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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

October 22, 1999

Honorable Thomas J. Baumgartner, Chairman
State Board of Accountancy
116 Pine Street
Harrisburg, PA 17105

Re: IRRC Regulation #16A-556 (#2056)
State Board of Accountancy
Peer Review

Dear Chairman Baumgartner:

Enclosed are our Comments on the subject regulation. They are also available on our website at <http://www.irrc.state.pa.us>.

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact Fiona Wilmarth at 783-5438.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Nyce".

Robert E. Nyce
Executive Director

REN:kcg
Enclosure
cc: Joyce McKeever
Steven Wennberg
Honorable Kim Pizzingrilli
Dorothy Childress
Office of General Counsel
Office of Attorney General
Pete Tartline

COMMENTS OF THE INDEPENDENT REGULATORY REVIEW COMMISSION

ON

STATE BOARD OF ACCOUNTANCY REGULATION NO. 16A-556

PEER REVIEW

OCTOBER 22, 1999

We have reviewed this proposed regulation from the State Board of Accountancy (Board) and submit for your consideration the following objections and recommendations. Subsections 5.1(h) and 5.1(i) of the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) specify the criteria the Commission must employ to determine whether a regulation is in the public interest. In applying these criteria, our Comments address issues that relate to statutory authority, legislative intent, reasonableness and clarity. We recommend that these Comments be carefully considered as you prepare the final-form regulation.

1. Section 11.81. Definitions. - Clarity.

The body of the regulation uses the acronym "AICPA." However, this acronym is not defined. For clarity, the Board should define the acronym "AICPA."

2. Section 11.82. Effective dates for peer review compliance; proof of compliance or exemption. - Statutory authority, Legislative intent, Reasonableness and Clarity.

Peer review effective dates

Subsections (a) and (b) of the regulation require a firm to complete a peer review before the license biennium that begins May 1 of 2000, or May 1, 2004, for firms that have not accepted or performed any audit engagements. The House Professional Licensure Committee commented that the dates set forth for peer review are in conflict with the statutory language and legislative intent behind the Act.

Sections 8.2(f) and 8.8(c) of the Act state a license may not be issued to a firm after April 30, 2000 unless the applicant complies with Section 8.9 *Peer Review*. These sections of the Act do not directly require a peer review, but rather require compliance with Section 8.9.

Section 8.9(l)(2) of the Act states the following:

This section shall not become applicable to firms and *no firm shall be required to undergo a peer review under this section until May 1, 2000*, except that this section shall not become applicable until May 1, 2004 to a firm that has not accepted or performed any audit engagements during the period May 1, 1998, through April 30, 2004 (emphasis added).

Until May 1, 2000, every firm is in compliance with Section 8.9 of the Act, regardless of whether it has had a peer review or not. Likewise, prior to May 1, 2004, firms that have not accepted or performed any audit engagements are also in compliance. The Board should amend the deadlines for peer review to comply with Section 8.9(1)(2) of the Act.

Subsection (b)

Subsection (b) makes a distinction between a "review engagement" and an "audit engagement." It is unclear what specific characteristics distinguish the two from each other. For clarity, the Board should define these terms.

Subsection (d)

Subsection (d) addresses a firm claiming an exemption from peer review under Section 8.9(g) of the Act. The regulation requires a firm to submit "information that substantiates its entitlement to an exemption." To improve clarity, the Board should specify the type of documentation required by this subsection.

The second sentence in Subsection (d) addresses the special case of a multistate firm that claims an exemption based on previously having undergone a peer review in another state or jurisdiction. To improve clarity, this provision should be contained in a new Subsection (e).

In addition, Section 8.9(a) of the Act provides an exemption for a firm "that meets *one* of the exemptions in subsection (g)" (emphasis added). However, Section 8.9(g) states "a firm shall be exempt from the requirement to undergo peer review if *all* of the following apply..." (emphasis added). How will the Board reconcile these two contradicting provisions in the Act? If the Board will require a firm to meet *one* of the exemptions in Section 8.9(g) of the Act, Subsection (d) should be revised to reflect the Board's intent.

Subsection (d)(2) requires "A statement that the firm's internal inspection or monitoring procedures require that the firm's personnel from an out-of-State office perform an inspection of the firm's Pennsylvania offices at least once every 3 years." Is an internal inspection the equivalent of a peer review? If it is, we request the Board explain how an inspection by an out-of-state office of the same firm constitutes an independent peer review as required by the Act.

3. Section 11.83. Administering organizations for peer review; firm membership not required. – Clarity.

Administering organization

This section lists organizations that are qualified to administer peer review programs. However, the function of the administering organization in the peer review is unclear. We request the Board explain the role of the administering organization.

It is also unclear whether an administering organization, other than those listed in Subsections (a)(1) and (a)(2), can obtain Board approval. We request the Board add the process for approving other administering organizations in the final regulation.

Subsection (a)

Subsection (a)(2) provides that State societies and institutes that participate in the American Institute of Certified Public Accountants (AICPA) Peer Review Program are deemed qualified to administer peer review programs. Why is this provision limited to “State” societies and institutes?

Subsection (b)

This subsection states “A firm that is subject to peer review is not required to become a member of the AICPA or any other administering organization.” It is our understanding that this provision is intended to prohibit an administering organization from requiring membership as a pre-condition for conducting the review or attesting to the firm’s professional standards and practices. The Board should clarify its intent in the final regulation.

4. Section 11.85. Qualifications of peer reviewers. – Clarity.

Peer reviewers

This section addresses the qualifications of peer reviewers. However, it does not specify how these qualifications would be administered or reviewed by the Board. The Board should explain how it determines whether a prospective peer reviewer is qualified.

Subsections (b) and (c)

These subsections allow a licensed public accountant or a sole practitioner who “otherwise satisfies the requirements of subsection (a)” to serve as a peer reviewer. Subsection (a) requires the peer reviewer to meet the qualifications contained in the AICPA’s “Standards for Performing and Reporting on Peer Reviews.” It is unclear how an individual could otherwise satisfy the requirements of Subsection (a). We request the Board clarify the intent of Subsections (b) and (c).

Also, the term “sole practitioner” is not defined in the Act or the proposed regulation. To improve clarity, the Board should define this term in the final regulation.