



**TO:** The Honorable the Members of the Board of Regents

**FROM:** Sarah S. Benson *Sarah S. Benson*

**SUBJECT:** Proposed Addition of Subdivision (j) to Section 29.10 of the Rules of the Board of Regents and Amendment of Section 70.10 of the Regulations of the Commissioner of Education Relating to the Mandatory Peer Review Program in the Profession of Public Accountancy

**DATE:** October 7, 2021

**AUTHORIZATION(S):** *Don McG* *Betty M*

**SUMMARY**

**Issue for Decision (Consent)**

Should the Board of Regents add subdivision (j) to section 29.10 of the Rules of the Board of Regents and amend section 70.10 of the Regulations of the Commissioner of Education relating to the mandatory peer review program in the profession of public accountancy?

**Reason for Consideration**

Review of policy.

**Proposed Handling**

The proposed amendment is submitted to the Full Board for adoption as a permanent rule at the October 2021 meeting of the Board of Regents. A copy of the proposed amendment is included (Attachment A).

**Procedural History**

The proposed amendment was presented to the Professional Practice Committee for discussion at its June 2021 meeting. A Notice of Proposed Rule Making was published in the State Register on June 23, 2021. Following the 60-day public comment period required under the State Administrative Procedure Act, the Department received no comments on the proposed amendment. Therefore, an Assessment of

Public Comment is not required and no changes to the proposed amendment are needed. A Notice of Adoption will be published in the State Register on November 3, 2021. Supporting Materials are available upon request to the Secretary of the Board of Regents.

### **Background Information**

Pursuant to section 7410 of the Education Law, registered public accounting firms are required to undergo a peer review of the firm's attest<sup>1</sup> services every three years. A firm that is subject to the mandatory peer review requirements must provide the Department with a copy of the report for an acceptable quality review conducted within the prior three years, each time the firm registers. The Peer Review Oversight Committee (PROC) is responsible for overseeing this program on behalf of the Department. The PROC is a committee comprised of six members, five of whom are required to be certified public accountants. The PROC is separate from the State Board for Public Accountancy (Board). The PROC reports annually to the Board and the Department on its monitoring activities and issues related to the peer review program. Additionally, the PROC regularly monitors the status of all firms enrolled into the peer review program.

Section 70.10 of the Commissioner's regulations and section 29.10 of the Rules of the Board of Regents (Regents Rules) were last amended in 2018 to conform to the amendments made by Chapter 364 of the Laws of 2017 to the Education Law. Currently, section 70.10 of the Commissioner's regulations sets forth the rules for the mandatory peer review program for the profession of public accountancy, which include provisions on the PROC, requirements of public accountancy firms participation in the program, requirements for peer reviewers, and the overall administration of the program. As the national peer review standards continue to evolve, the current provisions do not provide the Board of Regents and/or the Department with sufficient flexibility to easily implement changes that occur with the peer review program on a national level, without having to amend the regulation each time any such changes occur. Presently, section 70.10 of the Commissioner's regulations allows the PROC to

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<sup>1</sup> As per Education Law §7401-a:

1. "Attest" means providing the following public accountancy services which all require the independence of licensees:
  - a. any audit to be performed in accordance with generally accepted auditing standards or other similar standards, developed by a federal governmental agency, commission or board or a recognized international or national professional accountancy organization, that are acceptable to the department in accordance with the commissioner's regulations;
  - b. any review of a financial statement to be performed in accordance with standards, developed by a federal governmental agency, commission or board or a recognized international or national professional accountancy organization, that are acceptable to the department in accordance with the Commissioner's regulations;
  - c. any examination to be performed in accordance with attestation standards developed by a federal governmental agency, commission or board or a recognized international or national professional accountancy organization, that are acceptable to the department in accordance with the commissioner's regulations; or
  - d. any engagement to be performed in accordance with the auditing standards of the public company accounting oversight board.

refer cases of alleged unprofessional conduct to the Department's Office of Professional Discipline (OPD). However, except for the competency of certified public accountant (CPAs) when performing attest services, section 29.10 of the Regents Rules does not define unprofessional conduct relating to the peer review program. As discussed below, the proposed amendment to section 70.10 of the Commissioner's regulations and section 29.10 of the Regents Rules is designed, in part, to provide the Department with flexibility in implementing and adapting to changes in national standards relating to the peer review program. It also defines the standards that relate to unprofessional conduct with respect to the mandatory peer review program; this will improve the Board of Regents' and the Department's ability to enforce these standards.

