2006

Proposed Revisions to AICPA/NASBA Uniform Accountancy Act, Section 23; Exposure draft (American Institute of Certified Public Accountants), 2006, December 11

American Institute of Certified Public Accountants (AICPA)

National Association of State Boards of Accountancy

December 11, 2006

TO: Those interested in State Accountancy Regulation:

The attached Uniform Accountancy Act (UAA) – Section 23 revision exposure draft is the result of the joint efforts of the AICPA Uniform Accountancy Act Committee and the NASBA Uniform Accountancy Act Committee. The proposed revisions are intended to enhance the UAA statutory provisions related to mobility and enforcement.

The exposure draft includes an explanation of the proposed revisions as well as the text of the affected UAA statutory sections that are recommended for addition or revision. Statutory provisions are in **BOLD** type. New language is underlined and language that would be deleted is stricken. To view the entire current UAA statute go to www.aicpa.org or www.nasba.org.

The AICPA and NASBA UAA Committees welcome your comments on the proposed revisions. **The exposure period will end on Monday, May 15, 2007.** Please send your comments to **sbango@aicpa.org** and **lhaberman@nasba.org.**

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EXPOSURE DRAFT

PROPOSED REVISIONS TO

AICPA/NASBA UNIFORM ACCOUNTANCY ACT

SECTION 23

(Including Background and Commentary Related to Enhancing Licensee Mobility While Protecting the Public)

December 2006

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INTRODUCTION

The revisions to Section 23 of the Uniform Accountancy Act (UAA) provide a comprehensive system for permitting licensee mobility while making explicit the boards' authority to regulate all who offer or render professional services within their jurisdiction regardless of how those services are being provided. These changes achieve the goals of enhancing public protection, facilitating consumer choice and supporting the efficient operation of the capital markets.

The recommendations for changes to Section 23 are based on recognition by the American Institute of CPAs and the National Association of State Boards of Accountancy that the revisions will enhance the ability of CPAs to meet the needs of their clients and the capital markets while strengthening the ability of state boards of accountancy to regulate all who practice within their jurisdiction. Professionals are being asked daily to cross state lines**,** via travel or electronic communication**,** to serve the needs of clients who are not restricting their business to a single state and to provide expert technical resources to perform all levels of accounting services, including effective audits. However, state boards of accountancy continue to be responsible for protecting the people in their jurisdiction from those who incompetently practice public accountancy, irrespective of the state in which they have their principal place of business. Consequently, while a system of regulation that depends on multiple diverse notification procedures is difficult to justify in the name of public protection, a system that does not provide a mechanism for the board to act against those who harm its state's citizens is not meaningful.

HISTORY

In May 1997 the AICPA/NASBA Joint Committee on Regulation of the Profession concluded a year-long study with the issuance of their report including suggestions for improving the state-based regulatory system. They cited a number of current environmental factors affecting the profession and its regulation which still apply: (1) globalization of business; (2) information and electronic technology; (3) expansion of services; (4) challenges to the current regulatory system; and (5) demographic shifts in the profession. Based on those suggestions, the Third Edition of the Uniform Accountancy Act was released. Its most significant change from prior versions was the concept of "substantial equivalency."

Under the concept of substantial equivalency in the existing Section 23 of the UAA, if a CPA has a license in good standing from a state that utilizes CPA certification criteria that are essentially those outlined in the UAA (*i.e.* 150 hours of education, passing the Uniform CPA Examination and at least one year of experience), then the CPA would be qualified to practice in another state that is not the CPA's principal place of business. The UAA drafters seriously considered omitting any formal notification requirement, but ultimately agreed to provide for a simple "notification of intent." Should licensees change their principal place of business to another state, they would need to get a reciprocal license or, if a firm opens an office in another jurisdiction, it would need a license from that jurisdiction; however, gaining practice privileges was to only require notification to the accountancy board of one's intent to enter their state.

In order for Section 23 to effectively impact mobility and the ability of CPAs to serve clients across state lines, as well as give state boards the ability to protect the public, each state needed to enact and implement the provision in a manner similar to what appeared in Section 23. Substantial equivalency remains the foundation of Section 23 in the proposed revision; however, the "notice" requirement has been eliminated in this proposal as an unnecessary and costly barrier to practice across state lines.

Unfortunately, the mobility and enhanced enforcement goals which are the foundation for the existing Section 23 have not been achieved. This is in large part due to practical difficulties, including the lack of uniformity in the notice requirement as implemented by the states. While the basic requirements for licensure are probably more uniform than ever (as of November 2006, there are 47 jurisdictions that have initial licensing criteria that are equivalent to the UAA's), and while at least 31 jurisdictions have enacted some version of Section 23 to provide for a practice privilege, no two states have implemented it in exactly the same way. As states implemented differing versions of the provision, obstacles resulted that were often difficult for CPAs and CPA firms to navigate. One of the most significant obstacles that has been identified is how the notification requirements differ and vary from state to state.

WHY NOW?

Rather than the streamlined process envisioned, jurisdictions have set up different forms and requirements for notification. Some charge a fee and some do not; some calculate the fee per engagement, some by type of service and some on an annual basis; some have a short form and others a long form; some require no notice for their definition of "temporary or incidental practice" but do require notification for engagements that go beyond that, etc. [See Exhibit I – Why the Notice Requirement is Broken.] Professionals practicing beyond the state of their principal place of business find it difficult to comply with state laws and some states have questioned how practically they can discipline CPAs from other states. Some states have recognized the problems that their licensees are having in efficiently obtaining practice privileges in other states.

It has been almost ten years since the Joint Group highlighted the development of the global economy, and globalization has continued to move rapidly forward. Effective American participation in the global economy requires efficient access to the specialized expertise of CPAs across state lines with a minimum of cost, delay and paperwork. Time-consuming, complex and costly procedures for gaining such access cannot be considered as being in the public's best interest. Compliance costs may be passed on to the public (businesses and consumers) in the form of higher costs for services.

These proposed changes provide the right balance of trust and protection. Removing notification is being coupled with automatic jurisdiction. By removing boundaries to practice within the United States, individuals and businesses will have easier access to appropriate expertise and there will be greater competition and lower future compliance costs to provide services. At the same time, the board's ability to discipline under the proposal is based on the CPA's and the CPA's firm's performance of public accounting activity, either physically, electronically or otherwise, within the state, rather than restricting the board's authority to only those holding a state's license or a practice privilege. This proposal gives the board expanded jurisdiction and authority over all CPAs practicing directly or indirectly in a state.

As has been frequently stated, problems arise with those who seek to avoid the board's rules, rather than those who seek to comply. In simplifying procedures for cross-border practice, the boards would be recognizing that the vast majority of CPAs are law-abiding licensees who are trying to serve their clients' business needs that seldom stop at the state line.

A few states have already moved forward with the elimination of notification and automatic consent to enforcement, such as Missouri, Ohio, Virginia and most recently Wisconsin, and they have proved that the concept can work. In fact, both Ohio and Virginia have an over five-year history with no notification requirement, without any documented lapse in public protection.

TEXT OF PROPOSED STATUTE CHANGES

There are three primary components to the proposed revisions:

(1) Removal of the notification requirement within Section 23:

Consistent language is added to Section 23 (a) (1) and (2) for both state and individual substantial equivalency: "Notwithstanding any other provision of law, an individual who offers or renders professional services...shall be granted practice privileges in this state and no notice or other submission shall be provided by any such individual. Such an individual shall be subject to the requirements in 23(a) (3)."

(2) Addition of explicit language that gives a Board of Accountancy automatic jurisdiction over a CPA and the CPA firm employing them:

Subsection 23(a) (3) is intended to allow state boards to discipline licensees from other states that practice in their state under a substantial equivalency practice privilege. New language is added to clarify that if an individual licensee is using these practice privileges to render professional services in the state on behalf of a CPA firm, then automatic jurisdiction of the state board is also asserted over the firm.

In addition, a new provision is added to 23 (a) (3)(c) that enhances state board authority over unauthorized practice by requiring a licensee to cease performing services in the substantial equivalency practice privilege state if the license from his or her principal place of business is no longer valid.

(3) Deletion of Sections 7(i) and 7 (j) – firm substantial equivalency:

As a result of the elimination of any notification requirement under Section 23, former subsections 7(i) and 7(j) are also being deleted. These provisions provided for substantial equivalency on a firm wide basis. These provisions were added to the 4th Edition, released in 2005, but would no longer be necessary with the elimination of notification.

Proposed Revisions by Section

*(The material set out below is the proposed statutory text and commentary of the impacted UAA provisions. The text of the statutory and commentary provisions is in **BOLD** type. The proposed language to be added to the UAA is underlined, and proposed deleted language is stricken-through)*

SECTION 23
SUBSTANTIAL EQUIVALENCY

(a)(1) An individual whose principal place of business is not in this state and who holds ~~having~~ a valid ~~certificate or~~ license as a Certified Public Accountant from any state which the NASBA National Qualification Appraisal Service has verified to be in substantial equivalence with the CPA licensure requirements of the AICPA/NASBA Uniform Accountancy Act shall be presumed to have qualifications substantially equivalent to this state's requirements and shall have all the privileges of ~~certificate holders and~~ licensees of this state without the need to obtain a ~~certificate or permit~~ license under Sections 6 or 7. ~~However, such individuals shall notify the Board of their intent to enter the state under this provision.~~ Notwithstanding any other provision of law, an individual who offers or renders professional services, whether in person, by mail, telephone or electronic means, under this section shall be granted practice privileges in this state and no notice or other submission shall be provided by any such individual. Such an individual shall be subject to the requirements in 23(a) (3).

(2) **An individual whose principal place of business is not in this state and who holds ~~having~~ a valid ~~certificate or~~ license as a Certified Public Accountant from any state which the NASBA National Qualification Appraisal Service has not verified to be in substantial equivalence with the CPA licensure requirements of the AICPA/NASBA Uniform Accountancy Act shall be presumed to have qualifications substantially equivalent to this state's requirements and shall have all the privileges of ~~certificate holders and~~ licensees of this state without the need to obtain a ~~certificate or permit~~ license under Sections 6 or 7 if such individual obtains from the NASBA National Qualification Appraisal Service verification that such individual's CPA qualifications are substantially equivalent to the CPA licensure requirements of the AICPA/NASBA Uniform Accountancy Act. ~~However, such individuals shall notify the Board of their intent to enter the state under this provision.~~ Any individual who passed the Uniform CPA Examination and holds a valid license issued by any other state prior to January 1, 2012 may be exempt from the education requirement in Section 5(c)(2) for purposes of this Section 23 (a)(2). Notwithstanding any other provision of law, an individual who offers or renders professional services, whether in person, by mail, telephone or electronic means, under this section shall be granted practice privileges in this state and no notice or other submission shall be provided by any such individual. Such an individual shall be subject to the requirements in 23(a) (3).**

(3) An~~y~~ individual licensee of another state exercising the privilege afforded under this section and the CPA firm which employs that licensee hereby simultaneously consent~~s~~, as a condition of the grant of this privilege:

(a) to the personal and subject matter jurisdiction and disciplinary authority of the Board,

(b) to comply with this Act and the Board's rules; and,

(c) that in the event the license from the state of the individual's principal place of business is no longer valid, the individual will cease offering or rendering professional services in this state individually and on behalf of a CPA firm; and

(~~c~~d) to the appointment of the State Board which issued their license as their agent upon whom process may be served in any action or proceeding by this Board against the licensee.

COMMENT: Subsection 23(a)(3) is intended to allow state boards to discipline licensees from other states that practice in their state. If an individual licensee is using these practice privileges to offer or render professional services in this state on behalf of a CPA firm, Section 23(a)(3) also facilitates state board jurisdiction over the CPA firm as well as the individual licensee. Under Section 23(a), State Boards could utilize the NASBA National Qualification Appraisal Service for determining whether another state's certification criteria are "substantially equivalent" to the national standard outlined in the AICPA/NASBA Uniform Accountancy Act. If a state is determined to be "substantially equivalent," then individuals from that state would have ease of practice rights in other states. Individuals who personally meet the substantial equivalency standard may also apply to the National Qualification Appraisal Service if the state in which they are licensed is not substantially equivalent to the UAA.

