

Office of the Governor
Regulatory Compliance Division Rule

To: Erin Bennett, Director Regulatory Compliance Division

Julie Davis, Regulatory Compliance Division

From: J. Randel (Jerry) Hill General Counsel, Texas State Board of Public Accountancy

Date: November 23, 2021

Subject: Board Rule 523.132 - Contracted Ethics Instructors

The Texas State Board of Public Accountancy has proposed an amendment to 22 Texas Administrative Code Section 523.132. The proposed rule may affect market competition and is submitted to the Regulatory Compliance Division for review.

The proposed amendment will clarify that the Board's relationship with the Ethics instructors is not contractual. It is an authorization to permit the instructors, as Board approved sponsors, to provide the required ethics continuing professional education to licensees so long as the instructors adhere to Board standards. The proposed amendment also eliminates the requirement that the authorization be approved by the Board every three years, clarifies that the authorization may be cancelled by the Board and an instructor may be required to submit a current resume. The text of the proposed rule amendment is attached to this memorandum.

The proposed Rule revisions were most recently published in the Texas Register on October 22, 2021 to offer the public the opportunity to provide comments. No comments were received.

To facilitate the Regulatory Compliance Division's review of the proposed rule, the Texas State Board of Public Accountancy provides responses to the following questions.

1. Briefly describe the proposed rule.

The proposed rule requires individuals wishing to teach the Board's required ethics courses be qualified to do so. The proposed rule

amendment clarifies that there is no contractual relationship with the Board.

2. What is the purpose of the proposed rule?

To assure that the ethics course instructors possess the education, experience, and training to provide a quality course product and to assure that the instructors possess the integrity, as evidenced by a lack of disciplinary actions taken against the instructors, to teach ethics courses to licensees.

3. Describe any relevant factual background to the proposed rule and the impetus for the state agency to consider rulemaking.

The Public Accountancy Act (hereinafter Act) requires a Certified Public Accountant (CPA) to maintain high standards of professional competence, integrity and expertise in all dealings with the public.

The Act, specifically Section 901.005 (e) (3), establishes the policy that a person licensed as a CPA must maintain high standards of professional competence and integrity and must demonstrate competence and integrity in all dealings with the public.

Lapses in competence and integrity by licensees have cost people their life savings, pensions, jobs and the public trust in the CPA profession. The lack of competence and integrity by CPAs resulted, at least in part, in the collapse of Enron, Arthur Andersen and the jobs of some 25,000 people. There are many other examples of a failure of competence and integrity by CPAs that have severely affected the people and the economy of this state.

Attached are articles published from studies on the effect that ethics training and continuing professional education has had on the profession of accountancy in Texas. The articles are titled:

Quality Review, Continuing Professional Education, Experience and Substandard Performance: An Empirical Study

Implementing a Required Ethics Class for Students in Accounting: The Texas Experience

Ethics Education for CPAs in Texas: Is it working?

Each of the studies found that the ethics training and continuing professional education required by this agency are having significant positive effects.

4. Describe the legal authority for the proposed rule.

a. Is the proposed rule specifically required or authorized by state statute? If so, list the statute(s).

Continuing professional education is specifically required by Section 901.411 of the Act. Section 901.411(a) recognizes the Board's authority to adopt rules to administer the program. Board Rule 523.132 has been promulgated to assure that the instructors that teach ethics as a part of the continuing professional education program are competent and possess the integrity to provide ethics training. An instructor's competence in professional standards is essential to providing beneficial continuing professional education. An instructor's integrity is required to effectively understand and therefore teach the need and importance of ethics in the practice of the profession.

b. Is the proposed rule within the scope of the state agency's general authority to regulate in a given occupation or industry? If so, describe how the proposed rule is within the scope, and reference the applicable state statute(s).

Section 901.005 of the Act recognizes that the strength of the financial system in this state is supported by the competence, integrity and expertise of the persons who attest to financial statements. This section of the Act further states that the public relies on the competence and integrity of CPAs in all of its dealings with CPAs.

Also, Section 901.411 of the Act requires a licensee to participate in a program of continuing professional education with the intent to maintain professional competency.

Continuing professional education is required, and is essential in maintaining the competence and integrity of the profession. The Board's rules administer this program to assure competence and integrity. The program rules require the persons who provide the statutory training to be competent and have the integrity to assure the courses provided have the value necessary to meet the expectations and requirements of the Act.

5. Describe the process that the state agency followed in developing the proposed rule, including any public hearings held, public comments invited, studies

The rules were originally developed by the Board's Continuing Professional Education Committee and all subsequent amendments were initially reviewed by that committee. The rules were reported out of committee to the Rules Committee which, following its consideration, offered the proposed rules to the Board for publication in the Texas Register for public comment. Following the public comment period and the consideration of public comment, the Board ultimately adopted the rules. The adoption dates of the rules follow.

The proposed rule was originally adopted effective April 7, 2004, 29 TexReg 3477; subsequently discussed and adopted as amended August 17, 2008, 33 TexReg 6384; amended to be effective August 12, 2009, 34 TexReg 5377; amended to be effective August 11, 2010, 35 TexReg 6827; amended to be effective February 6, 2013, 38 TexReg 505; and last adopted effective March 29, 2017, 42 TexReg 1445.

Each of the rules were proposed in an open meeting, pursuant to the Open Meetings Act, during the Board's Continuing Professional Educations and Rules Committee meetings. They were then discussed at a Board meeting pursuant to the Open Meetings Act which authorized the Executive Director to have the rule published in the Texas Register requesting comments from the public on the rule. Following the comment periods and considering the comments, the Board adopted the rules. The Board received and considered comments on the proposed rules in 2004. In the last 17 years, the public has offered no comments during the proposed revisions to the rule. No public hearings separate and apart from the 36 noticed Rules and Board meetings were needed.

6. Describe the harm that the proposed rule is intended to address and how the proposed rule will address the harm.

To assure that the ethics course instructors possess the education, experience, and training to provide a quality course product and to assure that the instructors possess the integrity, as evidenced by a lack of disciplinary actions taken against the instructors, to teach ethics courses to licensees.

7. Do any less restrictive alternatives to the proposed rule exist for addressing the same harm? If so, include a comparison of the proposed rule to the alternatives and a justification for not pursuing a less restrictive alternative. If no less restrictive alternatives exist, explain why.

The alternative is to not require evidence of education, experience, training and integrity. Doing so, however, creates the risk of unqualified or unethical instructors providing an ethics course of little or no value.

8. Indicate how the proposed rule affects market competition (See Section 57.105(d), Texas Occupations Code).

Individuals lacking the education, experience, training and integrity to teach an ethics course will not be permitted to provide the service.

9. Describe the specific impact that the proposed rule will have on market competition and how that effect is consistent with state policy as established by the Legislature in state statute.

The rule and statute are intended to promote compliance with professional standards by licensees and avoid the failure of business resulting from failed audits and failed accounting practices. Studies have shown, as evidenced in the attachments, that continuing professional education has value. It promotes integrity and competence in the practice of public accountancy which helps to protect the public from substandard or even fraudulent accounting work and the economic damages resulting from deficient accounting services.

10. Does the proposed rule relate to a question that is the subject of an opinion request pending before the Office of the Attorney General? Does the proposed rule relate to an opinion previously issued by the Office of the Attorney General?

The proposed rule does not relate to a question that is the subject of an opinion request before the Office of Attorney General or to a previously issued opinion from that office.

11. Does the proposed rule relate to a matter on which there is pending litigation or a final court order?

The proposed rule does not relate to a matter on which there is pending litigation or a final court order.

12. Is there anything else that the state agency would like the Regulatory Compliance Division to know about the proposed rule?

