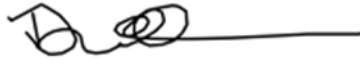






**TO:** The Honorable the Members of the Board of Regents

**FROM:** Douglas E. Lentivech  


**SUBJECT:** Proposed Amendment of §70.10 of the Regulations of the Commissioner of Education Relating to the Mandatory Peer Review Program in Public Accountancy

**DATE:** November 30, 2017

**AUTHORIZATION(S):**  

### SUMMARY

#### **Issue for Decision (Consent Agenda)**

Should the Board of Regents adopt, as an emergency action, the proposed amendment of paragraph (5) of subdivision (b) of §70.10 of the Regulations of the Commissioner of Education relating to the mandatory peer review program in public accountancy?

#### **Reason for Consideration**

Review of policy.

#### **Proposed Handling**

The proposed amendment will be presented to the Full Board for adoption as an emergency action at the December 2017 meeting of the Board of Regents. A copy of the proposed rule and a Statement of Facts and Circumstances Which Necessitate Emergency Action are attached. Supporting materials for the proposed rule are available upon request from the Secretary to the Board of Regents.

#### **Procedural History**

The proposed amendment was presented to the Professional Practice Committee for recommendation and to the Full Board for adoption as an emergency action at the October 2017 meeting of the Board of Regents, effective October 17, 2017. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on

November 1, 2017. Because the October emergency rule will expire on January 14, 2018, a second emergency action is necessary to ensure that the emergency rule remains continuously in effect until it can be adopted at the January 22-23, 2018 Regents meeting and take effect as a permanent rule.

Subsequent to the October 2017 meeting, Chapter 364 of the Laws of 2017 (Chapter 364) amended Education Law §§7408 and 7410 by, inter alia, replacing the word “quality” with the word “peer”, effective October 23, 2017. Thus, the mandatory quality review program is now referred to as the mandatory peer review program. In order to implement Chapter 364, at the November 2017 meeting of the Board of Regents, the proposed amendment of section 29.10 of the Rules of the Board of Regents and sections 70.7, 70.8 and 70.10 of the Regulations of the Commissioner of Education was presented to the Professional Practice Committee for recommendation and to the Full Board for adoption as an emergency action, effective November 14, 2017. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on November 29, 2017. The proposed amendment of section 70.10 of the Regulations of the Commissioner of Education relating to changing the name of the mandatory quality review program to the mandatory peer review program (and renumbering paragraph (6) of subdivision (b) of section 70.10, as paragraph (5) of subdivision (b) of section 70.10) has been incorporated into the attached terms of this proposed emergency action.

### **Background Information**

Pursuant to section 7410 of the State Education Law, most registered public accounting firms are required to undergo a peer review of the firm's attest 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 peer review conducted within the prior three years, each time the firm registers. This mandatory peer review program (MPRP) is administered by a Department approved sponsoring organization. A sponsoring organization administers the program by overseeing and facilitating peer reviews by a reviewer in accordance with the statutory requirements as well as the requirements of Commissioner's regulation section 70.10.

In most states, their respective State Societies of Certified Public Accountants (CPAs) are the sponsoring organizations for their peer review programs. Since New York State's MPRP was implemented into law in 2012, the New York State Society of Certified Public Accountants (NYSSCPA) has been the sole Department approved sponsoring organization.

In March 2017, the NYSSCPA notified the Department that, as of the fourth quarter of 2018, it would cease being a sponsoring organization for MPRP, which would leave New York State without a sponsoring organization for this statutorily mandated program. To ensure the continuous functioning of MPRP, another entity will need to be approved by the Department as a sponsoring organization. However, the timeline for approving a new sponsoring organization appears to have significantly shortened as the Department subsequently received information that the transition to a new sponsoring organization could be necessary as early as March of 2018.

Under the current provisions of paragraph (5) of subdivision (b) of §70.10 of the Regulations of the Commissioner of Education, only entities located in New York State can apply to the Department for approval as a sponsoring organization, which restricts prospective sponsoring organization applicants to New York State entities. Thus, if no other qualified entity located in New York State applies to become a sponsoring organization, New York State will be unable to carry out the statutory obligations of this program because the Department presently cannot approve an entity located in another state.

As is the case in New York State, with respect to the NYSSCPA's decision to discontinue being a sponsoring organization, on a national level, several other State Societies have exited or are planning to exit the program due to the increased complexity of the administration of the peer review program. Consequently, the State Societies that have decided to remain in this program are, or are becoming, consolidated sponsoring organizations that provide such administrative services to multiple states.

Moreover, based on outreach and research, the Department has determined that currently there is no other entity located in New York State that is willing and/or capable of becoming a sponsoring organization for this program. However, the Department and its Peer Review Oversight Committee have preliminarily identified a potential sponsoring organization located in another state.

The proposed amendment to paragraph (5) of subdivision (b) of §70.10 of the Regulations of the Commissioner of Education addresses the above-referenced situation by eliminating the requirement that only an entity located in New York State can become a Department approved sponsoring organization. The elimination of this requirement will permit the Department to accept and approve an application from an entity located either in or outside of this State, which will provide the Department with the discretion and flexibility that it needs to ensure that this program continues to operate, despite the recent changes at both the State and national levels.

### **Related Regents Items**

October 2017: Proposed Amendment of §70.10 of the Regulations of the Commissioner of Education Relating to the Mandatory Quality Review Program in Public Accountancy.

November 2017: Proposed Amendment of §29.10 of the Rules of the Board of Regents and Sections 70.7, 70.8 and 70.10 of the Regulations of the Commissioner of Education Relating to the Mandatory Quality Review Program in Public Accountancy.

