



June 13, 2008

Arthur Levitt, Jr., Co-Chair
Donald T. Nicolaisen, Co-Chair
Advisory Committee on the Auditing Profession
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Chairmen Levitt and Nicolaisen, and Members of the Advisory Committee:

The Center for Public Interest Law (CPIL) respectfully submits comments on the draft report of the Advisory Committee on the Auditing Profession (ACAP).

CPIL is a nonprofit, nonpartisan academic and advocacy organization based at the University of San Diego School of Law. For 28 years, CPIL has studied occupational licensing and monitored California agencies that regulate businesses, trades, and professions, including the California Board of Accountancy ("Board" or "CBA"). For about 15 years, CPIL attorneys have attended CBA meetings and participated actively in Board business in an attempt to ensure that the Board carries out its duty to protect consumers and investors. Since 1995, CPIL has submitted wide-ranging testimony on CBA's regulation of the accounting profession during the California Legislature's periodic "sunset reviews" of the Board; that testimony is posted on CPIL's Web site at www.cpil.org. Finally, CPIL's Administrative Director has participated actively on several Board task forces, including a task force it created in 2002 to formulate recommendations for reform of accounting regulation in response to the multibillion-dollar Enron/Andersen/WorldCom accounting fraud scandals. The work of that task force resulted in the enactment of three bills reforming California's regulation of the accountancy profession during 2002.

CPIL has not extensively followed or involved itself in the details of the ACAP's instant proceeding. However, CPIL has read the draft report and recommendations, and is compelled to comment on several of them because they appear to overlook serious concerns addressed in California over the past several decades. CPIL is concerned that the composition of the ACAP includes neither consumer advocates nor any representative of a state board of accountancy. While the draft report makes sweeping recommendations that will affect both of those stakeholder constituencies, it is unclear whether and to what extent the ACAP has heard from either during this proceeding, and/or whether the ACAP has actively sought input from either. Hence this submission.

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I. Human Capital Issues Affecting the Auditing Profession

In this chapter, the ACAP's draft report focuses on issues relating to the "education, licensing, recruitment, retention, and training of accounting and auditing professionals." Recommendations #1 and #2, respectively, concern the current educational curricula (including the Uniform CPA Examination of the American Institute for Certified Public Accountants (AICPA), which is universally used to test mastery of that required curricula) and the dearth of minorities in the accounting and auditing profession. While the ACAP should be commended for exposing the data on the lack of minorities in the accounting profession, the draft report fails to examine or even question the reason for that dearth — which in part is the so-called "150-hour" education requirement in the Uniform Accountancy Act (UAA). Alarming, the draft report appears to blindly embrace the 150-hour rule in the text following Recommendation #1, while bemoaning the clear impact of the 150-hour rule admitted in Recommendation #2.

CPIL respectfully submits the following comments regarding the UAA's educational requirements, its impact on minority entrance into the accounting profession, and the Uniform CPA examination.

A. The So-Called "150-Hour Rule"

The draft report notes that, "since the 1950s, several private sector groups have studied and recommended changes to the accounting curricula..." This effort began in earnest in the 1980s, when the AICPA — a national private trade association of CPAs, advancing the interests of its largest members (the large accounting firms that audit the financial statements of publicly-traded companies) — amended the CPA licensing requirements in its "model" UAA to require a minimum of 150 hours of college-level education (including a bachelor's degree) as a condition of licensure (the "150-hour rule"). At that time, most states (including California) did not even require a bachelor's degree for CPA licensure, much less 150 hours of education (the equivalent of a master's degree). At that time, California law set forth several options that allowed applicants to substitute supervised professional accounting experience for education. Under California law at that time, candidates had three options: (a) a bachelor's degree including 45 units of coursework in accounting or related subjects, and two years of supervised general accounting experience; or (b) 120 units of college-level education, including 45 units of coursework in accounting or related subjects, and three years of supervised general accounting experience; or (c) passage of the College Level Examination Program (CLEP) exam and completion of 10 college-level semester units in accounting subjects, and four years of supervised general accounting experience. In addition, applicants for licensure had to demonstrate exposure to the "attest" function (audit) through a separate attest experience requirement for licensure.

Since the late 1980s, the AICPA's UAA (the AICPA later added the National Association of State Boards of Accountancy, or NASBA, as a co-author of the UAA) called for — as the exclusive pathway toward CPA licensure — completion of 150 hours of college-level education (including a bachelor's degree), only one year of supervised general accounting experience, and

elimination of the “attest experience” requirement for licensure. Astoundingly, the UAA to this day includes no required curriculum for the added 30 units beyond the 120-hour bachelor’s degree; the additional 30 units can literally be in any subject at all: art, ceramics, music appreciation, or athletics. This bears repeating: Under the UAA, the additional college hours do not have to be in college subjects with any nexus at all to accounting.

Through state CPA societies and NASBA, the AICPA began shopping the 150-hour rule from state legislature to state legislature, encouraging each state to amend its CPA licensing laws so that they are “substantially equivalent” to the licensure requirements in the UAA. “Substantial equivalence” became the clarion call of AICPA/NASBA during the 1980s and 1990s, ostensibly to encourage “uniform” state laws that could more readily accommodate cross-border practice needed (if at all) by accountants in the large multistate accounting firms that serve large multistate clients — a small minority of the CPA profession.

By the late 1990s, the AICPA/NASBA effort enjoyed some success. According to a 1999 survey by the Colorado Department of Regulatory Agencies, the CPA licensing laws in 21 states were deemed “substantially equivalent” to the UAA at that time, and a total of 45 states had enacted the UAA’s 150-hour rule (requiring the equivalent of a master’s degree to be licensed as a CPA) but had delayed the effective date of the new requirement.¹ The results of increasing the number of college hours required have been entirely predictable. As those provisions have taken effect, the number of people taking the CPA exam for the first time decreased by over 40%.² Articles in business journals decried the decline in the number of CPAs across the nation.³ In 1999, this crisis in the accounting profession caused one state — Colorado — to repeal the 150-hour rule before it ever took effect.⁴ Importantly, the Colorado officials reviewing the impact of the rule made the following findings:

¹ Office of Policy and Research, Colorado Department of Regulatory Agencies, *Regulation of the Accounting Profession in Colorado: Colorado State Board of Accountancy 1999 Sunset Review* (October 15, 1999) at Appendix D.

² “Countrywide, those taking the exam for certified public accountant for the first time fell 40% from 1992 to 1998.” Nanette Byrnes, *Where Have All The Accountants Gone?*, BUSINESS WEEK (Mar. 27, 2000) at 203.

³ See *id.* (“[f]or the Big Five, the problem starts on campus, where the supply of accounting graduates has dwindled precipitously over the past decade. One big reason is the requirement now in place in many states that students complete 150 hours of education before they can sit for the CPA exam. The rules, which essentially increase accounting to a five-year major, were supposed to prepare graduates for the intricacies of globalization and increasingly creative financing. Instead, they have depleted the ranks of people going into accounting”). See also Melody Petersen, *Shortage of Accounting Students Raises Concern on Audit Quality*, THE NEW YORK TIMES, Feb. 19, 1999, at A-1 (“even as the number of public companies in the United States has grown by almost 30 percent in the last decade, the number of professionals in public accounting has remained almost unchanged at about 131,000”).

⁴ In 1997, the Colorado General Assembly enacted legislation which authorized the Colorado State Board of Accountancy to adopt rules concerning the educational requirements for certified public accountants. Pursuant to this authority, the Board established rules requiring 150 hours of education, to become effective on January 1, 2002. In early 2000, the Colorado Legislature repealed this law as part of a sunset review of the State Board of Accountancy with the enactment of House Bill 00-1258. Therefore, the previously adopted rules did not become effective and 150 hours of education are not required for CPA licensure in Colorado. The requirement remains at 120 hours.

The 150 credit-hour educational requirement is an overly restrictive entry barrier into the accounting profession with no demonstrable public protection function. Adoption of the 150 credit-hour requirement is likely to raise consumer costs, entrench market power in those accountants who attain the CPA designation, and restrict competition. On the other hand, keeping the educational requirement at the Bachelor's level is in line with current entry level educational trends in both the private and public sectors, and will promote the optimum utilization of personnel.⁵

In California, efforts to enact the 150-hour rule as the sole pathway to CPA licensure have failed on **four** separate occasions:

◆ In 1991, the California Legislature declined to entertain the 150-hour rule contained in Senate Bill 869 (Boatwright) due to opposition from the Republican Administration of Governor Pete Wilson.

◆ In 1996, the California Legislature rejected a Board proposal to establish the 150-hour rule as the sole pathway to CPA licensure, and instead passed Senate Bill 1077 (Greene), which required the Board to undertake an empirical study of its examination, experience, and continuing education requirements, and the impacts of mandating the UAA's educational requirements. The resulting study (conducted by Oriel Julie Strickland, Ph.D., a professor of industrial organizational psychology at California State University at Sacramento) measured the relationship among the Board's then-existing educational options, the proposed 150-hour educational requirement, and pass rates on the May 1998 Uniform CPA exam.⁶ Her study found "**no relationship** between the number of semester units taken and performance on any of the sections of the CPA examination."⁷

Dr. Strickland's study further found that most candidates taking that particular exam had not earned 150 units. Only 37% of those taking the exam had completed 150 units.⁸ In fact, "the mode (most frequently occurring number)" was 120 units. Thus, "there are a substantial number of candidates who would be affected by an increase."⁹ Dr. Strickland noted that "candidates who have earned bachelor's degrees from a university in the University of California (UC) system"—some of our state's finest universities—are included in this "substantial number of candidates who would be affected by an increase."¹⁰ Finally, Dr. Strickland's study noted that only three states had even

⁵ Office of Policy and Research, Colorado Department of Regulatory Agencies, *Regulation of the Accounting Profession in Colorado: Colorado State Board of Accountancy 1999 Sunset Review* (October 15, 1999) at 43.

⁶ Oriel Julie Strickland, Ph.D., *California Board of Accountancy: A Series of Studies Related to the Education and Experience Requirements for Licensure in California* (June 1999).

⁷ *Id.* at 7 (emphasis added).

⁸ *Id.* at 9.

⁹ *Id.*

¹⁰ *Id.*

five years experience with the 150-hour requirement, and that these states were not similar to California.¹¹ Thus, according to Dr. Strickland, it was not possible to tell whether the requirement was having an impact on competence, or on consumer protection, or on disciplinary rates.

◆ In 2001, and despite the outcome of Dr. Strickland’s study, the California Society of Certified Public Accountants (CalCPA) nevertheless sponsored Assembly Bill 585 (Nation), seeking to require imposition of the 150-hour rule as the sole pathway to CPA licensure in California. That attempt stalled after opponents cited the Colorado findings, Dr. Strickland’s study, and other-state experience with the requirement’s impact on the entrance of minority candidates into the accounting profession (see below for details). The proponents of the legislation (CalCPA and CBA) were forced to accept a compromise in the form of two pathways to CPA licensure: (1) a bachelor’s degree (including a minimum of 24 units in accounting subjects and 24 units in business-related subjects) and two years of general accounting experience (“Pathway One”); or (2) completion of 150 college-level units (including a bachelor’s degree and 24 units in accounting subjects and 24 units in business-related subjects) and one year of general accounting experience (“Pathway Two”). California’s “Pathway Two” is deemed “substantially equivalent” to the UAA; “Pathway One” is not.

◆ As recently as March 2008, the profession tried again in California. This time, CBA sponsored Assembly Bill 2473 (Niello and Ma), which included both the UAA’s licensing requirements (specifically, the bill would have sunsetted California’s Pathway One as of 2012), and the so-called “mobility provisions” which the ACAP as an abstract matter endorses in its “Firm Structure and Finances” chapter (see below for discussion of the mobility provisions). Opponents of the 150-hour rule cited recent scholarly evaluation of the impacts of the requirement. William H. Dresnack and Jeffrey C. Strieter conducted an “extensive survey” of CPAs in states that had begun to require 150 hours of education for CPA licensure between 1993 and 1997 (including Alabama, Kansas, Louisiana, Mississippi, Montana, South Carolina, Tennessee, Texas, and Utah). Their findings — entitled *The Effectiveness of the 150-Hour Requirement*, published in 2005 in the *CPA Journal*) — include:

- “The data suggest that respondents found little or no benefit from the 150-hour requirement.”
- “71.3% of respondents indicate that the requirement has decreased the number of qualified job applicants[.]”
- “Combined, these data suggest that roughly three-quarters of CPAs do not see the 150-hour requirement as an improvement.”

Perhaps the most stinging critique of the 150-hour rule is the conclusion reached in a scholarly, industry-sponsored study by Professor W. Steve Albrecht, CPA, and Professor Robert J. Sack, CPA. Professor Albrecht is the Arthur Andersen LLP Alumni Professor of Accounting and

¹¹ *Id.* at 8. The states were Tennessee, Florida, and Hawaii.

Associate Dean of the Marriott School of Management at Brigham Young University. Professor Sack is an emeritus Professor of Business Administration at the Darden Graduate School of Business Administration at the University of Virginia. In a wide-ranging analysis of the rule, the professors recounted their survey data:

[N]early 100% of accounting educators and 79% of accounting practitioners ... stated that they would not get an accounting degree if completing their education all over again.... Six times as many practicing accountants would get an MBA as would an M.Acc., over three times as many practitioners would get a Master's of Information Systems as would get an M.Acc., and nearly twice as many practitioners would get a law degree instead of an M.Acc.¹²

And they pointedly concluded, in unqualified language worthy of emphasis:

*Given the changes taking place in the profession, the 150-hour rule is almost universally seen as a mistake.*¹³

Due to strong opposition by a diverse combination of stakeholders — elected public officials (including California State Treasurer (and former California Attorney General) Bill Lockyer, State Board of Equalization Vice-Chair Betty Yee, and San Francisco Assessor-Recorder Phil Ting), respected consumer groups (including Consumers Union, Public Citizen, and Consumer Watchdog), labor groups (including the California Nurses Association, Communications Workers of America Local 9400, International Longshore and Warehouse Union, and United Food and Commercial Workers Union, Western States Council), and the Consumer Attorneys of California, the proponents of the California legislation were forced to withdraw Assembly Bill 2473 prior to its first hearing before the California Assembly Business and Professions Committee on April 9, 2008. California Treasurer Lockyer's letter in opposition is instructive and reflective of the sentiment regarding the 150-hour rule, and it provides a segue to the next topic of CPIL concern:

AB 2473 also would create in California an unjustified barrier to gaining eligibility for a CPA license. Bachelor's degree holders no longer could become eligible for licensure by completing two post-graduate years of accounting experience. Under AB 2473, their only pathway to eligibility would be to complete 30 additional hours of college coursework in any subject [emphasis original]: The elevation of non-accounting college study over practical experience as a licensure requirement raises serious consumer protection concerns. Further, studies by scholars and the

¹² W. Steve Albrecht and Robert J. Sack, *Accounting Education: Charting the Course Through a Perilous Future* (2000), published by the American Accounting Association and available at <http://www.imanet.org/pdf/Charting%20the%20Course%20Accting%20Education%20Series-%20Vol.%2016.pdf>, Chapter 4. The study authored by Professors Albrecht and Sack was sponsored by the American Accounting Association, the American Institute of Certified Public Accountants, the Institute of Management Accountants, Arthur Andersen, Deloitte & Touche, Ernst & Young, KPMG, and PricewaterhouseCoopers.

¹³ *Id.* at Chapter 3 (emphasis added).

Board itself have shown that a requirement for additional coursework does not increase professional competence or strengthen consumer protection, and disproportionately harms the ability of minorities to enter the profession.¹⁴

B. The Impact of the 150-Hour Rule on Minority Participation in the Accounting Profession

The ACAP's draft report cites stark data concerning the unacceptable level of minority participation in the accounting profession, yet fails to identify what CPA societies and scholars across the nation have unanimously concluded: The dearth of minority CPAs is significantly due to the 150-hour educational requirement in the UAA, which has been and is still being advanced by its primary author, the AICPA, an industry trade group.

Almost a decade ago, the Florida Institute of Certified Public Accountants discussed the impacts of the 150-hour rule — first imposed in Florida in 1983 — in a 1999 article in its *Florida CPA Today* newsletter:

- “[O]ne side effect of this additional requirement was the financial burden placed on students seeking to become CPAs. In particular, minority students were hit the hardest.”
- “*Florida CPA Today* talked to several minority accounting majors who had considered switching majors at one time or other. All pointed to the extra financial burden of the fifth year as a major reason.”
- The Florida article cited the similar experience of Texas and Ohio: “In each state, the 150-hour requirement created discernible and measurable consequences for minority students.”

The results of the surveys conducted by Dresnack and Strieter (2005) confirm the experience of Florida, Texas, and Ohio. “The data suggest that the 150-hour requirement has not been an overwhelming success. ... 42.2% [of respondents indicate] that the requirement has decreased the number of qualified minority applicants. The accounting profession has had an historical shortage of qualified minority practitioners, and the 150-hour requirement does not appear to be helping.”

