

**New Mexico
Public Accountancy Board**



**1999 NM Public Accountancy Act
2017-2018 EDITION**

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ARTICLE 28B 1999 Public Accountancy Act

Section

- [61-28B-1 Short title. \(Repealed effective July 1, 2024.\)](#)
- [61-28B-2 Purpose. \(Repealed effective July 1, 2024.\)](#)
- [61-28B-3 Definitions. \(Repealed effective July 1, 2024.\)](#)
- [61-28B-4 Board created; terms; officers; meetings; reimbursement. \(Repealed effective July 1, 2024.\)](#)
- [61-28B-5 Board; powers and duties. \(Repealed effective July 1, 2024.\)](#)
- [61-28B-6 Fund created. \(Repealed effective July 1, 2024.\)](#)
- [61-28B-7 Repealed.](#)
- [61-28B-8 Qualifications for a certificate as a certified public accountant. \(Repealed effective July 1, 2024.\)](#)
- [61-28B-8.1 Fingerprinting; criminal history background checks. \(Repealed effective July 1, 2024.\)](#)
- [61-28B-9 Issuance and renewal of certificate; maintenance of competency; nonresident maintenance of competency requirements. \(Repealed effective July 1, 2024.\)](#)
- [61-28B-10 Repealed.](#)
- [61-28B-11 Certificates issued to holders of a certificate, license or permit issued by another state. \(Repealed effective July 1, 2024.\)](#)
- [61-28B-12 Registered public accountants and firms of registered public accountants. \(Repealed effective July 1, 2024.\)](#)
- [61-28B-13 Firm permits to practice, attest experience, peer review. \(Repealed effective July 1, 2024.\)](#)
- [61-28B-14 Appointment of secretary of state as agent. \(Repealed effective July 1, 2024.\)](#)
- [61-28B-15 Enforcement procedures; investigations. \(Repealed effective July 1, 2024.\)](#)
- [61-28B-16 Enforcement procedures; hearings by the board. \(Repealed effective July 1, 2024.\)](#)
- [61-28B-17 Enforcement; unlawful acts. \(Repealed effective July 1, 2024.\)](#)
- [61-28B-18 Exemptions; unlawful acts. \(Repealed effective July 1, 2024.\)](#)
- [61-28B-19 Business names; prohibitions. \(Repealed effective July 1, 2024.\)](#)
- [61-28B-20 Enforcement; administrative violations and remedies. \(Repealed effective July 1, 2024.\)](#)
- [61-28B-21 Reinstatement. \(Repealed effective July 1, 2024.\)](#)
- [61-28B-22 Criminal penalties. \(Repealed effective July 1, 2024.\)](#)
- [61-28B-23 Single act evidence of practice. \(Repealed effective July 1, 2024.\)](#)
- [61-28B-24 Confidential communications. \(Repealed effective July 1, 2024.\)](#)
- [61-28B-25 Working papers; client records. \(Repealed effective July 1, 2024.\)](#)
- [61-28B-26 Practice privilege and discipline for a certificate holder from a state whose accountancy statute is substantially equivalent. \(Repealed effective July 1, 2024.\)](#)
- [61-28B-27 Fees. \(Repealed effective July 1, 2024.\)](#)
- [61-28B-28 Criminal offender eligibility. \(Repealed effective July 1, 2024.\)](#)
- [61-28B-29 Termination of agency life; delayed repeal. \(Repealed effective July 1, 2024.\)](#)

61-28B-1. Short title. (Repealed effective July 1, 2024.)

Chapter [61](#), Article [28B](#) NMSA 1978 may be cited as the "1999 Public Accountancy Act".

History: Laws 1999, ch. [179](#), § [1](#).; 2007, ch. [219](#), § [1](#).

The 2007 amendment, effective June 15, 2007, changes the statutory reference the act.

Delayed repeals. — For delayed repeal of this section, *see* [61-28B-29](#) NMSA 1978.

61-28B-1. Short title. (Repealed effective July 1, 2024.)

Chapter [61](#), Article [28B](#) NMSA 1978 may be cited as the "1999 Public Accountancy Act".

History: Laws 1999, ch. [179](#), § [1](#).; 2007, ch. [219](#), § [1](#).

The 2007 amendment, effective June 15, 2007, changes the statutory reference the act.

Delayed repeals. — For delayed repeal of this section, *see* [61-28B-29](#) NMSA 1978.

61-28B-3. Definitions. (Repealed effective July 1, 2024.)

As used in the 1999 Public Accountancy Act:

A. "attest" means to provide the following services:

(1) an audit or other engagement performed in accordance with the statements on auditing standards;

(2) a review of a financial statement performed in accordance with the statement on standards for accounting and review services;

(3) an engagement performed in accordance with the statements on standards for attestation engagements adopted by the board; and

(4) an engagement to be performed in accordance with the auditing standards of the public company accounting oversight board;

B. "board" means the New Mexico public accountancy board;

C. "certificate" means the legal recognition issued to identify a certified public accountant or a registered public accountant pursuant to the 1999 Public Accountancy Act or prior law;

D. "certified public accountant" means a person certified by this state or by another state to practice public accountancy and use the designation;

E. "compilation" means a service provided to management, applying accounting and financial reporting expertise, in the presentation of financial statements and reports without undertaking to obtain or provide assurance that there are no material modifications that should be made to the financial statements or reports to be in accordance with the applicable financial reporting framework;

F. "contingent fee" means a fee established for the performance of a service pursuant to an arrangement in which no fee will be charged unless a specific finding or result is attained or upon which the amount of the fee is dependent upon a finding or result. "Contingent fee" does not mean a fee set by the court or a public authority on a tax matter;

G. "director" means the executive director of the board;

H. "firm" means a sole proprietorship, professional corporation, partnership, limited liability company, limited liability partnership or other legal business entity that practices public accountancy;

I. "licensee" means a person, certified public accountant, certified public accountant firm, registered public accountant or registered public accountant firm authorized to do business in New Mexico pursuant to the provisions of the 1999 Public Accountancy Act or prior law;

J. "peer review" means a study, appraisal or review of one or more aspects of the professional work of a firm by a certified public accountant who is not affiliated with the firm being reviewed;

K. "permit" means the annual authority granted to practice as a certified public accountant firm or a registered public accountant firm;

L. "practice" means performing or offering to perform public accountancy for a client or potential client by a person who makes a representation to the public as being a permit holder or registered firm;

M. "public accountancy" means the performance of one or more kinds of services involving accounting or auditing skills, including the issuance of reports on financial statements, the performance of one or more kinds of management, financial advisory or consulting services, the preparation of tax returns or the furnishing of advice on tax matters;

N. "registered public accountant" means a person who is registered by the board to practice public accountancy and use the designation;

O. "report" means a written communication issued by an accountant or an accountant firm that:

(1) when used in reference to an audit, review or examination service, expresses or disclaims an opinion or a conclusion as to whether subject matter is presented in accordance with specified criteria; and

(2) when used in reference to a compilation, agreed-upon procedures service or other service that is not an audit, review or examination service, includes a statement or implication that the accountant or accountant firm that issued the report has special knowledge or competence in accounting or attest services such as by the use of names or titles indicating that the person or firm is an accountant or an accountant firm or by the contents of the report itself; and

P. "substantial equivalency" means a determination by the board that the education, examination and experience requirements for certification of another jurisdiction are comparable to or exceed the requirements of Paragraph (1) of Subsection A of Section [61-28B-26](#) NMSA 1978.

History: Laws 1999, ch. [179](#), § [3](#); 2000, ch. [91](#), § [1](#); 2008, ch. [30](#), § [1](#); 2017, ch. [12](#), § [1](#).

Delayed repeals. — For delayed repeal of this section, see [61-28B-29](#) NMSA 1978.

The 2017 amendment, effective June 16, 2017, added the definition of "compilation" to, and clarified certain definitions in, the Public Accountancy Act; in Subsection A, in the introductory clause, after "the following", deleted "financial statement", and in Paragraph A(3), after "an", deleted "examination of prospective financial information" and added "engagement", and after "attestation engagements", added "adopted by the board"; added a new Subsection E and redesignated the succeeding subsections accordingly; in Subsection I, after "'licensee' means a", added "person", and after "accountant firm", added "authorized to do business in New Mexico pursuant to the provisions of the 1999 Public Accountancy Act or prior law"; and in Subsection O, in the introductory clause, after "'report' means", deleted "an opinion or other writing that:" and added "a written communication issued by an accountant or an accountant firm that:", and deleted former Paragraphs O(1) through O(3) and added new Paragraphs O(1) and O(2).

The 2008 amendment, effective May 14, 2008, added Paragraph (4) of Subsection A and Subparagraph (a) of Paragraph (3) of Subsection N; deleted the definition of person and of specialty designation; and in Subsection O, changed the reference to the 1999 Public Accountancy Act to Subsection A of Section 61-28A-26 NMSA 1978.

The 2000 amendment, effective July 1, 2000, added a new Subsection E and redesignated the remaining subsections accordingly.

ANNOTATIONS

Generally, as to public accountant. — A public accountant is one who provides accounting or auditing, as opposed to bookkeeping, services on a fee basis, per diem or otherwise, for more than one employer. 1947-48 Op. Att'y Gen. No. [47-5050](#).

Providing auditing services for credit union league members. — An individual not registered or licensed as an accountant, who is employed by the New Mexico credit union league, and provides auditing services on behalf of the league for member credit unions, does not hold himself out to the public as a public accountant, nor does he violate the public accountancy provisions. 1969 Op. Att'y Gen. No. [69-124](#).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 1 Am. Jur. 2d Accountants § 1 et seq.

Construction and application of statutory provisions respecting persons who may prepare tax returns for others, 10 A.L.R.2d 1443.

Regulation of accountants, 70 A.L.R.2d 433, 4 A.L.R.4th 1201.

1 C.J.S. Accountants § 2.

61-28B-4. Board created; terms; officers; meetings; reimbursement. (Repealed effective July 1, 2024.)

A. The "New Mexico public accountancy board" is created. The board shall be administratively attached to the regulation and licensing department. The board shall consist of seven members appointed by the governor who are citizens of the United States and residents of New Mexico. Four members of the board shall be certified public accountants or registered public accountants who have practiced for at least five calendar years immediately preceding their appointment to the board. Three members shall represent the public and shall not have ever held a certificate or permit

to practice public accountancy in any state and shall not have ever had a significant financial interest, direct or indirect, in the public accountancy profession or in a firm. Public members shall have professional or practical experience in the use of accounting services and financial statements, so as to be qualified to make judgments about the qualifications and conduct of persons subject to the provisions of the 1999 Public Accountancy Act [[61-28B-1](#) NMSA 1978].

B. Members of the board shall serve for terms of three years or less, staggered in a manner that the terms of not more than three members expire on January 1 of each year; provided that members appointed and serving pursuant to prior law on the effective date of the 1999 Public Accountancy Act shall serve the remainder of their terms. A vacancy on the board shall be filled by appointment by the governor for the unexpired term. Upon the expiration of a member's term of office, he shall continue to serve until his successor has been appointed and qualified. A professional member of the board whose certificate is suspended or revoked shall automatically cease to be a member of the board. The governor may remove a member of the board for neglect of duty or other just cause.

C. The board shall elect annually from among its members a chairman and other officers as the board determines. The board shall meet at times and places as fixed by the board. A majority of the board constitutes a quorum.

D. Members of the board may receive per diem and travel expenses as provided in the Per Diem and Mileage Act [[10-8-1](#) NMSA 1978], but shall receive no other compensation, perquisite or allowance.

History: Laws 1999, ch. [179](#), § [4](#); 2003, ch. [408](#), § [28](#).

Delayed repeals. — For delayed repeal of this section, see [61-28B-29](#) NMSA 1978.

Transfers and references. — Laws 1999, ch. [179](#), § [30](#), effective July 1, 1999, provides that on July 1, 1999, all personnel, money, appropriations, property, records and other things of value belonging to the New Mexico state board of public accountancy shall be transferred to the New Mexico public accountancy board. All contracts, including certificates and registrations, in effect for the New Mexico state board of public accountancy shall be binding on the New Mexico public accountancy board. All references in law to the New Mexico state board of public accountancy shall be construed as references to the New Mexico public accountancy board.

The 2003 amendment, effective July 1, 2003, substituted "The board shall be administratively attached to the regulation and licensing department. The board shall consist" for "consisting" following "is created" near the beginning of Subsection A.

ANNOTATIONS

Appointment to unexpired term. — Since plaintiff could serve on the accountancy board only for the remainder of the unexpired term to which she was appointed on January 24, 2002, as the appointing governor did not have authority to appoint plaintiff to a term beyond December 31, 2002, the succeeding governor had authority to appoint plaintiff's successor. *Roberts v. Richardson*, [2005-NMSC-007](#), [137 N.M. 226](#), [109 P.3d 765](#).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 1 C.J.S. Accountants § 9.

61-28B-5. Board; powers and duties. (Repealed effective July 1, 2024.)

A. The board may:

- (1) appoint committees or persons to advise or assist it in carrying out the provisions of the 1999 Public Accountancy Act [[61-28B-1](#) NMSA 1978];
- (2) retain its own counsel to advise and assist it in addition to advice and assistance provided by the attorney general;
- (3) contract, sue and be sued and have and use a seal;

(4) cooperate with the appropriate authorities in other states in investigation and enforcement concerning violations of the 1999 Public Accountancy Act and comparable acts of other states; and

(5) adopt and file in accordance with the Uniform Licensing Act [[61-1-1](#) NMSA 1978] and the State Rules Act [[14-4-1](#) NMSA 1978] rules to carry out the provisions of the 1999 Public Accountancy Act, including rules governing the administration and enforcement of the 1999 Public Accountancy Act and the conduct of certificate and permit holders.

B. The board shall:

(1) maintain a registry of the names and addresses of certificate and permit holders; and

(2) develop, in conjunction with the department of public safety, rules requiring a criminal history background check of an applicant for initial or reciprocal certification in New Mexico as provided for in the 1999 Public Accountancy Act.

History: Laws 1999, ch. [179](#), § [5](#); 2003, ch. [408](#), § [29](#); 2007, ch. [219](#), § [2](#).

The 2007 amendment, effective June 15, 2007, adds Paragraph (2) of Subsection B.

The 2003 amendment, effective July 1, 2003, deleted former Paragraph A(1), concerning employment of director, and redesignated the subsequent paragraphs accordingly.

Delayed repeals. — For delayed repeal of this section, see [61-28B-29](#) NMSA 1978.

61-28B-6. Fund created. (Repealed effective July 1, 2024.)

A. The "public accountancy fund" is created in the state treasury. All money received by the board and interest earned on investment of the fund shall be credited to the fund.

B. Payments from the public accountancy fund shall be made upon warrants of the secretary of finance and administration pursuant to vouchers issued by the director in accordance with the budget approved by the department of finance and administration.

C. Money in the fund shall be used only to pay the expenses of carrying out the provisions of the 1999 Public Accountancy Act [[61-28B-1](#) NMSA 1978] and rules adopted pursuant to that act.

D. All amounts paid into the fund are appropriated for expenditure by the board for the necessary expenses of the board for execution of the provisions of the Public Accountancy Act. The balance remaining in the fund at the end of a fiscal year shall accumulate to the credit of the fund for use by the board for necessary expenses.

History: Laws 1999, ch. [179](#), § [6](#).

Delayed repeals. — For delayed repeal of this section, see [61-28B-29](#) NMSA 1978.

61-28B-7. Repealed.

Repeals. — Laws 2017, ch. [12](#), § [5](#) repealed [61-28B-7](#) NMSA 1978, as enacted by Laws 1999, ch. [179](#), § [7](#), relating to qualifications for a certificate as a certified public accountant, effective June 16, 2017. For provisions of former section, see the [2016 NMSA 1978](#) on *NMOneSource.com*.

61-28B-8. Qualifications for a certificate as a certified public accountant. (Repealed effective July 1, 2024.)

A. An applicant for a certificate shall complete the application form provided by the board and demonstrate to the board's satisfaction that the applicant:

(1) is of good moral character and lacks a history of dishonest or felonious acts; and

(2) meets the education, experience and examination requirements of the board.

- B. The board may refuse to grant a certificate on the ground that the applicant failed to satisfy the requirement of good moral character.
- C. After July 1, 2008, the education requirement for examination shall be a baccalaureate degree or its equivalent conferred by a college or university acceptable to the board, with thirty semester hours in accounting or the equivalent as determined by the board. An applicant for a certificate shall have at least one hundred fifty semester hours of college education or its equivalent earned at a college or university acceptable to the board.
- D. The examination for certification shall be offered via a computer-based testing system at least four times per year at a designated testing center and shall test an applicant's knowledge of the subjects of accounting and auditing and other related subjects as prescribed by the board. The board shall prescribe the method of applying for the examination and the dissemination of scores, and it shall rely on the American institute of certified public accountants for the grading of the examination. The board may use all or any part of the uniform certified public accountant examination services of the national association of state boards of accountancy to perform administrative services with respect to the examination. The board or its designee shall report all eligibility and score data to the national candidate database, and it shall, to the extent possible, provide that the passing scores are uniform with passing scores of other states.
- E. An applicant must pass all sections of the examination to qualify for a certificate. A passing scaled score for each section shall be seventy-five. Sections may be taken individually and in any order. An applicant may not take a failed test section within the same three-month examination window. Credit for any section passed shall be valid for eighteen months from the actual date the applicant took that section, without having to attain a minimum score on any failed test section and without regard to whether the applicant has taken other test sections. An applicant must pass all four test sections within a continuous eighteen-month period, which begins on the date that the first section passed is taken. If all four test sections are not passed within the continuous eighteen-month period, credit for any test section passed outside the eighteen-month period will expire, and that test section must be retaken.
- F. An applicant who has passed at least two sections of the paper and pencil examination, as of the launch date of the computer-based examination, will retain credit for the corresponding test sections of the computer-based examination.
- G. An applicant who has passed at least two sections of the paper and pencil examination, as of the launch date of the computer-based examination, shall be given a transition period to complete any remaining test sections of the computer-based examination.
- H. An applicant shall be given credit for examination sections passed in another state if such credit would have been given in New Mexico.
- I. The board may waive or defer requirements of this section regarding the circumstances in which sections of the examination must be passed, upon a showing that, by reason of circumstances beyond the applicant's control, the applicant was unable to meet the requirement.
- J. An applicant for initial issuance of a certified public accountant certificate shall show that the applicant has had at least one year of experience. This experience shall include providing service or advice involving the use of accounting, attest, management advisory, financial advisory, tax or consulting skills as verified by a certified public accountant who meets requirements prescribed by the board. The experience is acceptable if it was gained through employment in government, industry, academia or public practice.

History: Laws 1999, ch. [179](#), § [8](#); 2004, ch. [34](#), § [2](#); 2008, ch. [30](#), § [2](#).

Delayed repeals. — For delayed repeal of this section, see [61-28B-29](#) NMSA 1978.

The 2008 amendment, effective May 14, 2008, deleted former Subsection C and added a new Subsection C.

The 2004 amendment, effective March 2, 2004, rewrote Subsections D and E to provide for the examination to be offered four times a year by a computer-based testing system instead of at least twice a year and to change the number time period for passing all four sections of the exam, added new Subsections F, G and H and redesignated former Subsections G and H as Subsections I and J.

61-28B-8.1. Fingerprinting; criminal history background checks. (Repealed effective July 1, 2024.)

A. All applicants for certification as provided for in the 1999 Public Accountancy Act [[61-28B-1](#) NMSA 1978] shall:

(1) be required to provide fingerprints on two fingerprint cards for submission to the federal bureau of investigation to conduct a national criminal history background check and to the department of public safety to conduct a state criminal history check;

(2) pay the cost of obtaining the fingerprints and criminal history background checks; and

(3) have the right to inspect or challenge the validity of the record development by the background check if the applicant is denied certification as established by board rule.

B. Electronic live scans may be used for conducting criminal history background checks.

C. Criminal history records obtained by the board pursuant to the provisions of this section are confidential. The board is authorized to use criminal history records obtained from the federal bureau of investigation and the department of public safety to conduct background checks on applicants for certification as provided for in the 1999 Public Accountancy Act.

D. Criminal history records obtained pursuant to the provisions of this section shall not be used for any purpose other than conducting background checks. Criminal history records obtained pursuant to the provisions of this section and the information contained in those records shall not be released or disclosed to any other person or agency, except pursuant to a court order or with the written consent of the person who is the subject of the records.

E. A person who releases or discloses criminal history records or information contained in those records in violation of the provisions of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section [31-19-1](#) NMSA 1978.

History: Laws 2007, ch. [219](#), § [5](#).

Effective dates. — Laws 2007, ch. [219](#) contains no effective date provision, but, pursuant to N.M. Const., [art. IV](#), § [23](#), is effective June 15, 2007, 90 days after the adjournment of the legislature.

Delayed repeals. — For delayed repeal of this section, *see* [61-28B-29](#) NMSA 1978.

61-28B-9. Issuance and renewal of certificate; maintenance of competency; nonresident maintenance of competency requirements. (Repealed effective July 1, 2024.)

A. The board shall grant or renew a certificate upon application and demonstration that the applicant's qualifications are in accordance with the 1999 Public Accountancy Act or that they are eligible under the substantial equivalency standard provided in that act.

B. The board may establish by rule for the issuance of annual certificates and may prescribe the expiration date of certificates. Failure to pay the renewal fee shall be cause for the board to withhold renewal of a certificate without prior hearing pursuant to the provisions of the Uniform Licensing Act [[61-1-1](#) through [61-1-31](#) NMSA 1978]. If the renewal fee and delinquency fee are not paid within ninety days after the expiration date of the license, the certificate shall be subject to cancellation. A certificate holder whose certificate has been canceled for failure to pay the

annual renewal fee may secure reinstatement of the certificate only upon application and payment of the renewal fee and reinstatement fee and upon approval by the board.

C. The board shall grant or deny an application for certification no later than one hundred twenty days after the complete application is filed.

D. If an applicant appeals the decision of the board to deny a certificate, the board may issue a provisional certificate for no longer than ninety days while the board reconsiders its decision.

E. To renew a certificate, a certificate holder shall provide satisfactory proof to the board of continuing professional education that is designed to maintain competency. Continuing professional education courses shall comply with board rules. The board may create an exception to the requirement to maintain continuing professional education for certificate holders who do not provide services to the public. A certificate holder granted such an exception must place the word "inactive" or "retired" adjacent to the certificate holder's certified public accountant title or registered public accountant title on a business card, letterhead or other document or device, except for a board-issued certificate.

F. A nonresident certificate holder seeking to renew a certificate shall be determined to have met the continuing professional education requirement in this state if the nonresident has met the continuing professional education requirement in the state where the nonresident's principal place of business is located; provided that:

(1) the nonresident signs a statement on the renewal application that the nonresident has met the continuing professional education requirement in the state where the nonresident's principal place of business is located; and

(2) the state where the nonresident's principal place of business is located requires continuing professional education.

G. An applicant for initial issuance or renewal of a certificate pursuant to this section shall list all foreign and domestic jurisdictions in which the applicant has applied for or holds a designation to practice public accountancy. The applicant shall also list any past denial, revocation or suspension of a certificate, license or permit. An applicant or certificate holder shall notify the board in writing, within thirty days of the occurrence of any issuance, denial, revocation or suspension of a designation or commencement of a disciplinary or enforcement action by any jurisdiction.

History: Laws 1999, ch. [179](#), § [9](#); 2005, ch. [84](#), § [1](#); 2017, ch. [12](#), § [2](#).

Delayed repeals. — For delayed repeal of this section, see [61-28B-29](#) NMSA 1978.

The 2017 amendment, effective June 16, 2017, allowed a nonresident accountant to meet continuing education requirements in New Mexico if the nonresident accountant meets the requirements in the state where the nonresident accountant's primary place of business is located; in the cathline, after "competency", added "nonresident maintenance of competency requirements"; in Subsection E, after "adjacent to", deleted "his" and added "the certificate holder's"; and added a new Subsection F, and redesignated former Subsection F as Subsection G.

The 2005 amendment, effective July 1, 2005, provides that failure to pay a renewal fee is cause for the non-renewal of a certificate without a prior hearing, that a certificate is subject to cancellation if the renewal fee and delinquency fee is not paid within ninety days after expiration of the license and that a certificate that has been cancelled for failure to pay the annual renewal fee may be reinstated only upon application and payment of the renewal fee and a reinstatement fee and upon approval by the board.

61-28B-10. Repealed.

Repeals. — Laws 2008, ch. [30](#), § [7](#) repealed [61-28B-10](#) NMSA 1978, as enacted by Laws 1999, ch. [179](#), § [10](#), relating to the use of specialty designations by certificate holders, effective May 14, 2008. For provisions of former section, see the [2007 NMSA 1978](#) on *NMOneSource.com*.

61-28B-11. Certificates issued to holders of a certificate, license or permit issued by another state. (Repealed effective July 1, 2024.)

A. The board may issue a certificate to a holder of a certificate, license or permit issued by another state upon a showing that the applicant:

- (1) passed the examination required for issuance of the applicant's certificate with grades that would have been passing grades at the time in New Mexico;
- (2) passed the examination upon which the applicant's out-of-state certificate was based and has two years of experience acceptable to the board or meets equivalent requirements prescribed by board rule, within the ten years immediately preceding the application; and
- (3) if the applicant's certificate, license or permit was issued more than four years prior to application, has fulfilled the board's requirements of continuing professional education.

B. A person licensed by another state who wishes to establish a principal place of business in New Mexico shall apply to the board for a certificate prior to establishing the business. The board may issue a certificate to the person if the person provides proof from a board-approved national qualification appraisal service that the person's certified public accountant qualifications are substantially equivalent to the certified public accountant certification requirements of Paragraph (1) of Subsection A of Section [61-28B-26](#) NMSA 1978.

C. The board may issue a certificate to a holder of a substantially equivalent foreign designation; provided that:

- (1) the foreign authority that granted the designation makes similar provision to allow a person who holds a valid certificate issued by New Mexico to obtain such foreign authority's comparable designation;
- (2) the foreign designation:
 - (a) was duly issued by a foreign authority that regulates the practice of public accountancy and the foreign designation has not expired or been revoked or suspended;
 - (b) entitles the holder to issue reports upon financial statements; and
 - (c) was issued upon the basis of educational, examination and experience requirements established by the foreign authority or by law; and
- (3) the applicant:
 - (a) received the designation based on educational and examination standards substantially equivalent to those in effect in New Mexico at the time the foreign designation was granted;
 - (b) completed an experience requirement in the jurisdiction that granted the foreign designation that is substantially equivalent to the requirement provided for in the 1999 Public Accountancy Act [[61-28B-1](#) NMSA 1978] or has completed four years of professional experience in New Mexico or meets equivalent requirements prescribed by the board within the ten years immediately preceding the application; and
 - (c) passed a uniform qualifying examination on national standards and an examination on the laws, rules and code of ethical conduct in effect in New Mexico that is acceptable to the board.

D. An applicant for initial issuance or renewal of a certificate pursuant to this section shall list all foreign and domestic jurisdictions in which the applicant has applied for or holds a designation to practice public accountancy. The applicant shall also list any past denial, revocation or suspension of a certificate, license or permit. An applicant or certificate holder shall notify the board in writing, within thirty days of the occurrence of any issuance, denial, revocation or suspension of a designation or commencement of a disciplinary or enforcement action by any jurisdiction.

E. The board has the sole authority to interpret the application of the provisions of this section.

History: Laws 1999, ch. [179](#), § [11](#); 2008, ch. [30](#), § [3](#).

Delayed repeals. — For delayed repeal of this section, see [61-28B-29](#) NMSA 1978.

The 2008 amendment, effective May 14, 2008, in Subsection A, deleted the condition for the application of Subsection A that the applicant not qualify for reciprocity pursuant to the substantial equivalency standard and in Subsection B, changed the reference to the 1999 Public Accountancy Act to Subsection A of Section 61-28A-26 NMSA 1978.

61-28B-12. Registered public accountants and firms of registered public accountants. (Repealed effective July 1, 2024.)

A. A person who on July 1, 1999 holds a certificate as a registered public accountant issued pursuant to prior New Mexico law shall be entitled to have his certificate renewed upon fulfillment of the continuing professional education requirements, application and payment of fees prescribed for certificate renewal.

B. A registered public accountant firm holding a permit issued pursuant to prior New Mexico law shall be entitled to have its permit renewed pursuant to the requirements for permit renewal for a certified public accountant firm in the 1999 Public Accountancy Act [[61-28B-1](#) NMSA 1978].

C. As long as a registered public accountant and a registered public accountant firm hold a valid certificate and permit, they shall be entitled to perform attest services to the same extent as a certified public accountant and certified public accountant firm. In addition, they shall be entitled to use the titles "registered public accountant" and "registered public accountants", but no other title.

History: Laws 1999, ch. [179](#), § [12](#).

Delayed repeals. — For delayed repeal of this section, see [61-28B-29](#) NMSA 1978.

61-28B-13. Firm permits to practice, attest experience, peer review. (Repealed effective July 1, 2024.)

A. The board may grant or renew a permit to practice as a certified public accountant firm to an applicant that demonstrates its qualifications in accordance with this section.

B. A permit issued pursuant to this section shall be required for the following:

(1) a firm with an office in New Mexico performing attest services as defined by the 1999 Public Accountancy Act;

(2) a firm with an office in New Mexico that uses the title "CPA" or "CPA firm"; or

(3) a firm that does not have an office in New Mexico but offers or renders attest services for a client in New Mexico, except as provided in Subsection C of this section.

C. A firm that does not have an office in New Mexico may offer or render attest services for a client in New Mexico and may use the title "CPA" or "CPA firm" without a permit issued pursuant to this section only if:

(1) the firm offers or renders the services through a person with practice privileges under Section [61-28B-26](#) NMSA 1978; provided that the firm can lawfully perform the services in the state where the person's primary place of business is located;

(2) the firm meets the requirements of Paragraph (1) of Subsection H of this section; and

(3) the firm meets the requirements of Subsection L of this section.

D. A firm not subject to the requirements of Subsection B or C of this section may perform other nonattest professional services while using the title "CPA" or "CPA firm" in New Mexico without a permit issued pursuant to this section only if:

- (1) the firm performs services through a person with practice privileges pursuant to Section [61-28B-26](#) NMSA 1978; and
- (2) the firm can lawfully perform services in the state that is the firm's principal place of business.
- E. Permits shall be issued and renewed for periods of not more than two years, expiring on June 30 of the year of expiration. Failure to pay the renewal fee shall be cause for the board to withhold renewal of a permit without prior hearing pursuant to the provisions of the Uniform Licensing Act [[61-1-1](#) through [61-1-31](#) NMSA 1978]. If the renewal fee and delinquency fee are not paid within ninety days after the expiration of the permit, the permit shall be subject to cancellation. A firm whose permit has been canceled for failure to pay the annual renewal fee may secure reinstatement of the permit upon application and payment of the renewal fee and upon approval by the board.
- F. The board shall grant or deny an application for a permit no later than ninety days after the complete application is filed.
- G. If an applicant appeals the decision of the board to deny a permit, the board may issue a provisional permit for no longer than ninety days while the board reconsiders its decision.
- H. An applicant for initial issuance or renewal of a permit shall demonstrate that:
- (1) a simple majority of the ownership of the firm, in terms of financial interests, profits, losses, dividends, distributions, options, redemptions and voting rights of all partners, officers, shareholders, members or managers, belongs to holders of a certificate who are licensed in some state. A partner, officer, shareholder, member or manager, whose principal place of business is in New Mexico, and who performs professional services in New Mexico, must hold a valid certificate. The firm and all owners must comply with the 1999 Public Accountancy Act. A person with practice privileges pursuant to Section [61-28B-26](#) NMSA 1978 who performs services for which a permit is required pursuant to this section shall not be required to obtain a certificate from New Mexico pursuant to Section [61-28B-9](#) NMSA 1978. A firm may include owners who are not certificate holders; provided that:
- (a) the firm designates a New Mexico certificate holder, or in the case of a firm that must have a permit, a licensee of another state who meets the requirements of Subsection A of Section [61-28B-26](#) NMSA 1978, who is responsible for the proper registration of the firm and identifies that person to the board;
- (b) all owners who are not certificate holders are active participants in the certified public accountant firm or registered public accountant firm or affiliated entities; and
- (c) the firm complies with the 1999 Public Accountancy Act; and
- (2) a certificate holder, or a person qualifying for practice privileges pursuant to Section [61-28B-26](#) NMSA 1978, who is responsible for supervising attest services or signs or authorizes someone to sign the accountant's report on behalf of the firm meets the experience requirements set out in the professional standards for such services.
- I. An applicant for initial issuance or renewal of a permit shall be required to register each office of the firm within New Mexico with the board and to show that all attest services rendered in this state are under the charge of a person holding a valid certificate issued pursuant to the 1999 Public Accountancy Act or the corresponding provision of prior law or by some other state.
- J. An applicant for initial issuance or renewal of a permit shall list all foreign and domestic jurisdictions in which it has applied for or holds permits as a certified public accountant firm and list any past denial, revocation or suspension of a permit by any jurisdiction. Each permit holder or applicant shall notify the board in writing, within thirty days of the occurrence of a change in the identities of partners, officers, shareholders, members or managers whose principal place of

business is in this state, a change in the number or location of offices within this state, a change in the identity of the persons in charge of such offices and any issuance, denial, revocation or suspension of a permit by another jurisdiction.

K. A firm that falls out of compliance with the provisions of the 1999 Public Accountancy Act due to changes in firm ownership or personnel shall take corrective action to bring the firm back into compliance as quickly as possible. The board may grant a six-month period for a firm to take the corrective action. Failure to bring the firm back into compliance within six months shall result in the suspension or revocation of the firm permit.

L. As a condition to permit renewal, the board shall require the applicant to undergo a peer review conducted in accordance with board rules. The review shall include a verification that a person in the firm, or a person qualifying for practice privileges pursuant to Section [61-28B-26](#) NMSA 1978, who is responsible for supervising attest services and signs or authorizes someone to sign the accountant's report on behalf of the firm meets the experience requirements set out in the professional standards for the services as required by the board.

M. If a partner, shareholder or member is a legal business entity, that legal business entity must be a firm.

N. Attest services may only be provided by a certificate holder or a member of a firm that satisfies the requirements of this section and Sections [61-28B-8](#) and [61-28B-13](#) NMSA 1978. Attest services may not be performed by a certificate holder who is a member of a firm that does not meet the certificate holder's ownership requirements set forth in this section.

History: Laws 1999, ch. [179](#), § [13](#); 2000, ch. [42](#), § [1](#); 2005, ch. [84](#), § [2](#); 2008, ch. [30](#), § [4](#); 2017, ch. [12](#), § [3](#).

Delayed repeals. — For delayed repeal of this section, *see* [61-28B-29](#) NMSA 1978.

The 2017 amendment, effective June 16, 2017, expanded the type of services a nonresident accountant firm may offer to or render for a client in New Mexico without a permit; in Paragraph B(3), after "New Mexico but", deleted "performs" and added "offers or renders", after "for a client", deleted "whose principal place of business is", and after "New Mexico", deleted "except as provided in Subsection C of this section"; in Subsection C, in the introductory clause, after "A firm", deleted "without" and added "that does not have", after "New Mexico may", deleted "perform" and added "offer or render attest", after "services", deleted "described in Paragraph (2) of Subsection A of Section [61-28B-3](#) NMSA 1978", and after "for a client", deleted "whose principal place of business is"; in Paragraph C(1), deleted "it performs" and added "the firm offers or renders the", and added "provided that the firm can lawfully perform the services in the state where the person's primary place of business is located"; in Paragraph C(2), deleted "a simple majority of the ownership of the firm belongs to holders of a certificate who are licensed in some state pursuant to" and added "the firm meets the requirements of"; in Paragraph C(3), after "the firm", deleted "has undergone a peer review pursuant to" and added "meets the requirements of"; in Subsection D, in the introductory clause, after "may perform other", added "nonattest"; in Paragraph H(2), after "accountant's report", deleted "on the financial statements"; in Subsection L, after "accountant's report", deleted "on the financial statements"; and in Subsection N, after "requirements of this section", added "and Sections [61-28B-8](#) and [61-28B-13](#) NMSA 1978".

The 2008 amendment, effective May 14, 2008, in Subsection A, deleted the requirement that a firm hold a permit to provide attest services or use CPA and RPA titles; added Subsections B through D; in Paragraph (1) of Subsection H, provided that a person with practice privileges pursuant to Section [61-28B-26](#) NMSA 1978 is not required to obtain a certificate pursuant to Section [61-28B-9](#) NMSA 1978; included a licensee of another state who meets the requirements of Subsection A of Section [61-28B-26](#) NMSA 1978 in Subparagraph (a) of Paragraph (1) of Subsection H; and included a person qualifying for practice privileges pursuant to Section [61-28B-26](#) NMSA 1978 in Paragraph (2) of Subsection H and in Subsection L.

The 2005 amendment, effective July 1, 2005, provides that a certificate is subject to cancellation if the renewal fee and delinquency fee is not paid within ninety days after expiration of the license and that a certificate that has been cancelled for failure to pay the annual renewal fee may be reinstated only upon application, payment of the renewal fee and approval by the board.

The 2000 amendment, effective July 1, 2000, substituted "a simple majority" for "a minimum of sixty percent majority" at the beginning of Subsection E(1).

61-28B-14. Appointment of secretary of state as agent. (Repealed effective July 1, 2024.)

Application for a certificate or permit by a person or firm that is domiciled outside of New Mexico shall constitute appointment of the secretary of state as the applicant's agent, upon whom process may be served in an action or proceeding against the applicant or certificate holder arising out of a transaction or operation connected with or incidental to services performed within New Mexico.

History: Laws 1999, ch. [179](#), § [14](#).

Delayed repeals. — For delayed repeal of this section, see [61-28B-29](#) NMSA 1978.

61-28B-15. Enforcement procedures; investigations. (Repealed effective July 1, 2024.)

A. Upon receipt of a complaint or other information suggesting a violation of the 1999 Public Accountancy Act [[61-28B-1](#) NMSA 1978], the board may conduct an investigation to determine whether there is probable cause to institute a proceeding against a person or firm. An investigation is not required when a determination of probable cause can be made without investigation. To aid the investigation, the board or the board's chairman may issue a subpoena to compel a witness to testify or to produce evidence.

B. The board may designate a person to serve as investigating officer to conduct an investigation. The investigating officer shall file a report with the board upon completion of an investigation. The board shall find probable cause or lack of probable cause upon the basis of the report or shall return the report to the investigating officer for further investigation.

C. Upon a finding of probable cause, if the subject of the investigation is a certificate or permit holder, the board shall direct that a notice of contemplated action be issued in accordance with the 1999 Public Accountancy Act. If the subject of the investigation is not a certificate or permit holder, the board shall take appropriate action as provided in that act. Upon a finding of no probable cause, the board shall close the matter.

D. The board may review the publicly available professional work of a certificate or permit holder without any requirement of a formal complaint or suspicion of impropriety on the part of a particular certificate or permit holder. In the event that such review reveals reasonable grounds for a more specific investigation, the board may proceed pursuant to the 1999 Public Accountancy Act.

History: Laws 1999, ch. [179](#), § [15](#).

Delayed repeals. — For delayed repeal of this section, see [61-28B-29](#) NMSA 1978.

61-28B-16. Enforcement procedures; hearings by the board. (Repealed effective July 1, 2024.)

A. Hearings by the board shall be conducted in accordance with the provisions of the Uniform Licensing Act [[61-1-1](#) NMSA 1978].

B. In a case when the board renders a decision imposing discipline against a certificate or permit holder pursuant to the 1999 Public Accountancy Act [[61-28B-1](#) NMSA 1978], the board shall examine its records to determine whether the certificate or permit holder holds a certificate or permit in any other state; and, if so, the board shall notify the board of accountancy of the other

state of its decision, by mail, within forty-five days of rendering the decision. The board may also furnish information relating to a proceeding resulting in disciplinary action to another public authority and to private professional organizations having a disciplinary interest in the certificate or permit holder. When an appeal pursuant to New Mexico law is in progress, the notification and furnishing of information to a disciplinary authority shall await the resolution of such appeal. If resolution is in favor of the certificate or permit holder, no automatic notification or furnishing of information shall be made.

History: Laws 1999, ch. [179](#), § [16](#).

Delayed repeals. — For delayed repeal of this section, see [61-28B-29](#) NMSA 1978.

61-28B-17. Enforcement; unlawful acts. (Repealed effective July 1, 2024.)

A. Except as otherwise provided in the 1999 Public Accountancy Act [[61-28B-1](#) NMSA 1978], it is unlawful for a person to engage in practice in New Mexico unless the person is a licensee.

B. Except as otherwise provided in the 1999 Public Accountancy Act, no person shall issue a report or financial statement for a person or a governmental unit or issue a report using any form of language conventionally used respecting an audit or review of financial statements, unless the person holds a current license or permit. The state auditor and the state auditor's auditing staff are considered to be in the practice of public accountancy.

C. With the exception of persons cited in Section [61-28B-18](#) NMSA 1978, a person who prepares a financial accounting and related statements and who is not the holder of a certificate or a permit under the provisions of that act shall use the following statement in the transmittal letter: "I (we) have prepared the accompanying financial statements of (name of entity) as of (time period) and for the (time period) ending (date). This presentation is limited to preparing in the form of financial statements information that is the representation of management (owners). I (we) have not audited or reviewed the accompanying financial statements and accordingly do not express an opinion or any other form of assurance on them."

D. No person shall indicate by title, designation, abbreviation, sign, card or device that the person is a certified public accountant or a registered public accountant unless the person is currently certified by the board pursuant to the 1999 Public Accountancy Act or is a firm currently permitted by the board pursuant to that act. Unless the person is a holder of a current certificate or permit, no person shall use any title, initials or designation intended to or substantially likely to indicate to the public that the person is a certified public accountant or registered public accountant.

E. No person shall engage in practice unless:

(1) the person holds a valid certificate or current permit; or

(2) the person is an employee supervised by a licensee pursuant to Section [61-28B-18](#) NMSA 1978 and not a partner, officer, shareholder or member of a firm.

F. No person or firm holding a certificate or permit shall engage in practice using a professional or firm name or designation that is misleading about the legal form of the firm; provided, however, that names of one or more former partners, shareholders or members may be included in the name of a firm or its successors.

G. No person shall sell, offer to sell or fraudulently obtain or furnish any certificate or permit nor shall the person fraudulently register as a certified public accountant or registered public accountant or practice in this state without being granted a certificate or permit as provided in the 1999 Public Accountancy Act.

H. A licensee or the licensee's firm shall not receive a commission to recommend or refer a product or service to a client or to recommend to anyone else a product or service to be supplied by a client during the period the licensee or the licensee's firm is engaged to perform the following services for that client and during the period covered by any historical financial statements involved in the services:

- (1) an audit or review of a financial statement;
- (2) a compilation of a financial statement when the licensee expects or might reasonably expect that a third party will use the financial statement, and the compilation report does not disclose the lack of independence by the licensee; or
- (3) an examination of prospective financial information.

I. A licensee or the licensee's firm that is not prohibited from receiving a commission by Subsection H of this section and that is paid or expects to be paid a commission shall disclose that fact in writing to the person for whom the licensee or the licensee's firm performs a service or refers or recommends a product or service. A licensee or firm that accepts or pays a referral fee for a service or to obtain a client shall disclose such acceptance or payment to the client in writing.

J. A licensee or the licensee's firm shall not charge or receive a contingent fee for a client for whom the licensee or the licensee's firm performs the following services:

- (1) an audit or review of a financial statement;
- (2) a compilation of a financial statement when the licensee expects or reasonably might expect that a third party will use the financial statement and the compilation report does not disclose a lack of independence;
- (3) an examination of prospective financial information; or
- (4) preparation of an original or amended tax return or claim for tax refund, except in the case of federal, state or other taxes in which the findings are those of the tax authorities and not those of the licensee or in the case of professional services for which fees are to be fixed by courts or other public authorities and that are therefore indeterminate in amount at the time the professional services are undertaken.

K. No licensee shall sign or certify any financial statements if the licensee knows the same to be materially false or fraudulent.

L. For the purposes of this section, a person with practice privileges pursuant to Section [61-28B-26](#) NMSA 1978 shall be substantially equivalent to a certificate holder pursuant to Section [61-28B-9](#) NMSA 1978. Terms or references that refer to a certificate holder pursuant to Section [61-28B-9](#) NMSA 1978 shall include a person with practice privileges pursuant to Section [61-28B-26](#) NMSA 1978.

M. For the purposes of this section, a firm practicing under Subsection C or D of Section [61-28B-13](#) NMSA 1978 may perform the services specified by the applicable provisions of the 1999 Public Accountancy Act and may use the terms "CPA" or "CPA firm" without obtaining a permit. Terms or references that refer to a firm holding a permit pursuant to Subsection B of Section [61-28B-13](#) NMSA 1978 shall include a firm practicing pursuant to Subsection C or D of Section [61-28B-13](#) NMSA 1978.

History: Laws 1999, ch. [179](#), § [17](#); 2000, ch. [91](#), § [2](#); 2001, ch. [97](#), § [1](#); 2008, ch. [30](#), § [5](#).

Delayed repeals. — For delayed repeal of this section, *see* [61-28B-29](#) NMSA 1978.

The 2008 amendment, effective May 14, 2008, in Subsections A and B, changed the reference to “Subsection C of this section and Section [61-28B-18](#) NMSA 1978” to the 1999 Public Accountancy Act; in Paragraph (2) of Subsection E, required employees to be supervised by a licensee pursuant to Section [61-28B-18](#) NMSA 1978; and added Subsections L and M.

The 2001 amendment, effective April 2, 2001, added the exception in Paragraph J(4).

The 2000 amendment, effective July 1, 2000, updated the internal references in Subsections A, B and C, rewrote Subsections H and I, added new Subsection J, and redesignated former Subsection J as present Subsection K.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 1 Am. Jur. 2d Accountants § 2 et seq.

Failure of accountant to procure license as affecting validity or enforceability of contract, 118 A.L.R. 651.

Construction and application of statutory provisions respecting persons who may prepare tax returns for others, 10 A.L.R.2d 1443.

1 C.J.S. Accountants § 5.

61-28B-18. Exemptions; unlawful acts. (Repealed effective July 1, 2024.)

A. Subsection B of Section 17 [[61-28B-17](#) NMSA 1978] of the 1999 Public Accountancy Act does not prohibit:

(1) an officer, partner, shareholder, member or employee of a firm from affixing his own signature to a statement or report in reference to the financial affairs of his firm with any wording designating the position, title or office that he holds within the firm;

(2) any act of a public official or employee in the performance of his duties; or

(3) the performance by any persons of other services, including management, financial advisory or consulting services, the preparation of tax returns or the furnishing of advice on tax matters and the preparation of financial statements without the issuance of reports on them.

B. Nothing contained in the 1999 Public Accountancy Act [[61-28B-1](#) NMSA 1978] shall prevent a person from serving as an employee of or as an assistant to a certified public accountant, a registered public accountant or a firm; provided that the employee or assistant shall work under the control and supervision of a certified public accountant or registered public accountant who holds a certificate issued pursuant to that act.

History: Laws 1999, ch. [179](#), § [18](#).

Delayed repeals. — For delayed repeal of this section, see [61-28B-29](#) NMSA 1978.

61-28B-19. Business names; prohibitions. (Repealed effective July 1, 2024.)

A. No person engaged in practice shall use in a business name the words "company" or "and company" or a similar designation or any abbreviations thereof unless the person is a firm pursuant to the 1999 Public Accountancy Act [[61-28B-1](#) NMSA 1978] and has more than one partner, shareholder or member and the business name contains the name of at least one current or former partner, shareholder or member. A business name may contain only the name or initials of a present or former partner, shareholder or member and the words "and company" or "company" or a similar designation or any abbreviation thereof.

B. Nothing contained in this section shall apply to, affect or limit the right of the remaining partner, shareholder or member or added partners, shareholders or members in the continuous use of a business name adopted before the enactment of the 1999 Public Accountancy Act, even though the person whose name is included in the business name is no longer a partner, shareholder or member.

History: Laws 1999, ch. [179](#), § [19](#).

Delayed repeals. — For delayed repeal of this section, see [61-28B-29](#) NMSA 1978.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 1 Am. Jur. 2d Accountants § 10.

Validity, construction and application of statute or regulation restricting use of terms such as "accountant," "public accountant" or "certified public accountant," 4 A.L.R.4th 1201.

61-28B-20. Enforcement; administrative violations and remedies. (Repealed effective July 1, 2024.)

A. The board may take, after providing a person due process pursuant to the Uniform Licensing Act [[61-1-1](#) through [61-1-31](#) NMSA 1978], corrective action identified in Subsection B of this section following a finding that an applicant or licensee:

- (1) committed fraud or deceit in obtaining a certificate or permit;
- (2) lost a certificate or permit through cancellation, revocation, suspension or refusal of renewal in any other state for cause, as defined by board rule;
- (3) failed to maintain compliance with the requirements of the 1999 Public Accountancy Act and board rules for issuance or renewal of a certificate or permit or failed to report material changes to the board, as required by board rule;
- (4) lost the authorization to practice in any state or before any federal agency through revocation or suspension of that authorization;
- (5) committed dishonest, fraudulent or grossly negligent acts in the practice of public accountancy or in the filing or failure to file the applicant's or licensee's own income or other federal, state or local tax returns;
- (6) violated a provision of the 1999 Public Accountancy Act or a rule promulgated by the board pursuant to that act;
- (7) violated a rule of professional conduct promulgated by the board pursuant to the 1999 Public Accountancy Act;
- (8) has been convicted of a felony or of a crime an element of which is dishonesty or fraud under the laws of the United States, of New Mexico or of any other state, or of any other jurisdiction, if the acts involved would have constituted a crime under the laws of New Mexico;
- (9) performed a fraudulent act while holding a certificate or permit issued pursuant to the 1999 Public Accountancy Act or prior law; or
- (10) participated in any conduct reflecting adversely upon the applicant's or licensee's fitness to engage in practice.

B. After a finding by the board that an applicant or licensee has committed a violation identified in Subsection A of this section, the board may take, with or without terms, conditions and limitations, one or more of the following corrective actions:

- (1) deny an application or revoke a certificate or permit issued pursuant to the 1999 Public Accountancy Act or corresponding provisions of prior law;
- (2) suspend a certificate or permit for a period of not more than five years;
- (3) reprimand, censure or limit the scope of practice of a licensee;
- (4) impose an administrative fine not exceeding ten thousand dollars (\$10,000); or
- (5) place the licensee on probation.

C. In lieu of or in addition to a remedy specifically provided in Subsection B of this section, the board may require of a licensee:

- (1) a quality review conducted in such a fashion as the board may specify;
- (2) satisfactory completion of such continuing professional education programs as the board may specify;
- (3) correction of the violation identified; and

(4) any other suitable remedial action as determined by the board.

D. In a proceeding in which a remedy provided by Subsection B or C of this section is imposed, the board may also require the respondent to pay the costs of the proceeding.

E. The provisions of Section [61-1-3.2](#) NMSA 1978 notwithstanding, the board may impose a civil penalty in an amount not to exceed two thousand dollars (\$2,000) against a person who engages in public accountancy without a license. In addition, the board may assess the person for administrative costs, including investigative costs and the cost of conducting a hearing.

History: Laws 1999, ch. [179](#), § [20](#); 2007, ch. [219](#), § [3](#); 2017, ch. [52](#), § [12](#).

Delayed repeals. — For delayed repeal of this section, see [61-28B-29](#) NMSA 1978.

The 2017 amendment, effective June 16, 2017, provided that the New Mexico public accountancy board may impose a civil penalty not to exceed two thousand dollars (\$2,000) and assess certain costs against any person who engages in public accountancy without a license; and added Subsection E.

The 2007 amendment, effective June 15, 2007, increases the maximum administrative fine in Paragraph (4) of Subsection (B) from \$1,000 to \$10,000.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 1 Am. Jur. 2d Accountants § 6.

Bias of members of license revocation board, 97 A.L.R.2d 1210.

Regulation of public accountants, 4 A.L.R.4th 1201.

Liability of independent accountant to investors or shareholders, 35 A.L.R.4th 225.

Liability of independent accountant to investors or shareholders, 48 A.L.R.5th 389.

1 C.J.S. Accountants §§ 6 to 9.

61-28B-21. Reinstatement. (Repealed effective July 1, 2024.)

A. In any case in which the board has suspended or revoked a certificate or permit or refused to renew the same, the board may, upon application in writing by the person or firm affected and for good cause shown, modify the suspension or reissue the certificate or permit.

B. The board shall specify by rule the manner in which such applications shall be made, the times within which they shall be made and the circumstances in which hearings shall be held thereon.

C. Before reissuing or terminating the suspension of a certificate or permit pursuant to this section and as a condition thereto, the board may require the applicant to show successful completion of specified continuing professional education or may require a quality review or both.

History: Laws 1999, ch. [179](#), § [21](#).

Delayed repeals. — For delayed repeal of this section, see [61-28B-29](#) NMSA 1978.

61-28B-22. Criminal penalties. (Repealed effective July 1, 2024.)

A. When the board has reason to believe that a person or firm has knowingly engaged in an act or practice that violates the provisions of the 1999 Public Accountancy Act [[61-28B-1](#) NMSA 1978], the board may bring its information to the attention of the district attorney or other appropriate law enforcement officer of any jurisdiction who may bring a criminal proceeding.

B. A person or firm that knowingly violates a provision of the 1999 Public Accountancy Act is guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than one thousand dollars (\$1,000) or by a definite term of imprisonment not to exceed six months or both.

History: Laws 1999, ch. [179](#), § [22](#).

Delayed repeals. — For delayed repeal of this section, see [61-28B-29](#) NMSA 1978.

61-28B-23. Single act evidence of practice. (Repealed effective July 1, 2024.)

In an action brought pursuant to the provisions of the 1999 Public Accountancy Act [[61-28B-1](#) NMSA 1978], evidence of the commission of a single act prohibited by that act shall be sufficient to justify a penalty, injunction, restraining order or conviction, respectively, without evidence of a general course of conduct.

History: Laws 1999, ch. [179](#), § [23](#).

Delayed repeals. — For delayed repeal of this section, see [61-28B-29](#) NMSA 1978.

61-28B-24. Confidential communications. (Repealed effective July 1, 2024.)

Except by permission of the client for whom a certificate or permit holder performs a service or the heir, successor or personal representative of the client, a certificate holder shall not voluntarily disclose information communicated to him by the client relating to and in connection with a service rendered to the client by him. Such information shall be deemed confidential; provided that nothing in this section shall prohibit the disclosure of information required to be disclosed by a standard of the public accounting profession in reporting on the examination of a financial statement or prohibit disclosure in a court proceeding, in an investigation or proceeding pursuant to the 1999 Public Accountancy Act [[61-28B-1](#) NMSA 1978], in an ethical investigation conducted by a private professional organization or in the course of a peer review, or to another person active in the organization performing a service for that client on a need-to-know basis or to a person in the entity who needs this information for the sole purpose of assuring quality control.

History: Laws 1999, ch. [179](#), § [24](#).

Delayed repeals. — For delayed repeal of this section, see [61-28B-29](#) NMSA 1978.

61-28B-25. Working papers; client records. (Repealed effective July 1, 2024.)

A. A statement, record, schedule, working paper or memorandum made by a certificate or permit holder incident to rendering a service to a client shall be the property of the certificate or permit holder in the absence of an express agreement between him and the client to the contrary, except the report submitted by him to the client and except for a record that is part of the client's records. No such item shall be sold, transferred or bequeathed without the consent of the client or the client's personal representative, except to a partner, stockholder or member of the firm or any combined or merged firm or successor in interest to the certificate or permit holder. Nothing in this section shall prohibit any temporary transfer of a work paper or other material necessary in the course of carrying out a peer review or as otherwise interfering with the disclosure of information pursuant to the 1999 Public Accountancy Act [[61-28B-1](#) NMSA 1978].

B. A certificate or permit holder shall furnish to a client or former client, upon request and reasonable notice:

(1) a copy of his working paper, to the extent that such working paper includes a record that would ordinarily constitute part of the client's record and is not otherwise available to the client; and

(2) an accounting or other record belonging to, or obtained from or on behalf of, the client that he removed from the client's premises or received for the client's account; he may make and retain a copy of a document of the client when they form the basis for work done by him.

History: Laws 1999, ch. [179](#), § [25](#).

Delayed repeals. — For delayed repeal of this section, see [61-28B-29](#) NMSA 1978.

61-28B-26. Practice privilege and discipline for a certificate holder from a state whose accountancy statute is substantially equivalent. (Repealed effective July 1, 2024.)

A. Except as provided in Subsection D of this section, a person whose principal place of business is not in New Mexico shall be presumed to have qualifications substantially similar to New Mexico's requirements and may exercise all the practice privileges of certificate holders of New Mexico without the need to obtain a certificate pursuant to Section [61-28B-9](#) NMSA 1978 if the person:

(1) holds a valid license as a certified public accountant from any state that requires, as a condition of licensure, that a person:

(a) have at least one hundred fifty semester hours of college education, including a baccalaureate or higher degree conferred by a college or university acceptable to the board;

(b) achieve a passing grade on the uniform certified public accountant examination; and

(c) possess at least one year of experience, including providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax or consulting skills, which may be obtained through government, industry, academic or public practice, all of which can be verified by a licensee; or

(2) holds a valid license as a certified public accountant from any state that does not meet the requirements of Paragraph (1) of Subsection A of this section, but the person's certified public accountant qualifications are substantially equivalent to those requirements. A person who passed the uniform certified public accountant examination and holds a valid license issued by any other state prior to January 1, 2012 may be exempt from the education requirement in Subparagraph (a) of Paragraph (1) of this subsection.

B. Notwithstanding any other provision of law, a person who qualifies for the practice privilege pursuant to this section may offer or render professional services whether in person or by mail, telephone or electronic means, and no notice, fee or other submission shall be required of the person.

C. A person licensed in another state exercising the practice privilege afforded pursuant to this section shall consent, as a condition of exercising the practice privilege:

(1) to submit to the personal and subject-matter jurisdiction and disciplinary authority of the board;

(2) to comply with the 1999 Public Accountancy Act and the rules adopted by the board;

(3) to cease offering or rendering professional attest services in New Mexico in the event the license from the state of the person's principal place of business is no longer valid; and

(4) to the appointment of the state board that issued the license as agent upon whom process may be served in any action or proceeding by the New Mexico public accountancy board against the licensee.

D. A person who qualifies for the practice privileges pursuant to this section and who performs an attest service shall meet the requirements of Section [61-28B-11](#) NMSA 1978.

E. A certificate or permit holder of New Mexico that offers or renders an attest service or uses its certified public accountant title in another state shall be subject to disciplinary action in New Mexico for an act committed in another state for which it would be subject to discipline in the other state. The board shall investigate any complaint made by the board of accountancy in another state in accordance with the provisions of the 1999 Public Accountancy Act.

History: Laws 1999, ch. [179](#), § [26](#); 2008, ch. [30](#), § [6](#); 2017, ch. [12](#), § [4](#).

Delayed repeals. — For delayed repeal of this section, see [61-28B-29](#) NMSA 1978.

The 2017 amendment, effective June 16, 2017, required certain nonresident accountants who receive New Mexico practice privileges to meet the requirements of Section [61-28B-11](#) NMSA 1978; in Subsection A, added "Except as provided in Subsection D of this section"; in Subsection C, in the introductory clause, after "pursuant to this section", deleted "and the firm that employs the licensee simultaneously"; added a new Subsection D and redesignated former Subsection D as Subsection E; in Subsection E, after the first sentence, deleted "Notwithstanding the provisions of Sections [61-28B-15](#) and [61-28B-16](#) NMSA 1978", and after "board of accountancy in another state", added "in accordance with the provisions of the 1999 Public Accountancy Act".

The 2008 amendment, effective May 14, 2008, deleted former Subsections A through C and added new Subsections A through D.

61-28B-27. Fees. (Repealed effective July 1, 2024.)

The board may collect from certificate holders, permit holders, applicants and others the following fees:

- A. for examination, a fee not to exceed four hundred dollars (\$400) per examination section;
- B. for certificate issuance or renewal, a fee not to exceed one hundred seventy-five dollars (\$175) per year; provided, however, the board may charge a biennial fee of not more than twice the annual fee;
- C. for firm permits, a fee not to exceed one hundred dollars (\$100) per year; provided, however, the board may charge a biennial fee of not more than twice the annual fee;
- D. for incomplete or delinquent continuing education reports, certificate or permit renewals, a fee not to exceed one hundred dollars (\$100) each;
- E. for preparing and providing licensure and examination information to others, a fee not to exceed seventy-five dollars (\$75.00) per report;
- F. reasonable administrative fees for such services as research, record copies, duplicate or replacement certificates or permits;
- G. a fee for fingerprinting and background check for an applicant for certification not to exceed one hundred dollars (\$100);
- H. for certificate reinstatement, a fee not to exceed one hundred seventy-five dollars (\$175), plus past due fees and penalties;
- I. for waiver to comply with continuing professional education requirements, a fee not to exceed seventy-five dollars (\$75.00) per application; and
- J. for reentry into active certificate status and to comply with continuing education, a fee not to exceed seventy-five dollars (\$75.00) per application.

History: Laws 1999, ch. [179](#), § [27](#); 2002, ch. [85](#), § [1](#); 2004, ch. [34](#), § [3](#); 2007, ch. [219](#), § [4](#).

The 2007 amendment, effective June 15, 2007, adds Subsection G.

The 2004 amendment, effective March 2, 2004, amended Subsection A to increase the examination fee from two hundred twenty-five dollars (\$225) to four hundred dollars (\$400).

The 2002 amendment, effective July 1, 2002, substituted "two hundred twenty-five dollars (\$225) per examination section" for "one hundred seventy-five dollars (\$175) per examination application".

Delayed repeals. — For delayed repeal of this section, see [61-28B-29](#) NMSA 1978.

61-28B-28. Criminal offender eligibility. (Repealed effective July 1, 2024.)

Except as otherwise provided in the 1999 Public Accountancy Act [[61-28B-1](#) NMSA 1978], the provisions of the Criminal Offender Employment Act [[28-2-1](#) NMSA 1978] shall govern any consideration or criminal records required or permitted by the 1999 Public Accountancy Act.

History: Laws 1999, ch. [179](#), § [28](#).

Delayed repeals. — For delayed repeal of this section, see [61-28B-29](#) NMSA 1978.

61-28B-29. Termination of agency life; delayed repeal. (Repealed effective July 1, 2024.)

The New Mexico public accountancy board is terminated on July 1, 2023 pursuant to the provisions of the Sunset Act [[12-9-11](#) through [12-9-21](#) NMSA 1978]. The board shall continue to operate according to the provisions of the 1999 Public Accountancy Act until July 1, 2024. Effective July 1, 2024, the 1999 Public Accountancy Act is repealed.

History: Laws 1999, ch. [179](#), § [29](#); 2005, ch. [208](#), § [20](#); 2011, ch. [30](#), § [7](#); 2017, ch. [52](#), § [13](#).

The 2017 amendment, effective June 16, 2017, changed "July 1, 2018" to "July 1, 2024", and changed "July 1, 2018" to "July 1, 2024" in two places.

The 2011 amendment, effective June 17, 2011, changed the termination, operation and repeal dates.

The 2005 amendment, effective June 17, 2005, changes the termination, operation and repeal dates.

New Mexico Public Accountancy Rules

TITLE 16. OCCUPATIONAL AND PROFESSIONAL LICENSING

CHAPTER 60

Public Accountants

PART 1

GENERAL PROVISIONS

16.60.1.1 ISSUING AGENCY: State of New Mexico Public Accountancy Board.

[16.60.1.1 NMAC - Rp 16 NMAC 60.1.1, 02-14-2002]

16.60.1.2 SCOPE: General public, all individuals certified/licensed as a certified public accountant (CPA) or registered public accountant (RPA), individuals seeking to be a CPA and all CPA/RPA business entities registered as a firm or seeking registration as a CPA/RPA firm with the board.

[16.60.1.2 NMAC - Rp 16 NMAC 60.1.2, 02-14-2002]

16.60.1.3 STATUTORY AUTHORITY: Public Accountancy Act, Sections 61-28B-1 to 61-28B-29 NMSA 1978.

[16.60.1.3 NMAC - Rp 16 NMAC 60.1.3, 02-14-2002]

16.60.1.4 DURATION: Permanent.

[16.60.1.4 NMAC - Rp 16 NMAC 60.1.4, 02-14-2002]

16.60.1.5 EFFECTIVE DATE: February 14, 2002, unless a later date is cited at the end of a section.

[16.60.1.5 NMAC - Rp 16 NMAC 60.1.5, 02-14-2002]

16.60.1.6 OBJECTIVE: The objective of Chapter 16, Part 1 is to establish the general provisions for the rules filed in this chapter; provide definitions of terms for rules filed in this chapter; delineate the headquarters location of the board and board operations; and prescribe board fees for public accountancy board certification, licensing and firm registration actions, and board services.

[16.60.1.6 NMAC - Rp 16 NMAC 60.1.6, 02-14-2002]

16.60.1.7 DEFINITIONS:

A. “Acceptance letter” means a document issued by the sponsoring organization indicating the peer review report has been accepted and, if applicable, any remedial/corrective actions to be agreed to and completed by the firm.

B. “Accounting and auditing services” for peer review purposes means providing any one or more of the following:

- (1) engagements performed in accordance with the “statements on auditing standards”;
- (2) engagements, other than preparation services, performed in accordance with the “statements on standards for accounting and review services”;
- (3) examination, review or agreed upon procedures engagements performed in accordance with the “statements on standards for attestation engagements”; or
- (4) engagements performed in accordance with public company accounting oversight board (PCAOB) standards that are not subject to PCOAB permanent inspection.

C. “**Act**” means the New Mexico 1999 Public Accountancy Act, Sections 61-28B-1 to 61-28B-29 NMSA1978.

D. “**Agreed upon procedures**” are those which are to be performed in accordance with applicable attestation standards. They are also those in which a license is engaged to issue a written finding that is based on specific procedures that the specified parties agreed are sufficient for their purpose, is restricted to the specified parties, and does not provide an opinion or negative assurance.

E. “**Client**” means the person or entity who retains a licensee for the performance of professional services.

F. “**Completion letter**” means a document issued by the sponsoring organization after a firm has provided evidence of remedial/ corrective actions taken, which were specified in the acceptance letter, and its peer review committee has determined no further actions are required.

G. “**Enterprise**” means any person or entity who retains a licensee for the performance of professional services.

H. “**Financial statements**” means statements and footnotes related thereto that purport to show an actual or anticipated financial position or results of operations, cash flow, or changes in financial position based on generally accepted accounting principles or another comprehensive basis of accounting. The term includes specific elements, accounts, or items of such statements, but it does not include incidental financial data included in management advisory service reports which support recommendations made to clients. In addition, it does not include tax returns and supporting schedules.

I. “**He, his, him**” means masculine pronouns when used herein also include the feminine and the neuter.

J. “**Holding out to the public as a permit holder or registered firm**” means the phrase “holding himself out to the public as a permit holder or registered firm” as used in the definition of “practice of public accountancy” in Section 3L of the act, and in these rules it means any representation, other than by an individual holding a certificate or firm registration

issued by this board pursuant to the 1999 Public Accountancy Act, Sections 61-28B-7 thru 61-28B-9, 61-28B-1 or 61-28B-13, of the fact that a certificate holder holds a permit, certificate or is a registered firm in connection with the performance of, or an offer to perform, services for the public, except as allowed under the practice privilege pursuant to the 1999 Public Accountancy Act, Sections 61-28B-26. Any such representation is presumed to invite the public to rely upon the professional skills implied by the certificate, registration, or permit in connection with the professional services offered to be performed. For the purpose of this rule, a representation shall be deemed to include any oral or written communication conveying the fact that the person holds a certificate, permit or firm registration, including without limitation the use of titles or legends on letterheads, business cards, office doors, advertisements, internet, email, or other electronic media.

K. “Manager” has, when used in these rules, the same meaning as the term “manager” in a limited liability company.

L. “Member” has, when used in these rules, the same meaning as the term “member” in a limited liability company.

M. “PCAOB” means the public company accounting oversight board.

N. “Peer review program” means the sponsoring organization’s entire peer review process, including but not limited to the standards for administering, performing and reporting on peer reviews, oversight procedures, training, and related guidance and materials.

O. “Peer review committee” means a committee comprised exclusively of CPAs practicing public accountancy and formed by a sponsoring organization for the purpose of overseeing the administration, acceptance, and completion of peer reviews.

P. “Peer review oversight committee” means a board appointed committee to provide oversight of the sponsoring organization in order to provide reasonable assurance that peer reviews are being administered, conducted, and reported on in accordance with the minimum standards for performing and reporting on peer reviews.

Q. “Practice Privilege” as defined in the 1999 Public Accountancy Act, Section 61-28B-26, a person whose principal place of business or residence is not in New Mexico shall be presumed to have qualifications substantially similar to New Mexico’s requirements, may exercise all the practice privileges of certificate holders of New Mexico without the need to obtain a certificate pursuant to the 1999 Public Accountancy Act, Sections 61-28B-9 NMSA 1978, if the individual meets the requirements of the 1999 Public Accountancy Act, Section 61-28B-26.

R. “Professional engagement” means a written or oral agreement between a client and a licensee relative to the performance of professional services and the services performed under this agreement. Oral agreements may only be used when allowed by professional standards.

S. “Professional services” means any service performed or offered to be performed by a licensee for a client in the course of the practice of public accountancy.

T. “Public communication” means a communication made in identical form to multiple persons or to the world at large, including but not limited to television, radio, motion pictures, newspaper, pamphlet, mass mailing, letterhead, business card, the internet, email or directory.

U. “Quality review” means an interchangeable term for peer review.

V. “Report” As provided in Section 61-28B-3 N of the act, the term “report” includes the issuance of reports in conjunction with an accounting and auditing practice using the forms of language set out in the American institute of certified public accountants (AICPA) “statements on auditing standards,” “statements on standards of accounting and review services,” “statements on standards for attestation engagements,” and PCOAB standards.

W. “Services involving accounting or auditing skills” means “services involving accounting or auditing skills” as used in the definition of “practice of public accountancy” in Sections 3K and L of the act. It includes the provision of advice or recommendations in connection with the sale or offer for sale of products, when the advice or recommendations require or imply the possession of accounting or auditing skills or expert knowledge in auditing or accounting.

X. “Sponsoring Organization” means a board approved professional society, or other organization responsible for the facilitation and administration of peer reviews through use of its peer review program and peer review standards.

Y. “Statement of compliance” means a certified statement from the human services department (HSD) stating that an applicant or licensee is in compliance with a judgment and order for support.

Z. “Statement of non-compliance” means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment and order for support.

[16.60.1.7 NMAC - Rp 16 NMAC 60.1.7 and 16 NMAC 60.11.7, 02-14-2002; A, 11-30-2007; A, 4-15-2008; A, 06-30-2008; A, 01-17-2013; A, 09-15-2015; A, 10-1-2016]

16.60.1.8 HEADQUARTERS OF THE BOARD: The headquarters, administrative offices, and staff of the board shall be physically located at 5500 San Antonio Dr. NE, Suite A, Albuquerque, New Mexico, 87109 or a subsequent location subject to the board's approval and ratification.

[16.60.1.8 NMAC - Rp 16 NMAC 60.1-8, 02-14-2002; A, 12-30-2004; A, 03-03-2017]

16.60.1.9 BOARD OPERATION:

A. The board shall meet at least 6 times each year. The chair or a quorum of the board shall have the authority to call meetings of the board. The board shall follow and apply the rules of procedure of the State of New Mexico Open Meetings Act, Sections 10-15-1 to 10-15-4, as regards notice and conduct of meetings.

B. The board shall elect annually from among its members a chair, vice-chair, secretary/treasurer and such other officers as the board may require. The officers shall assume the duties of their respective offices at the conclusion of the meeting at which they were elected. Board officers shall serve a term of 1 year but shall be eligible for reelection.

C. The chair or, in the event of the chair's absence or inability to act, the vice-chair shall preside at all meetings of the board. The board shall determine duties of other officers.

[16.60.1.9 NMAC - Rp 16 NMAC 60.1.9, 02-14-2002]

16.60.1.10 FEES AND OBLIGATIONS: Fees charged by the board shall be as follows.

A. Fees set by the board for CPA examination applicants shall not unreasonably exceed the amount required for the board to operate CPA examination administration on a break even basis, but in no case shall the fee be less than the state's cost of procuring and administering the exam.

B. Initial examination qualification review under Section 27F of the act shall be \$75.

C. Delinquency fee for incomplete or delinquent continuing education reports, certificate/license or firm permit renewals under Section 27D of the act shall be \$100.

D. Certificate application under Section 27B of the act shall be: initial certificate, \$175; certificate renewal, \$130.

E. No annual renewal fee shall be assessed for an individual who holds an inactive certificate and who has reached the age of 70.

F. Firm permit application or renewal fee under Section 27C of the act shall be \$75 for each firm, regardless of form of entity.

G. Firm permit renewal delinquency fee under Section 27C of the act shall be \$100 and includes all practitioners whose renewal applications are delinquent.

H. Certificate/license/ firm permit reinstatement fee under Section 27H of the act shall be \$175. For certificate/individual license reinstatements only, reinstatement fee and an additional fee of the current year's renewal fee. No delinquency fee shall be assessed.

I. Continuing professional education waiver and reentry into active certificate status and to comply with continuing professional education under Sections 27H and 27I of the act shall not exceed \$75 each occurrence.

J. Administrative fees for services under Section 27F shall be:

- (1) list of certificate or permit holders, \$250;
- (2) duplicate or replacement certificate card or permit card, \$10 each;
- (3) duplicate or replacement wall certificate, \$25 each;
- (4) board evaluation of coursework for continuing professional education credit, \$50 per hour of board staff research and study;
- (5) certificate application package for reciprocity, \$20 each;
- (6) grade transfer candidates, \$75 each;
- (7) replacement packages for by-examination candidates, \$75 each;
- (8) copies of combined Accountancy Act and board rules, \$10 each;
- (9) copies of records and documents, \$.25 per page; and
- (10) name change due to marriage, divorce, legal name change, etc. for replacement license shall be \$130; and
- (11) the board may, at its discretion, charge for other administrative costs as it deems appropriate.

K. Fee for the transfer of licensure or examination information to a third party under Section 27E of the act shall be \$75.

L. Fee for criminal history background check under Section 8.1 of the act shall be the amount established by the department of public safety for the processing of criminal history background checks.

M. The board may waive charges as it deems appropriate.

N. All fees are non-refundable.

[16.60.1.10 NMAC - Rp 16 NMAC 60.2.8, 02-14-2002; A, 01-15-2004; A, 04-29-2005; A, 11-30-2007; A, 06-30-2008; A, 05-29-2009; A, 11-13-2009; A, 9-15-2010; A, 01-17-2013, A, 12-01-2014; A, 9-15-2015; A, 10-1-2016]

16.60.1.11 PRESCRIBED FORMS: All requests for licensure transactions and all documentation for licensure purposes must be made on prescribed forms.

- A. PAB 1 - Application for a New Mexico CPA Certificate by Examination.
- B. PAB 2 - Application for a New Mexico CPA Certificate by Grade Transfer.
- C. PAB 3 - Application for a New Mexico CPA Certificate by Reciprocity.
- D. PAB 4 - Application for Renewal of a Current New Mexico CPA Certificate.
- E. PAB 5 - Application for Reinstatement of a Cancelled New Mexico CPA Certificate.
- F. PAB 6 - Application for Change of Certificate Status.
- G. PAB 7 - Application for Firm Permit.
- H. PAB 8 - Firm Permit Renewal Application.
- I. PAB 9 - Application for Reinstatement of an Expired Firm Permit.
- J. PAB 11 - Interstate Exchange of Information Form.
- K. PAB 12 - Work Experience Verification Form.
- L. PAB 13 - Interstate Notification of Verifying CPA's License.
- M. PAB 14 - Report of Continuing Professional Education.
- N. PAB 15 - Interstate Verification of Examination Scores.

[16.60.1.11 NMAC - N, 07-30-2004; A, 05-15-2006; A, 06-30-2008]

HISTORY OF 16.60.1 NMAC:

Pre-NMAC History: Material in the part was derived from that previously filed with the commission of public records - state records center and archives:

BPA 84-2, Purpose, filed 07-09-84;

BPA 95-3, Definitions, filed 04-21-95;

BPA 95-8, Board, Powers and Duties, filed 04-21-95.

History of Repealed Material:

16 NMAC 60.1, General Provisions, filed 09-27-95; 16 NMAC 60.2, Fees, Obligations, and Communications, filed 09-27-95; and Amendment to 16 NMAC 60.2, Fees, Obligations, and Communication, filed 12-23-99, repealed effective 02-14-2002.

Other History:

16 NMAC 60.1 General Provisions, filed 09-27-95; 16 NMAC 60.2, