

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: October , 2021

Subject: Board Rules 523.144 Board Registered CPE Sponsors

523.145 Obligations of the Sponsor

523.146 Registry of CPE Sponsors

523.147 Sponsor Review Program

In order to assist licensees in maintaining their skills and knowledge of the professional standards required in the practice of public accountancy, and avoiding low value continuing professional education courses, Board Rules 523.144 through 523.147 were adopted. The rules establish a registry of continuing professional education providers that the Board has determined to be capable of providing course content pertaining to the profession of accounting which are both technical and non-technical courses which increase the licensee's ability to serve in a competent manner, such as but not limited to: communications, computer software and application, behavioral ethics, behavioral science, business management and organization, and advanced courses in foreign languages.

Persons registered with the Board may advertise that they are registered with the Board. By so registering they have agreed to provide relevant course content, not commit fraud, deceit or engage in fiscal dishonesty, misrepresent facts, make false statements or promote their services by coercion, overreaching, or vexatious or harassing conduct.

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 allows individuals wishing to provide continuing professional education courses to licensees to be registered with the Board.

2. What is the purpose of the proposed rule?

To provide licensees with the knowledge that course sponsors have been registered with the Board and agree to comply with Board standards to not misrepresent facts, provide courses that are related to the practice of public accountancy, and will not harass licensees in order to market their services.

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

A number of states, including Texas, had received complaints that courses that were advertised as providing continuing professional education have very limited course content that would be helpful to a licensee attempting to maintain their skill set in accounting. The courses promised more than they provided. States also received excessive annoying interruptions to their practice from unwanted marketing efforts that bordered on harassment.

Board Rules 523.144 through 523.147 have been promulgated to identify and recognize providers of continuing professional education programs that have agreed to follow Board standards delineated in Board Rule 523.140.

This includes the program developer organizing the program around the learning objectives, agreeing to have the course materials periodically reviewed to assure that they are accurate and consistent with currently accepted standards, assuring that instructors are qualified with respect to course content and teaching methods, and the sponsors evaluating the performance of the instructors to determine their suitability for continuing.

Registered sponsors are required to assure that self-study programs conform to Board Rules 523.102 (c)(2) and 523.140, nano programs are complying with the standards contained in Rule 523.140 including passing a final exam, blended programs are complying with Rule 523.140.

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 Board's Continuing Professional Education program.

- 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 Certified Public Accountants in all of its dealings with Certified Public Accountants.

In order to assure that the public can rely on the competence of licensees, 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.

5. Describe the process that the state agency followed in developing the proposed rules, including any public hearings held, public comments invited, studies conducted, and data collected or analyzed.

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.

Proposed rule 523.144 was originally adopted to be effective December 2, 2004, 29 TexReg 11033; amended to be effective June 7, 2006, 31 TexReg 4646; amended to be effective November 29, 2006, 31 TexReg 9615; amended to be effective August 12, 2007, 32 TexReg 4764; amended to be effective February 17, 2008, 33 TexReg 1116; amended to be effective February 6, 2013, 38 TexReg 506; amended to be effective March 29, 2017, 42 TexReg 1448

Proposed rule 523.145 was originally adopted to be effective October 12, 2004, 29 TexReg 9538; amended to be effective February 17, 2008, 33 TexReg 1117; amended to be effective February 6, 2013, 38 TexReg 506; amended to be effective March 29, 2017, 42 TexReg 1448

Proposed rule 523.146 was originally adopted to be effective October 12, 2004, 29 TexReg 9538; amended to be effective November 29, 2006, 31 TexReg 9615; amended to be effective February 6, 2013, 38 TexReg 507

Proposed rule 523.147 was originally adopted to be effective October 12, 2004, 29 TexReg 9538; amended to be effective February 17, 2008, 33 TexReg 1117; amended to be effective February 6, 2013, 38 TexReg 507

Each of the rules were proposed in an open meeting, pursuant to the Open Meetings Act during the Board's Continuing Professional Education and Rules Committee meetings. They were then discussed at Board meetings pursuant to the Open Meetings Act and the Board authorized the Executive Director to have the rules published in the Texas Register requesting comments from the public on the rules. 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 subsequent 17 years the public has offered no further comments during the proposed revisions to the rules. 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 provide licensees with the knowledge that course sponsors have been registered with the Board and agree to comply with Board standards to not misrepresent facts, provide courses that are related to the practice of public accountancy, and will not harass licensees in order to market their services.

Licensees will have the option to take courses that will contribute to the competence and integrity of the licensee as it relates to the practice of public accountancy. Licensees will know that courses provided by registered sponsors will meet minimum standards and time and money expended by the licensee will be maximized.

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 Board is not restricting anyone from offering continuing education courses to licensees. A provider of continuing education may choose not to register with the Board. By not registering, the licensee wishing to receive credit from the non-registered provider will be required to submit course materials to the Board to assure the course content is relevant to the practice of public accountancy and contributes to the licensee's professional competency.

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

The rule will have a minimal effect on market competition other than a licensee will be more likely to take a course for continuing education credit from a provider that is registered with the Board.

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

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Texas State Board of Public Accountancy

Filed: January 24, 2020



Texas Administrative Code

TITLE 22	EXAMINING BOARDS
PART 22	TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY
CHAPTER 523	CONTINUING PROFESSIONAL EDUCATION
SUBCHAPTER D	STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION PROGRAMS AND RULES FOR SPONSORS
RULE §523.144	Board Registered CPE Sponsors

(a) The board may enter into an agreement with any sponsor of CPE programs to become a board registered CPE sponsor where the sponsor, in the opinion of the board, demonstrates that it will comply with its obligations to the board and that its programs will conform to the board's standards as outlined in:

- (1) §523.115 of this chapter (relating to Credits for Instructors and Discussion Leaders);
- (2) §523.130 of this chapter (relating to Ethics Course Requirements), (if applicable);
- (3) §523.140 of this chapter (relating to Program Standards);
- (4) §523.141 of this chapter (relating to Evaluation); and
- (5) §523.142 of this chapter (relating to Program Time Credit Measurement for Sponsors).

(b) The board will also require that each organization applying to become a board registered CPE sponsor agrees that in the conduct of its business it will:

- (1) Not commit fraud, deceit or engage in fiscal dishonesty of any kind;
- (2) Not misrepresent facts or make false or misleading statements;
- (3) Not make false statements to the board or to the board's agents; and
- (4) Comply with the laws of the United States and the State of Texas.

(c) Each organization applying to become a board registered CPE sponsor must submit an application on registration forms provided by the board. The application must be complete in all respects and must be accompanied with payment of a non-refundable registration fee unless the sponsor is exempt from paying the fee in accordance with this rule. Sponsors that offer regularly scheduled course titles that are at least one hour and up to four hours in length may accumulate these course titles into an eight-hour course block when determining fees. A maximum of 24 hours may be accumulated into three eight-hour course blocks. Refer to interpretative comment in subsection (j) of this section for explanation. The registration fee is based on the number of course titles offered and is identified in the following chart:

[Attached Graphic](#)

(d) To qualify for an exemption from the annual registration fee a sponsor must be:

- (1) a state, federal or other governmental agency that provides CPE for its employees and others at no charge;
- (2) a sponsor registered and in good standing with NASBA's National Registry of CPE Sponsors;

(3) an institution of higher education whose courses are accepted for transfer credit by the reporting institution in the State of Texas. Other than courses acceptable for transfer credit, continuing education does not qualify for the exemption whether offered through an institute of higher education or through an educational foundation operating within such an institution; or

(4) subject to the board's discretion, sponsors' courses that are subject to review by another entity may apply for an exemption from fees.

(e) Sponsors that are exempt from paying the registration fee shall annually register with the board.

(f) The board will not prorate the registration payment for an organization for less than one year. Upon renewal in the second and succeeding years, the registration amount may be increased to cover the costs of review of sponsors and individual courses.

(g) Board staff will review each application and notify the sponsor of its acceptance or rejection. Accepted sponsors will be assigned a sponsor number and can represent that they are a board registered CPE sponsor. An acceptance in any given year shall not bind the board to accept a sponsor in any future year.

(h) After the registration has been accepted, the board, in its sole and exclusive discretion, may determine that a registered sponsor is not in compliance with the registration requirements, CPE standards or applicable board rules. The board will provide the registered sponsor reasonable notice of such a determination and shall provide the registered sponsor a reasonable opportunity to become compliant. If the board determines the sponsor is not in compliance, the board may request that the sponsor make changes or the board may terminate the sponsor's registration. A sponsor that has had its registration terminated or has voluntarily surrendered its registration may apply for reinstatement after the first anniversary of the date of termination. The registration fee shall not be prorated or refunded if the registration is terminated.