Rather than simply embracing the profession's suggested (and discredited) educational requirements for CPA licensure, CPIL suggests that the ACAP commission or conduct additional studies into the impact of this requirement on “the under-representation of minorities in the profession,” which the ACAP itself characterizes as “unacceptable from both a societal and business perspective.”¹⁵

¹⁴ The letters of Treasurer Lockyer and several other opponents of AB 2473 are attached as Exhibit A.

¹⁵ After the possible impact on people of color came to light in 2001, the California Legislature refused to force all potential licensees to take 150 hours of education and told the Board not to try and repeal the other pathway without studying the consequences first. (See Section 1 of Senate Bill 133 (Figueroa) (Chapter 718, Statutes of 2001.) Strangely, the study was never done but the California Board reintroduced the 150-hour rule as a part of AB 2473 nevertheless.

C. The AICPA's Improper Control Of the Uniform CPA Examination

In the "Human Capital Issues" chapter, the draft report urges unspecified improvements to the required accounting curricula and to the examination that tests competency in that curricula, specifically the Uniform CPA Examination. In its draft report, the ACAP makes the following statement:

The American Institute of Certified Public Accountants (AICPA) already regularly analyzes and updates its examination content, through practice content analysis and in conjunction with the AICPA Board of Examiners, which comprises members from the profession and state boards of accountancy.

The source of this finding is unclear. Undoubtedly, the AICPA somehow assured the ACAP of this "fact" and it went unquestioned. Like the 150-hour rule, CPIL believes it should be questioned, because California's experience with the AICPA and its control over the Uniform CPA Exam is not consistent with this assertion.

CPIL has long expressed concern about the AICPA's control over the Uniform CPA Examination. So has the California Board of Accountancy, and so has the California Legislature. All of these concerns are reflected in a July 25, 2005 letter from CPIL to CBA, which letter includes citations to and quotations from both the Board and the Legislature dating back to 1995. CPIL's July 25, 2005 letter is attached as Exhibit B for the ACAP's convenience; however, we include additional information below:

◆ In 1995 testimony to the California Legislature's "sunset review" committee, CPIL noted: "[The Board] administers the Uniform CPA exam prepared by the American Institute of Certified Public Accountants (AICPA), a national trade association. Every state uses AICPA's exam. The pass rate on this exam is extraordinarily low. Most examinees must take the test at least three times to pass all five parts; very few even attempt to take and pass all five parts on the first try, and the pass rate for those who do appears to be under 15%. Any exam which flunks this many examinees is clearly testing more than the minimum standards of competence for an entry-level CPA. Even the State Bar exam has a 50% pass rate for first-time takers (and it has no experience requirement). AICPA drafts, grades, and sets the pass point for the Uniform CPA exam. The Board's use of this exam to control supply into the CPA profession is clearly inappropriate." CPIL suggested that the Board persuade AICPA to divest itself of its role in preparing, grading, and setting the pass point for the licensing examination.

◆ In 1996, the Board agreed with CPIL, noting that "it is this Board's view that ownership and control of the Uniform CPA Examination should be assumed by an independent non-trade entity," and that it should "work toward implementation of a national examination developed and administered by a national organization in the future, with the proviso that the national organization be a non-trade association such as the National Association of State Boards of Accountancy."

◆ In its 1996 report on the Board of Accountancy, the California Legislature's sunset review committee made several findings regarding the Uniform CPA Examination: "(1) The exam given

by the board has a very low passage rate; [and] (2) the examination requirement appears to be an artificial barrier to entry into this profession and may be testing more than the minimum standards of competence necessary for an entry-level CPA.” The sunset committee noted that “the problem may really be in the use of a trade association to draft, grade, set the pass point, and validate the exam,” and recommended that the Board “work toward implementation of a national examination which will be developed and administered by a ‘non-trade’ organization.”

◆ In 1999, the California Legislature passed Assembly Bill 1105 (Jackson) (Chapter 67, Statutes of 1999), which required the California Department of Consumer Affairs (DCA), in conjunction with various occupational licensing boards, to develop and distribute a policy by September 30, 1999 which addressed (among other things) “an appropriate schedule for examination validation and occupational analyses, and circumstances under which more frequent reviews are necessary.” In compliance with AB 1105, DCA distributed on September 30, 1999 its Policy Regarding Requirements for Occupational Analyses and Examination Validation. Among other things, DCA’s policy states that “occupational analyses and/or validations should be conducted every three to seven years, with a recommended standard of five years....”

◆ As CBA approached its 2000–01 sunset review, it realized that AICPA had not conducted a full occupational analysis and revalidation of the Uniform CPA Exam since 1991 — a violation of DCA’s policy. Because of this delay, the Board and DCA were forced to dispatch a DCA psychometrician to AICPA to audit the Uniform CPA Examination in February 2000. Although the psychometrician found that the exam met legal and professional requirements and was a valid measurement of what entry-level CPAs need to know in order to practice, he conveyed eight recommendations to AICPA, only four of which were successfully resolved at the time of the Board’s December 2000 sunset review hearing.

◆ In addition to AICPA’s delay in revalidating the exam, the Board had also been concerned (and had expressed concerns to AICPA) about (1) AICPA’s commission of a serious grading error on one portion of the 1999 examination (which AICPA *failed to disclose* to state accountancy boards until *after* it had disclosed the error to state CPA societies); (2) AICPA’s decision to computerize its exam without meaningfully consulting state boards of accountancy about the details of implementing such a change and the time it would take state boards to secure the necessary legislative and administrative amendments in order to accommodate such a change; and (3) AICPA’s subsequent decisions related to contracts for the administration of the computerized examination. The Board requested that AICPA representatives attend its March 2000 meeting to address these examination-related issues. At that meeting, Board members questioned the AICPA representatives about the composition of the Board of Examiners (BOE), and expressed concern that no seats on BOE are reserved for current representatives of state boards. Board members expressed strong support for a restructuring of the BOE to ensure that (at minimum) the AICPA and NASBA share equal representation, control, and decisionmaking powers, annually rotate the BOE’s chair position between AICPA and NASBA, and ensure the regulatory boards ability to actively participate and have equal voice in all aspects of decisionmaking concerning the examination. At that meeting, the AICPA representatives committed to restructuring the composition of the BOE to provide greater representation from state boards of accountancy.

◆ In 2001 testimony to the sunset review committee, CPIL reiterated and expanded on its concern about the AICPA's continuing control over the examination: "Incredibly, this national trade association still drafts, grades, and controls the primary means of entry into this profession — the universally-used Uniform CPA Examination. Even more incredibly, the AICPA has not properly validated this exam in almost ten years. While most other national trade associations that once drafted and/or controlled occupational licensing examinations have relinquished control over such exams due to the patently obvious conflict of interest when a cartel controls entry into its ranks, this trade association refuses to budge."

◆ Once again, the Board itself agreed with CPIL's critique. In its October 2000 report to the sunset review committee, the California Board of Accountancy stated: "The foundational reason for advocating a change in the AICPA's ownership is because of a perceived conflict of interest posed by a professional association's controlling the examination instrument. The appearance of a conflict arises because the Board's regulatory mission is consumer protection, while the association's mission must necessarily be advocacy for and protection of members. Because the examination is an essential key to opening the gateway to becoming a public accounting practitioner, the exam's being owned and controlled by a trade association — rather than by an organization representing the regulatory perspective — furthers the perception that the exam is an artificial barrier into the profession, instead of an instrument to better ensure consumer protection."

◆ And once again, the California Legislature's sunset review committee agreed with CPIL and CBA. In its 2001 final report, the committee repeated its 1996 recommendation that "the Board should continue with its active role in dealing with issues involving the control, ownership, development, and administration of the Uniform CPA Examination by the AICPA....Specific to a proposed restructuring of the AICPA Board of Examiners and its related committees, [CBA should work to] ensure that at a minimum the AICPA and NASBA share equal ("50/50") representation, control, and decisionmaking powers, annually rotate the Board of Examiners' chair positions between the AICPA and NASBA, and ensure the regulatory boards' ability to actively participate and have equal voice in all aspects of decisionmaking relative to both the restructuring process and final direction, form, composition, and function of the Board of Examiners."

◆ Commencing in April 2004, and after many delays and disputes, AICPA computerized its Uniform CPA Examination. Following extensive problems with AICPA's implementation of computer-based testing, the Board once again demanded that AICPA representatives appear at its July 2005 meeting. At that meeting, CPIL questioned those representatives about their March 2000 promise to restructure the BOE. Under questioning, AICPA admitted that — although it had (in an exercise of its discretion) appointed some members to BOE who have past state board regulatory experience — it had not changed the composition of the BOE at all (much less to the "50/50" composition recommended by the California Legislature's sunset review committee).

◆ According to AICPA's Web site, the Uniform CPA Exam's last formal validation was not completed until 2000. It is now 2008. Although AICPA voted at its June 2006 meeting to commence a new validation, it is unclear whether that process is complete. Indeed, on May 1, 2008, AICPA released an exposure draft of proposed content and skill specifications for the Uniform CPA Examination, and characterized that draft as "a product of the 2008 Practice Analysis" and "a

culmination of two years of practice analysis work by thousands of contributors.” Comments on the exposure draft are not due until July 31, 2008. Because the complete revalidation was not completed prior to 2007, California’s continuing use of the exam appears to violate DCA’s Policy, as five years is the recommended interim between revalidations and seven years is the outside window for examination revalidation.

The AICPA — a national trade association — owns and controls the examination instrument used by all state boards of accountancy to control entry into the CPA profession. The AICPA owns and controls every facet of that examination, from development of the questions and the form of the exam to its administration and grading. As explained more fully in Exhibit A, all other national trade associations of licensed professionals that have ever drafted, owned, or controlled licensing examinations have long since spun off such control of those examinations to a 501(c)3 nonprofit organization unconnected with the trade association or to a coalition of state regulators, *because of the obvious conflict of interest inherent in the control by a trade association over the testing instrument used to block entry into the profession it represents and whose interests it promotes*. Rather than accepting the AICPA’s assertions about its exam, the ACAP should initiate an investigation into transference of responsibility for the exam to a more appropriate entity.

II. Firm Structure and Finances

In this chapter, the draft report addresses — among many other things — the regulatory system applicable to auditing firms. In Recommendation #2, the ACAP calls for “greater regulatory cooperation and oversight of the public company auditing profession to improve the quality of the audit process and enhance confidence in the auditing profession and financial reporting.” To achieve this goal, the ACAP recommends that states substantially adopt the mobility provisions of UAA Fifth Edition (as amended by the AICPA and NASBA less than one year ago, in July 2007).

For many years, the accounting profession — and especially the largest accounting firms — have been advocating the need for what it sometimes calls “mobility” or “ease of cross-border practice” by CPAs and CPA firms. The largest accounting firms have offices in every state and many nations; these firms want to be able to send their CPA employees wherever they are needed, and they sometimes need their CPA employees to be able to practice public accountancy in states where they do not hold a license. Many of their clients — both audit and tax clients — are companies that do business in many states, and those clients do not want to have to retain a CPA in each state in which they do business. None of this is unreasonable.

The problem — as will be seen with this recommendation as it addresses mobility — stems not from its diagnosis but its prescription. CPIL has no objection to mobility *per se* and has not opposed most California efforts to enhance it. But to anyone intimately familiar with the UAA’s mobility provisions — such as the many labor organizations, consumer groups, and public officials who recently and successfully opposed enactment of those provisions in California, it is apparent that these provisions entirely lack the basic, widely accepted, *de minimis* consumer protections that have hallmarked state regulation of the profession for more than a century; protections so basic that any model law without them simply cannot be endorsed, especially by those knowledgeable as to how deeply troubled this profession has been revealed to be in the last decade.

A. The Urgent Need for Vigorous Regulation

Each of this nation's 55 states and territories has an accountancy board, and each state's accountancy board licenses and regulates CPAs who practice "public accountancy" in that state. Most of these boards "license" individual CPAs and "register" CPA firms/partnerships/corporations.

States — not the federal government — regulate the accounting profession. While the PCAOB and the SEC may bar a CPA from practicing before them, impose fines, and even refer matters for criminal prosecution, states set minimum requirements for the CPA license; states pursue by far the most discipline; and states disclose to their residents — or not — the disciplinary and/or criminal record of their licensees. Crucially, absent a federal regulator with similar powers, only a state is empowered to remove from a CPA the license to practice as a CPA.

As the California Board's Web site rightly observes:

From the beginning of the 20th Century, consumer protection has been the undertaking of the Board. A December 1, 1913, letter to Governor Hiram Johnson signed by Secretary-Treasurer Atkinson states, "For the further protection of the business public, a statute should be enacted regulating the practice of public accounting so as to require all persons holding themselves forth as being qualified to obtain from this Board the certificate of certified public accountant. Public accounting is now generally recognized in business to be of such importance that a standard should be set by public authority and no one allowed to practice without proper credentials."¹⁶

We impose the extraordinary burden and restraint of trade of licensure on some professions because we deem them so potentially and irreparably injurious to consumers that we need to assure ourselves — through mandatory education, experience, examination, and continuing education — of the competence and integrity of licensees *before* they have a chance to hurt a consumer.

Harm *prevention* is the core reason for licensure. Where accountancy is concerned, the need for prevention is particularly emphatic. As Enron, WorldCom, Tyco, and the like show, this is because no after-the-fact discipline imposed upon a CPA's license can restore a consumer's good name, fortune, pension, or the fruits of a lifetime of hard work and thrift.

It is useful to pause to reinforce the present need for this profession to be regulated vigorously and effectively by the states in the absence of federal regulatory mechanisms comparable to those of the states. The Enron, Tyco, WorldCom, and many other accounting fraud scandals were all at bottom failures of the accounting profession to abide by its essential role as independent auditors of the financial statements of publicly-traded companies.

The result of these accounting misdeeds has been broadly devastating for millions of investors and families. Millions of working families lost their pensions and their life savings. This devastated not just the immediate families, but children who lost inheritances as well.

¹⁶ <http://www.dca.ca.gov/cba/history.htm>

Having devastated the pensions of millions of working families, it now appears that the accounting profession has played a significant role in ruining the equity in their homes as well, while pushing the nation into a credit-crunch driven recession. Consider this from the *New York Times* on March 27, 2008:

A sweeping five-month investigation into the collapse of one of the nation's largest subprime lenders points a finger at a possible new culprit in the mortgage mess: the accountants. New Century Financial, whose failure just a year ago came at the start of the credit crisis, engaged in "significant improper and imprudent practices" that were condoned and enabled by auditors at the accounting firm KPMG, according to an independent report commissioned by the Justice Department.

Sadly, there is more. A 2003 report of the U.S. Senate Permanent Subcommittee on Investigations, Committee on Government Affairs entitled *U.S. Tax Shelter Industry: The Role of Accountants, Lawyers, and Financial Professionals* states:

The sale of potentially abusive and illegal tax shelters has become a lucrative business in the United State, and some professional firms such as accounting firms, banks, investment advisory firms, and law firms are major participants in the mass marketing of generic "tax products" to multiple clients. During the past ten years, professional firms active in the tax shelter industry have expanded their role, moving from selling individualized tax shelters to specific clients, to developing generic tax products and mass marketing them to existing and potential clients. No longer content with responding to client inquiries, these firms are employing the same tactics employed by disreputable, tax shelter hucksters: churning out a continuing supply of new and abusive tax products, marketing them with hard sell techniques and telemarketer cold calls; and taking deliberate measures to hide their activities from the IRS.

More stringent scrutiny of CPAs is certainly justified by such a record. As will be seen, however, the UAA mobility precepts recently turned back by the California Legislature upturn and frustrate this harm prevention *raison d'être* of licensure.

B. The UAA, California, and Mobility: A California Legislative Defeat Is Followed by a Quick, Radical Amendment to the UAA

The UAA contains uniform licensing requirements that the profession wants every state to enact and, in fact, 47 of the 55 jurisdictions in the United States and its territories have enacted those licensing requirements. As discussed above, when a state adopts the UAA's licensing requirements, the term of art used to describe those licensing requirements is that they are "substantially equivalent" to those in the UAA. California has two pathways to CPA licensure; one of them is deemed "substantially equivalent" to the UAA.

Up to and until July 2007, the UAA's Section 23, pertaining to "cross-border practice," permitted a CPA licensed in one "substantially equivalent" state (say, New Mexico) to practice

public accountancy in another “substantially equivalent” state (say, California) without having to get a full license from California so long as the CPA notifies the state board of accountancy in California that he is going to practice there.

The idea is that New Mexico, whose licensing standards are “substantially equivalent” to those in the UAA, has already licensed this CPA — it has required him to pass the Uniform CPA Exam and to meet the education and experience requirements of the UAA. If California has the same licensing requirements, why should California require him to go to the cost, time, and trouble of getting a California license? And if he, say, commits fraud in California, California ought to be able to discipline him directly or refer him to the New Mexico Board of Accountancy and depend on its “sister board” to appropriately discipline him.

Prior to January 1, 2006, California had not enacted Section 23 of the UAA or any other provision allowing cross-border practice by an out-of-state CPA so long as he notifies the California Board of his practice here. Prior to January 1, 2006, out-of-state CPAs and foreign CPAs were allowed to practice public accountancy in California without notice to the Board so long as that practice was “temporary” and “incidental to” accounting practice in the CPA’s home state or nation (former California Business and Professions Code section 5050).

