



August 14, 2018

Ken Levine
Director
Sunset Advisory Commission
PO Box 13066
Austin, Texas 78711

Via email: sunset@sunset.texas.gov

Dear Director Levine:

The American Institute of CPAs (AICPA) is pleased to submit comments regarding the Texas Sunset Advisory Commission's (the Commission) sunset review of the Texas State Board of Public Accountancy (TSBPA). The AICPA applauds the Commission's periodic reflection on the work and engagement of public boards, such as TSBPA, to ensure regulatory boards remain committed to public protection in a manner reflective of the values of this state.

The AICPA is the world's largest member association representing the CPA profession, with more than 431,000 members in 137 countries, and a history of serving the public interest since 1887. AICPA members represent many areas of practice, including business and industry, public practice, government, education and consulting. The AICPA sets ethical standards for its members and U.S. auditing standards for private companies, nonprofit organizations, federal, state and local governments. It develops and grades the Uniform CPA Examination, offers specialized credentials, builds the pipeline of future talent and drives professional competency development to advance the vitality, relevance and quality of the profession. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

The AICPA appreciates the Commission's statement in Issue 3 that "the state has a continuing need to regulate accountancy." The acknowledgement that a highly functioning CPA profession depends on a robust and smart regulatory framework is not to be overlooked when there are legislative efforts in other states attacking the efficacy of state occupational licensure. Nevertheless, the recommendation to decrease the current number of CPAs on the TSBPA as well as the recommendation to change the current peer review rules are concerning to us and our members.

- **Recommendation 3.2 - Adjust the board’s composition to consist of eight public members and seven certified public accountants.**

The AICPA does not support the recommendation to decrease the number of CPAs on the TSBPA from ten to seven. The CPA profession, as stated in the report, is highly technical and requires skilled practitioners to keep pace with the evolving technical licensing and oversight issues that come before TSBPA daily. We believe the proposed diminution of expertise will have a deleterious effect upon the TSBPA, Texas CPAs and Texas CPA firms. The Commission asserts that the recommendation is intended to preserve the state’s ability to claim immunity in future anti-trust litigation. As support for this concern, it points to the U.S. Supreme Court decision *North Carolina State Board of Dental Examiners v. Federal Trade Commission (NC Dental)*¹. In *NC Dental*, the Court ruled that the North Carolina State Board of Dental Examiners (NC Dental Board) was not entitled to so-called “state action” immunity from antitrust laws when it sought to restrict non-dentists from performing teeth whitening services. However, the Court’s decision was not because the NC Dental Board’s composition had a majority of market participants. It was because their actions lacked sufficient state supervision.² The Court reasoned that active supervision is necessary for state agencies composed of active market participants because their private interests are so strong that they create an increased risk of anti-competitive conduct that may not be clear to them. However, the Court did not create a formulaic bright line test to suggest how many market participants should be on a regulatory board. Nor did the decision clearly define the concept of “active supervision.”

States are still grappling with the Court’s decision in *NC Dental*. In the absence of a clear standard for what “active supervision” means, several federal and state legislative proposals have suggested creating a sunset regime for regulatory boards. This suggests that the Texas sunset review process, as well as Texas law that currently grants immunity,³ may provide more protection from anti-trust law suits than removing CPAs from TSBPA.

- **Recommendation 2.10 - Direct the board to amend its peer review rules to account for risk posed to the public.**

In Recommendation 2.10, the Commission directs the Board to adopt a more risk-based peer review program to “better align the frequency of peer review with the risk posed by the services provided by the CPA firm.” Further in Recommendation 2.10, the Commission highlights firms who only perform compilation services as examples of whom should receive

¹ 135 S. Ct. 1101 (2015)

² *Ibid.*

³ Tex. Occ. Code Ann. § 901.162

less stringent peer review; and highlights states that exempt sole proprietorships or firms who perform less than a certain number of compilations in a given time period. While effective regulation should include a risk-based framework, we have concerns over the manner in which the Commission is suggesting the Board deviate from the current AICPA peer review program for the following reasons: 1) the recommendation may compromise peer review's primary objective of promoting and enhancing quality in the accounting and auditing services provided by CPA firms; 2) the recommendation does not acknowledge the degree to which a risk-based analysis already exists within the peer review program; 3) the cost of the Board creating its own peer review program may be cost prohibitive and may not result in the intended outcome; and 4) the creation of a separate peer review program tears at the successful uniform system created to allow CPA firms to perform attest services across state lines without additional fees and regulation.