The American Institute of Certified Public Accountants<sup>2</sup> (AICPA) has adopted the Standards for Performing and Reporting on Peer Reviews (Standards) to establish the national requirements for the practice monitoring of public accountancy firms that provide accounting and attest services. These national standards are integral in the mandatory peer review program for the profession of public accountancy. The proposed amendment to section 70.10 of the Commissioner's regulations conforms to the Standards by clarifying definitions and terms, including the requirements for the sponsoring organization and the administering entities; prohibiting members of the PROC from also serving as members of the administering entity peer review committee; adding peer reviewer training, including the team and review captain; eliminating the retention requirements; and eliminating equivalent peer review programs. The proposed amendment also clarifies that firms that obtain an inspection by the Public Company Accounting Oversight Board<sup>3</sup> must participate in the mandatory peer review program and have their inspection reports monitored by the PROC. The proposed amendment further requires firms to submit additional peer review information to the Department, which includes enrollment and extension letters.

The Standards establish the framework that CPAs and CPA firms are expected to comply regarding peer review standards. When CPA firms do not comply with this mandated program, the firm is putting the public at risk by conducting attest services that are not in compliance with professional standards. While the AICPA currently encourages a robust enforcement system and refers enforcement matters to the State Board for Public Accountancy, the absence of supporting rules defining unprofessional conduct results in enforcement efforts that are often challenging and lengthy.

Since "unprofessional conduct" is not defined in this specific context, CPAs and CPA firms are only found to have committed unprofessional conduct if OPD can demonstrate that their failure to comply with some or all of the peer review program's requirements was willful or grossly negligent. This demanding standard can be a challenging standard to meet, which impedes the Board of Regents' ability to impose

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<sup>2</sup> The AICPA, among other things, sets the ethical standards for certified public accountants (CPAs) and the United States auditing standards for private companies, non-profit organizations, federal, state, and local governments. It also develops and grades the Uniform CPA Examination.

<sup>3</sup> The Public Company Accounting Oversight Board oversees the audits of public companies and Security and Exchange Commissioner (SEC)-registered brokers and dealers.

discipline on CPAs and CPA firms that have repeatedly failed to comply with the peer review program requirements.

The regulation proposed herein seeks to solve this problem. This means that the willful or grossly negligent standard will no longer apply to cases involving allegedly unprofessional conduct with respect to the requirements of the peer review program prescribed in regulation. The proposed amendment to section 29.10 of the Regents Rules, among other things, indicates that noncooperation with, or termination/expulsion from, the peer review program in accordance with the Standards constitutes unprofessional conduct irrespective of whether such conduct was willful or grossly negligent. The proposed amendment also defines unprofessional conduct for firms that fail to comply with the administering entity's remediation plan and when a firm fails to submit the required peer review documents to the Department.

The proposed amendments to section 70.10 of the Commissioner's regulations and section 29.10 of the Regents Rules are necessary to conform to the national peer review program standards and enhance the enforcement efforts to help ensure the quality of attest services provided by New York public accounting firms.