### **Recommendation**

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

VOTED: That paragraph (5) of subdivision (b) of §70.10 of the Regulations of the Commissioner of Education be amended, as submitted, effective January 15, 2018, as an emergency action upon a finding by the Board of Regents that such action is necessary

for the preservation of the public health and general welfare to ensure that the emergency rule adopted at the October 2017 Regents meeting remains continuously in effect until the proposed rule can be presented for adoption and take effect as a permanent rule.

### **Timetable for Implementation**

If adopted at the December 2017 Regents meeting, the emergency rule will take effect on January 15, 2018. It is anticipated that the proposed amendment will be presented to the Board of Regents for permanent adoption at the January 2018 meeting, after publication of the proposed amendment in the State Register for the 45-day public comment period required under the State Administrative Procedure Act.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

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

Paragraph (5) of subdivision (b) of section 70.10 of the Regulations of the Commissioner of Education is amended, as follows:

(5) Sponsoring organization means an entity[, located in the State of New York,] approved by the department in accordance with subdivision (e) of this section to oversee and facilitate peer reviews performed by a reviewer in accordance with the provisions of this section.

## **8 NYCRR §70.10**

### STATEMENT OF FACTS AND CIRCUMSTANCES WHICH NECESSITATE EMERGENCY ACTION

Pursuant to section 7410 of the State Education Law, most registered public accounting firms are required to undergo a peer review of the firm's attest 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 peer review conducted within the prior three years, each time the firm registers. This mandatory peer review program (MPRP) is administered by a Department approved sponsoring organization. A sponsoring organization administers the program by overseeing and facilitating peer reviews by a reviewer in accordance with the regulatory requirements.

In most states, their respective State Societies of Certified Public Accountants (CPAs) are the sponsoring organizations for their peer review programs. Since New York State's MPRP was implemented into law in 2012, the New York State Society of Certified Public Accountants (NYSSCPA) has been the sole Department approved sponsoring organization.

In March 2017, the NYSSCPA notified the Department that, as of the fourth quarter of 2018, it would cease being a sponsoring organization for MPRP, which would leave New York State without a sponsoring organization for this statutorily mandated program. To ensure the continuous functioning of MPRP, another entity will need to be approved by the Department as a sponsoring organization. However, the timeline for approving a new sponsoring organization appears to have significantly shortened as the Department subsequently received information that the transition to a new sponsoring organization could be necessary as early as March of 2018.

Under the current provisions of paragraph (5) of subdivision (b) of section 70.10 of the Regulations of the Commissioner of Education, only entities located in New York State can apply to the Department for approval as a sponsoring organization, which restricts prospective sponsoring organization applicants to New York State entities. Thus, if no other qualified entity located in New York State applies to become a sponsoring organization, New York State will be unable to carry out the statutory obligations of this program because the Department presently cannot approve an entity located in another state.

As is the case in New York State, with respect to the NYSSCPA's decision to discontinue being a sponsoring organization, on a national level, several other State Societies have exited or are planning to exit the program due to the increased complexity of the administration of the peer review program. Consequently, the State Societies that have decided to remain in this program are, or are becoming, consolidated sponsoring organizations that provide such administrative services to multiple states.

Moreover, based on outreach and research, the Department has determined that currently there is no other entity located in New York State that is willing and/or capable of becoming a sponsoring organization for this program. However, the Department and its Peer Review Oversight Committee have preliminarily identified a potential sponsoring organization located in another state.

The proposed amendment to paragraph (5) of subdivision (b) of section 70.10 of the Regulations of the Commissioner of Education addresses the above-referenced situation by eliminating the requirement that only an entity located in New York State can become a Department approved sponsoring organization. The elimination of this requirement will permit the Department to accept and approve an application from an

entity located either in or outside of this State, which will provide the Department with the discretion and flexibility that it needs to ensure that this program continues to operate, despite the recent changes at both the State and national levels.

The proposed amendment was presented to the Professional Practice Committee for recommendation and to the Full Board for adoption as an emergency action at the October 2017 meeting of the Board of Regents, effective October 17, 2017. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on November 1, 2017.<sup>1</sup> Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be presented for regular (non-emergency) adoption, after expiration of the required 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) section 202(1) and (5), would be the January 22-23, 2018 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the January meeting, would be February 7, 2018, the date a Notice of Adoption would be published in the State Register. However, the October emergency rule will expire on January 14, 2018. If the rule were to lapse, it could impede the Department's ability to ensure the continuous functioning of this statutorily mandated program because the Department would not have the authority to accept, consider and approve prospective sponsoring organization applications from entities located both in and outside of this State.

Therefore, emergency action is necessary at the December 2017 Regents meeting for the preservation of the public health and general welfare to ensure that MPRP can

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<sup>1</sup> A Notice of Emergency Adoption and Proposed Rule Making was also published in the State Register on November 29, 2017, to amend, *inter alia*, section 70.10, which implemented Chapter 364 of the Laws of 2017 (Chapter 364) which took effect on October 23, 2017, by replacing the word "quality" with the word "peer;" thus changing the reference to the mandatory quality review program which is now referred to as the mandatory peer review program.



continue to function by continuing the Department's authority to approve a sponsoring organization or organizations, located either in or outside of this State, to oversee and facilitate peer reviews performed by a reviewer as mandated by statute.

It is anticipated that the proposed amendment will be presented for permanent adoption at the January 22-23, 2018 Regents meeting, which is the first scheduled meeting after the expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act for State agency rule makings.