Peer review plays a critical role in advancing the public protection mission of the CPA profession. One of its primary purposes is to protect members of the public who rely on the accuracy and quality of accounting and auditing services provided by CPAs, and to allow state boards of accountancy to regulate ensure the quality of accounting and auditing services provided by licensed CPA firms. Specifically, the peer review program increases the likelihood that: 1) CPA licensees develop appropriate procedures to maintain quality control over their work; 2) CPA licensees are following quality control procedures in practice; 3) and CPA licensees are complying with professional and ethical standards.

For example, the AICPA Peer Review Program (PRP) seeks to achieve quality in the performance of accounting and auditing engagements of non-U.S. Securities and Exchange Commission registrants through remedial corrective measures. The PRP includes rigorous checks and balances through continual monitoring of the administrative and acceptance process, including reviewer performance. The entire administrative and technical process is overseen nationally by the AICPA Peer Review Board.

The AICPA PRP was put in place to monitor the profession and establish a layer of public protection by:

- identifying CPA firms that have inadequate systems of quality control,
- detecting non-performance in accordance with professional standards in all material respects,
- imposing remedial action to correct deficiencies, and
- improving firms' accounting and auditing practices.

As indicated above, the entire peer review process results in improvements in a firm's compliance with professional standards with accounting and auditing engagements with the

goal of better protecting the public. Public protection does not preclude the PRP from including risk-based elements to mitigate the burden on firms performing less risky services. Firms that perform only reviews and compilations under Statements on Standards for Accounting and Review Services (SSARS) and certain Statements on Standards for Attestation Engagements (SSAE) engagements undergo an engagement review. Such reviews are performed at the reviewer's office and consists of reading the financial statements or information submitted by the firm including the accountant's report. The reviewer is required to look at one engagement of each of the areas of service performed by the firms (i.e. review, compilation with disclosures, compilations that omit substantially all disclosures and engagements under SSAEs other than examinations). If a sole practitioner performed three reviews and two compilations with disclosures, the reviewer would be required to look at one review engagement and one compilation engagement.⁴ Firms that elect to perform preparation services as their highest level of service are not subject to peer review requirements unless they choose to enroll in peer review.⁵ Firms, however, that perform engagements under the Statements on Auditing Standards (SAS) or Government Auditing Standards, examinations under the SSAEs, or engagements under Public Company Accounting Oversight Board (PCAOB) standards, as their highest level of service have a system review.⁶ Due to the high risk of these engagements, system reviews are ordinarily performed at the firm's office and assesses the firm's system of quality control. System reviews cost more than an engagement review because it requires the reviewer to assess the design and compliance of the firm's system of quality control.

The Board adopted the AICPA *Standards for Performing and Reporting on Peer Reviews* which requires all firms to undergo a peer review every three years regardless of the firm's size of practice.⁷ The Board could certainly develop its own peer review program consistent with the Commission's recommendation, but it would be in the minority of states to do so. We are aware of only six states (Alaska, Florida, Kansas, New York, Oklahoma and Pennsylvania) that do not require firms that perform only compilations as their highest level of service to enroll in a peer review program. One state, New York, had a law that exempted firms with two or fewer CPA practitioners from enrolling in peer review. That law was repealed October 23, 2017. Moreover, since 47 jurisdictions require firms be enrolled in peer review if their highest level of service is a compilation, it would imperil the uniformity the CPA profession relies upon to allow for greater unfettered firm mobility across state lines. An opportunity we would like to see the Texas Legislature extend to Texas CPA firms eventually. Finally, the fact that very few state boards of accountancy manage their own peer review program suggests at least two things: 1)

⁴ PRP 1000.104(a)

⁵ PRP 1000.207

⁶ PRP 1000.07

⁷ 22 TAC Section 527.3

the cost of developing and administering a unique peer review program likely outweighs the benefits; and 2) the majority of state boards of accountancy, including TSBPA, recognize the strength of the PRP.

- **Conclusion**

The AICPA lauds the Commission's mission of ensuring state government is efficient, effective and accountable. We share these same goals for our profession. We appreciate the opportunity to share our concerns on this report its potential impact on Texas CPAs and CPA firms. If there are any questions or concerns, please contact me at Skip.Braziel@aicpa-cima.com or 202.434.9273.

Sincerely,

A handwritten signature in black ink, appearing to read "M.L. Braziel, Jr.", with a stylized flourish at the end.

M.L. (Skip) Braziel, Jr.
Vice President
American Institute of CPAs