However, neither of those terms was ever defined in statute or regulation — thus allowing non-California CPAs to freely practice here, without notifying the Board, upon their own self-determination that their practice was “temporary” and “incidental to” accounting work done in their home state or nation. Such a policy did not protect consumers, and it also did not protect legitimate out-of-state CPAs who worked here in the mistaken belief that their practice was “temporary” and “incidental to” practice in their home state. If the out-of-state CPA interpreted “temporary” or “incidental to” incorrectly, the California Board could charge him or her not only with unprofessional conduct but also with the unlicensed practice of public accountancy in California.

And importantly, the accounting profession has publicly admitted that some of its pre-January 1, 2006 tax practice in California was illegal, because it exceeded the allowable “temporary and incidental” limit. In the words of a lobbyist representing the Big Four Accounting Firms at a March 7, 2006 meeting of a Board working group, “some of the tax practice was neither temporary nor incidental. It was undertaken pursuant to a longstanding, continuing professional relationship, and was thus illegal.”

In 2003, the California Board created a task force and charged it with drafting a legislative provision that would both allow cross-border practice by out-of-state CPAs and protect the public at the same time. This task force met frequently throughout 2003–04. Although the process was not dispute-free, the result was a consensus product that was not opposed by any stakeholder (including the accounting profession and CPIL). The result of this work directly implemented Section 23 of the UAA and was incorporated into Senate Bill 1543 (Figueroa). SB 1543 enacted Business and Professions Code section 5096 *et seq.*, which creates the “practice privilege” program. Under this program, out-of-state CPAs who are licensed by another U.S. board of accountancy and meet certain qualifications may apply for a “practice privilege” which enables them to practice public

accountancy in California for a year without a California CPA license. Currently, this program simply requires a CPA to fill out a four-page form (consisting mostly of check-boxes), pay \$100, and the CPA may practice in California without limitation for a year.

Although SB 1543 was enacted in 2004, the practice privilege program provisions did not become effective until January 1, 2006, because the Board needed to adopt regulations to “flesh out” the details of the program during 2005.

On April 1, 2005, the Board published notice of its intent to adopt regulations implementing the practice privilege program statutes, and received public comments on the proposed regulations for a 45-day period. During the comment period, most of the comments received by the Board were from out-of-state CPAs who wanted to continue filing individual tax returns for California residents. These out-of-state CPAs argued that their clients had formerly resided in their home state, had relocated to California, and wished to continue their professional relationship. These CPAs questioned the need to obtain a license or practice privilege in order to be able to file a small number of individual tax returns in California.

In response to these comments, the Board decided to draft proposed legislation exempting the preparation of “tax returns for natural persons who are California residents or estate tax returns for the estates of natural persons who were clients at the time of death” from the California CPA license, practice privilege, and CPA firm registration requirements, so long as the out-of-state CPA or CPA firm does not physically enter California, does not solicit California clients, and does not assert or imply that the CPA or firm is licensed or registered to practice public accountancy in California. The draft legislation also reserved the Board’s right to adopt regulations to “limit the number of tax returns that may be prepared” pursuant to this provision.¹⁷ On June 22, 2005, this language was inserted into Senate Bill 229 (Figueroa) as new Business and Professions Code section 5054, which was subsequently passed by the Legislature and signed by the Governor. (CPIL did not oppose this change.)

Thus, effective January 1, 2006, an out-of-state CPA may practice public accountancy in California in any of three ways:

(1) He can get a license from the Board. This would allow him to establish a “principal place of business” in California and offer all public accountancy services in California.

(2) He can get a practice privilege from the Board. Tracking Section 23 of the UAA as it then existed, an out-of-state CPA can secure a practice privilege by completing a simple four-page form on the Board’s Web site and emailing it to the Board (which takes about 20 minutes) and by mailing a check for \$100 to the Board. The privilege entitles a qualified CPA to practice public

¹⁷ At the time, CalCPA asked the Board to expand the proposed exemption to the preparation of “all tax returns” (such as business/corporate tax returns), but the Board resisted. Board members stressed that (1) the narrowness of the exemption is what makes it acceptable, (2) it directly and narrowly responds to most of the comments on the proposed regulations, and (3) out-of-state CPAs who wish to engage in public accountancy beyond that envisioned in the narrow exemption can get a practice privilege.

accountancy in California without limitation for one year. An out-of-state CPA may qualify for a practice privilege in any of three ways: (1) the CPA must be licensed by a state with licensing requirements that are “substantially equivalent” to those in the UAA (as mentioned above, 47 of 55 U.S. jurisdictions are deemed “substantially equivalent”); (2) the out-of-state CPA may request certification of his/her individual qualifications as “substantially equivalent” by NASBA; or (3) the CPA must have practiced public accountancy under a valid license issued by another state for four of the past ten years.

In signing the notification form, the out-of-state CPA consents to the disciplinary jurisdiction of the Board, and the Board may “administratively suspend” the privilege without notice to the privilege holder if the Board receives a complaint about the holder, discovers that the holder lied on his application, or the holder acquires any one of the disqualifying conditions (Business and Professions Code section 5096.4).

Finally, if the out-of-state CPA who gets a privilege works for a CPA firm that is not registered in California and the CPA wishes to be able to practice public accountancy on behalf of his firm (that is, “sign on behalf of the firm”), the firm must be registered by the California Board of Accountancy — which requires merely that one of the firm’s partners be fully licensed as a CPA by the Board.

(3) If his California practice is limited to the tax return preparation services authorized by section 5054, he is exempt from both the licensure and practice privilege requirements. If the only public accountancy service the out-of-state CPA or CPA firm is going to provide is the preparation of “tax returns for natural persons who are California residents or estate tax returns for the estates of natural persons who were clients at the time of death,” the out-of-state CPA or CPA firm does not have to do anything. New section 5054, as added by SB 229 (Figueroa) in 2005, exempts that CPA/firm from California’s licensure, practice privilege, and firm registration requirements. As noted above, there are conditions to this “authorization” to file these tax returns — the out-of-state CPA/firm may not physically enter California, may not solicit California clients, and may not assert or imply that the CPA or firm is licensed or registered to practice public accountancy in California.

Although it actively participated in the drafting of and supported both SB 1543 in 2004 and SB 229 in 2005, the California accounting profession — within months after the practice privilege program became effective in January 2006 — asserted that, rather than facilitating cross-border practice, the new practice privilege program was causing significant disruption in its ability to serve clients across state lines. Although the profession never provided documentation or even an estimate of the concrete number of consumers, CPAs, and/or CPA firms actually daunted by the new program, it contended that the following problems occurred:

Problem #1. Some foreign CPAs must occasionally practice public accountancy in California. They used to do this under section 5050’s “temporary and incidental” exception to the licensure requirement, but that provision had been repealed. And foreign CPAs do not qualify for a California practice privilege unless they are licensed by another state in the United States.

Problem #2. Some out-of-state CPAs file tax returns for California consumers and businesses. These tax returns were previously filed by those same out-of-state CPAs under section 5050's "temporary and incidental" exception to the licensure requirement — which had been repealed. (It bears repeating: The profession publicly admitted that at least some of its pre-2006 tax practice was neither "temporary" nor "incidental to" home-state practice. It was undertaken pursuant to a lengthy, ongoing professional relationship and was illegal under prior section 5050.) Thus, those out-of-state CPAs must now either (1) limit their tax practice to that allowed by section 5054, or (2) obtain a practice privilege.

Problem #3. Some out-of-state CPAs may not qualify for a practice privilege. This assertion was made primarily by the four largest accounting firms; however, it is difficult to believe that they would hire CPAs who — in large numbers — fail to qualify for a practice privilege under any of the three methods described in the statute. As noted above, the profession produced no data regarding the number of CPAs who were not able to qualify for a practice privilege.

Problem #4. Some out-of-state CPAs who need to practice public accountancy in California must be able to sign on behalf of their firm, thus requiring the firm to be registered in California. These individuals argued that there was insufficient time to secure a firm registration prior to the deadline to file tax returns. A firm registration applications costs \$1,800, takes months to process by CBA and the California Secretary of State, and requires the out-of-state firm to have at least one partner who is fully licensed in California.

Each of these problems was addressed in 2006 by the enactment of Assembly Bill 1868 (Bermudez). Problems #1, #2, and #3 above were addressed through an amendment to Business and Professions Code section 5050 which temporarily restores "temporary and incidental" practice for out-of-state and foreign CPAs (subject to several conditions which were not part of the pre-2006 "temporary and incidental" law). To protect the public, AB 1868 also added new sections 5050.1 and 5050.2; these sections confer jurisdiction on the Board to discipline any CPA or firm that practices public accountancy in California, and authorize the Board to adopt regulations to implement the "temporary and incidental" statutes. Finally, Problem #4 above was addressed through the addition of new section 5096.12, which currently exempts out-of-state CPA firms from the California firm registration requirement when they practice public accountancy in California through a single CPA employee who secures a privilege via the four page form. In other words, firm registration is now entirely unnecessary for an out-of-state firm whose CPA employee practices in California under a practice privilege — there is no need to spend \$1,800 or months getting registered, because the requirement has been waived. The confluence of new sections 5096.12 and 5050.1 authorize CBA to assert enforcement jurisdiction over both the individual out-of-state CPA and his/her unregistered firm when practicing public accountancy in California.¹⁸

Early versions of AB 1868 also sought to permit anyone claiming to be a CPA and residing in another state to provide "tax services" (undefined) to Californians without first notifying the Board. CPIL, in lobbying successfully against this provision in 2006, centerpieced then-Section 23 of the UAA which, at that time, unambiguously required out-of-state CPAs to notify the Board before providing services here, exactly as required by the four-page form. Confronted by the

¹⁸ Again, CPIL opposed none of these changes.

opposition of consumer groups and the California Attorney General, and in violation of then-UAA Section 23, this part of AB 1868 was deleted from the bill.

The dates here are significant. The profession and the Board sought to eliminate the practice privilege program — the “notice” required by UAA Section 23 — for the provision of “tax services” mere months after it went into effect in January 2006. After the defeat of the “tax services” provision, and literally before the ink was dry on the reforms enacted by AB 1868 to assist mobility, the AICPA and NASBA quickly moved to amend the UAA to delete the notice requirement from Section 23. That amendment became effective in July 2007.

C. The New UAA, AB 2473, And Controversy

Once more, the Board and the profession returned to the California Legislature, this time in 2008 with a new UAA embracing the new (and current) mobility provisions. These UAA-inspired provisions were included (along with the 150-hour rule) in the aforementioned Assembly Bill 2473 (Niello and Ma). AB 2473 was the result of heavy AICPA/NASBA/professional society advocacy before the California Board (and before every other state board of accountancy) throughout 2007–08 — the proponents billed the proposal as the “no-notice / no-fee / no-escape” law, because the proposal sought to wipe out the notice requirement, eliminate the fee (which might help state boards to police the conduct of out-of-state CPAs), and ostensibly subject an out-of-state CPA to in-state board disciplinary action for misconduct.¹⁹

Key to the UAA’s current mobility provisions is the notion that each state should be able — on faith — to rely upon the resources, licensing and enforcement policies and practices (including their Internet disclosure of accurate information about the disciplinary and criminal histories of CPA licensees), and regulatory vigor of other states and foreign nations — even though no one (AICPA included) has ever comprehensively studied the efficacy of these boards. AB 2473 was no exception.

Following the lead of the UAA’s mobility provisions, AB 2473 sought to permit any person from literally any foreign country (Nigeria, for example) or state who claims to be a CPA to practice in California without limit on the services they can provide and without first notifying the California Board to give the Board a chance to check to see if the person is, in fact, a licensed CPA — let alone a convicted felon. During CBA debate on the proposal, the Board’s own staff warned:

Under this [cross-border] option, the Board would be unable to perform any ‘front end’ checks to make sure a practitioner engaged in cross-border practice is duly licensed and has not been disciplined or convicted of a crime ...

This option would permit unrestricted practice by practitioners who have been convicted of a crime until the state of principal place of business takes appropriate discipline.

Cross-Border Practice Issues, provided to the CBA for its November 2007 meeting, at pages 3-4.

¹⁹ Recall that California had already enacted the “no escape” aspect of new Section 23 in 2006, with the addition of section 5050.1 in Assembly Bill 1868 (Bermudez).

1. Testing The Assumption

It is useful to examine the assumptions upon which the UAA's mobility provisions are grounded. Is it, for example, really all that burdensome for an out-of-state CPA to practice in California under the old UAA regime of prior notice?

Recall that under current California law, if a CPA from another state wants to practice here, he or she can fill out a four-page form (mostly consisting of check boxes) and pay (at most) \$100. That CPA is then allowed to practice here without limitation for a full year. The online form is available at <http://www.dca.ca.gov/cba/forms/ppnotify.pdf>, and it is attached as Exhibit C.

This short form has huge significance for consumers. As the warning from Board staff quoted above reflects, the form allows the California Board an opportunity to check that someone is who and what they say they are before the person from out-of-state or another nation can lawfully provide services that could forever ruin the lives of California families and small businesses.

And, crucially, the practice privilege form allows a Californian — again, *before* she risks her life savings — to go to a California Web site and see if someone is in fact lawfully allowed to practice here because that person has met the qualifications California imposes for minimum competence, training, and ethics.

Yet this short form is the supposed barrier to out-of-state CPAs providing services to Californians, justifying the cross-border provisions of AB 2473 and the UAA. This requires emphasis: this simple form, less complex than a 1040EZ tax form, is supposedly so daunting to a CPA — a CPA! — that CPAs are *en masse* unwilling to seek opportunities in this, the world's sixth-largest economy and the several states.

Not surprisingly — and this too requires emphasis — not a single human being or accounting firm from anywhere has ever come forward to admit that they are in fact not providing services in California because of the existence of the four-page practice privilege form. *Not one.*

Indeed, filling out fifty of them would take a secretary just several hours.

The “problem” the cross-border portions of the UAA and AB 2473 seek to address is, with enormous respect to the authors of the UAA, but bluntly put, both preposterous and fictitious. No CPA that we would want to practice anywhere would be daunted by the brief California practice privilege form, or even fifty of them. And, apparently, none have been.

The existence of any “problem” with cross-border ambitions is further undermined when one more closely scrutinizes the flexible options available to out-of-state CPAs under current law. Recall, in 2006 the California Legislature addressed the problems with registering CPA firms in California. Business and Professions Code section 5096.12 *entirely exempts* out-of-state CPA firms from the California firm registration requirement when they practice public accountancy in California through a CPA employee who secures a practice privilege for \$100.

As well, and as described above, California law offers ample flexibility for someone from another state who needs to be here but briefly, while retaining minimal protections. An out-of-state CPA whose practice requires him to practice temporarily in California is legally permitted to do so without filing any form at all – so long as his practice is actually “temporary” and “incidental to” his main practice in his home state or country. And section 5054 allows out-of-state CPAs to file individual tax returns in California without a California license or a practice privilege. This provision was adopted to accommodate longstanding CPA-client relationships when the client moves out of state.

CPIL opposed none of these flexible options. CPIL does not oppose mobility *per se*, just mobility that frustrates entirely the core harm prevention purpose of state regulation and licensure.

As detailed above, there may have been problems with the “practice privilege” program — *not the form itself*— when it was rolled out, but *those problems were all addressed by the additions to law just discussed*.

The stubborn fact endures: Nobody who claims to be a CPA has ever stepped forward to argue that the four-page form required by California is in and of itself a daunting barrier to their wanting to earn money from Californians. Claims that the UAA as it existed for twenty-plus years — honoring state regulation by requiring states to be notified in advance when someone who claims to be a CPA from elsewhere wants to practice in another state so that state can check on his *bona fides* — somehow actually inhibits firms or individuals from practicing wherever they want are, based on California’s experience, just claims — unsubstantiated claims.

2. **A Solution to a Non-Problem That Creates Numerous New Problems for Small Businesses and Families**

Inspired by the UAA, AB 2473 sought to delete provisions of current California law that require foreign or out-of-state residents claiming to be CPAs to complete and submit the practice privilege form to the Board before they provide services to California families and businesses.

True, the bill also tried to impose certain conditions on who from another country or another state can practice here, but — without notice — there would be no way for the Board to check first to make sure those requirements are met *before* someone from out-of-state provides services that could devastate the financial lives of families or small businesses.

Again, this is why the Board of Accountancy’s own staff warned that:

Under this [cross-border] option, the Board would be unable to perform any ‘front end’ checks to make sure a practitioner engaged in cross-border practice is duly licensed and has not been disciplined or convicted of a crime ...

This is also why the Board’s Chief of Enforcement voiced concerns about the proposal at a public meeting, and why the California Department of Consumer Affairs opposed it outright:

By removing the notification requirement for out-of-state licensees the [Board] will have no way of knowing who and how many out-of-state licensees are practicing in California. The Department fears that this policy could encourage unqualified individuals to practice in California and lead to a decline in consumer protection.

(See Exhibit D: February 6, 2008 letter from California Department of Consumer Affairs Director Carrie Lopez to CBA President Donald Driftmier, saying that the DCA must “respectfully oppose the [Board’s] proposed revisions to the Business and Professions Code ... known as cross-border practice.”)

