wide variety of services to their employers, and the services often do not require the use of skills a person needs to become licensed.

A4. Services provided to the public generally are three-party engagements—the licensee, the person or entity who engaged the licensee to provide the service, and one or more third-party users of the results of the service provided by the licensee. Services provided to an employer generally are two-party engagements—the licensee and the employer.

A5. While there is no bright line in applying the Board's mission to a two-party engagement, a practical approach that best protects the public is to base the determination of whether continuing professional education is required on the relative importance of the license to the employer. Two illustrations of the notion of relative importance follow.

- a. If a licensee becomes a sales representative for an entity, the fact that the person is licensed is not important to the entity and requiring him to obtain continuing professional education would not be consistent with the Board's mission.
- b. If a licensee becomes the chief financial officer or the internal auditor of an entity, the fact that he is licensed is important to the entity and requiring him to obtain continuing professional education would be consistent with the Board's mission.

A6. The Board established two criteria for assessing relative importance—whether the services the licensee provides to the employer require the use of skills that are *relevant* to determining whether the licensee should be required to obtain continuing professional education *and* whether the licensee uses those skills to fulfill a *substantial* portion of his responsibilities to the employer.

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A7. The framework added to the statutes through the 2007 revisions is based on three definitions that appear in § 54.1-4400:

- a. *Continuing professional education* means the education that a person obtains after passing the CPA examination and that relates to services provided to an employer in academia, government, or industry using the CPA title or to services provided to the public using the CPA title.
- b. *Providing services to an employer using the CPA title* means providing to an entity services that require the substantial use of accounting, financial, tax, or other skills that are relevant, as determined by the Board.
- c. *Providing services to the public using the CPA title* means providing services that are subject to the guidance of the standard-setting authorities listed in the standards of conduct and practice in subdivisions 5 and 6 of § 54.1-4413.3.

A8. Under this framework—

- a. Continuing professional education is *only required* when it is necessary to protect the public.
- b. Continuing professional education is considered necessary to protect the public when a licensee *either*—
 - (1) provides services to the public *or*
 - (2) provides services to an employer that require the substantial use of skills that are relevant to determining whether the licensee should be required to obtain continuing professional education.

A9. The *statutes do not require* a licensee to obtain continuing professional education if he does not provide services to the public *and* he does not provide services to an employer that require the substantial use of relevant skills. However, the proposed new regulations clarify that in order for a licensee who is not required to obtain continuing professional education *to begin providing* these services:

- a. He is required to have obtained at least 120 hours of continuing professional education *prior to providing* the services, including an ethics course of at least two hours.
- b. Continuing professional education obtained during the three calendar years prior to the current calendar year and from the start of the current calendar year to when he begins providing the services shall be considered in determining whether the licensee has complied with that requirement.

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- A10. **A Roadmap.** A roadmap for applying the framework prescribed by the statutes follows.
- a. Does the licensee provide services to the public?
 - (1) If the answer is *yes*, stop: the licensee is required to obtain continuing professional education.
 - (2) If the answer is *no*, go to the next question.
 - b. Does the licensee provide services to an employer in academia, government, or industry?
 - (1) If the answer is *no*, stop: the licensee is not required to obtain continuing professional education.
 - (2) If the answer is *yes*, go to the next question.
 - c. Do the services the licensee provides to the employer require the use of skills that are relevant to determining whether he should be required to obtain continuing professional education?
 - (1) If the answer is *no*, stop: the licensee is not required to obtain continuing professional education.
 - (2) If the answer is *yes*, go to the next question.
 - d. Does the licensee use those skills to fulfill a substantial portion of his responsibilities to the employer?
 - (1) If the answer is *no*, stop: the licensee is not required to obtain continuing professional education.
 - (2) If the answer is *yes*, stop: the licensee is required to obtain continuing professional education.
- A11. If a licensee is *not required* to obtain continuing professional education:
- a. He is *still permitted to use the CPA title* in Virginia.
 - b. If he begins providing services that would require him to obtain continuing professional education, he will be subject to the continuing professional education requirements prospectively and *to protect the public* will also be *subject to a catch-up requirement* that must be met *before* he begins *providing* those services.

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Appendix B—Practical Illustrations

B1. A series of practical illustrations follows to show how to determine whether a licensee is required to obtain continuing professional education under the new requirements and how the new requirements are less restrictive than the superseded requirements.