(i) A sponsor that requests reinstatement may do so by submitting a completed application and paying the fee provided for in subsection (c) of this section. The application for reinstatement must be accompanied with a list of the course(s) proposed to be offered. From that list the board will select one or more courses that must successfully pass the review pursuant to §523.147 of this chapter (relating to Sponsor Review Program), before any course can be offered.

(j) A CPE sponsor registration is renewable annually by submitting a renewal application and paying the registration fee unless stated in subsection (d) of this section.

(k) Interpretive Comment: In applying the fee structure to courses, it is deemed that small practice groups and sponsors that provide lectures and seminars on a regular basis are allowed to accumulate course titles that are at least one hour and up to four hours in length into one eight-hour course block. The maximum number of groupings of courses is limited to three eight-hour course blocks of 24 hours of qualified courses.

Source Note: The provisions of this §523.144 adopted to be effective December 2, 2004, 29 TexReg 11033; amended to be effective June 7, 2006, 31 TexReg 4646; amended to be effective November 29, 2006, 31 TexReg 9615; amended to be effective August 12, 2007, 32 TexReg 4764; amended to be effective February 17, 2008, 33 TexReg 1116; amended to be effective February 6, 2013, 38 TexReg 506; amended to be effective March 29, 2017, 42 TexReg 1448

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Figure: 22 TAC §523.144(c)

NO. OF COURSE TITLES OFFERED	TOTAL ANNUAL REGISTRATION FEE
1 - 10	\$400
11 - 40	\$750
41+	\$1250
Exemption 1	0
Exemption 2	0
Exemption 3	0
Exemption 4	0

Texas Administrative Code

TITLE 22	EXAMINING BOARDS
PART 22	TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY
CHAPTER 523	CONTINUING PROFESSIONAL EDUCATION
SUBCHAPTER D	STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION PROGRAMS AND RULES FOR SPONSORS
RULE §523.145	Obligations of the Sponsor

(a) Sponsors shall comply with the program standards as stated in §523.140 of this chapter (relating to Program Standards).

(b) In consideration for registering as a CPE sponsor each organization shall certify in writing, to the following:

(1) "We understand that after acceptance of the application or reapplication for a registration by the board we may advise prospective attendees of the program sponsor registration, our sponsor number, and the number of CPE credits recommended. We further agree that if we notify licensees of this registration we shall do so by use of the following language, 'We are registered with the Texas State Board of Public Accountancy as a CPE sponsor. This registration does not constitute an endorsement by the board as to the quality of our CPE program.'"

(2) "We understand that our advertising shall not be false or misleading, nor will our conduct in an effort to promote our services be coercive, overreaching, vexatious or harassing. We understand it is a violation of these rules for us to persist in contacting a licensee when the licensee has made known to us, or we should have known, the licensee's desire not to be contacted by us or our representative."

(3) "We agree that parties designated by the board may inspect our facilities, examine our records, attend our courses or seminars at no charge, and review our program to determine compliance with the sponsor registration requirements, CPE standards and applicable board rules."

(4) "We understand and agree that if we fail to comply with the registration requirements or fail to meet acceptable standards in our programs, the sponsor registration may be terminated at any time by the board, the sponsor registration or renewal application may be denied, and notice of such termination or denial may be provided to licensees by the board."

(c) Every board registered CPE sponsor shall cooperate fully with the board's sponsor review program. At least every three years a sponsor shall undergo a sponsor review. This cooperation shall include, but not be limited to providing information, records and access to programs and instructors as requested. Failure to cooperate with the program shall be grounds for terminating the registration.

Source Note: The provisions of this §523.145 adopted to be effective October 12, 2004, 29 TexReg 9538; amended to be effective February 17, 2008, 33 TexReg 1117; amended to be effective February 6, 2013, 38 TexReg 506; amended to be effective March 29, 2017, 42 TexReg 1448

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CHAPTER 523	CONTINUING PROFESSIONAL EDUCATION
SUBCHAPTER D	STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION PROGRAMS AND RULES FOR SPONSORS
RULE §523.146	Registry of NASBA CPE Sponsors

(a) The board shall accept courses offered by sponsors shown as being in good standing on the NASBA's National Registry of CPE Sponsors; however, organizations that wish to offer CPE courses to Texas CPAs are not required to register with NASBA.