Proponents of the UAA’s “no notice” mobility approach have argued that the same situation exists under current law. Under current law, they contend, an out-of-state person claiming to be a CPA in good standing could elect to break the law and provide services here without completing the form that gives the Board a chance to verify their qualifications first. *But here is the critical difference:* Under current law, a Californian can go to the California Board’s Web site and differentiate between those who have filled out and submitted the form and those who haven’t. Those whose names do not appear there are not lawfully allowed to practice here. Those that are listed there may lawfully do so.

Under AB 2473, in contrast, California consumers would not be able to consult their own state regulator to distinguish between those who are here legally and those who are not, because everyone will appear to be here legally. Felons, fakes, those with revoked licenses, and those with disciplinary proceedings pending will be invisible to the Board and hence the consumers the Board is supposed to protect.

Proponents of AB 2473 countered by arguing that Californians can travel the Internet or make phone calls to other boards and look up the records of the out-of-state CPAs in their home states. But incredibly, and consistent with the UAA’s treatment of all states as identically vigorous in their enforcement, *the Board did not look at the Web site of even a single state or make even a single phone call to another board to see if in fact other state boards disclose such information. Not a single state was studied, let alone 49 other states, let alone foreign nations.*

The *Orange County Register*, in a January 2008 piece stingingly critical of the Board’s astonishing lack of due diligence, did its own analysis and found that only 19 states have Web sites comparable to California’s. (The article and other media articles addressing AB 2473 are attached as Exhibit E.) Is this accurate? At the time, we didn’t know (but see below for more recent information). What is incontestable, though, is that before the Board moved to erase the visible differences between felons and CPAs in good standing based on what is publicly available in other states, it should have first checked to see if its assumption was true. And by extension, the ACAP should perform due diligence before sweepingly recommending that all states adopt the UAA’s mobility provisions.

In January 2008, California Senate President pro Tempore Don Perata asked the Board to perform just such a study before seeking legislative approval of the mobility proposal embraced in

AB 2473. (Senator Perata's letter is attached as Exhibit F.) The Board failed to do so. The ACAP would be wise to commission a similar study before it blesses the UAA's mobility provisions.

Recent revelations demonstrate just how prescient Senator Perata and the *Orange County Register* were, and, by short extension, how the premise undergirding the UAA's mobility — that all states' regulatory programs are equally trustworthy and efficacious — is sadly mistaken. At CBA's May 2008 meeting, Board staff revealed the results of its attempts to verify the information on 2,658 practice privilege notices. Staff tried to compare the information on the forms to the information available on the Web sites of other state boards: licensee name and address of record; licensee information and status; qualifications; disciplinary actions; and qualification to do attest work.

Staff was able to verify these items for 1,005 practitioners. Of the remaining 1,635 notice forms, fully "892 were still in a pending status **due to inadequate information available on the other state boards' Web sites.**" Attached to the letter is a worksheet listing 30 state boards whose Web sites fail to provide even the most basic information about CPA licensees. Thus, according to the California Board of Accountancy, only 19 state boards (an exact match with the *Register* analysis) have Web sites that provide consumers with the minimal information required in order to enable consumers to avoid retaining a CPA whose license has lapsed or expired, or who may have been subject to grievous discipline. (See Exhibit G: Letter from CBA Executive Officer Carol Sigmann dated May 27, 2008.)

Phrased differently, **consumers in 30 states are currently unable to go to their own state board Web site and check on the basic *bona fides* of CPAs.** And if California had enacted AB 2473, there would be no way for Californians to distinguish between someone who is truly a licensed CPA from another state and someone who is not.

Because of our modest notice requirement, however, Californians may currently distinguish between the licensed and the unlicensed by going to the Web site of the only government agency anywhere in the world with the "paramount" duty to protect and safeguard them from being harmed in the first place by CPAs with troubled pasts and unlicensed charlatans claiming to be CPAs.²⁰

Even assuming that all 49 other states, the territories, and foreign nations in fact had Web sites that reveal basic information about their licensees, a Web site cannot disclose discipline that its regulator didn't impose. As important as what is disclosed is whether in fact all the other states and nations on the earth are equally vigilant and strict in disciplining licensees as is California, such that each state can in fact trust other regulators to protect its citizens in a way ACAP would deem minimally acceptable.²¹

²⁰ California Business and Professions Code section 5000.1 states: "Public protection shall be the highest priority of the California Board of Accountancy in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be **paramount**" (emphasis added).

²¹ In at least one high profile matter that CPIL has been tracking, California appears to have been far more protective of its consumers than another state. Messrs. Mullen and Trauger were CPA colleagues working together for Ernst & Young in San Francisco. Trauger was licensed by California; Mullen was licensed by Washington. In September 2003, the SEC

The California Board failed to perform due diligence on this core question. We urge the Advisory Committee not to make the same mistake by accepting the raw claim that the several states are each and collectively so sufficiently vigorous and similar and well-resourced as to warrant mobility without harming consumers. Do not simply assume without your due diligence that the claims underlying mobility are true. In California's experience, they are not.

Proponents of "no notice" mobility may counter by arguing that the Board's primary remedies for consumer harm have always been after-the-fact ones. They have been heard to argue that the Board always waits until something goes wrong and then seeks to impose discipline afterward.

This could not be more wrong. **This fundamentally misapprehends why accountancy — like medicine and lawyering — is a licensed profession.** We require licenses, restrain trade, and tolerate the higher prices as a result because certain professions are so inherently and irrevocably injurious that no after-the-fact remedy can make the injured consumer whole. If an incompetent physician kills you, revoking his license won't bring you back to life. If a corrupt CPA overvalues a publicly traded company, suspending her license won't get your retirement back.

Licensed professions are those few professions where we seek to ensure the competence and ethics of professionals before they provide the services that can end lives and dissipate fortunes. The Board's own Web site observes, "**Public accounting is now generally recognized in business to be of such importance that a standard should be set by public authority and no one allowed to practice without proper credentials.**" (http://dca.ca.gov/cba/board_info/history.shtml)

Moreover, such an argument also misapprehends what administrative disciplinary proceedings do and do not do. Administrative disciplinary proceedings before administrative law judges do not make an injured consumer whole. They do not require the licensee to pay damages. Administrative disciplinary proceedings place restrictions on licenses to protect future consumers prospectively. Only a civil lawsuit seeking damages before a formal judge can make a consumer financially whole. Yet under the UAA and Board's proposal, a California consumer duped by an out-of-state licensee who wanted to be made whole would have to sue that out-of-state resident either in federal court or in the home state of the CPA who injured them.

Finally, proponents of mobility fail to recognize and grapple with the consequences that this Advisory Committee has recognized — that most state boards are underresourced and incapable of

announced that it had instituted administrative proceedings against both men, alleging that they together altered working papers for one of the firm's clients. After Mr. Mullen pled guilty in his criminal case, the SEC suspended him from practice before the Commission. A search of Washington's Web site (<http://www.cpaboard.wa.gov/LicenseeSearchApp/default.aspx>) reveals no disciplinary action against Mr. Mullen. Even though he is a felon and was barred from practice before the SEC, the Web site reveals that Washington apparently took no action to restrain his license. In contrast, the California Board's Web site (www.dca.ca.gov/cba) reveals that CBA revoked Mr. Trauger's license, disclosing that, like Mr. Mullen, Mr. Trauger had pled guilty to a felony and, like Mr. Mullen, was barred from practice before the SEC. Does this prove that Washington or other states are routinely more lax in enforcement than California? It is just one instance. But does it demonstrate that a minimally responsible Board needs to review the enforcement records of other states before proposing to rely on them to protect Californians? Yes. Does it indicate that ACAP should do the same before insisting that all states enact the UAA's mobility provision? Yes.

aggressive after-the-fact enforcement (especially against the largest accounting firms). According to the draft report, “[a] number of state boards are under-funded and lack the wherewithal to incur the cost of investigations leading to enforcement.” Even the California Board — which has been able to take disciplinary action against some of the largest firms — is starkly underresourced. In a 2006 letter to Governor Arnold Schwarzenegger, former Senator Liz Figueroa made this point bluntly and forcefully (emphasis supplied):

I cannot state this firmly enough. The CBA has the smallest and least well-staffed enforcement division of any comparably-sized board in this state. This is an ongoing and enormous problem that is only made worse as each new accounting scandal moves into the headlines. The accounting profession is — of all professions — at the very heart of California’s economy. If markets — and consumers — cannot have faith that a company’s books are being reviewed by truly independent professionals whose loyalty is to accuracy, and not to the companies they are reviewing, the entire basis of our economy is undermined. And we have seen how such industry self-dealing can, in fact, lead directly to the collapse of enormous companies whose fall affects millions of people. Faith in CPAs is absolutely essential to making sure that companies we rely on will not collapse the way Enron, WorldCom, and others have. **But the CBA’s enforcement division is not even remotely capable of effectively monitoring the large number of licensed entities under the CBA’s jurisdiction. Compared with the Medical Board, the Contractors State License Board, the State Bar, and others who regulate a large number of licensees, the CBA’s enforcement is barely noticeable.**

Finally, observe how the inability to differentiate up-front between CPAs in good standing and those that are not uniquely imperils middle-class families and small businesses. Large sophisticated concerns or individuals of wealth will not be Googling “accountant” on the Internet. Large businesses or people of means will have the deep pockets, insurance, and access to high-priced out-of-state counsel to seek redress and protect themselves against losses if they do occur. Small businesses and middle-class families whose fortunes evaporate because of shoddy or corrupt CPA services will likely have none of these options; none of the insurance, resources, sophistication, or means of redress. They more than anyone else need the state to prevent the harm from occurring in the first place because prevention as a practical matter is the only way to protect them at all.

In sum, the UAA’s “no notice” cross-border practice approach eviscerates a state board’s ability — before the fact — to prevent an unscrupulous CPA (or non-CPA posing as a CPA) from practicing accountancy in the state, and assumes that a state board’s after-the-fact enforcement process is capable of excising that CPA from practice. In most states, nothing could be further from the truth. ACAP makes its mobility recommendation based on enforcement and disclosure assumptions about the several states that have never been verified and, where disclosure is concerned, have now been contradicted by California’s 50-state analysis. ACAP is well advised to further study the UAA’s mobility provision before foisting it on all state boards.

3. What Is Really Going On Here? The Evisceration of State Consumer Protection Efforts, State-By-State, Including Post-Enron Reforms

As observed earlier, no federal authority regulates CPAs with anything close to the level of scrutiny as states. States set educational requirements, discipline CPAs for routine matters, and determine whether someone will lose their ability to ply their trade entirely by revoking their license.

The Internal Revenue Service can and does bar CPAs from practicing before it. The same is true with the Securities and Exchange Commission. But neither of these federal authorities can do what the several states can: completely terminate the ability of a CPA to call him or herself a CPA, and to perform services which are reserved to licensed CPAs. Federal laws do not govern who may or may not be called a CPA. That is entirely the job of the states in our federal system.

So why is a state-regulated profession where the most famous, flagship firms have been hit by multimillion-dollar fines, criminal sanctions, deferred prosecutions, and lawsuits post-Enron, WorldCom, Tyco (and the like) using its considerable influence over state boards and state legislatures throughout the rest of the nation to push for “mobility” proposals such as those in AB 2473?

One possible answer is hinted at by AB 2473’s proposed repeal of Business and Professions Code section 5096.5. This statute was enacted in 2005, and is one of the California Legislature’s reforms to protect its citizen from Enron-like auditing abuses. Section 5096.5 reiterates that California’s important requirements for CPAs who sign attest reports continue to apply to out-of-state CPAs signing attest reports under a practice privilege.

It is an understatement to say that attest reports are important. In the words of the U.S. Supreme Court, “by certifying the public reports that collectively depict a corporation’s financial status, the independent auditor assumes a public responsibility transcending any employment relationship with the client. The independent public accountant performing this special function owes ultimate allegiance to the corporation’s creditors and stockholders, as well as to the investing public. This ‘public watchdog’ function demands that the accountant maintain total independence from the client at all times and requires complete fidelity to the public trust.”²²

Contrary to everything that should have been learned from the Enron/Andersen/WorldCom audit fraud debacles, AB 2473 would have allowed out-of-state CPAs to perform attest work (for example, supervise audits and sign audit reports) in California *without* a California license, *without* a practice privilege, and *without* meeting the special requirements that all California CPAs must meet in order to perform that same attest work.

Current California law requires *all California-licensed* CPAs who wish to perform attest work to (i) demonstrate to the Board 500 hours of exposure to the attest process (Business and Professions Code section 5095), and (ii) devote 24 hours of the required 80 hours of continuing

²² *United States v. Arthur Young & Co.*, 465 U.S. 805, 817–18 (1984).

education every two-year renewal period to courses in the area of accounting and auditing related to reporting on financial statements (Business and Professions Code section 5027(c)).

AB 2473 would have allowed *out-of-state* CPAs to sign attest reports in California without having met either requirement even though *California* CPAs would still have to comply with them. It proposed to repeal Business and Professions Code section 5096.5 (which currently requires out-of-state practice privilege holders who wish to sign attest reports in California to comply with California's 500-hour attest experience requirement), and (in amended section 5096(c)(2)) it would have exempted out-of-state CPAs who have met the continuing education requirements of their home state — *whatever they may be* — from the special continuing education requirements applicable to California CPAs who sign attest reports.

To reiterate: These provisions would have allowed out-of-state CPAs to compete with California CPAs for California attest work when those out-of-state CPAs have not met the attest requirements that California CPAs must meet — raising fundamental issues of fairness, equal protection, competence, and competitive disadvantage to the profession regulated by this Board in this state.

But putting aside the unfairness to California CPAs, the proponents of the UAA-inspired AB 2473 argued that this important protection must be repealed not because it is a bad idea, not because unique qualifications for these CPAs are not important to protect California consumers, but because unique California consumer protections frustrate the cross-border practice ideal of CPAs being able to practice anywhere at any time.

So, one ingenious way to try to block states from enacting consumer protections in the first place — or, as here, getting them to repeal such protections — is to persuade boards and legislatures of the need to have cross-border ease of practice (never mind the lack of evidence that California's form at least impedes anyone from doing anything). And under a system where uniquely protective laws get flagged as a problem, *the states with the most lax and bare consumer protections (based on industry-drafted "model" laws) become the nationwide standard*. Just as section 5096.5 becomes an obstacle to cross-border practice, and supposedly should be repealed for that reason, so too do the consumer protections in the other states, and so on until a profession unregulated federally succeeds in achieving reduced regulation nationally, state by state. Likewise, model laws written and pushed for by professional societies become the *de facto* substitute for the policy judgments of several states.

III. Conclusion

Several of the topics addressed in this Advisory Committee's draft report — the 150-hour educational requirement, the AICPA's control over the Uniform CPA Examination, and considerations of "mobility" and "cross-border practice" — have been the subject of considerable scrutiny, study, and debate in California. CPIL, perhaps the only public interest organization in the United States that actively monitors state consumer regulatory boards on an ongoing basis, believes the ACAP should be aware of these precedents from the perspective of an organization that represents consumers and consumer interests.

The ACAP draft report appears to embrace the UAA. It is important to recognize what the UAA is and is not. It is a model act drafted from the point of view of the regulated industry which then intensely uses the act in its state legislative lobbying. If investor and consumer groups were to draft a model act with the intent of using it to lobby fifty state legislatures, it might look very different. For example, to promote a rational market based on the quality of licensees, a model act drafted by investor and consumer interests might address the minimum requirements for state Internet disclosures about accountants. Should accusations (formal charges against the license) filed by state boards be disclosed to the public? All felony convictions? Misdemeanor convictions if substantially related to the practice? SEC disciplinary actions? Malpractice settlements? Liability insurance payouts? It cannot be contradicted that such disclosures are an essential means of consumer self-help and market rationalization especially where, as the ACAP has correctly observed, the ability of regulatory boards to restrict licenses is hampered by inadequate resources.

As detailed above, the California Board and a California investigative reporter have documented that state Internet disclosures about licensees are all over the map, lacking in even basic consistency. Yet, the UAA — putatively all about uniformity — fails to address such an important consumer protection issue at all.

Likewise, consider enforcement. A model act drafted by, say, victims of the accountancy scandals would likely address such issues as the minimum number of enforcement investigators per thousand licensees; the UAA does not. What about minimum licensure penalties for serious offenses, such as embezzlement or audit fraud? Again, a model act drafted by SEC prosecutors would likely address such points; the UAA does not.

The modest point here is that the UAA is fine as a starting point of an inquiry but it emphatically cannot be relied upon to be the beginning, middle, and end of one where consumer and investor protection is concerned. CPIL implores the ACAP to question the assertions made about the UAA and explore the assumptions underlying them before accepting them — as we have done in California to the enduring benefit of informed decisionmaking on issues vital to the financial well-being of every American.

Thank you for your consideration of these comments.