No further response is needed.

REVIEW OF AGENCY RULES

This section contains notices of state agency rule review as directed by the Texas Government Code, §2001.039. Included here are proposed rule review notices, which invite public comment to specified rules under review; and adopted rule review notices, which summarize public comment received as part of the review. The complete text of an agency's rule being reviewed is available in the *Texas Administrative Code* on the Texas Secretary of State's website.

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the website and printed copies of these notices may be directed to the *Texas Register* office.



Texas State Board of Public Accountancy

Title 22, Part 22

The Texas State Board of Public Accountancy will review and consider for re-adoption, revision or repeal Title 22 Texas Administrative Code, Part 22, Chapters 501, 502, 505, 507, 509, 511, 512, 513, 514, 515, 517, 518, 519, 520, 521, 523, 525, 526 and 527.

This review is conducted pursuant to Section 2001.039 of the Government Code.

In conducting its review, the Board will determine whether the reasons for the rules continue to exist. The review will also determine whether the rules are obsolete, whether the rules reflect current legal and policy considerations, and whether the rules reflect current procedures of the Board.

Any comments pertaining to this notice of intention to review may be submitted within the next 120 days to General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701. Any proposed changes to the rules as a result of this review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional comment period prior to final adoption or repeal by the Board.

Chapter 501 - Rules of Professional Conduct

Chapter 502 - Peer Assistance

Chapter 505 - The Board

Chapter 507 - Employees of the Board

Chapter 509 - Rulemaking Procedures

Chapter 511 - Eligibility

Chapter 512 - Certification by Reciprocity

Chapter 513 - Registration

Chapter 514 - Certification as a CPA

Chapter 515 - Licenses
Chapter 517 - Practice by Certain Out of State Firms and Individuals
Chapter 518 - Unauthorized Practice of Public Accountancy
Chapter 519 - Practice and Procedure
Chapter 520 - Provisions for the Fifth-Year Accounting Students Scholarship Program
Chapter 521 - Fee Schedule
Chapter 523 - Continuing Professional Education
Chapter 525 - Criminal Background Investigations
Chapter 526 - Board Opinions
Chapter 527 - Peer Review
TRD-202000293
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Filed: January 24, 2020



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TITLE 22. EXAMINING BOARDS
PART 22. TEXAS STATE BOARD OF
PUBLIC ACCOUNTANCY
CHAPTER 523. CONTINUING PROFES-
SIONAL EDUCATION

SUBCHAPTER C. ETHICS RULES: INDIVIDUALS AND SPONSORS

22 TAC §523.132

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.132, concerning Board Contracted Ethics Instructors.

Background, Justification and Summary

The amendment establishes the relationship between the Board and CPE sponsors as an authorization and not contractual. The CPE sponsors are authorized by the Board to offer continuing professional education.

Fiscal Note

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment is in effect, there will be no additional estimated cost to the state, no estimated reduction in costs to the state and to local governments, and no estimated loss or increase in revenue to the state, as a result of enforcing or administering the amendment.

Public Benefit

The adoption of the proposed amendment clarifies that CPE sponsors are authorized by the Board to offer continuing professional education.

Probable Economic Cost and Local Employment Impact

Mr. Treacy, Executive Director, has determined that there will be no probable economic cost to persons required to comply with the amendment and a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Small Business, Rural Community and Micro-Business Impact Analysis

William Treacy, Executive Director, has determined that the proposed amendment will not have an adverse economic effect on small businesses, rural communities or micro-businesses because the amendment does not impose any duties or obligations upon small businesses, rural communities or micro-businesses; therefore, an Economic Impact Statement and a Regulatory Flexibility Analysis are not required.

