

MARIO J. CIVERA, JR., MEMBER  
HOUSE POST OFFICE BOX 202020  
MAIN CAPITOL BUILDING  
HARRISBURG, PENNSYLVANIA 17120-2020

232 LONG LANE  
UPPER DARBY, PENNSYLVANIA 19082



*House of Representatives*  
COMMONWEALTH OF PENNSYLVANIA  
HARRISBURG

COMMITTEES

PROFESSIONAL LICENSURE,  
MAJORITY CHAIRMAN  
LIQUOR CONTROL,  
FIREFIGHTERS' CAUCUS,  
COCHAIRMAN EMERITUS

March 21, 2000

Original: 2096

Bush

Copies: McGinley

Jewett

Markham

Wyatte, Sandusky, Notebook

John R. McGinley, Jr., Chairman

Independent Regulatory Review Commission

14th Floor, Harrisburg 2

333 Market Street

Harrisburg, PA 17101

RECEIVED  
2000 MAR 22 PM 2:02  
INDEPENDENT REGULATORY  
REVIEW COMMISSION

Dear Chairman McGinley:

I am writing to inform you that the House Professional Licensure Committee held a meeting on March 21, 2000. The Committee submits the comments listed below pertaining to the regulations that were considered.

**Regulation 16A-568, State Real Estate Commission.** The Committee voted to take no formal action until final-form regulations are promulgated. However, the Committee offers the following comments:

- (1) The Committee questions why the definition of "agency relationship" as set forth in Sec. 35.201 is different from the definition of "agency relationship" set forth in the act.
- (2) Proposed Section 35.292(a) (7) reflects the language of Section 606(a)(7) of the act which requires licensees to "timely disclose" to consumers any conflicts of interest. However, proposed Sec. 35.283, which also addresses the duty to disclose conflicts of interest, provides that disclosure be made "in a reasonably practicable period of time." The Committee questions the inconsistency between these two proposed sections.
- (3) The proposed amendment to Sec. 35.284(a)(4) refers to the disclosure summary in Sec. 33.336. The disclosure summary is actually provided in Sec. 35.336.
- (4) Proposed Sec. 35.315(b) is somewhat vague as to what a consumer is consenting to in authorizing a broker to designate agents. As drafted, it would appear that a consumer would be granting a "blanket" consent to a designated agency relationship without being advised of the identity of the designated agent

and the date on which the designated agency becomes effective. The Committee recommends that in the best interests of the consumer, this section be clarified that the consumer must consent to the broker's designation of an agent, the identity of the agent, and the date on which the designation will occur.

(5) Proposed Sec. 35.315(b) provides that a licensee may be "designated" after an initial designation or after a written agreement has been entered into, provided the broker (1) obtains the principal's consent, in writing, to the newly designated licensee, and (2) obtains, where applicable, the principal's agreement to renounce any previous agency relationship with the other licensees employed by the broker of record to the exclusion of other designated agents. The Committee requests an explanation of the phrase "to the exclusion of other designated agents."

(6) Proposed Sec. 35.315(d), which provides that all licensees employed by the broker of record who are not designated, have no agency relationship with either party in the transaction, would appear to be in conflict with Sec. 606 of the act, which provides that licensees employed by the broker shall bear the same relationship to the consumer as the broker. Although Sec. 606 authorizes a broker to designate agents to act exclusively for either a buyer or seller, it does not expressly negate any duties on the part of other employees of the broker to consumers who have entered into an agency relationship with the employing broker.

(7) Proposed Sec. 35.315(e), which would authorize employees of a broker to designate themselves and/or affiliated licensees who are employed by the broker as designated agents, provided there is a written company policy. Sections 606 and 606.5 of the act expressly provide that a broker may designate licensees employed by the broker to act as designated agents. Regardless of whether or not there is a written company policy, the act would not appear to authorize employees of a broker to designate themselves or others as designated agents. Additionally, the Committee requests a clarification as to what is meant by "affiliated licensees" who are employed by the broker.

(8) On page 6 of the proposed rulemaking package, the Commission states the Sec. 35.332(d), relating to exclusive listing agreements, would be deleted. However, the deletion is not shown in the proposed draft.

**Regulation 16A-555, State Board of Accountancy.** The Committee voted to take no formal action until final-form regulations are promulgated. However, the Committee offers the following comment:

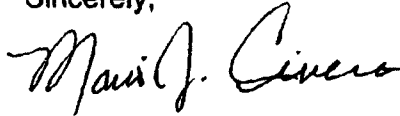
The Committee questions whether a deadline of December 31, 2000, affords sufficient time for approved program sponsors to seek re-approval. Currently, this deadline is less than one year away, and it is uncertain how much time will

John R. McGinley, Jr., Chairman  
Independent Regulatory Review Commission  
March 21, 2000  
Page 3

be left before final-form regulations have been approved. Additionally, the Board estimates that one half of the approximately 2,000 currently approved sponsors will apply for re-approval. The Committee questions whether the Board will be able to timely process that number of applications prior to the deadline. Finally, there may be situations where a licensee, prior to December 31, 2000, signs up for a continuing education program to be given after that date. If the program sponsor has not been re-approved by the time the program is administered, how will credits earned by the licensee be affected?

Please feel free to contact my office if any questions should arise.