Sincerely,



Edward P. Howard
Senior Counsel
Center for Public Interest Law



Julianne D'Angelo Fellmeth
Administrative Director
Center for Public Interest Law

EXHIBIT A



BILL LOCKYER
TREASURER
STATE OF CALIFORNIA

April 3, 2008

Honorable Mike Eng, Chair
Assembly Business and Professions Committee
State Capitol
Sacramento, CA 95814

Re: AB 2473 (Niello / Ma) – Oppose

Dear Assemblymember Eng:

I respectfully oppose AB 2473 (Niello and Ma) because of the potential danger it poses to consumers of accounting services, the barrier it erects to entry into the profession, and the lack of evidence supporting the proposed rollback of regulatory oversight.

Consumer protection issues always have been extremely important to me during my public service career, including my years as a state legislator and California's Attorney General. The recent turmoil in capital markets has demonstrated, once again, the need to maintain the highest standards in the accounting profession. As State Treasurer, I have witnessed first-hand this market meltdown.

AB 2473 will allow out-of-state CPAs to practice accounting in California with no state CPA license, no practice privilege and no notice to the California Board of Accountancy (Board). The measure forces California to rely on the disclosure, licensing, enforcement resources, policies and practices of other states to ensure that out-of-state CPAs are competent and have not been convicted of a crime. California regulators would have no ability to protect consumers from harm caused by out-of-state accountants before that harm is inflicted.

April 3, 2008
Honorable Eng
Page Two

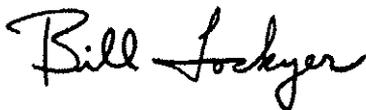
Such reliance on the adequacy of other states' regulatory and consumer protection mechanisms is especially troubling given the fact the Board has not even studied or assessed other states' procedures. Senate President pro Tempore Don Perata, in a January 10, 2008 letter to the Board, asked the Board to conduct such an evaluation and provide the information to lawmakers to aid their deliberations on AB 2473. I agree the Board owes a duty to the public to conduct that due diligence – before the Legislature considers passing this measure.

AB 2473 also would create in California an unjustified barrier to gaining eligibility for a CPA license. Bachelor's degree holders no longer could become eligible for licensure by completing two post-graduate years of accounting experience. Under AB 2473, their only pathway to eligibility would be to complete 30 additional hours of college coursework in any subject.

The elevation of non-accounting college study over practical experience as a licensure requirement raises serious consumer protection concerns. Further, studies by scholars and the Board itself have shown that a requirement for additional coursework does not increase professional competence or strengthen consumer protection, and disproportionately harms the ability of minorities to enter the profession.

Our seniors and working families deserve our best efforts to protect their hard-earned money and their retirement security. AB 2473, unfortunately, fails this test. For this reason I must regretfully oppose the measure.

Sincerely,

A handwritten signature in cursive script that reads "Bill Lockyer". The signature is written in black ink and is positioned above the printed name and title.

BILL LOCKYER
State Treasurer

cc: The Honorable Fiona Ma
The Honorable Roger Niello



BETTY T. YEE - 余淑婷
VICE CHAIRWOMAN
STATE BOARD OF EQUALIZATION

April 7, 2008

Honorable Mike Eng, Chair
Assembly Committee on Business and Professions
State Capitol, Room 6025
Sacramento, CA 95814

Subject: Assembly Bill 2473 (Niello and Ma) - Oppose

Dear Chairman Eng:

I write to respectfully oppose Assembly Bill 2473 (Niello and Ma) and the changes it proposes to make to the practice of public accounting and the provision of tax services to California consumers by out-of-state certified public accountants (CPAs) and the unduly burdensome increase in college-level education required to qualify for obtaining a license to practice in California.

AB 2473 would eliminate the need for out-of-state CPAs who provide accounting and tax services in California to register with the California Board of Accountancy (Board) through a currently abbreviated notification process; obtain a CPA license; or obtain practice privileges. Approximately 18 months ago, the Board instituted a new program to establish a notification process for out-of-state CPAs to register with the Board for consumer protection purposes. This program was strongly supported by the accounting industry. Now, AB 2473 seeks to abruptly terminate this program and instead, allow out-of-state CPAs to practice in California through a "No Notice" process, thus reducing the protections, safeguards, and enforcement capabilities presently in place. A "No Notice" process would allow any out-of-state CPA sole proprietor or firm employee to come into or be sent to California without paying a fee who may not be knowledgeable, experienced, or trained about California laws, regulations, and practices compared to a registered CPA, thereby increasing the likelihood of harm to the consumer of public accounting and tax services.

AB 2473 also would abrogate to other states, California's ability to independently vet out-of-state CPA and firm qualifications, eligibility, and competency before they begin to practice in California. California would instead be relying on the practices of other states to safeguard our consumers and businesses from harm. The Board would have no way of knowing if a CPA or firm has been convicted of a disqualifying crime without doing its own background investigation. Furthermore, the Board would not even know if an out-of-state CPA was in California practicing and providing harmful services to consumers until after the fact.

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WEBSITE: www.boae.ca.gov/members/bettyyee/
E-MAIL: BoardMember01@boae.ca.gov

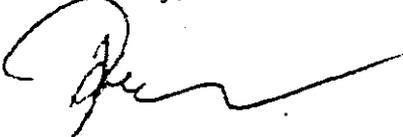
Printed on recycled paper

As a member of the State Board of Equalization with the responsibility of hearing and deciding a multitude of business and income tax appeals matters pursuant to California's unique revenue and taxation laws, I often encounter small business and individual taxpayers being represented by CPAs. The likelihood of a small business or individual taxpayer retaining an inexperienced, unqualified CPA would increase under AB 2473, to the extent the upfront notification process for out-of-state CPAs to register with the Board would be eliminated. This proposed change could adversely affect both the consumer and the State by creating more tax disputes, lengthening and complicating appeals before the Board of Equalization, causing improper information to be filed on amounts of tax due, causing taxpayer bills to be sent out after the fact when it then is more difficult for a taxpayer to pay the proper amount due, and potentially resulting in uncollectible revenues for the State. It is imperative that the State continues to inform California taxpayers as consumers of accounting and tax services about the status of the licenses for all CPAs who practice in this state. Eliminating our oversight and simple notification process is unacceptable.

Finally, AB 2473 also proposes to amend the path to licensure for college graduates. The bill would increase by 30 the number of semester units needed, and decrease by one year the amount of general accounting experience required to secure a California CPA license. The required increase in study could be in any subject matter at the cost of actual hands-on practical accounting experience in the field. The increased education requirements beyond the traditional four-year length of time would result in both dollar and time cost increases for students and future CPA candidates. Without any evidence to support this change, the proposed increase in the educational requirements would create a greater barrier to entry into the accounting profession for many low-income, disadvantaged, and minority individuals that is not justified.

For these reasons stated above, I respectfully request your No vote on AB 2473.

Sincerely,



BETTY T. YEE
Vice Chairwoman

cc: Members of the Assembly Committee on Business and Professions:
Honorable Bill Emerson, Vice Chair
Honorable Wilmer Armina Carter
Honorable Mary Hayashi
Honorable Ed Hernandez
Honorable Shirley Horton
Honorable Bill Maza
Honorable Curren Price
Honorable Alberto Torrico
Honorable Roger Niello
Honorable Fiona Ma

OFFICE OF THE ASSESSOR-RECORDER
SAN FRANCISCOPHIL TING
ASSESSOR-RECORDER

The Honorable Roger Niello
State Capitol, Room 6027
Sacramento, CA 95814

Dear Assemblymember Niello:

As the Assessor-Recorder for the City and County of San Francisco, I have serious questions about the efficacy of AB 2473 as proposed.

- AB 2473 would allow certified public accountants that are licensed in another state to perform accounting services for Californians without a California CPA license or any other registration or notice to the California Board of Accountancy.
- Out-of-state CPAs would not need any California permission to practice in the state.

California law already provides for a streamlined method for out-of-state accountants to practice in California after notifying the Board of Accountancy in an 'online form' which discloses important information such as past disciplinary history, information about the license(s) held in other states, and a small fee. AB 2473 would appeal this 'practice privilege' system and instead throw the gates open in California to unregulated accountancy practice by any person who is licensed in another state without any prior notice to the California Board of Accountancy. Likewise, California families and businesses may no longer be able to check a California website to ensure that an out-of-state CPA is in good standing.

We are managing our resources at a time of incredible uncertainty about our financial institutions' ability to police itself in the public interest. Underscoring this concern was the recent investigative story by Vikas Bajaj of the *New York Times* on March 27th highlighting the unethical behavior of accountants at a major accounting firm in our state causing irreparable harm to lenders involved in the now the worst mortgage crisis our country has faced in fifty years. ("Inquiry Assails Accounting Firm in Lender's Fall," *NY Times*, March 27, 2008.)

California working families have been hit hard with an economic recession, unemployment and a mortgage crisis that sees no end in how many victims will fall through the cracks and lose their homes on top of amounting unnecessary debt.

I respectfully oppose this bill because it is my view that we must take measures to protect all consumers from unlawful actors in the system.

Sincerely,

A handwritten signature in black ink that reads "Phil Ting".

Phil Ting
Assessor-Recorder
City and County of San Francisco

cc: Members of the Assembly Committee on Business and Professions

City Hall Office: 1 Dr. Carlton B. Goodlett Place
Room 190, San Francisco, CA 94102-4698
Tel: (415) 554-5516 Fax: (415) 554-7815
www.sfgov.org/assessor
e-mail: assessor@sfgov.org

Business Personal Property: 875 Stevenson Street
Room 100, San Francisco, CA 94103
Tel: (415) 554-5531 Fax: (415) 554-5544



Auto Safety Group • Congress Watch • Energy Program • Global Trade Watch • Health Research Group • Litigation Group
Joan Claybrook, President

April 3, 2008

The Honorable Mike Eng
Chair, Assembly Committee on Business & Professions
1020 N Street
Room 124
Sacramento, CA 95814

BY FAX: 319-3306

Re: AB 2473 (Niello and Ma) -- **Oppose**

Dear Assemblymember Eng:

I am a Board Member of Public Citizen and former Chair of the Senate Business and Professions Committee.

Public Citizen is a national, nonprofit consumer advocacy organization founded in 1971 to represent consumer interests in legislative matters, the executive branch and the courts.

On behalf of Public Citizen I must respectfully write in opposition to AB 2473.

The accountancy profession is one of awesome significance to the lives of Californians. Over the past decade we have seen instance after instance of how illegal corruption in this profession has devastated the lives of millions of Americans including millions of Californians.

Enron, Tyco, WorldCom, and the like, these disasters were all at their core failures of the accounting profession to adhere to its essential role as unbiased arbiters of fiscal transparency and accountability.

The result: millions of working families lost their pensions and their life's savings; the fruits of lifetimes worth of earnest hard work were destroyed. Inheritances were lost with the consequences flowing through subsequent generations all because of the utter failure of accounting firms to adhere to their ethics and abide by the law.

Sadly, having devastated the pensions of working families, it now appears that the profession has had a significant role in ruining the equity in their homes while also helping to plunge the nation into a credit-crunch driven recession. Consider this from the *New York Times* on March 27th:

“A sweeping five-month investigation into the collapse of one of the nation’s largest subprime lenders points a finger at a possible new culprit in the mortgage mess: the accountants. New Century Financial, whose failure just a year ago came at the start of the credit crisis, engaged in ‘significant improper and imprudent practices’ that were condoned and enabled by auditors at the accounting firm KPMG, according to an independent report commissioned by the Justice Department.”

Against this backdrop, AB 2473's effort to delegate the regulation of this troubled profession to other states without the barest study or analysis as to whether those states have enforcement records and resources worthy of our trust is, respectfully, severely misguided; an unjustified dereliction of our duty to protect Californians as best we can.

Indeed, apart from Enron and New Century, KPMG just two years ago was socked with massive fines in the hundreds of millions of dollars for its role in promoting abusive tax shelters which cost governments millions in lost revenue.

If anything, the devastating impact on working families of these ongoing accounting failures warrants California tightening its scrutiny of this profession, which used to be dominated by the Big Eight, but which after the "death penalty" given to venerable Arthur Andersen for its misdeeds, is now just the Big Four, perhaps soon to be just the Big Three.

And the idea that a simple four page form consisting mostly of checkboxes constitutes a barrier to legitimate out-of-state CPAs deciding to practice here is, respectfully, without merit, as is the Board's proposal to have convicted felons and those whose licenses have been revoked in other states voluntarily step forward and report those events to the California Board so it can move against them.

I am as a Latina also personally troubled by the studies done by CPAs revealing the potentially racially discriminatory impact of requiring more education in lieu of work experience (education in any subject mind you). This was why I helped broker the compromise in current law to permit poor students and students of color to work and gain the experience they need and why I inserted language into my SB 133 requesting that the Board study these issues before again recommending legislation that could hurt people of color for no good reason.

Inexplicably the Board has refused to do its homework and is back before the Legislature nevertheless.

For these reasons Public Citizen strongly urges a no vote on measure. Given the stakes – Enron, WorldCom, Tyco, and now the mortgage crisis -- Senator Perata was right to request an independent study of the Board's proposal so legislators can look at objective analyses, and not rely on he-said, she-said lobbying.

Now is not the time without independent analysis to de-regulate this profession or delegate the protection of California's working families to other states whose enforcement prowess the California Board of Accountancy has strangely never examined.

Sincerely,

Liz Figueroa

cc: Assemblymembers Niello and Ma
Senators Perata and Ridley-Thomas

Consumers Union

Nonprofit Publisher
of Consumer Reports

March 31, 2008

The Honorable Roger Niello
State Capitol, Room 6027
Sacramento, CA 95814

FAX: (916) 319-2105

Re: AB 2473 (Niello and Ma) — OPPOSE

Dear Assemblymember Niello:

Consumers Union, the nonprofit publisher of *Consumer Reports*, respectfully opposes AB 2473. This bill would allow certified public accountants who are licensed in another state to perform accounting services for Californians without a California CPA license or any other registration or notice to the California Board of Accountancy. The regulatory body primarily responsible for the quality of accountancy services in California would have no way to know who is practicing accounting for California residents.

California law already provides for a streamlined method for out of state accountants to practice in California after notifying the Board of Accountancy in a form which discloses important information such as past disciplinary history, information about the license(s) held in other states, and a small fee. AB 2473 would repeal this "practice privilege," system and instead throw the doors open in California to unregulated accountancy practice by any person who is licensed in another state without any prior or contemporaneous notice to the California Board of Accountancy.

Under this bill, only California-based CPAs would continue to need the permission of the licensing body to practice in California. Out-of-state CPAs would not need any California permission. Under this bill, the Board of Accountancy would have no practical ability to keep even known "bad apples" from providing California CPA services until after an there had first been an incident in California sufficient to warrant discipline.

One of the key ways that licensing boards protect the public is by denying entry to persons with a bad record. By eliminating the "practice privilege", AB 2473 would deprive the California Board of Accountancy of that important consumer protection tool.

The author of this letter is no stranger to the existing California practice privilege. Serving as an individual public member of the California Board of Accountancy, she assisted in the crafting of that system.

This bill goes much further than did AB 1868 (Bermudez), a 2006 bill (that Consumers Union also opposed) that would have allowed out-of-state CPAs to perform "tax services" for Californians without a license or a practice privilege. AB 2473 does away with the notice requirement entirely, allows out-of-state CPAs to provide any accounting

services to Californians, and also eliminates the nominal fee for the privilege of practicing here. Consumers Union is concerned that this measure would open California's borders to out-of-state CPAs even for those whose conduct in another state suggests that they should not be permitted to practice in California. While certain conditions would still be disqualifiers, the step in which the regulatory body is informed of those disqualifiers would be eliminated. Those who are disqualified apparently would be on the honor system. The California Board of Accountancy will not know that they are practicing accountancy for Californians until a Californian is harmed and complains.

For these reasons, Consumers Union opposes AB 2473.

Very truly yours,

A handwritten signature in black ink, appearing to read "Gail Hillebrand". The signature is written in a cursive style with a prominent horizontal stroke across the top.

Gail Hillebrand

cc: The Honorable Fiona Ma


CONSUMER ATTORNEYS
OF
CALIFORNIA

President
Don A. Ernst
President-Elect
Christine D. Spagnoli
Chief Executive Officer
Michael M. Reyna

Senior Legislative Counsel
Nancy Drabble
Legislative Counsel
Nancy Peverini
Legal Counsel
Lea-Ann Tratten

April 4, 2008

The Honorable Roger Niello
State Capitol, Room 6027
Sacramento, CA 95814

Re: AB 2473 (Niello) Accountancy: licensure

OPPOSE

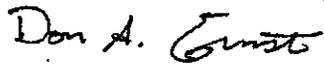
Dear Assembly Member Niello:

Consumer Attorneys of California (CAOC) must respectfully oppose AB 2473 (Niello) which is scheduled to be heard before the Assembly Business and Professions Committee on April 9, 2008. Recently, high-profile incidents of illegal conduct by accountants have focused attention on the significant harm caused to millions of consumers. The failure of accountants to act as unbiased overseers of corporate transparency and the performance of corporations such as Tyco, Enron, and WorldCom has resulted in the loss of or the dilution of individual consumer's pensions and life-savings. Additionally, the negligent oversight by accountants of the mortgage industry has been a major factor leading to the current sub-prime crisis which has caused consumers and their families to lose equity in their homes and has caused a negative ripple effect in the consumer credit marketplace.

Within this context, AB 2473 would sanction other states to be responsible for the practice of accountants in California. AB 2473 would authorize out of state accountants to "engage in the cross-border practice of accountancy" in California without having to obtain a certificate or license. AB 2473 fails to provide adequate assurances as to the potential competency and liability of "cross-border" accountants. Now is most certainly not the time to be loosening California's oversight of a profession that has been singled out as a major component of the current crisis facing California's consumers, pensioners, shareholders, homeowners. For this reason Consumer Attorneys must oppose AB 2473. If you or a member of your staff has any questions, please contact our legislative advocates in our state office in Sacramento.

Legislative Department

Respectfully,



Don A. Ernst
President



Christine D. Spagnoli
President-Elect

cc: Assembly Business and Professions Committee



Communications Workers of America Local 9400

AFL-CIO, CLC

7844 Rosecrans Avenue, Paramount CA 90723-2296 562.259.9400 562.633.0536 Fax CWA9400@pacbell.net

Michcal J. Hartigan
President

April 4, 2008

The Honorable Mike Eng
Chair, Assembly Committee on Business and Professions
1020 N Street, Rm. 124
Sacramento, CA 95814

RE: AB 2473 (Niello and MA)-- Oppose

Dear Chairman Eng:

As the Vice President of the Communications Workers of America Local 9400, I have serious questions about the efficacy of AB 2473 as proposed.

- AB 2473 would allow certified public accountants that are licensed in another state to perform accounting services for Californians without a California CPA license or any other registration or notice to the California Board of Accountancy.
- Out-of-state CPAs would not need any California permission to practice in the state.

California law already provides for a streamlined method for out of state accountants to practice in California after notifying the Board of Accountancy in a 'online form' which discloses important information such as past disciplinary history, information about the license(s) held in other states, and a small fee. AB 2473 would appeal this 'practice privilege,' system and instead throw the gates open in California to unregulated accountancy practice by any person who is licensed in another state without any prior notice to the California Board of Accountancy. Likewise, California families and businesses may no longer be able to check a California website to ensure that an out-of-state CPA is in good standing.

We are managing our resources at a time of incredible uncertainty about our financial institutions ability to police itself in the public interest. Underscoring this concern, was the recent investigative story by Vikas Bajaj of the NY Times on March 27th, highlighting the unethical behavior of accountants at a major accounting firm in our state causing irreparable harm to lenders involved in the now the worst mortgage crises our country has faced in fifty years. (* Inquiry Assails Accounting Firm in Lender's Fall, NY Times, March 27, 2008)

I must oppose this bill because it is my view that we must take measures to protect all consumers from unlawful actors gaming the system.

Respectfully,

A handwritten signature in black ink, appearing to read "Alfred R. ...", with a long horizontal flourish extending to the right.

CC.
Members, of the Assembly Committee on Business and Professions

EXHIBIT B



University of San Diego

Center for Public Interest Law

Children's Advocacy Institute

Energy Policy Initiatives Center

July 25, 2005

Renata Sos, President, and Members
California Board of Accountancy
2000 Evergreen Street, Suite 250
Sacramento, CA 95815-3832

Re: AICPA's Control of Uniform CPA Exam

Dear Ms. Sos and Board Members:

I write to confirm and document the comments I made during the public comment session at the Board's July 22, 2005 meeting in San Francisco.

During that July 22 meeting, representatives of the American Institute of Certified Public Accountants (AICPA) made a presentation concerning their efforts to resolve numerous significant problems experienced by state boards of accountancy with the computerized version of the AICPA's Uniform CPA Exam. Although that exam is currently administered under a three-party contract among AICPA, the National Association of State Boards of Accountancy (NASBA), and Prometric, AICPA alone controls the contents, structure, and validation of the exam.

Following their presentation, I reminded the AICPA representatives that they had previously visited CBA in March 2000 to discuss other problems with the Uniform CPA exam (at that time, the problem was AICPA's failure to fully and properly validate the exam in over ten years). At that time, AICPA committed to including more state regulators on its various committees that control the exam. Inasmuch as the AICPA's July 22 powerpoint presentation acknowledged that "state boards feel disenfranchised" (slide 4) about the current problems with the exam, I asked them whether AICPA had — since 2000 — changed the composition of its Board of Examiners (BOE) or any other AICPA examination committee (slides 9 and 10) to include any seats reserved for current state regulators. As you heard, their answer was no.

During your public comment session, I explained to you the reason for my question. I told you that I have attended the meetings of various California occupational licensing agencies (including CBA) for over 15 years. When other boards experience problems with the licensing exam they administer and request an appearance and explanation by those responsible for the exam,

the individuals who respond to such a request never include representatives of a national professional association. Why? Because all national professional associations that have ever had ownership or control over a licensing exam — the instrument used by state boards to control entry into the profession — have long since divested themselves of such ownership or control. All other national trade associations of licensed professionals that have ever drafted, owned, or controlled licensing exams have long since spun off such control to a 501(c)3 nonprofit organization unconnected with the trade association or to a coalition of state regulators (such as NASBA, in CBA's case), because of the obvious conflict of interest inherent in the control by a trade association over the testing instrument used to block entry into the profession it represents and whose interests it promotes. Of the major regulated professions, only the accountancy profession — in the form of the American Institute of Certified Public Accountants — retains control over the licensing examination used in 54 jurisdictions to license its members. AICPA has resisted calls for divestiture of its control over this exam, and it has resisted numerous pleas to include more sitting state regulators on its various committees that control the exam — to the continuing and present detriment of state boards of accountancy.

This fact is not in question. Consider these examples: The American Bar Association (the major national professional association of lawyers) has no ownership interest in or control over the contents of any licensing examination administered by any state attorney licensing agency (commonly called “state bars”) in this country. Attorney licensing exams are controlled by state bars — government agencies in each state that regulate lawyers. The American Medical Association (the major national professional association of physicians) has no ownership interest in or control over the contents of the licensing examinations administered by any state medical board in this country. Long ago, the AMA spun off its medical licensing exam function to the separate and independent National Board of Medical Examiners, and state medical boards administer the NBME's United States Medical Licensing Examination — which it co-owns with the Federation of State Medical Boards (a national coalition of state medical licensing authorities). In 1994, the American Veterinary Medical Association (the major national trade association of veterinarians) spun off its National Board Examination Committee (which controlled the national examination used by most states in licensing veterinarians) into a completely independent 501(c)3 nonprofit now called the National Board of Veterinary Medical Examiners. And so on down the line. CPIL monitors California agencies that regulate over twenty professions and trades, and we are hard-pressed to identify one other agency that uses a licensing exam that is still drafted, controlled, validated, and graded by a national trade association. The AICPA is the only national professional association that has insistently clung to its control over the barrier to entry into its own profession — clearly a fundamental public function inappropriate for trade association intrusion.

Although this fact appeared to be a revelation to many Board members last week, this is not a new issue. CPIL raised this issue in extensive “sunset review” testimony during CBA's 1995–96 and 2000–01 sunset reviews; that testimony is available on CPIL's Web site at www.cpil.org under “Research and Advocacy.”

On both sunset review occasions, the Board acknowledged that AICPA's control over the CPA licensing exam is inappropriate and resolved to work toward transferring control of the national exam to a non-trade association.¹ In its October 2000 sunset review report, this Board cogently stated the reason for its view:

The foundational reason for advocating a change in the AICPA's ownership is because of a perceived conflict of interest posed by a professional association's controlling the examination instrument. The appearance of a conflict arises because the Board's regulatory mission is consumer protection, while the association's mission must necessarily be advocacy for and protection of members. Because the examination is an essential key to opening the gateway to becoming a public accounting practitioner, the exam's being owned and controlled by a trade association — rather than by an organization representing the regulatory perspective — furthers the perception that the exam is an artificial barrier into the profession, instead of an instrument to better ensure consumer protection.²

On both sunset review occasions, the Joint Legislative Sunset Review Committee (JLSRC) expressed concerns about AICPA's control over the Uniform CPA exam and urged CBA to work toward divestiture of that control. Specifically, in its 1996 report and recommendations, the JLSRC agreed that CBA should “work toward implementation of a national examination developed and administered by a national organization in the future, with the proviso that the national association be a non-trade association such as the National Association of State Boards of Accountancy.”³ In 2001, the JLSRC expressly stated that “almost all state licensing examinations are provided by independent non-trade related entities because of the perceived conflict of interest posed by a professional association controlling the examination instrument.”⁴ The JLSRC also recognized the Board's efforts to urge AICPA to divest itself of control over the exam or — at the very least — to include significant representation for members of state boards of accountancy on its exam committees to ensure that state boards have an “equal voice with the AICPA in decision-making and

¹ See California State Board of Accountancy, *Sunset Review Report* (September 29, 1995) at 90 (CBA should “work toward implementation of a national examination developed and administered by a national organization in the future, with the proviso that the national organization be a non-trade association such as the National Association of State Boards of Accountancy”). See also California Board of Accountancy, *Sunset Review Report* (October 2000) at 68 (“it is this Board's view that ownership and control of the Uniform CPA Examination should be assumed by an independent non-trade related entity, and the Board has played a nationwide leadership role in actively advocating that change”).

² *Id.* at 68.

³ Joint Legislative Sunset Review Committee, *Findings and Recommendations: Review and Evaluation of the Board of Accountancy* (February 1996) at 33.

⁴ Joint Legislative Sunset Review Committee, *Final Recommendations for the Board of Accountancy* (April 25, 2001) at 6.

policy formation relative to the control, development, and administration of the examination because of this inherent conflict.”⁵ The Joint Committee repeated its recommendation that “the Board should continue with its active role in dealing with issues involving the control, ownership, development, and administration of the Uniform CPA Examination by the AICPA. . . . Specific to a proposed restructuring of the AICPA Board of Examiners and its related committees, [CBA should work to] ensure that at a minimum the AICPA and NASBA share equal (“50/50”) representation, control, and decision-making powers, annually rotate the Board of Examiners’ chair positions between the AICPA and NASBA, and ensure the regulatory boards’ ability to actively participate and have equal voice in all aspects of decision-making relative to both the restructuring process and final direction, for, composition, and function of the Board of Examiners.”⁶

Years later, AICPA has neither divested itself of control of the exam nor changed the composition of its BOE or any other exam-related committees to ensure state regulators a voice in the contents, development, and validation of this exam for which state boards are legally liable. This is unacceptable.

This is a fundamental issue of which you should be aware as you prepare for the September 2005 face-to-face “summit” with AICPA, NASBA, and Prometric regarding the long list of 91 problems that you and other state boards have encountered with the computerized examination. As I stated at your meeting, state regulators must have input into the contents, structure, and validation of the exam so that these problems can be prevented before they happen. Assured equal representation for sitting state regulators on AICPA’s examination committees is long overdue and is the very least you should demand. As described above, complete divestiture of AICPA’s ownership and control of the Uniform CPA exam — and the transfer of control of that national exam to NASBA or another independent entity — is more consistent with the practice in every other regulated trade and profession and with the intentions expressed by this Board and by the Joint Legislative Sunset Review Committee. Thank you for your consideration of these comments.

Sincerely,

Julianne D’Angelo Fellmeth
Administrative Director
Center for Public Interest Law

cc: Senator Liz Figueroa, Chair, Joint Legislative Sunset Review Committee
Carol Sigmann, Executive Officer, California Board of Accountancy

⁵ *Id.*

⁶ *Id.* at 6–7.

EXHIBIT C

**CALIFORNIA BOARD OF ACCOUNTANCY**

2000 EVERGREEN STREET, SUITE 250
 SACRAMENTO, CA 95815-3832
 TELEPHONE: (916) 263-3680
 FACSIMILE: (916) 263-3675
 WEB ADDRESS: <http://www.dca.ca.gov/cba>



**NOTIFICATION AND AGREEMENT TO CONDITIONS FOR THE PRIVILEGE TO
 PRACTICE PUBLIC ACCOUNTING IN CALIFORNIA PURSUANT TO CALIFORNIA BUSINESS AND
 PROFESSIONS CODE SECTION 5096 AND TITLE 16, DIVISION 1, ARTICLE 4 OF THE
 CALIFORNIA CODE OF REGULATIONS**

CONTACT INFORMATION**Individual Information**

Name: _____ Prior Name(s): _____

Date of Birth: ____ / ____ / ____ Social Security Number: _____

Daytime Direct Telephone Number: _____ E-mail Address: _____
(optional)**Certified Public Accounting Firm Information**

Complete the Certified Public Accounting Firm Information **ONLY** if the certified public accounting firm name you are associated with is different from the individual name above.

Certified Public Accounting Firm Name: _____

Firm Address: _____

Firm Main Telephone Number: _____ Fax Number: _____ Firm Taxpayer ID Number: _____

Include additional certified public accounting firms you are associated with on Attachment 2, if necessary.

Other Contact Information

Address of Record (mailing address:
 fill out only if different from firm address
 or if no firm address is listed above): _____

QUALIFICATION REQUIREMENTS**I state as follows:**

1. I am an individual.
2. a. My principal place of business is not in California; **OR**
 b. I have a pending application for licensure in California under Sections 5087 and 5088.
3. I qualify for a practice privilege based on my current, valid license to practice public accountancy in the following state:

State: _____ License Number: _____ Date Originally Issued: _____ Expiration Date: _____

4. a. The license identified in Item 3 is deemed substantially equivalent by the California Board of Accountancy; **OR**
- b. My individual qualifications have been determined by the National Association of State Boards of Accountancy (NASBA) to be substantially equivalent (NASBA file no. _____); **OR**
- c. I have continually practiced public accountancy as a certified public accountant under a valid license issued by any state for four of the last 10 years.
5. a. I am submitting this notice to the CBA at or before the time I begin the practice of public accountancy in California; **OR**
- b. I am submitting this notice after I began the practice of public accountancy in California on ___/___/____. My reason(s) for not providing notice on or before that date is(are) provided below. (The safe harbor provision is referenced in the California Code of Regulations, Title 16, Division 1, Article 4, Section 30.)
-
-
6. I have met the continuing education requirements and any exam requirements for the state of licensure identified in Item 3.

I consent and agree to the following:

7. To comply with the laws of the state of California, including the California Accountancy Act (Business and Professions Code Section 5000 et seq., accessible at http://www.dca.ca.gov/cba/acnt_act.htm) and the regulations thereunder (accessible at <http://www.dca.ca.gov/cba/reg.htm>).
8. To the personal and subject matter jurisdiction of the CBA including, but not limited to, the following:
- a. To suspend, without prior notice or hearing and in the sole discretion of the CBA or its representatives, the privilege to practice public accounting;
- b. To impose discipline for any violation of the California Accountancy Act or regulations thereunder and recover costs for investigation and prosecution; and
- c. To provide information relating to a practice privilege and/or refer any additional and further discipline to the board of accountancy of any other state and/or the Securities and Exchange Commission (SEC), the Public Company Accounting Oversight Board (PCAOB) or other relevant regulatory authorities.
9. To respond fully and completely to all inquiries by the CBA relating to my California practice privilege, including after the expiration of this privilege.
10. To the authority of the CBA to verify the accuracy and truthfulness of the information provided in this notification. I consent to the release of all information relevant to the CBA's inquiries now or in the future by:
- a. Contacting other state agencies;
- b. Contacting the SEC, PCAOB or any other federal agency before which I am authorized to practice; and
- c. Contacting NASBA.
11. In the event that any of the information in this notice changes, to provide the CBA written notice of any such change within 30 days of its occurrence.
12. To submit any applicable fees timely.

AUTHORITY TO SIGN ATTEST REPORTS

Choose **ONE** of the following options:

I WISH to be able to sign an attest report under this practice privilege, and I have at least 500 hours of experience in attest services. By checking this box, I agree to pay within 30 days of submission of this Notification Form, the \$100 Notification Fee which includes authorization to sign attest reports.

OR

I DO NOT WISH to be able to sign an attest report under this practice privilege. Under this choice, I may participate in attest engagements but may not sign an attest report. By checking this box, I agree to pay the \$50 Notification Fee, due within 30 days of submission of this Notification Form.

DISQUALIFYING CONDITIONS

Please respond to the following items. For any items checked "Yes" in (A) – (G), you must provide additional information as requested in Attachment 1, and you are not authorized to practice in California unless and until you receive notice from the CBA that the privilege has been granted.

Please check "Yes" for any items even if they were previously reviewed and cleared by the Board in a past California Practice Privilege. To expedite the review process, please include the details of all disqualifying conditions, including those previously reported in the additional information you provide.

- | | | | |
|-------------------------------|-------------------------------|----|--|
| Y
<input type="checkbox"/> | N
<input type="checkbox"/> | A. | I have been convicted of a crime other than a minor traffic violation. |
| Y
<input type="checkbox"/> | N
<input type="checkbox"/> | B. | I have had a license, registration, permit or authority to practice a profession surrendered, denied, suspended, revoked, or otherwise disciplined or sanctioned except for the following occurrences:

(1) an action by a state board of accountancy in which the only sanction was a requirement that the individual complete specified continuing education courses.
(2) the revocation of a license or other authority to practice public accountancy, other than the license upon which the practice privilege is based, solely because of failure to complete continuing education or failure to renew. |
| Y
<input type="checkbox"/> | N
<input type="checkbox"/> | C. | I am currently the subject of an investigation, inquiry or proceeding by or before a state, federal, or local court or agency (including the PCAOB) involving my professional conduct. |
| Y
<input type="checkbox"/> | N
<input type="checkbox"/> | D. | I have an unresolved administrative suspension or an unpaid fine related to a prior California Practice Privilege. |
| Y
<input type="checkbox"/> | N
<input type="checkbox"/> | E. | I did not respond to a request for information from the CBA related to a prior California Practice Privilege. |
| Y
<input type="checkbox"/> | N
<input type="checkbox"/> | F. | I have been notified by the CBA that prior Board approval is required before practice under a new California Practice Privilege may commence. |
| Y
<input type="checkbox"/> | N
<input type="checkbox"/> | G. | I have had a judgment or arbitration award against me involving my professional conduct in the amount of \$30,000 or greater. |

REQUIRED ADDITIONAL INFORMATION

I currently hold a California Practice Privilege. Yes No

Expiration date: _____ Unique Identifier: _____

I have held a California CPA/PA license. Yes No License number: _____

In addition to the state of licensure identified in Item 3, I also am authorized to practice public accountancy in the following:

State: _____ License Number: _____

State: _____ License Number: _____

Include additional licenses on Attachment 2, if necessary.

An answer of "No" to any of the following statements does not disqualify you from a California Practice Privilege.

I am an associated person of a firm registered with the PCAOB. Yes No

My firm has undergone peer review within the last three years. Yes No

The state of licensure identified in Item 3 requires CE in fraud detection. Yes No
If yes, I have fulfilled this requirement. Yes No

I, _____, understand that any misrepresentation or omission in connection with this notification disqualifies me from the California Practice Privilege and is cause for termination. Further I authorize the California Board of Accountancy to act accordingly, including notifying other state or federal authorities. I certify under penalty of perjury under the laws of the state of California that the foregoing information is true and correct.

Signature: _____ Date: _____

Unless you have checked "Y" to any items under Disqualifying Conditions, your privilege to practice commences with the submission of your properly completed notification. Your fee must be received within 30 days. Your privilege expires one year from the date of submission of this notification.

RESET

EXHIBIT D



February 6, 2008

Donald A. Driftmier
President, California Board of Accountancy
2000 Evergreen Street, Suite 250,
Sacramento, CA 95815-3832

RE: Proposed Practice Privilege Policy - OPPOSE

Dear Board President Driftmier:

As you know, the Department of Consumer Affairs and its regulatory agencies are principally charged by statute with promoting consumer protection. As the Department Director, I take this obligation very seriously.

The Department of Consumer Affairs (Department) must respectfully oppose the California Board of Accountancy's (CBA) proposed revisions to the Business and Professions Code proposed at the November 2007 meeting of the CBA's Committee on Professional Conduct, in regards to the Board's practice privilege policy, also known as cross border practice.

The Department is seriously concerned about moving to a "no notification" practice privilege policy in California. By removing the notification requirement for out-of-state licensees the CBA will have no way of knowing who and how many out-of-state licensees are practicing in California. The Department fears that this policy could encourage unqualified individuals to practice as CPAs in California and lead to a decline in consumer protection.

Should you have any questions regarding our position, please contact me at (916) 574-8200.

Sincerely,

Carrie Lopez
Director, Department of Consumer Affairs

cc: Antonette Sorrick, Deputy Director Board Relations
(Carol Sigman, Executive Officer, Board of Accountancy)
Angela Chi, Accountancy Board Member
David Swartz, Accountancy Board Member
Donald Driftmier, Accountancy Board Member
Lenora Taylor, Accountancy Board Member
Leslie LaManna, Accountancy Board Member
Lorraine Hariton, Accountancy Board Member

EXHIBIT E

ORANGE COUNTY
REGISTER
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Thursday, January 17, 2008

Proposal would relax rules on CPAs

Regulator board pushes bill to allow out-of-state accountants to work in California without registering.

BRIAN JOSEPH
Register columnist
CAPITOL WATCHDOG
bjoseph@ocregister.com
[Comments 0](#) | [Recommend 3](#)

SACRAMENTO – Hire the wrong tax guy and it could cost you plenty. Just ask Jefferson K. Davis.

In 2001, Davis hired a Laguna Beach accountant to prepare taxes for his father-in-law's estate and trust. The CPA never did it. Sure the accountant lost his license, but it was Davis, the trustee, who got hit with \$640,000 in penalties.

"That's always the case where an accountant doesn't do his job," said Davis' attorney, William Hart of Santa Ana. "You can't insulate yourself if you hire a professional. If a mistake is made, you still owe the taxes."

And more mistakes could be on the way thanks to the board regulating accountants.

Since November, the California Board of Accountancy has been pushing to allow out-of-state accountants to practice in California without notifying the state of their qualifications. In contrast, doctors and other professionals can't provide any service to Californians without a California license.

Board staff warned that eliminating the requirement would make it impossible to prevent unqualified accountants – or even convicted felons – from preying on California consumers. Furthermore, the board itself recommends that Californians carefully review qualifications before hiring an accountant. The board's enforcement chief, Greg Newington, even prefers notice.

The board, however, ignored its own advice and approved draft legislation to eliminate prior notice, even though a key section of the bill was left blank at the time.

The proposal is so questionable that Senate Leader Don Perata wrote the board president this month demanding independent research of its implications to consumers and the state.

"This whole thing is being driven by the Big Four accounting firms," said Julie D'Angelo Fellmeth of the Center for Public Interest Law, referring to PricewaterhouseCoopers, Deloitte & Touche, Ernst & Young and KPMG. Fellmeth told me those firms helped convince the board to water down regulations implemented after the 2001 Enron scandal. "The board is abrogating its responsibility to protect the public," she said.

The 15-member board, whose mission is "to protect the public welfare," cannot change the law itself, it can only recommend changes to the Legislature. Included among its members are seven certified public accountants and a former Orange County assemblyman who has taken \$37,600 from CPAs, according to my calculations.

In fact, that lawmaker, Democrat Rudy Bermudez, once introduced legislation to effectively remove the same registration requirement. His plan was met with steep opposition by the Consumers Union, then-state Sen. Liz Figueroa and then-Attorney General Bill Lockyer, who called it "ill advised." Bermudez eventually removed the registration changes and the bill passed.

Bermudez told me this week that the critics didn't really understand the registration provision and that their fears were unfounded. He said the changes pursued by the board will help consumers with interests in multiple states.

"We're in a global economy now," he said. "We need policies that reflect that."

Board Chairman Donald Driftmier likewise dismissed criticism of the proposal and the board. He said the board protects the public and noted that two of the Big Four accounting firms, KMPG and Ernst & Young, are on probation in California. As for the proposal, he said it's more likely to help out-of-state consumers with interests in California than affect residents here.

"We're just getting on board with the other ... states considering it," Driftmier said. "It's not unique. It's not earth-shattering."

Indeed, many states already have, or are drafting, laws permitting licensed, out-of-state accountant to practice under their jurisdiction without registration. This nationwide effort to change state laws is being led by the National Association of State Boards of Accountancy, a group critics say sides with the industry.

Association Senior Vice President Ken Bishop told me 11 states already have changed their laws while accountancy boards in another 33, including California, support it.

Bishop said his goal isn't to make life easier for CPAs, it's to make life better for their clients, and that's what this proposal does. In today's economy, companies don't just operate, or pay taxes, in one state. Requiring a CPA to register in each state would be like making Californians get a new driver's license when they head into Arizona. It's a hassle, and in this case, it could prevent customers from hiring an accountant they trust.

Bishop said he's heard of out-of-state accountants having problems with California – despite a very simple notification form – but couldn't name anyone specific. Nonetheless, he said, "I believe this is a public advocacy bill."

Bishop also added that it's unnecessary for California to collect information on duly licensed out-of-state accountants because if consumers have questions about, say, Nevada practitioners, they could just look them up on Nevada's CPA Web site. "Almost all" states, he said, have Web sites where they list their licensed CPAs.

He's right. I only found two states, Louisiana and New Hampshire, who didn't have some sort of Web site listing their licensed CPAs. However, by my estimation, only 19 with Web sites provide similar disciplinary information as California does. Some states just provide basic information, like name, license number and address.

That means Californians can't consult a California Web site to determine if their accountant is licensed, qualified or in trouble.

What's more, the proposal represents a sort of sea change for the board. Like most regulatory agencies, the accountancy board reviewed qualifications on the front end and disciplined wrongdoing on the back end. By removing the registration requirement, the board is stepping back from front end reviews, voluntarily blinding itself to unqualified accountants. That could be dangerous, Davis' attorney said.

"You should at least register with the California Board of Accountancy," Hart said. "Then a consumer can make an informed decision about who they hire."

Brian Joseph covers Capitol issues for the Register. His Capitol Watchdog column focuses on government practices. To reach him, call 916-449-6046 or e-mail bjoseph@ocregister.com.



The Web Site of The Sacramento Bee

This story is taken from [Sacbee / Politics](#).

Bill targets California's accountant regulations

By John Hill - jhill@sacbee.com

Published 12:00 am PDT Sunday, April 6, 2008

Four years ago, California accountants pushed for a bill they said would better protect consumers by forcing out-of-state CPAs to let state regulators know they were practicing in the state.

Now, they say that 2004 law "created a monster" and want the state Legislature to undo it. The law led to a confusing system that discourages the free flow of commerce between state lines, the state accounting board says.

The board and an association representing the profession want to return to a system of allowing out-of-state accountants to provide many services without notifying the state or paying a fee.

Not so fast, says a consumer advocacy group that closely monitors the accounting board. Considering recent accounting scandals, California consumers need the protections created by the 2004 bill more than ever, the Center for Public Interest Law says.

The center sees the attempt to reverse the law as part of a nationwide push by the accounting profession to loosen oversight that increased after the Enron scandal, which brought down accounting powerhouse Arthur Andersen.

"They want to dismantle the entire ability of the state of California to license CPAs and prevent harm before it happens," said Julianne D'Angelo Fellmeth, administrative director of the Center for Public Interest Law, part of the University of San Diego School of Law.

The language overturning the 2004 law is contained in Assembly Bill 2473, co-written by Assemblyman Roger Niello, R-Fair Oaks, and Assemblywoman Fiona Ma, D-San Francisco. The bill would allow out-of-state accountants to practice in California without paying the current fee of \$50 or \$100 or filling out a four-page application.

The state Board of Accountancy, which oversees California's 76,000 licensees, is sponsoring the bill. All 15 members of the board, including eight who are not accountants, voted to support AB 2473. The bill also is backed by the California Society of Certified Public Accountants, national professional associations and other business groups.

But it hasn't all been all smooth sailing.

Senate President Don Perata, D-Oakland, wrote a letter to the state accounting board in January raising a host of questions. He wrote that an earlier bill to discontinue out-of-state notification "caused much confusing and conflicting debate."

Perata sent the board four pages of questions. Board President Donald Driftmier says the board has answered some and is working on the others.

The director of the Department of Consumer Affairs, which oversees the accounting board, opposes AB 2473.

"The Department fears that this policy could encourage unqualified individuals to practice as CPAs in California and lead to a decline in consumer protections," Director Carrie Lopez wrote in a Feb. 6 letter to Driftmier.

The Center for Public Interest Law laid out its opposition in a 12-page letter to Niello, the bill's author.

The center says that the bill puts the state in a passive stance, waiting for problems to occur rather than blocking bad accountants from working in California before they do harm.

"There will be no way for the board to check first to make sure those requirements are met before someone from out-of-state provides services that could devastate the financial lives of families or small businesses," the center wrote.

The accountants are fighting back. With the help of Roseville political consultant Goddard & Claussen, they argue that cross-state practice has become the way of the global economy.

Sacramento accountant Michael Ueltzen, a past chairman of the statewide accountants' association, offers the cases of a trucking company that does business in 37 of the 50 states. Using the model contained in the 2004 California law, he said, an accountant working on the company's books would have to register 37 different times.

The law hinders accountants from quickly addressing financial emergencies by placing a call across the California state line, they say.

Accountants say that they all operate under the same rules and guidelines, regardless of their home states. They liken cross-border practice to using a driver's license to travel across states.

Many states have reacted to the "chaos" created by notification laws such as California's by passing laws that allow cross-border practice – at least a dozen so far.

The current system, Ueltzen and others say, creates a false sense of security by listing out-of-state accountants who have registered on the state board's Web site.

Consumers may think these accountants have been screened, said board Chairman Driftmier.

"We really don't look at them now," he said. "Are we doing a great investigation on these people? No."

Niello's bill, by contrast, would give the state the power to fine out-of-state miscreants, bar them from practice and report them to their home state boards, supporters say.

But Fellmeth says that, under the 2004 law, the board can and should be screening out-of-state accountants who want to work in California.

"If they don't have sufficient staff, that's the board's fault and the profession's fault for not insisting

on that," she said. The center maintains that the forms are simple enough that accountants, of all people, should be able to fill them out in very little time.

It disputes the contention that all states have the same rules when it comes to accountants - in fact, California has some that are stricter, which could be undermined if Niello's bill passes.

Accountants who have to deal with a financial emergency are free under current law to do so, the center says. They just have to notify the state board by e-mail, and send in the fee later.

Fellmeth said this is exactly the wrong time to ease oversight on the accounting profession, considering recent revelations that accounting firm KPMG may have played a role in the collapse of subprime giant New Century Financial.

"This is a very troubled profession," Fellmeth said. "This is a profession that has apparently learned nothing since Enron."

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Friday, April 11, 2008

Accountants bill could hit low-income students

The measure, which has been pulled, would have installed a 5-year requirement to become a CPA.



BRIAN JOSEPH

Register columnist
CAPITOL WATCHDOG
bjoseph@ocregister.com

SACRAMENTO – Remember that accounting bill I've been writing about? The one

that would allow anyone out of state to practice accounting in California without first proving their qualifications with the state?

It's more dubious than I thought.

You see, buried in the bill is an unrelated section that appears to particularly hurt minorities by making it harder for low-income students to become accountants.

"I think it's discriminatory," said lobbyist Stephanie Roberson, who is black. "The public is not aware of what's really happening."

I first wrote about the accounting proposal in January, when the state Board of Accountancy was drafting the bill and looking for someone in the Legislature to carry it.

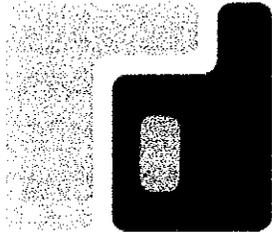
As I wrote at the time, accountants are pushing similar legislation in every state in the nation apparently as part of a systematic attempt to weaken oversight of their industry. Even the board's own staff warned that the plan could harm residents because it would make it impossible to prevent unqualified accountants, or even felons, from preying on Californians.

It is so controversial that the director of the state Department of Consumer Affairs

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officially opposes it and even Senate Leader Don Perata has demanded independent research on its impact to consumers.

Since then, the accountancy board, which includes former Orange County lawmaker Rudy Bermudez, has gotten Assembly members Roger Niello and Fiona Ma to sponsor the legislation as Assembly Bill 2473. Meanwhile, several more officials and consumer groups have joined the opposition, including State Treasurer Bill Lockyer and the publisher of Consumer Reports.

But as far as I was concerned, I didn't think there was much more to write on the issue. Then I found out about Section 6.

Section 6 of AB 2473 is a classic case of the Devil in the details. All it does is eliminate one of the ways students can become licensed accountants in California. But look a little deeper and you'll see there's more.

Currently students have two options, or "pathways," to become accountants. The first requires a bachelor's degree with classes in business and accounting, a year of work experience and a total of 150 units of college credit. A bachelor's degree usually requires 120 units; the extra 30, which generally amounts to a fifth year of college, can be in any subject.

The other option requires a bachelor's degree plus two years work experience. AB 2473 would eliminate this second option in 2012. The accountancy board has already announced that the pathway could be terminated.

Now, that might seem like a small change, but it isn't. A 1999 article by the Florida Institute of CPAs and a 2005 study published in New York state's CPA Journal both found that the cost of an extra year of school is enough to dissuade minorities from entering the accounting industry.

"(O)ne side effect of this additional requirement was the financial burden placed on students seeking to become CPAs," the Florida institute reported. "In particular, minority students were hit the hardest."

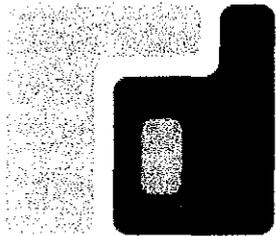
And the New York study concludes: "The accounting profession has had an [sic] historical shortage of qualified minority practitioners, and the 150-hour requirement does not appear to be helping."

And that's not the only research. As it just so happens, the Legislature actually addressed this issue in 1996, when it mandated that the accountancy board study the impact of the 150-hour rule.

The resulting study, by Dr. Oriol Strickland of Cal State Sacramento, found that

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additional hours didn't help students pass the CPA test. A few years later, a study commissioned in part by the American Accounting Association concluded, "(T)he 150-hour rule is almost universally seen as a mistake."