Government Growth Impact Statement

William Treacy, Executive Director, has determined that for the first five-year period the amendment is in effect, the proposed rule: does not create or eliminate a government program; does not create or eliminate employee positions; does not increase or decrease future legislative appropriations to the Board; does not increase or decrease fees paid to the Board; does not create a new regulation; limits the existing regulation; does not increase or decrease the number of individuals subject to the proposed rule's applicability; and does not positively or adversely affect the state's economy.

Takings Impact Assessment

No takings impact assessment is necessary because there is no proposed use of private real property as a result of the proposed rule revision.

The requirement related to a rule increasing costs to regulated persons does not apply to the Texas State Board of Public Ac-

countancy because the rule is being proposed by a self-directed semi-independent agency. (§2001.0045(c)(8))

Public Comment

Written comments may be submitted to J. Randel (Jerry) Hill, General Counsel, Texas State Board of Public Accountancy, 505 E. Huntland Dr., Suite 380, Austin, Texas 78752 or faxed to his attention at (512) 305-7854, no later than noon on November 22, 2021.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small businesses. If the proposed rule is believed to have an adverse effect on small businesses, estimate the number of small businesses believed to be impacted by the rule, describe and estimate the economic impact of the rule on small businesses, offer alternative methods of achieving the purpose of the rule; then explain how the Board may legally and feasibly reduce that adverse effect on small businesses considering the purpose of the statute under which the proposed rule is to be adopted; and finally, describe how the health, safety, environmental, and economic welfare of the state will be impacted by the various proposed methods. See Texas Government Code, §2006.002(c).

Statutory Authority

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code §901.151 and §901.655 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by this proposed amendment.

§523.132. Board Authorized [~~Contracted~~] Ethics Instructors.

(a) The board may authorize [~~contract with~~] any instructor wishing to offer an ethics course approved by the board pursuant to §523.131 of this chapter (relating to Board Approval of Ethics Course Content) who can demonstrate that:

- (1) the instructor is a CPA licensed in Texas or that the instructor is team teaching with a CPA licensed in Texas;
- (2) the instructor has never been disciplined for a violation of the board's Rules of Professional Conduct unless waived by the board; and
- (3) the instructor is qualified to teach ethical reasoning because he has:
 - (A) experience in the study and teaching of ethical reasoning; and
 - (B) formal training in organizational or ethical behavior instruction.

(b) An instructor demonstrates that he is qualified to teach ethical reasoning upon evidence that he has:

- (1) at the time of his application obtained sufficient education in ethics substantially equivalent to a minimum of six hours of credit from a university, college or community college, of which at least three credit hours must be in organizational ethics or other education as approved by the board;
- (2) teaching experience that is substantially equivalent to two or more full time semesters teaching experience at a university, college or community college, or other experience as approved by the board;

(3) spent at least 10 years performing accountancy related activities as a licensed CPA;

(4) no record of discipline for violation of the rules of professional conduct of the AICPA, the TSCPA or other national or state accountancy organization recognized by the board; and

(5) goals and interests consistent with the board's purpose of protecting the public interest pursuant to the provisions of the Act.

~~[(e) An instructor must renew the contract with the board every three years.]~~

~~(c) [(d)]~~ The board may ~~[refuse to contract, refuse to renew a contract or]~~ cancel an authorization ~~[the contract]~~ of any instructor who no longer meets the requirements of this section or has engaged in conduct rendering that instructor unsuitable for teaching ethics.

~~(d) [(e)]~~ An instructor must submit a current resume at the request of the board ~~[with the contract]~~.

~~(e) [(f)]~~ Interpretive comments: To have goals and interests consistent with the board's purpose of protecting the public interest pursuant to the provisions of the Act, an instructor must refrain from using the instruction of an ethics course as a marketing tool for other products and services offered by the instructor. An instructor must be free from conflicts of interest with the board in both fact and appearance. Representation of a respondent or a complainant in a disciplinary proceeding pending before the board creates the appearance of a conflict of interest.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on October 6, 2021.

TRD-202103961

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 21, 2021

For further information, please call: (512) 305-7842