Individual CPAs who practice across state lines or who service clients in another state via electronic technology would not be required to obtain a reciprocal certificate or license if their state of original certification is deemed substantially equivalent, or if they are individually deemed substantially equivalent. ~~Under Section 23, the CPA merely must notify the Board of the state in which the service is being performed.~~ However, licensure is required in the state where the CPA has their principal place of business. If a CPA relocates to another state and establishes their principal place of business in that state then they would be required to obtain a certificate in that state. See Section 6(c)(2). Likewise, if a firm opens an office in a state they would be required to obtain a license in that state. As a result of the elimination of any notification requirement combined with the automatic jurisdiction over any firm that has employees utilizing practice privileges in the state, former subsections 7(i) and 7(j) have been deleted. ~~See also Sections 7(i) and 7(j) which allow the use of substantial equivalency on a firm wide basis~~.

Unlike prior versions of this Section, the revised provision provides that practice privileges shall be granted and that there shall be no notification. With the addition of a stronger Consent requirement (subsection 23(a)(3)), there is no need for individual notification ~~As it relates to the notification, requirement, states should consider the need for such a requirement~~ since (i) the nature of an enforcement complaint would in any event require the identification of the CPA, (ii) online licensee databases have greatly improved, and (iii) both the individual ~~a~~ CPA practicing on the basis of substantial equivalency as well as the individual's CPA firm employer will be subject to enforcement action in any state under Section 23 (a)(3) regardless of a notification requirement.

Implementation of the "substantial equivalency" standard and creation of the National Qualification Appraisal Service will make a significant improvement in the current

regulatory system and assist in accomplishing the goal of portability of the CPA title and mobility of CPAs across state lines.

In order to be deemed substantially equivalent under Section 23(a)(1), a state must adopt the 150-hour education requirement established in Section 5(c)(2). A few states have not yet implemented the education provision. In order to allow a reasonable transition period, Section 23(a)(2) provides that an individual who has passed the Uniform CPA examination and holds an active license from a state that is not yet substantially equivalent may be individually exempt from the 150-hour education requirement and may be allowed to use practice privileges in this state if the individual was licensed prior to January 1, 2012.

(b) A licensee of this state offering or rendering services or using their CPA title in another state shall be subject to disciplinary action in this state for an act committed in another state for which the licensee would be subject to discipline for an act committed in the other state. Notwithstanding Section 11(a), the Board shall be required to investigate any complaint made by the board of accountancy of another state.

COMMENT: This section ensures that the Board of the state of the licensee's principal place of business, which has power to revoke a license, will have the authority to discipline its licensees if they violate the law when performing services in other states and to ensure that the state board of accountancy will be required to give consideration to complaints made by the boards of accountancy of other jurisdictions.

CONFORMING CHANGES SECTIONS 7(i)(j)

SECTION 7
FIRM SUBSTANTIAL EQUIVALENCY

(i)(1) Any CPA firm with a permit in this state may perform services through its individuals licensed in another state whose principal places of business are not in this state and who meet the requirements in Section 23 of this Act. However, the CPA firm:

(A) Shall provide name(s) of such individuals to the Board of Accountancy upon request

(B) Shall, by utilizing the privileges granted under this provision, consent on its own behalf and for the individual licensees to:

(i) cooperate in any Board investigation regarding any of the individual licensees of the CPA firm even if the individual is no longer an owner or employed by the CPA firm;

(ii) accept service of process from the Board on its own behalf and for the licensees;

(iii) be subject to the administrative jurisdiction of the state board regarding enforcement matters arising out of or pertaining to the use of the practice privileges provided under this subsection; and

(iv) comply with the state's accountancy laws and rules while using practice privileges under this subsection.

(2) An individual licensee whose CPA firm has complied with the preceding subsection shall not be required to file the notice required under Section 23 of this Act only as long as said individual licensee remains an employee or owner of the CPA firm.

