



**Dora**  
Department of Regulatory Agencies

**Office of Policy, Research and Regulatory Reform**

# **2009 Sunset Review: State Board of Accountancy**

October 15, 2009





**Executive Director's Office**  
D. Rico Munn  
Executive Director

Bill Ritter, Jr.  
Governor

October 15, 2009

Members of the Colorado General Assembly  
c/o the Office of Legislative Legal Services  
State Capitol Building  
Denver, Colorado 80203

Dear Members of the General Assembly:

The mission of the Department of Regulatory Agencies (DORA) is consumer protection. As a part of the Executive Director's Office within DORA, the Office of Policy, Research and Regulatory Reform seeks to fulfill its statutorily mandated responsibility to conduct sunset reviews with a focus on protecting the health, safety and welfare of all Coloradans.

DORA has completed the evaluation of the State Board of Accountancy (Board). I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2010 legislative committee of reference. The report is submitted pursuant to section 24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section...

The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination....

The report discusses the question of whether there is a need for the regulation provided under Article 2 of Title 12, C.R.S. The report also discusses the effectiveness of the Board and staff in carrying out the intent of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

D. Rico Munn  
Executive Director





Bill Ritter, Jr.  
Governor

D. Rico Munn  
Executive Director

## **2009 Sunset Review: Colorado State Board of Accountancy**

### **Summary**

#### ***What Is Regulated?***

Certified public accountants (CPAs) and their firms.

#### ***Why Is It Regulated?***

To assure that CPAs meet a standard level of competency, and that firms comply with the law.

#### ***Who Is Regulated?***

In fiscal year 07-08, there were a total of 16,763 CPAs and 1,299 firms.

#### ***How Is It Regulated?***

The State Board of Accountancy (Board) is housed in the Department of Regulatory Agencies' Division of Registrations. The Board licenses individual CPAs and registers firms. Applicants for CPA licensure must graduate from an approved accounting program, pass the Uniform CPA Examination, and obtain one year of experience, or obtain a bachelor's degree in accounting plus an additional 30 credits in accounting, and pass the Uniform CPA Examination.

#### ***What Does It Cost?***

In fiscal year 07-08, the Board's expenditures totaled \$446,098, and there were 1.5 full-time equivalent employees allocated to the Board.

#### ***What Disciplinary Activity Is There?***

Between fiscal years 03-04 and 07-08, the Board issued 378 disciplinary actions, including revocations, suspensions, fines and letters of admonition.

#### ***Where Do I Get the Full Report?***

The full sunset review can be found on the Internet at: [www.dora.state.co.us/opr/oprpublications.htm](http://www.dora.state.co.us/opr/oprpublications.htm).

## Key Recommendations

### ***Continue the State Board of Accountancy and the regulation of certified public accountants and their firms for nine years, until 2019.***

One of the more important roles for a licensed CPA, and a role that only a licensed CPA may perform, is to act in an independent, objective manner in rendering an opinion as to the financial soundness of a particular company, or as to whether a particular company has kept its books according to generally accepted accounting principles and standards, thereby rendering them reliable. Licensed CPAs are in a unique position in that they possess skills and apply rules that very few ordinary consumers understand. As a result, the public is not in a position to determine the competency of these individuals. This is the classic justification for regulation.

### ***Require 150 hours of education for all CPA licenses issued after June 30, 2015, and direct the Board to promulgate rules as to which subjects will qualify as satisfying this requirement.***

Under the phenomenon known as “mobility,” a CPA who is licensed in a state that is deemed to be “substantially equivalent” can practice in any state that has adopted mobility legislation. Mobility legislation essentially allows a CPA licensed in a substantially equivalent jurisdiction to practice in a state other than the license-granting state without a license in the second state, without having to provide the second state any notice that the CPA is working there, but consenting to the jurisdiction of the second state with respect to regulatory requirements. Colorado is not substantially equivalent, primarily due to the state’s educational requirements, thus placing Colorado-licensed CPAs at a competitive disadvantage.

## Major Contacts Made During This Review

American Institute of Certified Public Accountants  
Colorado Attorney General’s Office  
Colorado Department of Higher Education  
Colorado Division of Registrations  
Colorado Society of Certified Public Accountants  
Colorado State Board of Accountancy  
National Association of State Boards of Accountancy  
National Society of Accountants  
Public Accountants Society of Colorado

## What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether or not they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public’s right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are Prepared by:  
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## Background

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### *Introduction*

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria<sup>1</sup> and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

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<sup>1</sup> Criteria may be found at § 24-34-104, C.R.S.

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## *Types of Regulation*

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

Regulation, then, has many positive and potentially negative consequences.

There are also several levels of regulation.

### Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection – only those individuals who are properly licensed may use a particular title(s) – and practice exclusivity – only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

### Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

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While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

### Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements – typically non-practice related items, such as insurance or the use of a disclosure form – and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

### Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency – depending upon the prescribed preconditions for use of the protected title(s) – and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in enumerated proscribed activities. This is generally not the case with title protection programs.

### Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

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Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

### ***Sunset Process***

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. To facilitate input from interested parties, anyone can submit input on any upcoming sunrise or sunset review via DORA's website at: [www.dora.state.co.us/pls/real/OPR\\_Review\\_Comments.Main](http://www.dora.state.co.us/pls/real/OPR_Review_Comments.Main).

The regulatory functions of the State Board of Accountancy (Board) relating to Article 2 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on July 1, 2010, unless continued by the General Assembly. During the year prior to this date, it is the duty of DORA to conduct an analysis and evaluation of the Board pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation of certified public accountants (CPAs) and firms should be continued for the protection of the public and to evaluate the performance of the Board and staff of the Division of Registrations (Division). During this review, the Board and the Division must demonstrate that the regulation serves to protect the public health, safety or welfare, and that the regulation is the least restrictive regulation consistent with protecting the public. DORA's findings and recommendations are submitted via this report to the legislative committee of reference of the Colorado General Assembly.

### ***Methodology***

As part of this review, DORA staff conducted a literature review, attended Board meetings, interviewed Board staff, reviewed Board records and minutes including complaint and disciplinary actions, interviewed officials with state and national professional associations, interviewed practitioners, reviewed Colorado statutes and Board rules, and reviewed the laws of other states.

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## *Profile of the Profession*

In discussing the accounting profession, it is important to distinguish between public accountants, who are not regulated, and certified public accountants (CPAs), who are regulated and who are the subject of this sunset report.

Public accountants, in general, can provide a broad range of services, including:

- Tax work, including tax advice, tax planning and tax preparation;
- Financial consulting and planning;
- Forensic activities, which can involve investigating bankruptcies, contract disputes, securities fraud, embezzlement and money laundering;
- Consulting, which can involve matters pertaining to compensation, employee benefits, the design of accounting and data processing systems, and the safeguarding of financial assets; and
- Reviewing and preparing various types of corporate financial statements.

The last point is perhaps key to understanding the primary difference between public accountants and CPAs. Any public accountant may be a bookkeeper or review and prepare financial statements; only a CPA may attest to the public (including investors, regulators, creditors, etc.) that a particular set of financial statements have been prepared according to generally accepted accounting principles, and only a CPA may render an opinion based on such financial statements.

Since public accounting is not regulated, virtually anyone can provide these services or use such a title. Regardless, the vast majority of public accountants have similar educational backgrounds as CPAs.

To become a licensed CPA, one must, earn at least a bachelor's degree, pass the Uniform CPA Examination, and obtain one year of experience. In addition to earning a bachelor's degree, which is typically awarded after taking 120 credit hours, most states, but not Colorado, require the completion of 30 additional credit hours. This is commonly referred to as the "150 hour requirement."

Similarly, the one year of experience can vary by state. Some states allow any type of accounting experience to count, while Colorado, with a few exceptions, requires this experience to be in public accounting as the employee of a firm.

In addition to obtaining continuing education credits, many CPAs also undergo a process known as peer review. Although the exact process may vary by jurisdiction, regulating entity, and firm, the general idea remains the same – an outside third party reviews a specified number of audit reports prepared by the CPA or firm over the previous few years, evaluates those reports for compliance with generally accepted accounting principles and other standards promulgated by a variety of governmental and non-governmental sources, and determines whether the audit passes, passes with deficiencies, or fails.

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The overriding goal of peer review is educational in nature, both for the CPA conducting the review and the CPA being reviewed. Both parties stand to learn best practices from one another, thereby, in the end, improving the accounting services offered by all CPAs.

The federal Public Company Accounting Oversight Board requires all firms that perform audit work for publicly traded companies to undergo periodic peer review. Additionally, the American Institute of Certified Public Accountants and the Colorado Society of Certified Public Accountants, both of which are membership-based organizations, require their members to undergo peer review on a periodic basis.

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## Legal Framework

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### *History of Regulation*

Colorado has regulated accountants since 1907. The original statute provided for state licensure of select accountants as “Certified Public Accountants” (CPAs). Other people who provided accounting services were still allowed to practice, but were prohibited from holding themselves out as being CPAs.

Over the next 80 years, the scope of practice for licensed and unlicensed CPAs remained the subject of considerable debate, legislation and litigation.

In 1988, a scope of practice question spawned new litigation.<sup>2</sup> At issue was whether the State Board of Accountancy (Board) had the statutory authority to prohibit unlicensed public accountants from performing accounting services known as “reviews.”<sup>3</sup> In its decision, the Colorado Court of Appeals held that unlicensed public accountants were prohibited from conducting audits only if they were acting in the capacity of an independent auditor. Moreover, the court found that the statutory prohibition involving audit functions did not extend to the review function, which is separate and distinct from the audit function.

In 2000, as a result of the preceding year’s sunset review, Board members were limited to two consecutive terms, the Board’s authority to set educational requirements by rule was repealed and the ownership of firms was relaxed to require that only a simple majority of a firm’s ownership be held by licensed CPAs.

In 2003, House Bill 03-1197 addressed the use of confidential communications between certified public accountants and clients relating to the attest services of CPAs and firms. Passage of the bill created an exception to Colorado’s recognized “accountant-client privilege.” The bill empowered the Board to subpoena a CPA’s working papers and reports, even if the client has not waived privilege. The scope of the subpoena is limited to the working papers of the particular audit or review under investigation.

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<sup>2</sup> See *Cartwright v. State Bd. of Accountancy*, 796 P.2d 51 (Colo. App. 1990).

<sup>3</sup> A review is one of three distinct levels of financial analysis. A review involves an intermediate level of analysis and responsibility, more than that entailed in a compilation, but less than that involved in an audit. A review carries a “negative attestation” that the accountant does not know of any material modification that should be made to bring the financial statement into conformity with generally accepted accounting principles.

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The 2004 sunset review of the Board resulted in Senate Bill 05-145, which, among other things:

- Continued the Board until 2010;
- Simplified the continuing education requirement such that licensees would henceforth need only complete 80 hours every two years;
- Specified that CPAs and firms licensed in other states must obtain a temporary practice permit from the Board before engaging in business in Colorado; and
- Clarified that not only Board records, but also Board meetings involving the discussion of complaints, are closed to the public until such time as disciplinary action is taken.