### **Related Regent's Items**

June 2021: [Proposed Addition of Subdivision \(j\) to Section 29.10 of the Rules of the Board of Regents and Amendment of Section 70.10 of the Regulations of the Commissioner of Education Relating to the Mandatory Peer Review Program in the Profession of Public Accountancy](https://www.regents.nysed.gov/common/regents/files/621ppcd1revised.pdf)  
(<https://www.regents.nysed.gov/common/regents/files/621ppcd1revised.pdf>)

### **Recommendation**

It is recommended that the Board of Regents take the following action:

VOTED: That section 70.10 of the Regulations of the Commissioner of Education be amended, and a new subdivision (j) be added to section 29.10 of the Rules of the Board of Regents, as submitted, effective November 3, 2021.

### **Timetable for Implementation**

If adopted by the Board of Regents at the October Board of Regents meeting, the proposed amendment will become effective November 3, 2021.

**Attachment A**

AMENDMENT TO THE RULES OF THE BOARD OF REGENTS AND THE  
REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 6509, 7408 and 7410 of the Education Law

1. Section 29.10 of the Rules of the Board of Regents are amended by adding a new subdivision (j) to read as follows:

Section 29.10 Special Provisions for the profession of public accountancy

(a) . . .

(b) . . .

(c) . . .

(d) . . .

(e) . . .

(f) . . .

(g) . . .

(h) . . .

(i) . . .

(j) Peer Review. Unprofessional conduct as it relates to a firm or licensee that is subject to the Mandatory Peer Review Program, under section 7410 of the Education Law and section 70.10 of this Title, shall include:

(1) failure of a firm to cooperate with the peer review process as determined by either the administering entity, sponsoring organization, or the Peer Review Oversight Committee (PROC) at any point in the process. For purposes of this paragraph, “cooperate” means actively complying with the peer reviewer, administering entity, and the Department in all matters related to peer review, that could impact the firm’s

enrollment in the program, including arranging, scheduling, and completing the review and taking remedial and corrective actions as needed;

(2) making a false, fraudulent, misleading or deceptive statement, as part of, or in support of, a firm's peer review reporting;

(3) a firm's termination or expulsion for any reason by the sponsoring organization, from the peer review program, in accordance with the American Institute of Certified Public Accountants Standards for Performing and Reporting on Peer Reviews;

(4) failure of a firm and its licensees to follow the peer review process and complete any remedial actions required by the administering entity; or

(5) failure of a firm to provide access to its peer review information, as required by subdivision (j) of section 70.10 (Mandatory Peer Review Program Access to Peer Review Information) of this Title.

2. Section 70.10 of the Regulations of the Commissioner of Education is amended to read as follows:

Section 70.10 Mandatory peer review program

(a) Establishment of peer review program. Except as otherwise provided in this section, pursuant to section 7410 of the Education Law, effective January 1, 2012, the department establishes a mandatory peer review program, requiring all applicants seeking a firm registration or a renewal of such registration to participate in a peer review of the firm's attest services.

(b) Definitions. For purposes of this section:

(1) . . .

(2) [Review] Peer review means a review conducted under the mandatory peer review program prescribed in this section.

(3) Review team means an individual or individuals assisting the team captain or review captain in conducting a review under this section.

(4) Reviewer means the team captain, review captain, or a member of a review team, if any, approved by the sponsoring organization to conduct a review.

(5) Sponsoring organization means an entity approved by the department in accordance with subdivision (e) of this section to oversee and facilitate peer reviews [performed by a receiver in accordance with the provisions of this section.] directly or through its administering entities, as defined in paragraph (7) of this subdivision, in accordance with the provisions of this section.

(6) . . .

(7) Administering entity means an entity approved by the department in accordance with subdivision (e) of this section to administer the mandatory peer review program.

(c) Participation in mandatory peer review program.

(1) . . .

(2) [Any] In addition, any firm that performs attest services for any of the following shall be required to undergo an external peer review:

(i) . . .

(ii) Federal governmental entities pursuant to Federal Law, in conformity with Generally Accepted Government Auditing Standards issued by the Comptroller General of the United States[.]; or

(iii) Engagements performed under the Public Company Accounting Oversight Board standards.

(3) . . .

(4) . . .