(j) A CPA firm with a permit in another state which does not have an office in this state may provide professional services in this state through individuals that meet the requirements set out in Section 23 and such individuals shall be exempt from the notice requirement set out in Section 23 if the CPA firm:

(1) has filed a master notice, which shall be renewed not more frequently than annually, to all participating substantially equivalent jurisdictions, including this Board, by giving notice to the NASBA Qualifications Appraisal Board (or other comparable service designated by the Board); provided the information as maintained by NASBA (or such other comparable service) is accessible to this Board and includes the address of the firm and the name of the individual licensee responsible for filing the master notice.

(2) maintains a system of records reasonably designed to record for each calendar year the name, certificate number, state of licensure and principal place of business of each individual licensee who has used practice privileges in this state pursuant to Section 23 of this Act.

~~(3) has affirmed in its master notice that it consents in its own behalf and for the individual licensees to the requirements set forth in Section 7(i)(1)(B).~~

~~*COMMENT:* Sections 7(i) and 7(j) enhance substantial equivalency by adding new options for firms and for their substantially equivalent personnel. The procedure available under these Sections, makes substantial equivalency available on a "firm-wide" basis. However, Section 23 is still available should the firm prefer that its personnel file individual notices under that section. The provisions also preserve the enforcement provisions found in Section 23, which are designed to protect the public.~~

~~Under Section 7(i), a firm that has a permit in a state may offer services through substantially equivalent CPA personnel who are licensed in other states. These individuals may exercise practice privileges in the state on behalf of a CPA firm, without individually notifying the board. In addition, the CPA firm holding a permit in the state is not required to file a notice for the individual CPAs; it need only provide information to the board of accountancy upon request. However, the firm would be required to keep track of these individuals and submit their names to the board upon request. The firm must also cooperate in board investigations of the individuals, accept process of service for the licensees, and consent on behalf of the individual to be under the state's administrative jurisdiction and to comply with the state's laws and rules.~~

~~Under Section 7(j), a CPA firm that does not have a permit in the state may file a master notice with NASBA's Qualification Appraisal Board or another comparable service designated by the board of accountancy. If the CPA firm complies with the requirements of Section 7(j), the CPA firm's substantially equivalent CPAs are exempt from the state-by-state notification requirement set out in Section 23.~~

WHY THIS APPROACH WILL WORK

FROM THE LEGAL PERSPECTIVE

At least 23 states already have some form of automatic consent to jurisdiction embedded in their accountancy laws or regulations. So far all of these have worked and none have been challenged in the courts. The new proposed version of Section 23, that underscores the automatic acceptance of jurisdiction once an individual offers accounting services in a state, strengthens what states already have and would make it clear to all that wherever someone practices they are subject to discipline by the local board of accountancy.

This approach is not unique to the accounting profession. Comparable automatic consent to jurisdiction provisions can be found in other uniform acts such as the Uniform Securities Act (USA) – 2002 Version.[1] Insurance regulation has a similar provision in the Uniform Insurers Liquidation Act, covering consent to service of process and court jurisdiction which has been upheld in state cases dealing with due process issues.[2] Comparable automatic consents to jurisdiction can be found in other contexts and have been upheld in court[3].

The legal questions surrounding implementation of a no-notice practice by out-of-state CPAs in a state generally turn on three different aspects of jurisdiction, which are dictated in part by state statutes and are also limited by the federal and state constitutions. These are: (1) personal jurisdiction (the ability of the board to require the individual to defend an administrative action before the board); (2) subject matter jurisdiction (the requirement that an out-of-state CPA comply with another state's accountancy laws and rules); and (3) enforcement jurisdiction (a practical jurisdiction that pertains to whether a board can effectively enforce discipline over an out-of-state licensee even if there is personal and subject matter jurisdiction).

In the context of the practice of a profession, where there is a requirement that one comply with local laws when rendering professional services in a state, there is a strong argument that one has "availed oneself of the benefits of the laws of that state." If, on the other hand, the law is silent or allows temporary practice but does not require consent to personal jurisdiction, the out-of-state individual might be subject to the state's statutory requirement but not personally subject to the board's jurisdiction. Consequently, the revised language being proposed for Section 23 is both needed and beneficial to state boards of accountancy.

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[1] The 2002 version has been enacted by Hawaii, Idaho, Missouri, Oklahoma, Iowa, Kansas, Maine, Minnesota, South Carolina, South Dakota, US Virgin Islands and Vermont and prior versions of the USA with similar consent to jurisdiction provisions were adopted by at least 37 states. This USA provision has not been successfully challenged.

[2] "*Conduct constituting appointment of agent for service.* If a person, including a nonresident of this state, engages in an act, practice, or course of business prohibited or made actionable by this chapter or rule adopted or order issued under this chapter and the person has not filed a consent to service of process under subsection (a), the act, practice or course of business constitutes the appointment of the director as the person's agent for service of process in a noncriminal action or proceeding against the person or the person's successor or personal representative."

3 Arnold Cahit, Ltd. V. La Metropolitana, Compania Nacional De Seguros 26 Misc. 2d 751, 207 NYS2d 22 (1960) affirming provision in New York Insurance law that was based upon the Uniform Insurers Liquidation Act.
For example, the US Supreme Court upheld as a valid exercise of police power of the State a nonresident bus operator consenting to the appointment of the New York Secretary of State as its agent to accept service of process.

FROM THE LICENSEE'S PERSPECTIVE

Serving the needs of clients outside of an individual CPA's principal place of business has become reality in today's business world. Everyday, CPAs and CPA firms are faced with navigating a complex set of varying regulations and procedures that will grant them practice privileges in other jurisdictions. In order for the capital market system to continue to prosper and grow, we need to ensure that we have a mobility system in place that will allow CPAs and their firms, as professional service providers, to serve the needs of American business, while at the same time ensuring that the public is adequately protected. In other words, we need a system that allows the right CPA to be in the right place at the right time -- without unnecessary obstacles that do not add to the protection of the public's interest.

FROM THE BOARD'S PERSPECTIVE

Under the proposal, not only the individual, but also the firm consents to the jurisdiction and disciplinary authority of the board. Thus, if locating a CPA is difficult, the firm will be inclined to help locate the individual because it is in the firm's best interest to cooperate with the board. This approach benefits the firm because it eliminates the cost of notice compliance and avoids firms having CPAs who are not in compliance despite a firm's best efforts to be in compliance.

During the course of the year, there are literally thousands of CPAs crossing state lines to perform a portion of an entity's audit in numerous locations. Also, in today's electronic world, CPAs are offering advice to clients in other states on a regular basis or filing tax returns for their clients in other states without ever physically entering the states. State boards will rarely need to locate any of these CPAs for enforcement purposes. In this regard, it is noteworthy that: a) Ohio has had a no notice/ no fee approach for 45 years and, in the past ten years, it has had only two complaints against out-of-state licensees; and (b) Virginia has had this approach for over seven years and has had only one complaint-based enforcement case against a licensee from another state. It is the experience of these states, and the expectation of states more recently embracing this approach, that it is not necessary to incur the administrative costs, and impose a compliance burden on licensees, in order to effectively protect their constituents.

Under this approach, a board would be able to focus more of its human and financial resources on actual enforcement activities that protect the consumer, rather than employing administrative staff to receive and file information about the overwhelming number of CPAs who are in good standing in their home state.

Virtually all enforcement actions are the result of a person or entity filing a complaint. The complaint is generally going to be against the firm. But whether it is against the firm or an individual, the board will still receive the complaint and then contact the firm or the CPA. While Ohio and Virginia have eliminated notification, they have not had a problem in locating a CPA or CPA firm for enforcement cases.

While some states currently permit submission of a master notice to a state board, the list becomes outdated as soon as it is submitted because of frequent changes in personnel and assignments. The current proposal covers everyone and never becomes outdated.

As a practical matter, current laws limit the ability of state boards to take action against out-of-state licensees who commit unlawful acts in their state. If an out-of-state CPA practices in another state but fails to provide the required notification, the board may only be able to refer the matter to the CPA's home state board or the board may seek an injunction or pursue criminal charges. However, since the out-of-state CPA never consented to jurisdiction via the notification, the board would face the legal challenge of obtaining jurisdiction in court. Under the proposed change, in those cases which merit such an action, consent to jurisdiction is automatic – without the necessity of notification – so a board could initiate its own disciplinary proceeding against the out-of-state CPA, and impose whatever administrative discipline is appropriate. Although the board could not revoke a license issued by another state, it could revoke practice privileges. Of course, the board could also refer the case back to the licensee's principal place of business state, which would be obligated under this proposal to take the case (proposed UAA Section 23(b)). It is important to note that reliance on the principal place of business to suspend or revoke a license exists irrespective of whether states require notice.