B2. **Illustration 1.** The managing partner of a CPA firm holds a Virginia license and leaves the firm to become the chief executive officer of an entity. She only provides services that would be expected of a chief executive officer. None of those services requires the use of skills that would be relevant to determining whether she should be required to obtain continuing professional education. She is therefore not required to obtain continuing professional education. (The answer would have been the same under the superseded requirements.)

B3. **Illustration 2.** Change the facts in illustration 1 so that it later becomes apparent that the chief financial officer may leave and not prepare the annual financial statements. The licensee offers to prepare the annual financial statements if the chief financial officer leaves and a replacement cannot be found in time. Preparing financial statements *requires the use of skills that are relevant* to determining whether the licensee should be required to obtain continuing professional education. *However*, the licensee has only *offered* to provide the service. *Only services provided are considered under the new framework*. She is therefore not required to obtain continuing professional education. (The answer would have been different under the superseded requirements. Since they included *offering* to provide *any* services that require the use of *accounting skills*, she would have been required to obtain continuing professional education. Because the new requirements are less restrictive, the licensee is *no longer required* to obtain continuing professional education.)

B4. **Illustration 3.** Change the facts in illustration 2 so that the chief financial officer leaves, a replacement cannot be found in time, and the licensee prepares the annual financial statements. Preparing financial statements *requires the use of skills that are relevant* to determining whether the licensee should be required to obtain continuing professional education. *However*, the licensee *does not use those skills to fulfill a substantial portion of her responsibilities to the employer*. She is therefore not required to obtain continuing professional education. (The answer would have been different under the superseded requirements. Since they included providing *any* services that require the use of *accounting skills*, she would have been required to obtain continuing professional education even though this was a special, one-time situation. Because the new requirements are less restrictive, the licensee is *no longer required* to obtain continuing professional education.)

B5. **Illustration 4.** The general manager of a car dealership holds a Virginia license. Each year, he prepares the dealership's federal and state income tax returns. Preparing income tax returns *requires the use of skills that are relevant* to determining whether the licensee should be required to obtain continuing professional education. *However*, the licensee *does not use those skills to fulfill a substantial portion of his responsibilities to the employer*. He is therefore not required to obtain continuing professional education. (The answer would have been different under the

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superseded requirements. Since they included *preparing tax returns for an employer*, he would have been required to obtain continuing professional education even though he did not use those skills to fulfill a substantial portion of his responsibilities to the employer. Because the new requirements are less restrictive, the licensee is *no longer required* to obtain continuing professional education.)

B6. *If in addition* to preparing the dealership's tax returns, the licensee *also prepares* income tax returns for a few relatives and friends *as a side venture*, he would be considered to be providing services *to the public* and is required to obtain continuing professional education. (The answer would have been the same under the superseded requirements.)

B7. **Illustration 5.** A licensee is a project manager for an entity that develops real estate. His responsibilities include analyzing potential sites for their development potential and making recommendations to the owners of the entity, preparing budgets for projects adopted, and analyzing and reporting significant variances between budgeted and actual results. The development of prospective information and the financial analyses are services that *require the use of skills that are relevant* to determining whether the licensee should be required to obtain continuing professional education. *However*, the licensee *does not use those skills to fulfill a substantial portion of his responsibilities to the employer*. He is therefore not required to obtain continuing professional education. (The answer would have been different under the superseded requirements. They included providing *any* services that require the use of *accounting skills* and *reports on financial advisory services for an employer*. Because the new requirements are less restrictive, the licensee *is no longer required* to obtain continuing professional education.)

B8. **Illustration 6.** A licensee is the development director of a not-for-profit organization. A significant part of his responsibilities is consulting with potential donors and their advisors about the income tax and estate tax planning considerations for making contributions to the organization and obtaining and allocating federal and state tax credits. Those services *require the use of skills that are relevant* to determining whether the licensee should be required to obtain continuing professional education. In addition, the licensee *uses those skills to fulfill a substantial portion of his responsibilities to the employer*. As a practical matter, the fact that he is licensed was likely an important consideration to the organization in hiring him. He is therefore required to obtain continuing professional education. (The answer would have been the same under the superseded requirements. They included *furnishing advice on tax matters for an employer*.)