(i) . . .

(ii) . . .

(d) Peer [review oversight committee] Review Oversight Committee. The department establishes a peer review oversight committee (PROC) to oversee the mandatory peer review program and to perform the functions described in paragraph (2) of this subdivision.

(1) Composition of peer review oversight committee. The PROC shall be comprised of six members appointed by the Board of Regents. Members of the PROC shall be appointed by the Board of Regents for five-year terms. A vacancy occurring during a term shall be filled by an appointment by the Board of Regents for the unexpired term. At least five members of the PROC must be licensed certified public accountants in New York State and hold current registrations with the department, and may not be members of the State board for public accountancy or one of its committees. PROC members may not be members of the administering entity Peer Review Committee. PROC members shall be compensated in accordance with Education Law section 6506(4).

(2) . . .

(i) . . .

(ii) . . .

(iii) . . .

(iv) . . .

(v) . . .

(vi) . . .



(a) . . .

(b) . . .

(viii) . . .

(e) Approval of sponsoring organizations and administering entities. To qualify as a sponsoring organization or administering entity, an entity shall submit a peer review administration plan to the department for review and approval by the PROC. The sponsoring organization's or administrative entities' plan of administration shall:

(1) establish committees, as needed, and provide assurances that there is sufficient professional staff for the operation of the peer review program [overseen by the sponsoring organization;]. The administering entities are required to participate in the oversight program conducted by the sponsoring organization;

(2) provide assurances that the sponsoring organization and administering entity will notify firms and reviewers participating in the peer review program of the latest developments in peer review standards and the most common deficiencies in peer reviews [conducted by the sponsoring organization];

(3) . . .

(4) acknowledge that the sponsoring organization and administering entity are [is] subject to evaluations by the department or the PROC to periodically assess the effectiveness of the peer review program under its charge;

(5) establish procedures to evaluate and document the performance of each reviewer, and to disqualify a reviewer who does not meet the standards for peer reviews [set forth in subdivision (i) of this section];

(6) establish procedures such that the sponsoring organization and administering entity will provide the PROC timely access to peer review reports;

(7) . . .

(8) provide for annual reports to the PROC on the results of the [sponsoring organization's] administering entities' peer review program, which shall include information on completed reviews, including the most common deficiencies noted by reviewers and, with respect to the peer review program:

(i) . . .

(ii) . . .

(iii) . . .

(iv) . . .

(f) Approval of team and review captains and review teams.

(1) Each approved sponsoring organization shall develop and provide a list of reviewers to the department[, and from such lists the department shall monitor the list of approved reviewers for the peer review program]. The list may be made publicly available on a website specified by the sponsoring organization. The department will monitor the list of approved reviewers for the peer review program.

(2) . . .

(i) . . .

(ii) . . .

(3) Each approved sponsoring organization shall develop and implement procedures to assure that each team or review captain:

(i) is licensed or otherwise authorized to practice public accountancy in any state;

and

(ii) meets the following competencies prior to commencing a peer review:

(a) . . .

(1) . . .

(2) . . .

(b) has [either:] completed an initial training acceptable to the department that is in accordance with the American Institute of Certified Public Accountants Standards for Performing and Reporting on Peer Reviews, or its equivalent as determined by the department. At a minimum, said training shall include:

(1) [completed at least 16 hours of introductory training acceptable to the department] training relating to the performance of peer reviews if the team captain will be issuing a report expressing an opinion on the firm's system of quality control; or

(2) [has completed at least eight hours of introductory training acceptable to the department] training relating to the performance of peer reviews if the [team] review captain will be issuing a report that only evaluates engagements submitted for review without expressing an opinion on the firm's system of quality control;

(c) subsequent to the team or review captain's completion of an introductory reviewer training course pursuant to clause (b) of this subparagraph and within each successive triennial period as a team or review captain, the team or review captain shall complete [a minimum of eight hours of reviewer] training acceptable to the department relating to the performance of peer reviews; and

(d) . . .