POTENTIAL ISSUES

POTENTIAL LOSS OF REVENUES

Some state boards have raised loss of revenue as a possible obstacle in moving to a system that would not require notification – and fees. When all the costs of collecting and administering (including auditing compliance) for a notice-based program are considered against the revenues raised by notification, the amount of net revenue lost by foregoing notification fees, in most cases, may actually prove to be minimal.

In evaluating the significance of the net revenue loss issue, some state board members have recognized that there is a potential positive offsetting benefit to a state's own licensees. Their license holders would receive extra value by reason of possessing a license that could be used for practice privileges in most other states. Of course, reciprocal licenses would still be required when licensees change their principal place of business or open offices in other states. The possibility that a few states might be disproportionately affected by the change in revenue may require creative solutions, but the objectives to lower impediments to mobility and to enhance public protection should be the higher priorities of the UAA.

ABILITY TO LOCATE LICENSEES

Virtually all enforcement actions are the result of a person or entity filing a complaint. Often times, the complaint is also made against the firm. But whether it is against the firm or an individual, the board will still receive the complaint and then contact the firm or the CPA. Although Ohio and Virginia have done away with notification, they have not had a problem in locating the firm or CPA for enforcement cases. On the other hand, the cost of state board staff verification of information supplied on a practice privilege notice form can be expensive or prohibitively costly and may require a significant increase in staff.

A California consumer group has raised the issue of having an out-of-state licensee enter a state without giving any address to the accountancy board. This does not seem to be problematic, since clients will have an address or other contact information and they in turn will be able to supply the board with that information with which to take action, if necessary. Under the no notice/automatic jurisdiction structure of revised Section 23, a licensee of another jurisdiction can be served through the home state board. The state board where the violation occurred can revoke or suspend the practice privilege of the out-of-state licensee and the home state board can use that revocation to further discipline (including revoking or suspending) the home state licensee. The decision revoking or suspending the practice privilege can be used without further investigation by the home state board to the same extent that the home state board could use a decision of another state board revoking a reciprocal license.

ELIMINATION OF WRITTEN NOTIFICATION

Many states already permit some form of no notice practice (through the concept of temporary or incidental practice). This has resulted in few, if any, enforcement problems. As described in the legal section above, different professions in various states have moved

ahead without specific notification and have still been able to exercise their authority. It appears that written notification provides very little to the enforcement process. The cost, to both the state board and the practitioner, of providing notice just cannot be justified. Such resources would be best utilized by redirecting them to enforcement. Consequently, proposed Section 23 eliminates the written notice requirement.

TRUSTING OTHERS TO INVESTIGATE AND ENFORCE COMPLAINTS

Some states have expressed a concern that "other states" will not discipline their licensees for acts in "our state" and that "other states" have insufficient enforcement resources. Under Section 23(b), the state board where a licensee practices under a practice privilege does not have to rely on the other licensing state to do any investigation of violations occurring in the practice privilege state. UAA Section 10(a)(2) provides that state boards can discipline their licensees based on revocation or suspension of a practice privilege by another state board for disciplinary reasons. The practice privilege board can revoke or suspend the practice privilege, and the home state board can use that decision to discipline (including revoking or suspending) the license, without any further investigation. The section permits boards to use the other state board's decision disciplining a practice privilege in the same way it currently uses discipline of a licensee by another state board.

COMMON QUESTIONS

"If I don't require Notice I won't be able to do anything to an out-of-state CPA who does bad work in my state."

- Under the new proposed Section 23, you can do more against the out-of-state licensee because that individual will automatically be subject to the Board's administrative jurisdiction.

- Thus the Board can initiate a proceeding against the out-of-state individual, serve notice on the individual's home state board, conduct the hearing (even in absentia) and discipline the individual (by reprimand, civil penalty, or even revocation of practice privileges).

- The Board can post that discipline on its website and inform the state board in the individual's home state for further appropriate action, i.e., revocation of license issued by the home state based upon the revocation of the practice privilege.

- Almost all states make a licensee's violation of another state's laws an automatic violation in the home state.

"If I don't require Notice I won't know who is practicing as a CPA in my state."

- If you require Notice you only know the people who bother to give Notice.

- If you have a Temporary Practice or Incidental Practice or your law only allows you to regulate persons engaged in the "practice of public accountancy," there are probably already a lot of out-of-state CPAs offering or rendering professional services in your state whom you don't know about.

- Many of those CPAs that are not giving notice are good practitioners that do not intentionally violate the law but are not knowledgeable, or merely overlook giving notice.

"If I don't require Notice I won't know where an out-of-state CPA has his/her principal place of business."

- If your disciplinary process is primarily complaint driven, the complainant should have that information unless the individual foolishly engaged accounting services without knowing where the CPA was located. If the out-of-state CPA is operating a web-based practice, the address of the CPA can usually be obtained by virtue of the domain registration.

- Often the violation is brought to light by a governmental agency (i.e., SEC, GAO, etc.) which can provide the CPA's principal place of business.

- This can also be effectively regulated by enforcing the UAA internet practice requirement that CPAs must affirmatively disclose the address of their principal place of business and state of licensure. [See UAA Rule 7-6 (Jointly Adopted 2002)].

- This is a requirement that can be easily enforced in the state of principal place of business.

"Can a law make an out-of-state CPA automatically consent to the Board's jurisdiction unless the individual confirms that consent in a written notice?"

- If you depend upon notice and an out-of-state CPA fails to give Notice, you can sue the out-of-state CPA for failing to provide notice, but you will not have administrative jurisdiction over that individual so you will have to seek an injunction or an indictment.

- Also, since you are depending upon written Notice, you will not be able to serve process on the individual via the state of the individual's principal place of business.

- You will have to obtain service out-of-state by service upon the person.

- To prosecute criminally, you may have to seek extradition.

"Can a state make someone practicing from out-of-state who offers or renders services into that state without physically entering the state automatically subject to that state's laws by requiring a written notice?"

- If you cannot lawfully require automatic consent, you probably cannot even require written notice (and written consent).

- Such automatic consents to jurisdiction have been used and upheld in several other lines of interstate commerce, including securities, insurance, interstate transportation.

EXHIBIT I

WHY THE NOTICE REQUIREMENT IS BROKEN

What is "Notice"?

"Notice" is usually a code word for "application and fee"

- Applications range from zero to four pages.
- Fees range from zero to $434 to $60 per engagement.
- Processing ranges from instant to six months.
- Forms range from online to paper only plus original transcripts.

Who must provide "Notice" ?

It depends on how much you do - Those who must provide Notice range from:

- Everyone who offers or renders professional services in the state
- Everyone who uses the title "CPA" in, to or through the state
- Only persons who engage in audit/attest services. (at least 5 states)
- Only persons who actually "set foot in state" (20 states)
- Only persons who do more than the following in the state
    - 10 percent of your total work
    - 12 days
    - 10 days
    - 49 percent
    - 60 days
    - "temporary or periodic accounting work incidental to a regular practice in another jurisdiction"

It depends on what you do:

- Individual tax returns (32 states = yes)
- Business tax returns (33 states = yes)
- Teach CPE (at least 10 states require notification for teaching CPE)
- Consulting services (At least 30 states require notice for consulting services)
- Casino audits.

It depends on how you render the services:

- Online (25 states = yes)
- Only if you set foot in a state (20 states = yes)
- By mail or by phone (approximately 34 states = yes).

It depends on who you are

- Sole practitioner (No notice required in one state)
- In a firm with an office in the state (A majority of states)
- From outside the US (Most state rules favor foreign practitioners).

For a majority of states the current system often only protects your citizens:

- If you received Notice
- If the CPA physically enters your state
- If the CPA practices in your state more than 10 days
- If the CPA does something other than tax services.