Finally, in 2008, the General Assembly enacted what is popularly referred to as “mobility” through House Bill 08-1226. In essence, this bill authorized licensed CPAs and firms whose principal place of business is in another state to conduct business in Colorado without obtaining a license, temporary practice permit or otherwise notifying the Board of their presence in the state, so long as in doing so, they consent to the Board’s jurisdiction and comply with all Colorado laws and rules.

### *Regulation in Colorado*

The statutes that regulate CPAs and firms can be found at Article 2 of Title 12, Colorado Revised Statutes (C.R.S.). These provisions may hereinafter be referred to collectively as the “Act.”

In essence the Act regulates CPAs,

. . . Because of the customary reliance by the public upon audited financial statements and upon financial information presented with the opinion or certificate of persons purporting to possess expert knowledge in accounting or auditing . . .<sup>4</sup>

The power that is reserved to licensed CPAs and registered firms is more commonly known as the attest function. While anyone can prepare financial statements,<sup>5</sup> or prepare or assist in preparing tax returns,<sup>6</sup> only a licensed CPA or registered firm can, as an independent auditor:<sup>7</sup>

- Make or conduct an investigation, examination, or audit of the financial statements or supporting records of any person, organization, or corporation, to determine the accuracy or fairness with which they present the financial position, changes in financial position, or financial results of operations of such person, organization, or corporation.

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<sup>4</sup> § 12-2-101(1), C.R.S.

<sup>5</sup> § 12-2-120(6)(e), C.R.S.

<sup>6</sup> § 12-2-120(9), C.R.S.

<sup>7</sup> § 12-2-120(6)(a)(II), C.R.S.

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- Attest or express an opinion as to the financial position, changes in financial position, or financial results of the operation of any person, organization or corporation, or as to the accuracy or reliability of any financial information contained in any such accounting or financial statement.

To implement these requirements, the General Assembly has created the Board<sup>8</sup> and directed it to promulgate rules to implement the Act,<sup>9</sup> and to license and discipline CPAs and firms.<sup>10</sup>

The Board comprises seven, Governor-appointed members, five of whom must be Colorado-licensed CPAs, and two of whom must be members of the general public.<sup>11</sup> Board members are limited to serving no more than two, consecutive four-year terms.<sup>12</sup>

To obtain a CPA license, a candidate must have passed a written examination,<sup>13</sup> completed a Board-approved course in professional ethics,<sup>14</sup> and satisfied one of the following:

- Earned a bachelor's degree and acquired one year's experience doing public accounting work as an employee of a CPA or what the Board determines to be equivalent experience;<sup>15</sup> or
- Earned a bachelor's degree in accounting plus an additional 30 credit hours, the concentration of which must have been in accounting<sup>16</sup> (this path is commonly referred to as "education in lieu of experience").

The Board has, by rule, stipulated that, for a candidate pursuing licensure via the first path outlined above, he or she must take the indicated number of credit hours in the indicated subjects:<sup>17</sup>

- 24 credit hours in accounting;<sup>18</sup>
- 3 credit hours in audit; and
- 21 credit hours in general business subjects with no more than 6 credits in any single subject.

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<sup>8</sup> § 12-2-103(1), C.R.S.

<sup>9</sup> § 12-2-104(1)(b), C.R.S.

<sup>10</sup> § 12-2-104(1)(i), C.R.S.

<sup>11</sup> § 12-2-103(1), C.R.S.

<sup>12</sup> § 12-2-103(1), C.R.S.

<sup>13</sup> § 12-2-108(1)(b), C.R.S.

<sup>14</sup> §§ 12-2-108(1)(c) and 12-2-109(1)(b), C.R.S.

<sup>15</sup> §§ 12-2-108(1)(c) and 12-2-109(1)(a), C.R.S.

<sup>16</sup> §§ 12-2-108(1)(c) and 12-2-109(1)(c), C.R.S.

<sup>17</sup> Board Rule 2.4:2.

<sup>18</sup> For purposes of Board Rule 2.4:3, "accounting" includes cost accounting, tax, intermediate accounting, accounting theory and advanced accounting.

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For a candidate pursuing licensure via education in lieu of experience, he or she must take the indicated number of credit hours in the indicated subjects:<sup>19</sup>

- 39 credit hours in accounting;<sup>20</sup>
- 6 credit hours in audit; and
- 36 credit hours in general business subjects with no more than 9 credits in any single subject.

Similarly, Board rules clarify that the one year of public accounting experience must consist of at least 1,800 hours:

- Working as the employee of a licensed CPA;<sup>21</sup>
- Working as an internal auditor in an internal audit group and under the direct supervision of a licensed CPA;<sup>22</sup>
- Working under the direct supervision of a licensed CPA providing accounting services for an entity other than the employer of the license applicant;<sup>23</sup> or
- Working pursuant to an agreement whereby a licensed CPA will supervise the work product of the license applicant.<sup>24</sup>

In general, any experience other than that attained working as the employee of a licensed CPA requires special Board approval.

Under all circumstances, the work must regularly involve the exercise of independent judgment, objective and impartial judgment, and the application of appropriate technical and behavioral standards.<sup>25</sup> Additionally, it must be attained within five years of passing the examination.<sup>26</sup>

Alternatively, the Board may issue a license to a candidate who is licensed in another jurisdiction, the requirements of which are substantially equivalent to Colorado's.<sup>27</sup>

However, a CPA need not be licensed by the Board to work as such in Colorado. A CPA need only hold a valid license from another state and consent to the Board's jurisdiction to lawfully work in Colorado.<sup>28</sup>

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<sup>19</sup> Board Rule 2.5.

<sup>20</sup> For purposes of Board Rule 2.5, "accounting" includes elementary accounting, accounting theory, accounting practice, managerial accounting, cost accounting, tax accounting, not-for-profit accounting, governmental accounting, and accounting-related computer and information systems.

<sup>21</sup> Board Rule 4.1: A.

<sup>22</sup> Board Rule 4.1:B.

<sup>23</sup> Board Rule 4.1:C.

<sup>24</sup> Board Rule 4.1:D.

<sup>25</sup> Board Rule 4.1.

<sup>26</sup> Board Rule 4.2:A.5.

<sup>27</sup> § 12-2-113, C.R.S.

<sup>28</sup> § 12-2-121(2), C.R.S.

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Only an individual holding an active CPA license or a firm holding a registration may refer to himself, herself or itself as a “Certified Public Accountant,” or as a “C.P.A.” or any other term tending to indicate that he, she or it is authorized to act as such.<sup>29</sup> However, the Board may place CPA licenses in a retired status,<sup>30</sup> provided such licensee does not perform any audit work that requires him or her to attest or render an opinion.<sup>31</sup> Such a licensee may refer to himself or herself as “retired certified public accountant” or “retired C.P.A.”<sup>32</sup>

The Board is required to administer the examination, offer it no less than twice each year, and establish a passing score,<sup>33</sup> or it may use the examination offered by the American Institute of Certified Public Accountants.<sup>34</sup>

Further, the Board is required to approve accounting programs that have a curriculum designed to give the student proficiency in those subjects necessary to pass the examination and that have adequate equipment and resources.<sup>35</sup>

As a condition of renewing, reactivating or reinstating a CPA license, the CPA must obtain 80 hours of continuing education every two years.<sup>36</sup> At least 32 of these hours must be taken in the following subjects:<sup>37</sup>

- Accounting and auditing;
- Management consulting services;
- Taxation;
- Specialized industry accounting;
- Business-related computer courses;
- Financial planning;
- Ethics; and
- Colorado rules and regulations.

The remaining 48 hours can also be in these subjects, or they may be in subjects such as personal development, communication, quantitative methods, behavioral sciences, statistics or practice management, so long as they maintain or improve the licensed CPA’s professional competence.<sup>38</sup>

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<sup>29</sup> §§ 12-2-115, 12-2-120(1), 12-2-120(2), and 12-2-121(2), C.R.S.

<sup>30</sup> § 12-2-115.5(1), C.R.S.

<sup>31</sup> § 12-2-115.5(3), C.R.S.

<sup>32</sup> § 12-2-115.5(2), C.R.S.

<sup>33</sup> § 12-2-111(1), C.R.S.

<sup>34</sup> § 12-2-111(3), C.R.S.

<sup>35</sup> § 12-2-112(1), C.R.S.

<sup>36</sup> § 12-2-119(6), C.R.S., and Board Rule 5.3:A.2.

<sup>37</sup> Board Rules 5.3:A and 6.5:A.

<sup>38</sup> Board Rules 5.3:A and 6.5:B.

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Firms operating in Colorado must register with the Board every three years. In essence, at least one partner, shareholder or member, as applicable, and each resident manager of each office in the state, must be a Colorado-licensed CPA.<sup>39</sup> Additionally, a simple majority of those owning the firm must be licensed CPAs in some state.<sup>40</sup>

All partners, shareholders, or members, as applicable, of the firm are jointly and severally liable for all acts, errors, and omissions of the employees of the firm, except during those periods of time when the firm maintains professional liability insurance<sup>41</sup> of at least \$50,000 for each CPA employed by the firm, and at least \$150,000 annual aggregate for all claims.<sup>42</sup>

The Board may deny the issuance of, refuse to renew, revoke, suspend, or place on probation the license of any CPA, or censure or issue a letter of admonition to any CPA who, among other things:<sup>43</sup>

- Has fraudulently or deceitfully obtained or attempted to obtain a CPA license or firm registration;
- Has fraudulently or negligently filed his or her own income tax returns;
- Violates any provision of the Act or the Board's rules;
- Is convicted of, or enters a plea of guilty or *nolo contendere* to a felony;
- Is convicted of, or enters a plea of guilty or *nolo contendere* to any crime an element of which is dishonesty or fraud;
- Has a CPA license issued by any other state cancelled, revoked or suspended;
- Has the right to practice before any state or federal agency suspended or revoked for improper conduct or willful violation of the rules of such agency;
- Provides public accounting services, for a fee, without an active CPA license or firm registration;<sup>44</sup>
- Fails to comply with the Act's continuing education requirements;
- Acts in a manner that fails to meet generally accepted accounting principles or generally accepted auditing standards;
- Uses false, misleading or deceptive advertising;
- Engages in habitual intemperance or excessively uses any habit-forming drug, any controlled substance or alcohol such that it renders him or her unfit to practice;
- Fails to retain records of the work performed for each client for a period of five years; and
- Fails to register, or renew the registration of a firm.

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<sup>39</sup> §§ 12-2-117(1)(a) and 12-2-117(1)(e), C.R.S.

<sup>40</sup> § 12-2-117(1)(b)(I), C.R.S.

<sup>41</sup> § 12-2-117(3)(c), C.R.S.

<sup>42</sup> § 12-2-117(3)(c)(III), C.R.S.

<sup>43</sup> § 12-2-123(1), C.R.S.

<sup>44</sup> This is grounds for discipline, unless the services provided (e.g., tax preparation) do not otherwise require a license.

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Based on these same grounds, the Board may fine a licensed CPA up to \$1,000 in the first administrative proceeding, and between \$1,000 and \$2,000 in any subsequent administrative proceeding.<sup>45</sup> All fines are credited to the state's General Fund.<sup>46</sup>

With respect to firm registrations, the Board is limited to suspending or revoking the registration of a firm that engages in any of the abovementioned grounds for discipline.<sup>47</sup>

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<sup>45</sup> § 12-2-123(5)(a), C.R.S.

<sup>46</sup> § 12-2-123(5)(b), C.R.S.

<sup>47</sup> § 12-2-124, C.R.S.

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## Program Description and Administration

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The State Board of Accountancy (Board) comprises seven, Governor-appointed members. Five members are Colorado-licensed certified public accountants (CPAs) and two are members of the general public. The Board generally meets on the fourth Wednesday of every month at the Board's offices in downtown Denver.

Although Board discussions and deliberations pertaining to complaints, investigations and disciplinary actions are confidential, members of the public typically attend the open portion of Board meetings. In general, national trends and policies are discussed during this portion, and it is not unusual for members of the public to participate in these discussions.

The Board is staffed by the Department of Regulatory Agencies' (DORA), Division of Registrations (Division). In fiscal year 07-08, the Division dedicated 1.5 full-time equivalent (FTE) employees to the Board.

**Table 1  
Agency Fiscal Information**

<b>Fiscal Year</b>	<b>Total Program Expenditure</b>	<b>FTE</b>
03-04	\$549,273	2.5
04-05	\$479,360	2.5
05-06	\$518,065	2.0
06-07	\$526,263	1.7
07-08	\$446,099	1.5

Source: Board staff.

The 1.5 FTE indicated in Table 1 is dedicated to the Board, and includes:

- Section Director (0.1 FTE General Professional VII) – This position manages consistency across all boards, personnel matters pertinent to the Board; legislative issues related to the Board, and recruitment and retention of Board members.
- Program Director (0.3 FTE General Professional VI) – This position is responsible for the overall administration, personnel and day-to-day operations of the Board, including policy development.
- Program Assistant (1.0 FTE Program Assistant I) – This position manages all administrative tasks associated with the Board, including Board meeting arrangements, correspondence, follow-up, telephone calls, and examination data management.
- Administrative Support (0.1 FTE Administrative Assistant III) – This position assists with complaint intake and tracking.

The FTE in Table 1 does not include staffing in the centralized offices of the Division, which include:

- Director’s Office;
- Office of Examination Services;
- Office of Expedited Settlement;
- Office of Investigations;
- Office of Licensing; and
- Office of Support Services.

The cost of these FTE is reflected in the Total Program Expenditures in Table 1. The Board pays for these FTE through a cost allocation methodology developed by the Division and DORA’s Executive Director.

During this time frame, Board staff saw considerable turnover, resulting in a loss of process continuity. This may explain why the number of complaints and final agency actions decreased as well, as illustrated in Tables 10 and 12, on pages 23 and 25 respectively. This ostensible drop in workload may have resulted in a corresponding decrease in Board expenditures.

Division management has taken steps to address these problems.

### *Licensing*

The Board issues licenses to CPAs and it registers firms. Table 2 illustrates, for the fiscal years indicated, the total number of individual CPAs and firms that the Board regulated.

**Table 2  
Regulated CPAs and CPA Firms**

Fiscal Year	Number of CPA Licenses and CPA Firm Registrations			
	New – All Methods	Reinstatement	Renewal	TOTAL
03-04	876	Not available	12,552	16,072
04-05	835	212	1,699	15,985
05-06	916	123	13,510	16,886
06-07	927	380	219	16,892
07-08	1,009	127	14,983	18,062

Source: Board staff.

The total number of those regulated, then, has gradually increased over this period.

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The figures for the various types of license acquisition do not equal the figures in the “total” column due to a number of circumstances, including computer system anomalies. Many of these anomalies can be attributed to the date on which various reports are pulled, as well as when data is entered into the system.

Figures for renewals merit some additional explanation. Individual CPAs renew their licenses in even numbered years only, but firms renew their registrations every three years. As a result, renewal figures reported for fiscal years 03-04 and 05-06 are for individual CPAs only, whereas renewals in fiscal year 04-05 were firms only. In fiscal year 07-08, both individual CPAs and firms renewed.

Complicating all of this is the fact that CPA licenses and firm registrations expire on May 31 of the renewal year, but the Division grants them a grace period through July 31 of the renewal year. Thus, there can be some cross-over from one fiscal year to the next, as is exemplified by the renewal figures reported in fiscal year 06-07, which represent individual CPAs renewing late.

Reinstatement figures for fiscal year 03-04 are not available because the Division tracked these as renewals until fiscal year 04-05.

All new licensees and registrants, apply for such in Colorado by applying through the National Association of State Boards of Accountancy (NASBA). NASBA analyzes the application material against Colorado’s licensing and registration requirements and then issues the license or registration, informs the applicant of any deficiencies, or if there are any irregularities or questions regarding the application, forwards the information to the Board.

All fees for this are collected by and retained by NASBA. Table 3 illustrates the fees charged by NASBA as of July 2009.

**Table 3  
NASBA Fees**

<b>Purpose</b>	<b>Fee</b>
Initial CPA Licensure by Examination	\$85 <sup>48</sup>
Initial CPA Licensure by Transfer of Grades	\$165 <sup>49</sup>
Initial CPA Licensure by Endorsement	\$165 <sup>50</sup>
Initial CPA Firm Registration	\$150 <sup>51</sup>

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<sup>48</sup> *Colorado Licensure*. NASBA Tools.com. Retrieved on July 16, 2009, from [http://www.nasbatools.com/display\\_page?id=86](http://www.nasbatools.com/display_page?id=86)

<sup>49</sup> *Colorado Licensure*. NASBA Tools.com. Retrieved on July 16, 2009, from [http://www.nasbatools.com/display\\_page?id=87](http://www.nasbatools.com/display_page?id=87)

<sup>50</sup> *Colorado Licensure*. NASBA Tools.com. Retrieved on July 16, 2009, from [http://www.nasbatools.com/display\\_page?id=88](http://www.nasbatools.com/display_page?id=88)

<sup>51</sup> *Colorado Licensure*. NASBA Tools.com. Retrieved on July 16, 2009, from [http://www.nasbatools.com/display\\_page?id=89](http://www.nasbatools.com/display_page?id=89)

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The various means of obtaining initial licensure are discussed below. Table 3 is presented here purely for the information relating to fees.

All other licensing matters, such as renewals, reinstatements, inactivations and reactivations are processed by the Division's Office of Licensing. These fees remain with the Board, and are summarized in Table 4 for fees assessed in fiscal year 08-09.

**Table 4  
Board Fees**

Purpose	Fee
CPA License Renewal	\$68
Inactive CPA License Renewal	\$58
CPA License Reinstatement	\$83
CPA License Reactivation	\$25
Retired CPA License Renewal	\$20
CPA Firm Registration Renewal	\$285
CPA Firm Registration Reinstatement	\$300

Source: Board staff.

A license may be reinstated when it has previously lapsed, whereas a license is reactivated when, upon application, the licensee chooses to move from inactive to active status. The advantage of inactive status is that the licensed CPA is not obligated to comply with continuing education requirements.

There are three paths to becoming a Colorado-licensed CPA:

- Education, experience, and examination;
- Education and examination; and
- Endorsement.

To obtain a license by pursuing the first path, a candidate must complete an approved educational program, pass the Uniform CPA Examination, and acquire one year's experience doing public accounting work as an employee of a CPA or what the Board determines to be equivalent experience.

The Board has approved 19 accounting programs throughout the state.

To obtain a license by pursuing the second path, a path that is commonly referred to as "education in lieu of experience," a candidate must earn a bachelor's degree in accounting plus acquire an additional 30 credit hours, the concentration of which must be in accounting.

Finally, a candidate who is licensed in another jurisdiction, the requirements of which are substantially equivalent to Colorado's, may obtain a license by endorsement, but need do so only if the CPA's principle place of business is going to be in Colorado.

Table 5 illustrates, for the fiscal years indicated, the total number of CPA licenses.

**Table 5  
CPA Licensing Information**

Fiscal Year	Number of Licenses				
	Exam	Endorsement / Transfer of Grades	Reinstatement	Renewal	TOTAL
03-04	463	175 / 157	Not available	12,552	14,926
04-05	398	186 / 169	212	646	14,766
05-06	414	208 / 170	113	13,510	15,688
06-07	506	225 / 156	367	219	15,668
07-08	660	190 / 88	120	13,965	16,763

Candidates licensed through the "Transfer of Grades" option, as indicated in Table 5, are those who have already applied for and taken the Uniform CPA Examination in another jurisdiction, but for whatever reason, decided to apply for licensure in Colorado.

Table 5 clearly indicates a gradual but definite increase in the total number of active CPA licenses in Colorado.

To renew a CPA license, each applicant must attest to having obtained at least 80 hours of continuing education over the course of the preceding two years.

Each renewal year, the Board conducts an audit of CPA licensees to verify compliance with this requirement. In each year, the Board randomly selects five percent of all active licensees for audit, in addition to those licensees who have been disciplined since the previous audit.

The last two such audits occurred in fiscal years 05-06 and 07-08, during which the Board audited 507 and 751 licensees respectively. Although the rate of compliance is not available for fiscal year 05-06, in fiscal year 07-08, preliminary data suggest that, as of this writing, the rate of compliance with the continuing education requirement was 81 percent.

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Like CPA licensees, the number of firms has slowly, but steadily increased, as demonstrated by the data in Table 6.

**Table 6**  
**CPA Firm Registrations**

Fiscal Year	Number of Licenses			
	New	Reinstatement	Renewal	TOTAL
03-04	81	Not available	0	1,146
04-05	82	0	1,053	1,219
05-06	99	10	0	1,173
06-07	40	13	0	1,224
07-08	71	7	998	1,299

To register a firm, at least one partner, shareholder or member, depending upon the corporate structure of the firm, and each resident manager of each office in the state, must be a Colorado-licensed CPA. Additionally, a simple majority of those owning the firm must be licensed CPAs in some state.

### *Examinations*

The nationally recognized licensing examination for CPAs is the Uniform CPA Examination developed and owned by the American Institute of Certified Public Accountants (AICPA).

The Uniform CPA Examination consists of four sections that may be taken in any order, but the candidate must pass the final section within 18 months of passing the first. All four sections contain multiple choice questions (MCQs) administered in testlets, which are groups of questions that are constructed to appear together.<sup>52</sup> Each MCQ testlet contains between 24 and 30 questions.<sup>53</sup>

Additionally, several sections contain simulation testlets, which are condensed case studies intended to test a candidate's accounting knowledge and skills using real life, work-related situations. Each simulation testlet includes a written communication exercise and should be completed within 30 to 50 minutes.<sup>54</sup>

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<sup>52</sup> The Uniform CPA Examination: Candidate Bulletin, December 2008, p.23.

<sup>53</sup> The Uniform CPA Examination: Candidate Bulletin, December 2008, p.23.

<sup>54</sup> The Uniform CPA Examination: Candidate Bulletin, December 2008, p.23.

Table 7 delineates the four sections of the Uniform CPA Examination, and some details pertaining to each.

**Table 7**  
**Sections of the Uniform CPA Examination**

Section Name	Time Allowed	Number of Testlets	Description
Auditing and Attestation (AUD)	4.5 hours	3 MCQ testlets 2 simulation testlets	This section covers knowledge of auditing procedures, generally accepted accounting standards and other standards related to attest engagements, and the skills needed to apply that knowledge in those engagements.
Business Environment and Concepts (BEC)	2.5 hours	3 MCQ testlets	This section covers knowledge of general business environment and business concepts that candidates need to know in order to understand the underlying business reasons for, and accounting implications of, business transactions, and the skills needed to apply that knowledge.
Financial Accounting and Reporting (FAR)	4 hours	3 MCQ testlets 2 simulation testlets	This section covers knowledge of generally accepted accounting principles for business enterprises, not-for-profit organizations, and governmental entities, and the skills needed to apply that knowledge.
Regulation (REG)	3 hours	3 MCQ testlets 2 simulation testlets	This section covers knowledge of federal taxation, ethics, professional and legal responsibilities, and business law, and the skills needed to apply that knowledge.

Source: *The Uniform CPA Examination: Candidate Bulletin*, December 2008.

The AICPA has contracted with Prometric to administer the Uniform CPA Examination. Prometric has four test centers in Colorado, one each in Colorado Springs, Grand Junction, Greenwood Village, and Longmont.<sup>55</sup>

The Uniform CPA Examination is offered in four, two-month windows:

- January and February;
- April and May;
- July and August; and
- October and November.

The Uniform CPA Examination is not offered outside of these windows.

<sup>55</sup> *Available Test Sites*. Prometric. Retrieved on May 28, 2009, from <http://securereg3.prometric.com/SiteSelection.aspx>

Effective August 3, 2009, the fees to take the Uniform CPA Examination increased to.<sup>56</sup>

AUD - \$230.55  
 BEC - \$180.95  
 FAR - \$218.15  
 REG - \$193.35

Finally, Table 8 illustrates the Uniform CPA Examination pass rates for Colorado test takers.

**Table 8**  
**Uniform CPA Examination**  
**Colorado Pass Rates**

<b>Fiscal Year</b>	<b>Number of Written Examinations Given</b>	<b>Pass Rate (%)</b>
<b>03-04<sup>57</sup></b>	<b>632 (354 passed)</b>	<b>56.01</b>
		AUD: 57.65 BEC: 60.32 FAR: 52.72 REG: 53.97
<b>04-05</b>	<b>4,166 (2,494 passed)</b>	<b>59.86</b>
		AUD: 50.36 BEC: 59.94 FAR: 49.63 REG: 47.22
<b>05-06</b>	<b>6,430 (3,297 passed)</b>	<b>51.27</b>
		AUD: 48.61 BEC: 59.80 FAR: 51.84 REG: 45.27
<b>06-07</b>	<b>8,253 (4,354 passed)</b>	<b>52.76</b>
		AUD: 49.32 BEC: 60.25 FAR: 53.67 REG: 48.84
<b>07-08</b>	<b>9,229 (4,889 passed)</b>	<b>52.97</b>
		AUD: 49.27 BEC: 60.00 FAR: 54.31 REG: 48.82

Source: Board staff.

The relatively low number of tests administered in fiscal year 03-04 can be attributed, in large part, to the fact that until November 2003, the Uniform CPA Examination was administered only twice each year.

<sup>56</sup> *First Time Applicant Fees*. National Association of State Boards of Accountancy. Retrieved on May 28, 2009, from [www.nasba.org/nasbaweb/NASBAWeb.nsf/wpepcf?openform&stateabbrev=CO](http://www.nasba.org/nasbaweb/NASBAWeb.nsf/wpepcf?openform&stateabbrev=CO)

<sup>57</sup> Data for fiscal year 03-04 relates to examinations administered between April and July 2004. Prior to this time, the Uniform CPA Examination was administered in a pencil and paper format, and reliable data are no longer available.

As these pass rate statistics demonstrate, the Uniform CPA Examination is a difficult examination, with Colorado pass rates for each section in the 50 to 60 percent range. However, when compared to national pass rates, which are below 50 percent, as depicted in Table 9, Colorado test-takers do relatively well.

**Table 9**  
**Uniform CPA Examination**  
**National Pass Rates**

<b>Fiscal Year</b>	<b>Number of Written Examinations Given</b>	<b>Pass Rate (%)</b>
<b>03-04<sup>58</sup></b>	<b>22,590 (10,610 passed)</b>	<b>46.97</b>
		AUD: 48.46 BEC: 44.10 FAR: 46.61 REG: 47.78
<b>04-05</b>	<b>148,144 (61,256 passed)</b>	<b>41.35</b>
		AUD: 41.90 BEC: 43.90 FAR: 40.65 REG: 38.91
<b>05-06</b>	<b>174,651 (75,417 passed)</b>	<b>43.18</b>
		AUD: 43.35 BEC: 43.96 FAR: 44.05 REG: 41.36
<b>06-07</b>	<b>194,380 (88,650 passed)</b>	<b>45.61</b>
		AUD: 46.26 BEC: 45.32 FAR: 46.51 REG: 44.39
<b>07-08</b>	<b>216,246 (103,924 passed)</b>	<b>48.06</b>
		AUD: 48.78 BEC: 47.09 FAR: 47.88 REG: 48.62

Source: Board staff.

<sup>58</sup> Data for fiscal year 03-04 relates to examinations administered between April and July 2004. Prior to this time, the Uniform CPA Examination was administered in a pencil and paper format, and reliable data are no longer available.

## Complaints/Disciplinary Actions

One of the Board's primary responsibilities is to investigate complaints alleging misconduct by licensed CPAs and registered firms. The Board receives complaints from a multitude of sources, and it can initiate a complaint on its own motion.

Table 10 illustrates the total number of complaints, and the bases for those complaints, received by the Board for the fiscal years indicated.

**Table 10**  
**Complaint Information**

Nature of Complaints	FY 03-04	FY 04-05	FY 05-06	FY 06-07	FY 07-08
Holding out with Expired Firm Registration	11	19	4	8	0
Practicing/Holding out with Expired Certificate or without a Certificate	10	29	19	16	10
Practicing/Holding out with Unregistered Firm	0	10	7	7	0
Conviction of Felony or Any Crime	1	2	14	0	1
Withholding Client Records or Failure to Retain Records	4	1	0	0	2
Violation of Rules of Professional Conduct or Standards	22	25	36	31	11
Substandard Practice of GAAP <sup>59</sup> and GAAS <sup>60</sup>	7	12	14	3	2
Fraud/Negligence, Including Failure to File Own Taxes and Fraud in Obtaining a License	3	4	6	8	14
Violation/Discipline in Another State or Suspension/Revocation to Practice Before a State or Federal Agency	0	2	1	0	3
Continuing Education Non-Compliance	1	27	0	41	0
Cease and Desist Order Violation	1	2	0	0	0
<b>TOTAL</b>	<b>60</b>	<b>133</b>	<b>101</b>	<b>114</b>	<b>43</b>

<sup>59</sup> Generally Accepted Accounting Principles.

<sup>60</sup> Generally Accepted Accounting Standards.

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Board staff attributes the substantial increase in complaints received in fiscal year 04-05 to the accounting scandals that rocked the nation during this period. Recall, this was the period during which companies such as Enron and Qwest were embroiled in accounting issues. Staff attributes the increase in complaints during the referenced years to the ripple effects of these scandals.

The substantial decrease in complaints in fiscal year 07-08 may be attributed to the staffing issues discussed earlier.

For the most part, Board staff cannot explain the fluctuations in the types of complaints/allegations filed over the course of the review period. One exception to this pertains to the number of complaints involving conviction of a felony or any crime in fiscal year 05-06. That year, the Division, in response to a report by the State Auditor, screened all licensees. As a result of this screen, a number of CPAs were found to have fallen into this category, thus a Board complaint was initiated.

Additionally, continuing education compliance audits are conducted every two years, thus explaining the rise and fall of these numbers in Table 10.

Regardless of the source of a complaint, once received, a copy is sent to the CPA or firm in question, which then has 30 days in which to respond to the allegations. The Board reviews the complaint and the response and determines whether:

- More information is needed to determine whether a violation has occurred, in which case it may refer the case to the Division's Office of Investigations;
- No violation has occurred, in which case it dismisses the case; or
- A violation has occurred, in which case it determines the appropriate disciplinary action to take.

For those cases referred to the Office of Investigations (OI), the Division has established a goal that such cases remain in OI for no more than 180 days. OI has developed a system by which cases can be prioritized on a five-point scale (where "5" is a high priority case) to help it manage its caseload. In fiscal year 07-08, the average length of time that a case was worked by OI was 215.5 days, but this figure dropped to 189.9 days in fiscal year 08-09.

Table 11 illustrates the number of cases referred by the Board to OI during the timeframe indicated.

**Table 11  
Board Referrals to the Office of Investigations**

	<b>FY 03-04</b>	<b>FY 04-05</b>	<b>FY 05-06</b>	<b>FY 06-07</b>	<b>FY 07-08</b>
Number of Cases	10	20	19	9	13

Source: Office of Investigations.

Based on the information contained in the complaint and the response, or based on information discovered by OI, the Board may find that a violation has occurred, thus warranting disciplinary action. Table 12 illustrates, for the fiscal years indicated, the number and types of disciplinary actions taken by the Board.

**Table 12  
Final Agency Actions**

<b>Type of Action</b>	<b>FY 03-04</b>	<b>FY 04-05</b>	<b>FY 05-06</b>	<b>FY 06-07</b>	<b>FY 07-08</b>
Revocation / Surrender / Voluntary Relinquishment	2	1	3	4	0
Stipulation – Includes Probation/Practice Limitation	18	43	34	30	25
Final Agency Order	0	0	0	0	0
Summary Suspension	0	0	0	0	0
Suspension	1	1	3	3	0
Confidential Letter of Admonition	0	0	0	0	0
Letter of Admonition	0	4	3	4	1
License Denied	0	0	0	0	0
Fines Collected	19	41	37	38	28
Cease and Desist	0	0	0	0	0
Injunction	0	0	0	0	0
Other Actions	22	7	3	6	0
<b>TOTAL DISCIPLINARY ACTIONS</b>	<b>62</b>	<b>97</b>	<b>80</b>	<b>85</b>	<b>54</b>
<i>Dismissed</i>	10	23	31	45	25
Dismissed – Confidential Letter of Concern (LOC)	9	31	21	18	5
<b>TOTAL DISMISSALS</b>	<b>19</b>	<b>54</b>	<b>52</b>	<b>63</b>	<b>30</b>
<b>GRAND TOTAL</b>	<b>81</b>	<b>151</b>	<b>132</b>	<b>148</b>	<b>84</b>

Source: Board staff.

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“Other actions” include revocations held in abeyance or stayed, and suspensions held in abeyance or stayed.

The explanations offered at the beginning of this section pertaining to the substantial increases and decreases in complaints for fiscal years 04-05 and 07-08, hold true for final agency actions as well.

Table 13 provides greater detail with respect to the fines the Board has collected, by restating the number of fines, and the total dollar amounts collected.

**Table 13**  
**Fines**

<b>Fiscal Year</b>	<b>Number of Fines Collected</b>	<b>Total Value of Fines Collected</b>	<b>Average</b>
03-04	19	\$14,391	\$757
04-05	41	\$18,700	\$456
05-06	37	\$19,450	\$526
06-07	38	\$16,000	\$421
07-08	28	\$13,000	\$464

The Board may impose a fine of up to \$1,000 for a first violation, and up to \$2,000 for subsequent violations. As the data in the “Average” column indicate, it is rare for the Board to impose the maximum fine possible.

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## Analysis and Recommendations

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### *Recommendation 1 – Continue the State Board of Accountancy and the regulation of certified public accountants and firms for nine years, until 2019.*

The first sunset criterion asks whether regulation is necessary to protect the public health, safety or welfare. It is reasonable to interpret “welfare” as financial well being.

Public accountants provide the public with a wide range of services, including:

- Tax work, including tax advice, tax planning, and tax preparation;
- Financial consulting and planning;
- Forensic activities, which can involve investigating bankruptcies, contract disputes, securities fraud, embezzlement, and money laundering;
- Consulting, which can involve matters pertaining to compensation, employee benefits, the design of accounting and data processing systems, and the safeguarding of financial data; and
- Reviewing and preparing various types of corporate financial statements.

The impact of some of these services on the public welfare is clear and direct. A consumer clearly benefits from having a knowledgeable, competent person prepare his or her tax returns, or consult on financial planning matters.

However, most of these services are largely unregulated. What is regulated is the more obscure independent audit function that some public accountants perform. In order to provide such services the public accountant must be licensed by the State Board of Accountancy (Board) as a certified public accountant (CPA). While unlicensed public accountants and licensed CPAs can perform all of the services referenced above, only a licensed CPA can prepare and render opinions on financial statements as an independent auditor. This is often referred to as the “audit” or “attest” function.

The impact of audit and attest functions on the public welfare is less clear, but nevertheless direct. A company’s books or finances may be audited, reviewed or otherwise analyzed for any number of reasons, including:

- Stock offerings;
- Regulatory requirements;
- Bankruptcy proceedings; and
- Securing credit.

The role of the licensed CPA, and the registered firm for which the licensed CPA works, is to act in an independent, objective manner in rendering an opinion as to the financial soundness of a particular company, or as to whether a particular company has kept its books according to generally accepted accounting principles and standards, thereby rendering them reliable.

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While the typical consumer may never read an audited financial statement or an auditor's report, the implications of these documents on the everyday life of the typical consumer is inarguable.

Investors rely on audited financials in deciding whether to invest in a particular company, or whether to buy a particular company, or whether to lend money to a particular company. Audited financials make these decisions easier when the investor knows that the financials were prepared according to a standard set of rules by an independent, disinterested party – a licensed CPA.

Some may argue that such investors are relatively sophisticated and are well equipped to assess these risks without regulation. While this may be true to a certain extent, the assertion ignores the catastrophic downstream effects that could result.

Independent audited financials form the foundation upon which global capital markets are constructed. Investors are far more than wealthy individuals looking to make more money. Investors are governments, pension funds, mutual funds (including 401(k) and individual retirement account managers), insurance companies, banks, and many others.

When a bank's investments go bad, it may have less money to lend to consumers which may lead it to raise interest rates, restrict its lending practices, or both, making the purchase of homes or cars more difficult. Similarly, the bank may pay lower interest rates to its account holders.

Similarly, when a company's books are "cooked" or fraudulently prepared, it may defraud, either intentionally or unintentionally, millions of people. Recall the scandals involving firms such as Enron and WorldCom a few years ago. Millions of people were impacted by poor accounting decisions. These people saw their retirement accounts wiped out, their pension funds fail or their jobs disappear.

Even the high profile securities fraud schemes of the last couple of years highlight the importance of having public accountants who not only know what they are doing, but who can be held accountable when they engage in fraudulent or incompetent acts.

Bernard Madoff defrauded thousands of people of billions of dollars in his Ponzi scheme. In running his operation, Madoff employed a small firm that fraudulently attested to the accuracy of Madoff's company's books. As a result, thousands of people relied on these statements in deciding to invest their money – oftentimes, their life savings – with Madoff.

The Madoff scandal highlights two important aspects of the regulation of CPAs. First, it is doubtful that Madoff could have swindled people as he did without the complicity of a licensed CPA. The "CPA" designation carries clout and people trust it.

Second, Madoff's CPA can be prevented from acting as such again, because of regulation.

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Additionally, such scandals are not limited to “high rollers” on Wall Street. In early 2009, a Denver man who held himself out as a Colorado-licensed CPA, was indicted on allegations that he had stolen \$2.7 million from clients, including \$700,000 from one family’s college trust fund.<sup>61</sup> Again, it is doubtful whether this man could have defrauded his clients had he not gained their trust by holding himself out as a CPA.

Licensed CPAs are in a unique position in that they possess skills and apply rules that very few ordinary consumers understand. As a result, the public is not in a position to determine the competency of these individuals. This is the classic justification for regulation.

For all of these reasons, the General Assembly should continue the Board and its regulation of licensed CPAs and firms for nine years, until 2019. Nine years is a reasonable continuation period given the scope and breadth of the remaining recommendations contained in this sunset report.

***Recommendation 2 – Require 150 hours of education for all CPA licenses issued after June 30, 2015, and direct the Board to promulgate rules as to which subjects will qualify as satisfying this requirement.***

Under the phenomenon known as “mobility,” an issue heavily promoted by both the National Association of State Boards of Accountancy (NASBA) and the American Institute of Certified Public Accountants (AICPA), a CPA who is licensed in a state that is deemed to be “substantially equivalent” can practice in any state that has adopted mobility legislation. Mobility legislation essentially allows a CPA licensed in a substantially equivalent jurisdiction to practice in a state other than the license-granting state without a license in the second state, without having to provide the second state any notice that the CPA is working there, but consenting to the jurisdiction of the second state with respect to regulatory requirements. A popular refrain among those who advocate for mobility provides, “no notice, no fee, no escape.”

As of July 29, 2009, 45 jurisdictions, including Colorado, had adopted mobility legislation.<sup>62</sup>

To be deemed substantially equivalent by NASBA, a state must require license candidates to:<sup>63</sup>

- Complete at least 150 credit hours of education;
- Pass the Uniform CPA Examination; and
- Complete one year of experience.

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<sup>61</sup> Sara Gandy, “CPA accused of stealing \$2.7 million from Colo. Clients,” 9News.com, retrieved on April 2, 2009.

<sup>62</sup> Letter to the California Board of Accountancy from the National Association of State Boards of Accountancy, July 29, 2009. Colorado adopted mobility legislation in House Bill 08-1226.

<sup>63</sup> § 5 Uniform Accountancy Act, Fifth Edition, July 2007.

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Most people obtain a license as a CPA in Colorado by satisfying the combined requirements of sections 12-2-108(1) and 12-2-109(1), Colorado Revised Statutes (C.R.S.), which include, among other things, earning a bachelor's degree: 1) in accounting; or 2) in a field other than accounting but where the candidate has taken courses in accounting-related subjects, such as business administration.

To earn a bachelor's degree, a student must typically complete a number of requirements, including taking courses in certain subjects, taking a certain number of credits in his or her major, and earning at least 120 credit hours.

Although the Colorado statutes governing CPA regulation (Act) do not specifically require that a candidate complete at least 120 hours to obtain a CPA license, such is more or less required by virtue of the fact that the Act requires a candidate to earn a bachelor's degree.

This requirement has placed Colorado in a unique situation – Colorado is the only state, aside from California which has a two-track system, that does not require 150 hours of education to obtain a license as a CPA.<sup>64</sup> All other states require at least 150 hours of education.

Interestingly, California is deemed “substantially equivalent” through 2012, so long as it terminates its non-150-hour track to licensure. If California fails to terminate this track, it will lose its status as substantially equivalent.<sup>65</sup>

Thus, although Colorado requires only 120 hours of education, but satisfies the other two elements of substantial equivalency (passage of the examination and attainment of experience), Colorado is not substantially equivalent.

This fact, combined with the adoption of House Bill 08-1226, which codified mobility in Colorado, means that CPAs licensed in other states practice in Colorado with no regulatory impediments, but Colorado-licensed CPAs cannot do likewise in other states.<sup>66</sup>

The question, therefore, becomes whether Colorado should remain an island of greater access to the profession, but in doing such, limit the ability of Colorado-licensed CPAs to service their Colorado-based and other clients in other states, or whether Colorado should acquiesce to national pressure and raise the barrier to entering the profession by requiring candidates to complete 150 hours, thereby enabling them to take full advantage of the nation's various mobility laws. There are many arguments to be made on both sides of the issue.

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<sup>64</sup> National Association of State Boards of Accountancy. *Substantial Equivalency*. Retrieved July 20, 2009, from [www.nasbatools.com/display\\_page?id=105&wwparam=1248121907](http://www.nasbatools.com/display_page?id=105&wwparam=1248121907)

<sup>65</sup> Letter to the California Board of Accountancy from the National Association of State Boards of Accountancy, July 29, 2009.

<sup>66</sup> A Colorado-licensed CPA may, on an individual basis, still qualify by licensure by endorsement in a substantially equivalent jurisdiction, but such a CPA would not be able to take advantage of the less burdensome mobility provisions.

To begin this discussion, it is useful to reflect upon the second sunset criterion, which asks whether current regulation represents the least restrictive form of regulation consistent with protecting the public.

Recall that in addition to obtaining a certain level of education, a license candidate must also take and pass the Uniform CPA Examination. As Tables 8 and 9 on pages 21 and 22 respectively, and summarized in Table 14, clearly demonstrate, Colorado examinees have consistently outperformed, in terms of overall pass rates, their national peers on the Uniform CPA Examination.

**Table 14**  
**Uniform CPA Examination**  
**Colorado and National Pass Rates**

<b>Fiscal Year</b>	<b>Colorado Pass Rate (%)</b>	<b>National Pass Rate (%)</b>
<b>03-04<sup>67</sup></b>	<b>56.01</b>	<b>46.97</b>
	AUD: 57.65 BEC: 60.32 FAR: 52.72 REG: 53.97	AUD: 48.46 BEC: 44.10 FAR: 46.61 REG: 47.78
<b>04-05</b>	<b>59.86</b>	<b>41.35</b>
	AUD: 50.36 BEC: 59.94 FAR: 49.63 REG: 47.22	AUD: 41.90 BEC: 43.90 FAR: 40.65 REG: 38.91
<b>05-06</b>	<b>51.27</b>	<b>43.18</b>
	AUD: 48.61 BEC: 59.80 FAR: 51.84 REG: 45.27	AUD: 43.35 BEC: 43.96 FAR: 44.05 REG: 41.36
<b>06-07</b>	<b>52.76</b>	<b>45.61</b>
	AUD: 49.32 BEC: 60.25 FAR: 53.67 REG: 48.84	AUD: 46.26 BEC: 45.32 FAR: 46.51 REG: 44.39
<b>07-08</b>	<b>52.97</b>	<b>48.06</b>
	AUD: 49.27 BEC: 60.00 FAR: 54.31 REG: 48.82	AUD: 48.78 BEC: 47.09 FAR: 47.88 REG: 48.62

Source: Board staff.

Admittedly, the number of examinees reflected in the national pass rate figures is substantially higher than those for Colorado, but the data are nevertheless telling.

Additionally, just because a candidate took the examination as a Colorado candidate does not necessarily mean that that candidate had only 120 hours of education. Colorado requires at least 120 hours. A candidate may have more, as many advocates for the adoption of the 150-hour requirement contend.

<sup>67</sup> Data for fiscal year 03-04 relates to examinations administered between April and July 2004. Prior to this time, the Uniform CPA Examination was administered in a pencil and paper format, and reliable data are no longer available.

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However, it is possible to deduce that most of the Colorado candidates probably had fewer than 150 hours of education because the Colorado College Opportunity Fund (COF), the mechanism through which Colorado provides eligible students with the stipends that reduce their tuition to the in-state level, only covers 145 hours of undergraduate education.<sup>68</sup>

Even if this conclusion is in error, NASBA itself concedes that “there is no significant meaningful difference between 120 and 150 hour states as to exam pass rates.”<sup>69</sup>

Given this, it is reasonable to question whether the Uniform CPA Examination is a valid instrument to establish competency. Advocates for the adoption of the 150-hour requirement correctly point out that passage of the Uniform CPA Examination is only one of the requirements that must be satisfied in obtaining a license as a CPA. Education and experience also play a role in creating a minimally competent CPA.

However, even if pass rates alone are, perhaps, insufficient to justify rejection of the 150-hour requirement, there are at least two practical considerations that must be considered. Can Colorado’s higher education system accommodate the new requirement? Can Colorado students afford the additional tuition costs?

Of the 19 approved accounting programs in the state, 11 are at state schools:

- Adams State College;
- Colorado State University;
- Colorado State University at Pueblo;
- Fort Lewis College;
- Mesa State College;
- Metropolitan State College of Denver;
- University of Colorado at Boulder;
- University of Colorado at Colorado Springs;
- University of Colorado at Denver;
- University of Northern Colorado; and
- Western State College.

Of these, only three have graduate degree programs in accounting:

- Colorado State University;
- University of Colorado at Boulder; and
- University of Colorado at Denver.

Additionally, the University of Northern Colorado and Metropolitan State College of Denver have graduate accounting programs in the developmental stages.

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<sup>68</sup> § 23-18-202(5)(c)(I), C.R.S.

<sup>69</sup> DRAFT – Education and Licensure Requirements for Certified Public Accountants: A Discussion Regarding Degreed Candidates Sitting for the Uniform CPA Examination with a Minimum of 120 Credit Hours (120-Hour Candidate) and Becoming Eligible for Licensure with a Minimum of 150 Credit Hours (150-Hour Candidate), National Association of State Boards of Accountancy, November 2008, p. 19.

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Notably, all five of these existing and planned programs are on the Front Range, and two are in Denver.

Admittedly, substantial equivalency does not specify whether the additional hours need to be at the graduate or undergraduate level.

During the course of this sunset review, a representative of the Department of Regulatory Agencies (DORA) met with representatives of some of the state's higher education institutions. These representatives highlighted several issues that they would face if the state were to implement the 150-hour requirement.

First, the schools in the state college system are limited in the types of graduate level programs they can offer. This means that these institutions may have to offer 150 hours of undergraduate training in order to keep their accounting programs viable. Many indicated the difficulty with this as higher education faces deeper funding cuts and faculty is already stretched too thin.

Second, even those schools decided to offer graduate level programs, they would need time to develop and implement them. Importantly, as of this writing, no non-Front Range state school offers a graduate degree in accounting.

Regardless, the representatives of the higher education system conceded that the 150-hour requirement is likely inevitable and that they can meet the new standard, given sufficient time and resources.

This simple fact is justification for the delayed effective date of this Recommendation 2.

But even if the state's schools can offer the required programs, can Colorado students afford to attend them? Recall that COF essentially subsidizes a student's tuition such that the student pays in-state tuition for the first 145 hours of undergraduate education. Additionally, each student may apply for a waiver to this limitation. One of the grounds for granting a waiver is satisfied when the degree program requires more than 120 hours to complete.<sup>70</sup> It is possible that all 150 hours could be earned at the undergraduate level at in-state tuition prices.

An additional consideration for student costs is that of location. Recall that none of the state schools outside of the Front Range offer graduate programs in accounting. Many of these schools report trouble even satisfying the 120 hours currently necessary, making it unlikely that all of them would be able to provide an adequate program to satisfy the 150-hour requirement.

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<sup>70</sup> § 23-18-202(5)(e)(II), C.R.S.

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This could result in students taking their first 120 hours at, for example, Adams State College, Fort Lewis College, Mesa State College or Western State College, all of which have robust undergraduate accounting programs, and their final 30 hours at a Front Range School in Denver, Boulder or Fort Collins. Although these students would still qualify for in-state tuition, this change in campus would likely require them to move away from home, thereby forcing them to incur all of the associated costs.

In discussing costs, however, it is also reasonable to consider earnings potential downstream, for tuition can also be considered an investment in one's own future, rather than a mere cost.

With respect to the 150-hour requirement, the die has been cast at the national level. Given mobility and Colorado's current status as not substantially equivalent, Colorado graduates are at a distinct disadvantage in the national competition for CPA positions.

Representatives from the state's higher education system reported to a representative of DORA that their students are being told by potential employers that they will not get hired with less than 150 hours of education. DORA's own conversations with firms tend to confirm this.

Given a choice between a candidate with 120 hours and 150 hours of education, most firms, all things being equal, would hire the candidate with 150 hours of education. When discussing the larger, regional and national firms, this is even more salient. A licensed CPA with 150 hours of education can work in any state, whereas the candidate with only 120 hours of education will be limited to working in Colorado alone.

This is not even necessarily a "mobility" issue, but an issue of transferability and upward mobility. For example, if a CPA is hired at a national firm's Denver office and the firm desires to promote that CPA to its New York office, unless the CPA has 150 hours of education, it is unlikely that the CPA can accept the promotion.

Granted, from a purely regulatory perspective, this scenario is largely irrelevant. Indeed, it could be argued that this situation benefits Colorado in that a CPA considered qualified to work at a national firm's New York office will, instead, work in Colorado. But from a workforce and economic development perspective, this scenario is largely untenable. This is particularly true given that, in 2008, the top industry in the western U.S., based on sales growth, was accounting.<sup>71</sup>

Finally, some argue that if Colorado were to adopt the 150-hour requirement, the Board would receive fewer license applications from non-U.S. applicants. Of the approximately 15,000 Colorado-licensed CPAs (including active, inactive, retired, etc.), at least 1,045 have provided non-U.S. addresses to the Board. This has both upsides and downsides.

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<sup>71</sup> "Accounting a growth industry in the West," *Denver Business Journal*, February 23, 2009.

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In determining whether a public accountant from outside the U.S. qualifies for a Colorado CPA license, the Board must essentially examine each application individually. This is often necessary to determine whether the candidate meets Colorado's educational and experience requirements (most have already passed the Uniform CPA Examination).

Many argue that these accountants seek a license from a U.S. state, any state, so that they can promote themselves as being licensed in the U.S., even if they have no intention of ever entering the U.S. Given Colorado's lower educational requirements, a greater number of these applicants apply for licensure in Colorado, it is posited, because they would not qualify for licensure in a jurisdiction that requires 150 hours of education. This is a logical conclusion.

Additionally, many argue that, in addition to the added workload for the Board, Colorado is gaining a negative reputation with so many licensees running around the globe. First, it is argued, if these non-U.S., Colorado licensees get into trouble or do something wrong, there is very little, if anything, the Board can do. Second, the large number of non-U.S., Colorado-licensed CPAs abroad tends to dilute the importance and prestige of having not only a U.S. CPA license, but also a Colorado CPA license.

However, these non-U.S., Colorado-licensed CPAs are engaged in international commerce. By extension, then, so too, is Colorado. As the U.S. and Colorado economies continue to become more global in nature, it is reasonable to conclude that an increasing amount of accounting work will flow across borders.

By requiring only 120 hours of education, Colorado could attract an increasing number of highly qualified accountants from other nations. The Colorado economy, too, could witness greater internationalization and the state could become a hub of international finance and deal making.

Of course, this is purely speculative, but is, nevertheless, a possibility.

In the end, it is clear that the current regulatory structure represents the least restrictive form of regulation consistent with protecting the public health, safety and welfare.

However, the first and eighth sunset criteria may provide additional insight. Among the questions posed by the first criterion is whether conditions have arisen that would warrant more regulation. The sixth sunset criterion requires DORA to examine the economic impact of regulation.

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Inarguably, conditions have changed in the financial world such that the accounting profession, too, has changed substantially. The practice in which licensed CPAs engage is increasingly complex. Since 1988, the number of Statements of Financial Accounting Standards issued by the Financial Accounting Standards Board<sup>72</sup> has increased from 98 to 163. Similarly, the number of auditing standards issued by the AICPA has increased from 53 to 115. Additionally, the Public Company Accounting Oversight Board (PCAOB) has issued six auditing standards, along with various other rules and regulations since it was created in 2002.

Combined with generally accepted accounting principles, these statements, standards, principles, rules and regulations create the framework within which independent audits, as well as countless other services, are performed. A licensed CPA must be aware of all of these and at least be familiar with how to apply them in a given situation.

Many proponents of the 150-hour requirement argue that students today cannot possibly learn all they need to in only 120 hours, thereby justifying the increase to 150 hours. While this may be intuitive, the evidence, as highlighted above, fails to support it.

The number of standards and statements is not the only thing that has changed, however. Mobility – the national movement towards a uniform CPA licensing standard – has also forced a change in conditions.

Colorado is not substantially equivalent. This means that a Colorado-licensed CPA cannot take advantage of the mobility provisions adopted by the other states. This means that, unless the Colorado-licensed CPA also holds a license issued by a substantially equivalent state, the Colorado CPA must obtain a license – and incur all the costs and delays related thereto – from the state in which he or she wishes to service a particular client.

This may be uneconomical for a variety of reasons. First, it may not be economically feasible to obtain a license in another state in order to provide services for a single client regarding a single matter. Second, the costs and time delays associated with obtaining another license could cause the client to seek another CPA.

In the end, Colorado-licensed CPAs are at a distinct competitive disadvantage simply because Colorado is not substantially equivalent. Adding insult to this injury is the fact that Colorado will be deemed substantially equivalent on the effective date of the bill that requires 150 hours of education.<sup>73</sup> All Colorado-licensed CPAs will, regardless of their actual educational backgrounds, become able to take full advantage of mobility on that same day.

This is, very likely, the absolute worst reason to require 150 hours of education. Regardless, the reason is compelling in this situation.

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<sup>72</sup> The Financial Accounting Standards Board is a private sector entity that establishes financial accounting standards that are recognized as authoritative by the AICPA and the U.S. Securities and Exchange Commission.

<sup>73</sup> Assuming Recommendation 3 is also adopted.

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The next logical question: in what subjects should the 30 additional hours be obtained? Since the Board currently outlines the minimum curriculum necessary for licensing, it is reasonable to assign this task to the Board.

Finally, the 150-hour requirement should be fully effective on July 1, 2015. This will give the Board ample time to establish the acceptable curriculum and give the state's educational system an opportunity to develop the infrastructure necessary to educate its graduates to meet the new standard.

For all of these reasons, the General Assembly should require that, effective July 1, 2015, all new CPA licensees have 150 hours of education, and it should direct the Board to promulgate the rules necessary to outline what that education must encompass.

***Recommendation 3 – Repeal the education in lieu of experience pathway to CPA licensure.***

Recall that to be deemed a substantially equivalent state by NASBA, a state's licensing standards must require:

- 150 hours of education;
- Passage of the Uniform CPA Examination; and
- One year of experience.

If a state is deemed substantially equivalent, CPAs licensed in that state can take full advantage of various other states' mobility provisions.

Recall also that one path to licensure in Colorado is education in lieu of experience, whereby a candidate need not have one year of experience. Rather, the candidate has a graduate degree in accounting.

Therefore, even if the General Assembly adopts Recommendation 2 of this sunset report, Colorado will still not be deemed substantially equivalent. For NASBA to deem Colorado such, the General Assembly will also have to repeal the education in lieu of experience path to licensure.

Repealing this path only makes sense if Recommendation 2 is adopted because, other than the year of experience, both paths will be more or less the same. Since it makes no sense to have one path require 150 hours (a number of credit hours that would fall just shy of that needed for a graduate degree) and one year of experience, and one path that would require a graduate degree without experience, the General Assembly should repeal the education in lieu of experience path.

This position is further strengthened by the fact that very few individuals obtain a Colorado CPA license via the education in lieu of experience path. Therefore, very few individuals will be impacted.

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***Recommendation 4 – Expand the scope of acceptable experience required for licensure as a CPA.***

Recall that one path to CPA licensure in Colorado is for a candidate to, among other things, obtain “one year’s experience doing public accounting work as an employee of a certified public accountant or what the Board determines to be the equivalent.”<sup>74</sup>

The Board, despite its apparent discretion, has interpreted this requirement fairly narrowly, such that it essentially considers only experience in which the candidate has a degree of independence from the entity being audited. This has resulted in the Board rejecting the experience of some candidates that, after thorough discussions, the Board truly felt were qualified and would have made good CPAs. However, if the Board determines that the experience does not satisfy this “independence requirement,” it will deny the application.

On one hand, this makes a modicum of sense. The only function that accountants perform that requires a license is the independent audit/attest function. This fact, when viewed along with the statutory language, makes the Board’s interpretation understandable.

However, the Uniform Accounting Act (UAA), promulgated by NASBA and the AICPA, grants considerably more latitude in this area. Section 5(f) of the UAA simply requires:

This experience shall include any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting skills all of which was verified by a licensee . . . This experience would be acceptable if it was gained through employment in government, industry, academia or public practice.

So, whereas Colorado has a relatively low barrier with respect to the education required to obtain a license, it has a relatively high barrier with respect to the experience required to obtain a license.

Licensed CPAs provide services above and beyond independent audits and attestations. They routinely provide the types of services outlined in the UAA. Therefore, it seems somewhat incongruous to require the experience to be in only one of these areas of practice.

Additionally, most CPAs acknowledge that one year of experience does not adequately prepare a new CPA to conduct an independent audit on his or her own. Therefore it is disingenuous to restrict the experience requirement in such a way.

If the General Assembly adopts Recommendations 2 and 3 of this sunset report based on the idea of mobility and the uniform licensing standards it represents, then it should also broaden the type of experience a candidate may use to qualify for licensure.

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<sup>74</sup> § 12-2-109(1)(a)(II), C.R.S.

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***Recommendation 5 – Clarify that any disciplinary action taken by another jurisdiction or federal agency may serve as grounds for discipline by the Board.***

The Act allows, but does not require, the Board to take disciplinary action against a Colorado-licensed CPA if:

- The CPA is licensed in another state and that state has cancelled, revoked, suspended or refused to renew the CPA's license; or
- The CPA is authorized to practice before any state or federal agency (such as a state department of revenue, the SEC, the U.S. Internal Revenue Service, etc.) and that authority is suspended or revoked for improper conduct or willful violation of the rules of such agency.

In one sense, these two provisions are typical of regulatory programs. Most professional and occupational regulatory programs permit the regulatory authority to consider disciplinary action in another jurisdiction to be *prima facie* evidence that the practitioner violated Colorado law.

This is because regulatory programs regulate the practice of the individual, regardless of where the conduct may occur. For example, it is nonsensical to bar the Colorado Board of Medical Examiners (BME) from taking disciplinary action against a Colorado-licensed physician when that physician, who also is licensed in another state, engages in conduct that does not meet the generally accepted standards of practice, and the other state takes disciplinary action based on such. The risk of similar harm befalling Colorado consumers demands that the Colorado BME have the discretion to consider such action with respect to the physician's Colorado license.

The same can be said of CPAs, and the two statutory provisions highlighted above accomplish part of this goal. However, they fall short in the sense that the Board may only consider disciplinary actions taken in another jurisdiction, or by a state or federal agency, if that action results in the revocation of the CPA's ability to practice there.

As Table 12 on page 25 clearly illustrates, relatively few complaints result in such drastic measures. More commonly, if a complaint results in disciplinary action at all, such action is typically a letter of admonition or probation, neither of which prohibit the practitioner from practicing.

Additionally, as noted elsewhere in this report, a number of Colorado-licensed CPAs reside outside of the U.S., and most of them are Chartered Accountants, or other legally recognized CPA equivalents, in their home nations. Therefore, the term "jurisdiction" should replace the term "state" in the referenced statutory provisions so that disciplinary action taken by, for example, the Institute of Chartered Accountants of Alberta could serve as grounds for discipline by the Board, just as would action taken by the Montana Board of Public Accountants. The justification remains the same, so geographic locality of the violation should be irrelevant.

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Therefore, the Board should be authorized to consider any disciplinary action taken by another jurisdiction, in determining whether Colorado consumers would be best protected by taking disciplinary action in Colorado as well.

A related issue pertains mostly to federal agencies and their propensity to enter into consent decrees with CPAs and firms, as opposed to taking direct disciplinary action. The problem here centers on the fact that very rarely do consent decrees contain any admissions of guilt or culpability. Rather, they typically recite facts and impose some sort of monetary penalty.

During the course of this sunset review, many argued that the Board should have the authority to take disciplinary action based on these consent decrees, even where there are no admissions. While this would be possible, given the explicit statutory authority to do so, it is not necessarily desirable.

Individuals and firms, regardless of context, enter into consent decrees and other types of settlement agreements for a variety of reasons. Many times, the cost of litigation and further investigation exceeds the level of penalty at stake such that, from a purely logical perspective, it makes more sense to settle and pay a penalty than it does to continue to fight.

This Recommendation 5 does not advocate for the ability of the Board to have such broad authority. However, this recommendation does advocate for allowing the Board to take action when a federal agency takes a form of disciplinary action that is less than outright revocation. Given the specifics of a particular case and the specifics of a particular consent decree, the Board may have grounds to take disciplinary action based on such. This should remain, as it does now, a case-by-case analysis.

For all of these reasons, the Board should have the ability, but not the mandate, to take disciplinary action against a Colorado-licensed CPA or registered firm when that CPA or firm is disciplined by another jurisdiction or by a state or federal agency.

***Recommendation 6 – Clarify that disciplinary actions taken by the PCAOB may serve as grounds for discipline by the Board.***

This Recommendation 6 is somewhat related to Recommendation 5 in that it relates to the Board's authority to take disciplinary action based on the disciplinary actions of another regulatory authority.

The PCAOB is a private sector, nonprofit corporation created under the federal Sarbanes-Oxley Act of 2002 to oversee the auditors of publicly traded companies.<sup>75</sup>

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<sup>75</sup> Public Accounting Oversight Board. *Our Mission*. Retrieved on July 24, 2009, from [www.pcaobus.org/index.aspx](http://www.pcaobus.org/index.aspx)

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Whether the PCAOB is a “federal agency” under section 12-2-123(1)(h), C.R.S., is, therefore, crucial in determining whether the Board can take disciplinary action based on an action taken by the PCAOB.

This is no mere academic exercise. Of the 25 actions taken by the PCAOB between May 2005 and September 2009, four involved Colorado-licensed CPAs and Colorado-registered firms. Only California, Florida and New York have had more licensees sanctioned by the PCAOB.<sup>76</sup>

In one of the Colorado cases, the PCAOB found that the CPAs and the firm had failed to perform, or reasonably ensure the performance of, sufficient audit procedures in a variety of contexts in the audits of two publicly traded companies between 2003 and 2004. These violations resulted in the PCAOB censuring the firm and barring the individual CPA from being associated with any firm registered with the PCAOB for one year.<sup>77</sup>

In another Colorado case, the PCAOB found that the CPAs and the firm had engaged in numerous and repeated violations of PCAOB auditing standards in the audits of four publicly traded companies between 2005 and 2007. These violations were severe enough to result in the revocation of the firm’s PCAOB registration (with reapplication permitted after five years) and the barring of the individual CPAs from being associated with any firm registered with the PCAOB for five years.<sup>78</sup>

This second case is highly relevant to the present discussion since the firm and the individual CPAs both had their authority to practice before the PCAOB revoked. Clearly, whether the PCAOB is a federal agency is crucial to any final conclusion.

Unfortunately, the PCAOB’s legal status is less than clear. The PCAOB’s website declares that it is a “private sector nonprofit corporation.”<sup>79</sup> Yet the same website goes on to state that:

- It was created by the federal Sarbanes-Oxley Act of 2002;<sup>80</sup>
- Its board members are appointed by the SEC;<sup>81</sup> and
- Its budget is approved by the SEC.<sup>82</sup>

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<sup>76</sup> Public Accounting Oversight Board. Retrieved on July 24, 2009, from [www.pcaobus.org/Enforcement/Disciplinary\\_Proceedings/index.aspx](http://www.pcaobus.org/Enforcement/Disciplinary_Proceedings/index.aspx)

<sup>77</sup> *In the Matter of Cordovano and Honeck, P.C. and Samuel D. Cordovano, CPA*. Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions. PCAOB Release No. 105-2008-004. December 18, 2008.

<sup>78</sup> *In the Matter of Jaspers + Hall, PC, Thomas M. Jaspers, CPA, and Patrick A. Hall, CPA*. Order Instituting Disciplinary Proceedings, Making Findings, and Imposing Sanctions. PCAOB Release No. 105-2008-002. October 21, 2008.

<sup>79</sup> Public Accounting Oversight Board. *Our Mission*. Retrieved on July 24, 2009, from [www.pcaobus.org/index.aspx](http://www.pcaobus.org/index.aspx)

<sup>80</sup> Public Accounting Oversight Board. *Our Mission*. Retrieved on July 24, 2009, from [www.pcaobus.org/index.aspx](http://www.pcaobus.org/index.aspx)

<sup>81</sup> Public Accounting Oversight Board. Retrieved on July 24, 2009, from [www.pcaobus.org/About\\_the\\_PCAOB/The\\_Board/index.aspx](http://www.pcaobus.org/About_the_PCAOB/The_Board/index.aspx)

<sup>82</sup> Public Accounting Oversight Board. Retrieved on July 24, 2009, from [www.pcaobus.org/Support\\_Fees/index.aspx](http://www.pcaobus.org/Support_Fees/index.aspx)

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In the end, it is controlled by a federal agency, its budget is approved by a federal agency and it acts like a federal agency. The only problem is that it is not, technically speaking, a federal agency.

Therefore, in order to comply with the spirit of Colorado law regarding this area, the General Assembly should clarify that the Board may, in addition to all of its other powers, take disciplinary action based on disciplinary actions taken by the PCAOB or any successor organization.

***Recommendation 7 – Expand the Board’s disciplinary authority over registered firms to include the full panoply of disciplinary tools it has at its disposal with respect to licensed CPAs.***

Section 12-2-123(1), C.R.S., authorizes the Board to:

deny the issuance of, refuse to renew, revoke, suspend any certificate of a certified public accountant issued under this article or any prior law of this state or may fine, censure, issue a letter of admonition to, or place on probation the holder of any certificate and impose other conditions or limitations for any of the following causes:

The statutory provision goes on to state the grounds upon which the Board may take such disciplinary actions.

This provision speaks in terms of certificate holders. Throughout the Act, such reference is to individual licensed CPAs, not registered firms. This interpretation is corroborated by section 12-2-124(2), C.R.S., which authorizes the Board to:

revoke or suspend the registration of a partnership, professional corporation, or limited liability company for any of the causes enumerated in section 12-2-123 . . .

This makes it clear that the Board has a broad array of disciplinary tools at its disposal with respect to licensed CPAs, but these tools are limited to suspension or revocation with respect to registered firms.

Therefore, when taking disciplinary action against a registered firm, the Board should have at its disposal all of the disciplinary tools it has with respect to licensed CPAs.

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***Recommendation 8 – Increase the Board’s fining authority to \$5,000 against licensed CPAs and \$10,000 against registered firms, and allow the Board to impose a fine for each violation.***

The Board is authorized to impose on “any person” it finds has violated the Act:<sup>83</sup>

- (I) In the first administrative proceeding against a certificant, a fine not in excess of one thousand dollars;
- (II) In any subsequent administrative proceeding against a certificant, a fine not less than one thousand dollars nor in excess of two thousand dollars.

At issue here are two points: against whom a fine may be imposed; and the level of the authorized fine.

This statutory provision begins by authorizing the Board to impose a fine on “any person.” A plain language reading of this provision would permit the Board to fine a licensed CPA, a registered firm, or even an unlicensed individual or entity.

However, the subparagraphs seem to limit the Board’s authority to “certificants.” Throughout the Act, “certificant” is typically used to refer to licensed CPAs only.

Whether the Board has the authority to impose a fine on a registered firm is arguable. For the same reasons outlined in Recommendation 7, the Board should have the authority to impose a fine, like any other form of discipline, on a registered firm. Therefore, this language should be clarified in the statute.

The dollar limits currently delineated in statute have not been altered since 1990. While inflation alone would justify slightly higher limitations, other considerations are valid as well.

Licensed CPAs and registered firms can have enormous economic impact on their clients, and many of them make a considerable profit. For example, each of the big four accounting firms, all of which have offices in Colorado, make billions of dollars each year, and the salaries of their partners easily exceed six figures.

It is reasonable to question whether a fine of \$1,000 or \$2,000 is sufficient to deter errant conduct, or to adequately punish it. Most agree that it is not.

How much is sufficient? Some argue that fines reaching as much as \$500,000 would be ideal. Others argue that a more measured approach is appropriate.

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<sup>83</sup> § 12-2-123(5)(a), C.R.S.

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Similarly, it is reasonable to question whether the Board's fining authority over a licensed CPA should be the same as its authority over a registered firm.

The purpose of fining authority is two-fold: 1) deter conduct that constitutes a violation, and 2) adequately sanction those who engage in errant conduct so that they will not engage in such conduct again.

Although a fine of \$1,000 may be appropriate against an individual who makes \$50,000 per year, it may be too insignificant against an individual who makes \$150,000 per year.

Similarly, a fine of \$2,000 may be appropriate against a firm that makes \$200,000 per year, but may not even be noticed by a firm that makes \$100 million per year.

Additionally, current statutory language denies the Board a considerable degree of discretion with respect to subsequent violations, by forcing the Board to impose a minimum penalty. This is not only unusual, but also undesirable.

For example, if the Board fines a licensed CPA \$250 for practicing under a lapsed license, and the same CPA again fails to renew his or her license 15 years later, the Board is compelled to fine the CPA at least \$1,000, the statutory minimum.

Therefore, the General Assembly should clarify that the Board may impose fines on both licensed CPAs and registered firms, eliminate any minimum fines, and establish maximum fines of \$5,000 per violation against a licensed CPA and \$10,000 per violation against a registered firm.

***Recommendation 9 – Repeal the Board's authority to issue a censure.***

Among the Board's disciplinary tools is the ability to "censure" a licensed CPA.<sup>84</sup> According to Board staff, the Board has never used this authority. In fact, neither Board staff nor the Assistant Attorney General assigned to the Board is sure how a censure differs from a letter of admonition, which the Board may also issue.

Therefore, the General Assembly should repeal the authority of the Board to issue a censure.

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<sup>84</sup> § 12-2-123(1), C.R.S.

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***Recommendation 10 – Modify title protection provisions.***

The Act contains several provisions that protect the titles, “certified public accountant” and “C.P.A.”

Section 12-2-120(1), C.R.S., provides:

No person shall assume or use the title or designation “certified public accountant” or the abbreviation “C.P.A” or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant unless such person holds an active certificate as a certified public accountant under section 12-2-108, 12-2-109, or 12-2-113, or a prior law of this state.

This language seems to preclude anyone who is not a Colorado-licensed CPA from using the protected titles, under any circumstances. Importantly, this language also precludes a CPA licensed in another state from using the protected titles in Colorado, including on business cards, letterhead, etc.

However, section 12-2-122, C.R.S., provides:

Any person who displays, utters, or causes to be displayed or uttered a card, sign, advertisement, or other printed, engraved, or written instrument or device bearing such person’s name in conjunction with the words “certified public accountant” or the abbreviation “C.P.A.” or any title, designation, or abbreviation prohibited by section 12-2-120 may be presumed in any action brought under section 12-2-126 to have held himself out to be a certified public accountant holding an active certificate of certified public accountant pursuant to section 12-2-108 . . .

This language, coupled with the licensing provisions of section 12-2-108, C.R.S. (as referenced above), seems to suggest adding a descriptive term, such as “inactive” or “California,” may be acceptable, since these modifiers make it clear that the person is not holding out as an “active” Colorado-licensed CPA.

This is a confusing issue and one with which the Board has wrestled from time to time. Additionally, this is likely to become more problematic with mobility, as CPAs who are licensed in other states practice in Colorado with increasing frequency. Why should someone who is licensed in Utah, for example, be able to work as a CPA in Colorado under mobility, but simultaneously be barred from holding himself or herself out as such?

Therefore, descriptive terms or modifiers should be allowed.

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***Recommendation 11 – Clarify that a candidate for licensure must pass the Uniform CPA Examination, in addition to other requirements.***

The Board must grant a license to any candidate:<sup>85</sup>

- (b) Who has passed a written examination;
- (c) Who meets the further requirements of section 12-2-109(1)(b) and (1)(c), C.R.S., or who meets the further requirements of section 12-2-109(1)(a) and (1)(b), C.R.S.;
- (d) Who meets the requirements of section 12-2-113, C.R.S.; or
- (e) Who otherwise satisfies the Board of the applicant’s continued competence.

The disjunctive “or” at the end of paragraph (d) indicates that a candidate needs to satisfy any one of these four requirements, not all of them. Indeed, this makes sense with respect to paragraph (d), which references licensure by endorsement, and paragraph (e), which gives the Board discretion to accept other qualifications.

However, in practice, the Board requires candidates to both pass an examination, as required by paragraph (b), and satisfy the education and experience requirements referenced in paragraph (c).

This interpretation is supported by section 12-2-111(4), C.R.S., which provides:

A candidate for a certificate of certified public accountant who meets the requirements of section 12-2-109(1)(a)(I) or (1)(c), C.R.S., is entitled to examination.

Section 12-2-109, C.R.S., sets forth the education and experience requirements necessary for licensure.

Since this is confusing, the General Assembly should clarify that candidates may not become licensed CPAs simply by taking the examination.

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***Administrative Recommendation 1 – Conduct a comprehensive review of all Board rules and re promulgate as necessary.***

As part of this sunset review, a representative of DORA attended numerous Board meetings. At most of these meetings, various Board members struggled with interpreting and applying various Board rules. In some cases, the Board was unclear as to whether it was enforcing a statutory provision or one of its own rules.

Given the confusing nature of the Board’s rules, this is understandable.

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<sup>85</sup> § 12-2-108(1), C.R.S.

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More worrisome, however, is the fact that licensed CPAs and registered firms are expected to comply with Board rules that are not easily understandable.

Therefore, the Board should undertake to conduct a comprehensive review of its rules and repromulgate them so that they are easier to understand and comply with.

***Administrative Recommendation 2 – Seek to amend the sunset review bill to include any technical changes necessary.***

During the course of the sunset review, the Board, its staff and researchers found several places in the statutes administered by the Board that need to be updated and clarified to reflect current practices, conventions, and technology. Issues such as the statutes being made gender neutral; changing references from “certificate holders” to “licensees;” among several other technical issues, all should be addressed.

Recommendations of this nature do not rise to the level of protecting the health, safety, and welfare of the public, but an unambiguous law makes for more efficient implementation. All of the statutes pertaining to CPAs are commonly only examined by the General Assembly during a sunset review. Therefore, the Board and staff should review these statutes and prepare an omnibus amendment, which will rectify all identified technical problems, to the sunset review bill.