Sincerely,

A handwritten signature in black ink, reading "Mario J. Civera". The signature is fluid and cursive, with the first name "Mario" being the most prominent part.

Mario J. Civera, Chairman  
House Professional Licensure Committee

MJC/sms  
Enclosures

cc: Joseph Tarantino, Jr., Chairman  
State Real Estate Commission  
Thomas J. Baumgartner, CPA, Chairman  
State Board of Accountancy  
Honorable Kim H. Pizzigrilli, Secretary of the Commonwealth  
Department of State

Original: 2096

Bush

Copies: McGinley  
Sandusky  
Jewett  
Markham  
Wyatte

**Regulation 16A-555**

RECEIVED

**State Board of Accountancy** 2000 MAR 22 PM 2: 02

STATE BOARD REGULATORY  
REVIEW COMMISSION

**PROPOSAL:** Regulation 16A-555 amends 49 PA Code, Chapter 31, regulations of the State Board of Accountancy. The amendments would revise the current regulatory scheme for approving sponsors of continuing education programs for licensees.

The proposed Rulemaking was published in the Pennsylvania Bulletin on February 19, 2000. The Professional Licensure Committee has until April 10, 2000, to submit comments on the regulation.

**ANALYSIS:** The Board states that the proposed revisions would better enable the Board to monitor program sponsors' compliance with continuing education requirements. The amendments would require all previously approved program sponsors to apply for and obtain re-approval in order to maintain eligibility to offer continuing education programs after December 31, 2000, and to biennially renew their approval thereafter. The amendments are also designed to strengthen the procedures for initial program sponsor approval and withdrawal of approval, for which fees would be established. Program sponsors would become responsible for both the development and presentation of their continuing education programs. Comprehensive off-site reviews of selected program sponsors would be initiated. Program sponsors registered with the National Association of State Boards of Accountancy would be exempted from having to meet approval requirements.

The definition of "program developer" would be deleted from Section 11.1 (Definitions) since the Board intends to make the program sponsor responsible for developing as well as presenting a continuing education program. There are currently no fees charged to program sponsors. Section 11.4 (Fees) would be amended to add a fee of \$145.00 for initial approval and a fee of \$120.00 for biennial renewal of approval.

Section 11.64 lists the authorized sources for continuing education credit (e.g., national accounting organizations, colleges, universities, in-house programs) for licensees. This section would be amended to provide that beginning May 1, 2000, credit will be given only for courses offered by program sponsors who have been approved pursuant to new Sec. 11.69.1 (relating to approval of program sponsors). Section 11.65(a) prescribes the general criteria for continuing education programs. Sec. 11.65(b), which sets forth the current procedures for program sponsor approval, and Sec 11.65(c), which provides for biennial renewal of program sponsor approval, would be revised and relocated to new Sec. 11.69.1.

New Sec. 11.69.1 would set forth the procedures for sponsor approval. It would provide that approval of previously approved sponsors would expire on December 31, 2000. Individuals or entities who are members in good standing of the National Association of State Boards of Accountancy's National Registry of Continuing Professional Education Sponsors would be deemed to be approved sponsors. Subsection (c) would set forth the information which would be

required on an approval application. Statements made in an application must be sworn to be true and correct to the best of the applicant's knowledge. The application would be reviewed by the Board's Continuing Education Committee, which will make recommendations to the Board for approval or disapproval. If the Board disapproves an application, written notice of the reasons for disapproval will be provided to the applicant, and the applicant may submit a revised application to address the Board's concerns. An approved applicant will be assigned a program sponsor number. Beginning January 1, 2004, program sponsors will be required to renew their approval by January 1 of each even-numbered year.

Current Sec. 11.70 sets forth the responsibilities of continuing education program developers. It is the Board's intention to make program sponsors responsible for program development, so the provisions of this section would be moved to Sec. 11.71 (Responsibilities of program sponsors). In addition to the responsibility of developing programs, program sponsors are required to be responsible for disclosures to prospective participants, selection and evaluation of instructors, limitations on program enrollments, adequacy of facilities, program evaluation, retention of records, certificates of completion, and promotional materials. Program sponsors who lack expertise in program development would be permitted to contract with other parties to assist in complying with program development requirements.

New Sec. 11.71.1 would subject program sponsors to off-site review of their continuing education programs to ensure compliance with the Board's continuing education regulations. The review would involve an in-depth audit of all course materials, documents and records maintained by the program sponsor. Sec. 11.72 would be amended to provide a procedure for the Board's withdrawal of sponsor approval, and to set forth the offenses for which sponsor approval would be withdrawn upon a finding of guilt.

**RECOMMENDATIONS:** It is recommended that the Professional Licensure Committee take no formal action until final form regulations are promulgated. However, the Committee offers the following comment:

The Committee questions whether a deadline of December 31, 2000, affords sufficient time for approved program sponsors to seek re-approval. Currently, this deadline is less than one year away, and it is uncertain how much time will be left before final form regulations have been approved. Additionally, the Board estimates that one half of the approximately 2,000 currently approved sponsors will apply for re-approval. The Committee questions whether the Board will be able to timely process that number of applications prior to the deadline. Finally, there may be situations where a licensee, prior to December 31, 2000, signs up for a continuing education program to be given after that date. If the program sponsor has not been re-approved by the time the program is administered, how will credits earned by the licensee be affected?

House of Representatives  
Professional Licensure Committee  
March 17, 2000