But the industry wouldn't hear it. In 2001, accountants pushed for the 150-hour rule to be the state's sole pathway. As a compromise, the Legislature approved the two current pathways and said before the requirements could be changed again, the accountancy board would have to study the effectiveness of both pathways. That study was never done, as far as I can tell.

"They've never talked about this again," said Julianne D'Angelo Fellmeth, administrative director of the Center for Public Interest Law at the University of San Diego. She cited me 2007 federal figures showing that 93.7 percent of partners in the six largest accounting firms were white. "This is not an issue they want to deal with," she said.

What I find interesting is supporters aren't really talking about this provision of AB 2473. Documents from the Board of Accountancy and literature from Niello's office describe this as an attempt to make it easier for out-of-state accountants to work in California.

That has little to do, as far as I can tell, with the requirements for in-state accountants.

And, in fact, that sort of thing is very common in Sacramento. Just last month, I wrote about Proposition 98 on the June ballot. That's described in both the ballot title and campaign literature as an initiative to forbid governments from taking private property from one owner and giving it another. But included in that measure is a provision to phase out rent control in California.

Then there was Proposition 86 on the 2006 ballot, which would have increased the tax on cigarettes. It included an antitrust provision that some legal experts thought gave hospitals broad powers to inflate the price of emergency services.

Then there was AB 779, by Assemblyman Dave Jones, which I wrote about last year. Sponsored by the California Credit Union, that bill was promoted as a consumer protection bill that would require California retailers to guard their customers' credit card information. Buried inside was a provision giving credit unions the power to demand money from merchants even if credit information wasn't stolen.

"That's the duck and hide bill, as we call it," said professor Barbara O' Connor of Cal State Sacramento. "It's a

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way to hide more controversial measures. ... It's a common practice among some (lawmakers) and it has been historically. But it's not a good way to make sausage."

I asked Bermudez, the former OC lawmaker, and Donald Driftmier, the accountancy board chairman, why the 150-hour rule was included. They said it was necessary to make California "substantially equivalent" to other states, which is important if California accountants want to work in other states without having to register their qualifications.

"If we don't have that, we won't have reciprocity," Bermudez said.

It struck me as odd that California would care what other states thought of their laws, but Bermudez said if all the states can't agree on accounting regulations it's possible the feds could step in. "And that's the last thing you want," he said.

Supporters also dismiss any charges that the 150-hour rule hurts minorities. Niello, the bill's primary sponsor, put out a "Myths and Facts" sheet about the bill that portrays the criticism as a mystery.

"We can only conjecture why opponents claim that more education hurts people of color," the sheet says. "If they are proposing that people of color would be burdened by

the cost of an additional 30 hours of education, we know that outstanding financial aid is available for all students who need help with coursework."

Driftmier, on the other hand, told me the criticism wasn't new – "That question has always been around." – but said the proposal couldn't be discriminatory because it's being supported by minorities like Bermudez, who is Hispanic, as well as the National Association of Black Accountants.

As for the findings that an extra year of college doesn't help students pass the CPA exam, Driftmier said that's not important. "Passing the exam is a different mindset than taking another year of school," he said.

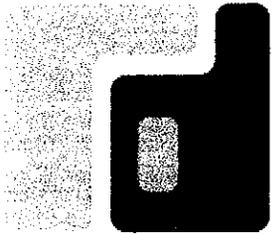
Once again, supporters dismiss any criticism. But that might not be enough this time.

On Wednesday, the Assembly Business and Professions Committee was supposed to hear AB 2473, but it was pulled from the agenda at the last minute. Niello's office later told me it had decided now was just not the right time for the bill and that AB 2473 is dead.

Well, I've been here long enough to know nothing's really dead until the

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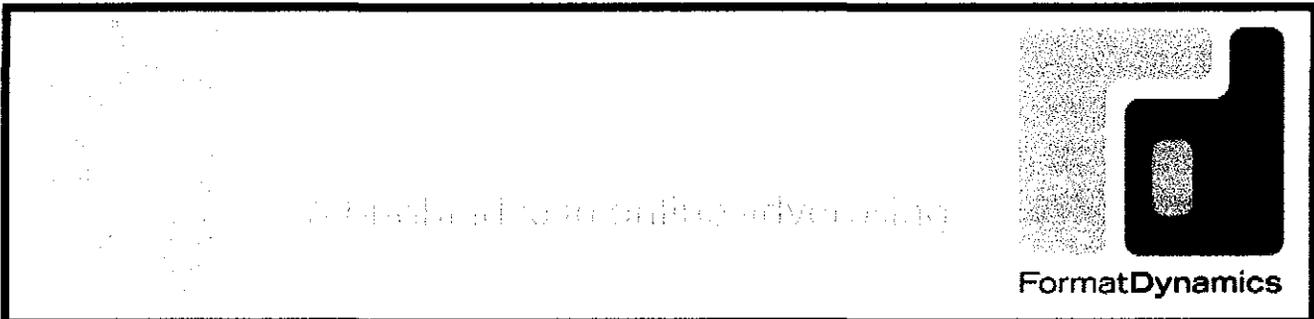
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session ends, so we'll see what happens. But I am told stories like this have made AB 2473 unpopular in Sacramento.

Brian Joseph covers Capitol issues for the Register. His Capitol Watchdog column focuses on government practices. To reach him, call 916-449-6046 or e-mail bjoseph@ocregister.com.

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Measure dies on changing California CPA licensing

By John Hill - jhill@sacbee.com

Published 12:00 am PDT Saturday, April 12, 2008

A bill to let out-of-state accountants provide many services without notifying the California licensing board has died – at least for now.

Assembly Bill 2473, facing widespread opposition, was shelved this week before it could be considered by a legislative committee.

"Obviously, the time was not right," said Assemblyman Roger Niello, R-Fair Oaks, who co-wrote the bill with Assemblywoman Fiona Ma, D-San Francisco.

But Niello added that "the issue is not going to go away." He pointed out that more than a dozen other states have passed laws allowing accountant mobility. "That's just going to grow," Niello said.

Four years ago, accountants succeeded in getting a bill passed that forced out-of-state practitioners to notify state regulators that they were operating within California.

But California accountants say that requirement created chaos, and pushed for a return to a system allowing out-of-state accountants to provide many services without notification or payment of a fee.

Opponents, led by the Center for Public Interest Law at the University of San Diego Law School, said the bill was part of nationwide effort to loosen accounting standards.

Senate President Don Perata, D-Oakland, challenged the state Board of Accountancy to answer a host of questions about it. Others, including State Treasurer Bill Lockyer and the director of the Department of Consumer Affairs, also lined up against the bill.

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EXHIBIT F

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California State Senate

COMMITTEE
 HUMAN
 CHAIRMAN

SENATOR DON PERATA
 PRESIDENT PRO TEMPORE



January 10, 2008

Donald A. Driftmier, CPA, President
 California Board of Accountancy
 2000 Evergreen Street, Suite 250
 Sacramento, California 95815-3832

Via: US Mail & Facsimile (916) 263-3675

RE: Out-of-State Residents and the Practice of Accountancy in California

Dear Mr. Driftmier:

It is my understanding that the Board will be sponsoring legislation to eliminate the requirement that out-of-state residents/accountants notify the Board of their intent to practice accountancy in California, thereby, foreclosing the Board's ability to affirm the competence, honesty, and qualifications of out-of-state CPAs before they provide services to Californians. In 2005, the Board supported AB 1868 (Bermudez) which was sponsored by the California Society of Certified Public Accountants. The intent of your current proposal seems somewhat similar to AB 1868.

AB 1868 caused much confusing and conflicting debate and discussion about the proper oversight needed for out-of-state accountancy including tax services. As you know, this issue has been very controversial. To avoid such continued controversy and to facilitate a debate based on facts, it is critical, that as the Board sponsors such legislation, the Board also provides the data necessary by which to consider that legislation.

Your proposal contemplates reliance on regulators and disclosure policies of other states to guarantee the honesty, competence, and integrity of those claiming to be CPAs prior to them providing vital accounting services in California. Therefore, the author of this legislation and the Board, as sponsor, should provide the following:

Donald A. Drifmiller, CPA, President
January 10, 2008
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1. A comprehensive report, preferably prepared by the California Research Bureau (or other independent research body), to include all of the following:
 - An analysis of accountancy disciplinary statutes and systems of the other states including, but not limited to, their statutory standards for discipline, their record of enforcement over the previous five years, and their resources, all in and of themselves and as compared to those of California.
 - A report of the Internet disclosure policies and statutes of other states as they relate to disclosure of the qualifications, competence, and integrity of out-of-state licensees. This review should include, but not be limited to, an assessment of how the other states' Internet disclosures compare to California's and the ease with which a consumer can find such information on the Internet.
 - A report of what is required by each state's laws and regulatory bodies before the state permits a resident of that state to practice including an assessment of testing, education, and other qualifications compared to California's.
 - Data on out sourcing of California tax return preparation. This should include outsourcing by in state and out-of-state CPAs and the countries to which California tax return preparation is outsourced.
 - An analysis of whether current notification requirements (filling out the practice privilege form and paying a fee of no more than \$100 annually) frustrate or impede the willingness of qualified out-of-state CPAs from practicing in California. This analysis should include data on CPAs who have been dissuaded from practicing in California and the reasons they have been dissuaded.

2. A legal analysis by the Attorney General reviewing efficacy and cost of potential enforcement of California laws and other states' laws against residents of other states. (It is important that this analysis be done by the Attorney General since it is the Attorney General that litigates on the Board's behalf.) This analysis should include the following:
 - The ability and cost of the Board to impair the license of an out-of-state CPA from practicing in their home state based on a violation of California law or harm to California consumers.
 - The ability and cost of the Board to prevent by state court order, an out-of-state citizen or CPA to practice in California.
 - The ability and cost of a California consumer to sue in state court to obtain damages for harm caused to them by an out-of-state citizen or CPA.
 - The ability and cost of the Board to designate another state's board as an agent for service of process on the out-of-state CPA.

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January 10, 2008
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- An overall cost estimate of an enforcement program against out-of-state citizens or CPAs, including the costs of service of process, fees paid to the Attorney General, interviewing witnesses, obtaining documents, and enforcing orders, as compared to the cost of revoking or denying an out-of-state individual's right to practice in California under existing law by denying them a practice privilege.
 - An analysis of timeliness; namely, an analysis of the respective time frames by which the Board will be able to definitively block an out-of-state individual's ability to practice in California under the proposal as compared to the time frame under current law by denying them a practice privilege.
3. A detailed description of how the Board and California consumers will be made aware that an out-of-state individual who has been banned under the Board's proposal may be practicing in California unlawfully. This is important given that California families and businesses will no longer be able to rely on a California website to distinguish between those out-of-state individuals who are and are not allowed to practice here.
 4. A legal analysis of the Board's authority and the means by which it could reconsider relying on another state's standards if another state changed its statutes regarding CPA discipline, qualification, and disclosure in a manner that the Board believes to insufficiently protect California families and businesses.

It is my hope that this information addresses and resolves the following potential concerns:

1. The proposed legislation may impede efforts of the Board and California's consumers to ensure that out-of-state accountants are duly licensed, have no criminal record, or have no record of prior discipline so that harm to California families and businesses may be avoided in the first place.
2. It is unclear how the Board would be able to verify that an out-of-state individual performing tax services for California families and small businesses is actually a licensed CPA without the current notification requirement. Further, under this proposal, Californians would no longer be able to check a California website to ensure that the out-of-state CPA is in good standing in their home state.
3. It is essential for California's licensing standards and laws to be vigorously enforced to protect California families and businesses.

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- 4. The overarching backdrop of recent actions against Enron, WorldCom, and Tyco, the criminal prosecution of Arthur Andersen, the recent \$1 million fine against Deloitte & Touche, and the significant fines levied recently against KPMG, as measured against whether there is any evidence that any individual has been dissuaded from practicing in California because of the existence of the practice privilege form.

I am sending this letter now to provide the Board sufficient opportunity to provide these materials well in advance of legislative deliberations. Please provide this information to my office and to the Senate Business, Professions, and Economic Development Committee prior to any legislative hearings on this issue.

Thank you, in advance, for your cooperation on this important matter. Please feel free to contact any of our offices with any questions that you may have about this request.

Sincerely,



DON PERATA
Senate President pro Tempore

DP:mmm

EXHIBIT G



CALIFORNIA BOARD OF ACCOUNTANCY

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WEB ADDRESS: <http://www.dca.ca.gov/cba>



May 27, 2008

Julianne D'Angelo Fellmeth, Administrative Director/Supervising Attorney
Center for Public Interest Law
University of San Diego School of Law
5998 Alcalá Park, San Diego, CA 92110

Dear Ms. D'Angelo Fellmeth:

In response to your request, provided below is a summary of the information orally reported by Patti Bowers, Licensing Chief, during the Licensing Division Report at the May 9, 2008 Board meeting regarding the Practice Privilege Unit.

Staff commenced their effort to perform an audit of all current practice privilege holders in April 2008. Staff verified the following items during the audit:

- Licensee name and address of record;
- License information and status;
- Qualification requirements (see Section 5096);
- Disciplinary actions;
- Qualification of attest authority (see Section 5096.5).

Staff utilized other state board Web sites to verify the items above. A total of 2,658 notification forms were subject to the practice privilege audit.

Of the total number of notification forms subject to the audit, 1,114 practice privilege holders who requested the attest authority were also mailed a *California Practice Privilege Holder Certification of Attest Experience* form.

As reported by Ms. Bowers at the Board meeting, staff was able to verify all of the audit items for 1,005 practice privilege holders via the other state boards' Web site. However, 1,635 notification forms were still in-process at the time of her report. Of those, 892 were still in a pending status due to inadequate information available on the other state boards' Web sites. Enclosed for your review is a document listing the state boards and the information not available on the Web sites that prevented the audit from being completed internally by staff. Staff are in the process of contacting the state boards directly for the required information.

At the time of the report, Ms. Bowers reported that staff had referred one practice privilege holder to the Enforcement Division for investigation based upon disciplinary action taken by another state board that was not reported to the California Board of

Julianne D'Angelo Fellmeth
May 27, 2008
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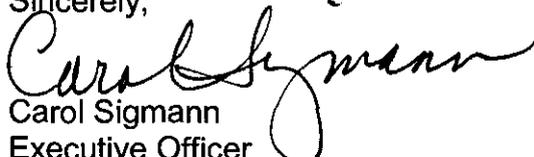
Accountancy during the notification process. An additional 22 files were identified by staff as possible enforcement referrals for one of the following reasons:

- An inactive license status in the home state;
- Staff were unable to locate and verify the license identified on the notification form;
- The practice privilege holder did not meet one of the qualification requirements at the time of notification;
- The other state board Web site reflected enforcement action that was not reported to this Board.

Ms. Bowers will provide an updated report regarding the Practice Privilege Audit at the Board meeting on July 25, 2008.

Should you have any questions or need any additional information, please contact Ms. Bowers at (916) 561-1740 or by email at pbowers@cba.ca.gov.

Sincerely,


Carol Sigmann
Executive Officer

Enclosure

c: Patti Bowers, Licensing Chief

California Board of Accountancy

Web site Information for Practice Privilege Audit

AUDIT STATE	# OF FILES	LICENSE STATUS NOT AVAILABLE	ISSUE DATE NOT AVAILABLE	EXPIRATION DATE NOT AVAILABLE	DISCIPLINE NOT AVAILABLE	PRIOR DISCIPLINE NOT AVAILABLE
ALABAMA	16			X	X	
ALASKA	2				X	
ARIZONA*	149			X	X	
ARKANSAS	9		X	X	X	
CONNECTICUT	31			X	X	
DISTRICT OF COLUMBIA	12				X	
GUAM	1				X	
KANSAS	9					X
KENTUCKY	12				X	
LOUISIANA	8	X	X	X	X	
MAINE	2					X Beginning Calendar Year 2000
MARYLAND	49		X			X
MINNESOTA	81		X	X		X Beginning Calendar Year 2005
MISSISSIPPI	3		X	X	X	
MISSOURI	63				X	
NEBRASKA	7		X	X		X

AUDIT STATE	# OF FILES	LICENSE STATUS NOT AVAILABLE	ISSUE DATE NOT AVAILABLE	EXPIRATION DATE NOT AVAILABLE	DISCIPLINE NOT AVAILABLE	PRIOR DISCIPLINE NOT AVAILABLE
NEVADA	38				X	
NEW MEXICO	15				X	
NORTH CAROLINA	35					X
NORTH DAKOTA	4	X	X	X	X	
OHIO	62					X
OKLAHOMA	17			X		X
OREGON	171				X	
RHODE ISLAND	2		X		X	
SOUTH CAROLINA	6					X Beginning Calendar Year 2002
SOUTH DAKOTA	4	X	X	X		X Beginning Calendar Year 2004
TENNESSEE	14					X Monthly Press Release
VIRGINIA	90				X	
WEST VIRGINIA Annual Roster	3	X	X	X	X	
WISCONSIN**	21					X Beginning December 1998

* Since the Board meeting, Arizona has provided the Board with the requested disciplinary audit information not available on their Web site.

** Wisconsin is in the process of updating their Board Web site to include all disciplinary actions.