(b) Sponsors registered with NASBA's National Registry of CPE Sponsors ("NASBA CPE sponsors") shall annually register with the board. NASBA CPE Sponsors are exempt from the board's registration fee but may be subject to a review by the board.

(c) NASBA CPE sponsors registered with the board shall:

- (1) comply with all board standards for CPE sponsors; and
- (2) cooperate with the board's sponsor review program.

(d) The board may revoke the registration of any NASBA CPE sponsor registered under this section for failure to comply with the registration requirements, CPE standards or applicable board rules.

Source Note: The provisions of this §523.146 adopted to be effective October 12, 2004, 29 TexReg 9538; amended to be effective November 29, 2006, 31 TexReg 9615; amended to be effective February 6, 2013, 38 TexReg 507

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<u>CHAPTER 523</u>	CONTINUING PROFESSIONAL EDUCATION
<u>SUBCHAPTER D</u>	STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION PROGRAMS AND RULES FOR SPONSORS
RULE §523.147	Sponsor Review Program

(a) A sponsor review program is established for the purpose of monitoring the compliance by board registered CPE sponsors and the courses they offer with the registration requirements, CPE standards and/or applicable board rules. The program shall emphasize high quality education and compliance with professional standards. In the event a sponsor does not comply with the registration requirements, CPE standards, or applicable board rules, the board shall take appropriate action.

(b) The presiding officer shall appoint three members who shall be either board members or advisory members to the Sponsor Review Program Committee (SRPC). The SRPC's duties are to:

(1) monitor the sponsor review program to provide assurance to the CPE committee that the CPE sponsors are being reviewed and that the reviews are conducted and reported in accordance with established CPE program standards;

(2) serve as mediators between the reviewers and sponsors whose courses are being reviewed; and

(3) report to the CPE committee as requested and make recommendations as appropriate.

(c) The board shall contract with qualified persons selected by the CPE committee to review the courses of sponsors ("reviewers"). The board will compensate reviewers from revenue received from sponsors' registration fees.

(1) If the reviewer is a CPA, the reviewer must be in good standing with the licensing board.

(2) A reviewer must recuse himself from service if the reviewer has an interest in the sponsoring organization under review or if the reviewer believes he cannot be impartial or objective.

(3) A reviewer may not concurrently serve as a member of the board or one of its committees.

(d) The reviewers shall:

(1) assess board-registered sponsors of CPE to provide reasonable assurance that quality CPE is being offered in accordance with registration requirement, CPE standards, or applicable board rules;

(2) review the policies and procedures of board registered CPE sponsors as to their conformity with the rules;

(3) when necessary, prescribe actions designed to assure correction of the deficiencies in the program or CPE;

(4) report to the SRPC as required:

(A) problems experienced with sponsor compliance; and

(B) problems experienced in the implementation of the review program.

(e) The procedures used by the reviewers in monitoring of sponsors of CPE may include, but not be limited to:

(1) random visits of sponsors as deemed appropriate, and review of course materials;

(2) meetings with the sponsor;

(3) reviewing educational materials and record keeping documents;

(4) reviewing the sponsor's educational philosophy;

(5) reviewing, on the basis of a random selection, the course evaluations from licensees to determine whether the materials have received adverse comments;

(6) expanding the review of records if significant deficiencies, problems, or inconsistencies are encountered during the review of the materials; and

(7) determining that courses offered by board-registered CPE sponsors comply with all applicable board rules including §523.102 of this chapter (relating to CPE Purpose and Definitions) and this subchapter and provide that:

(A) educational content meets the course objectives;

(B) course material is up-to-date and relevant; and

(C) adequate documentation procedures are in place;

(8) other procedures as deemed necessary by the board so that the CPE sponsor is in compliance with the registration requirements, CPE standards and applicable board rules.

Source Note: The provisions of this §523.147 adopted to be effective October 12, 2004, 29 TexReg 9538; amended to be effective February 17, 2008, 33 TexReg 1117; amended to be effective February 6, 2013, 38 TexReg 507

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