(g) . . .

(1) . . .

(2) . . .

(h) Effect of substandard reviews. Any firm that receives a peer review report indicating that the firm has failed to design a system of quality control over its attest

services or comply with its system of quality control over its attest services, or that receives a peer review report indicating that the firm has failed to perform and report on engagements in conformity with applicable professional standards in all material respects, may be referred by the PROC for disciplinary action under Education Law section 6510.

(i) . . .

(1) . . .

(2) . . .

(j) Access to [results of] peer review[s] information.

(1) Any firm required to participate in the mandatory peer review program pursuant to section 7410 of the Education Law shall submit the following documents and revisions, as applicable, to the department:

(i) a peer review report issued by a reviewer approved by the department;

(ii) the firm's response letter;

(iii) an acceptance letter from a sponsoring organization;

(iv) letter(s) signed by the firm accepting the documents with the understanding that the firm agrees to take any actions required by the reviewer; [and]

(v) a letter from the sponsoring organization notifying the reviewed firm that required actions have been appropriately completed[.];

(vi) a letter indicating that the firm has enrolled or reenrolled into the peer review program. Such enrollment or reenrollment letter shall state the date by which the peer review shall be completed; and

(vii) a letter indicating that the firm has received an extension to complete the peer review or remedial actions.

(2) Peer review documents required in subparagraphs (1)(i) through (iii) of this subdivision shall be made available to the department via a website address provided by the sponsoring organization within 30 days of the date on the acceptance letter from the sponsoring organization. The peer review document required in subparagraph (1)(iv) of this subdivision shall be made available to the department within 30 days of the date that the firm signs such letter. The document required in subparagraph (1)(v) of this subdivision shall be made available to the department within 30 days of the date of the letter from the sponsoring organization notifying the reviewed firm that the required actions have been appropriately completed. The peer review document required in subparagraph (1)(vi) of this subdivision shall be made available to the department within 30 days of the date on the acceptance letter into the peer review program. The peer review document required in subparagraph (1)(vii) of this subdivision shall be made available to the department within 30 days of the date of the extension letter from the sponsoring organization. If a sponsoring organization cannot provide access to the peer review documents required in subparagraphs (1)(i) to [(v)] (vii) of this subdivision via a website, the firm shall provide copies of the peer review documents by e-mail, mail or facsimile within 10 days of receipt of the applicable document, except for the peer review document required in subparagraph (1)(iv) of this subdivision which shall be submitted within 10 days of the date the firm signs such letter.

[(3) Equivalent peer review reports submitted in accordance with subdivision (m) of this section shall be made available to the department via a website provided by the entity administering the peer review, in accordance with the requirements of paragraph (2) of this subdivision. If the entity that administered the peer review cannot provide access to the equivalent peer review documents via a website, the firm shall provide

copies of the equivalent peer review documents by mail or facsimile in accordance with the requirements of paragraph (2) of this subdivision.]

(k) . . .

(1) . . .

(2) . . .

(l) Public Company Accounting Oversight Board (PCAOB) inspections. In addition to the review required under subdivision (c) of this section, any firm that undergoes an inspection conducted by the [Public Company Accounting Oversight Board] [(]PCAOB[)] as required under the Sarbanes-Oxley Act of 2002 shall [submit to the department a copy of the public version of its most recent inspection report within 10 days of a receipt of the notice of completion from the PCAOB] be subject to a review of its most recent inspection report by the PROC.

[(m) Equivalent peer review reports. The department may, in its discretion, accept from a firm a review report which the department deems to be the substantial equivalent of a peer review report issued under this section. A review report will be deemed substantially equivalent provided such reviews are conducted and reported on in accordance with the peer review standards set forth in subdivision (i) of this section. Peer reviews administered by entities located outside the State of New York acceptable to the department and any affiliated administering entities may be accepted as substantially equivalent of a peer review report issued under this section.]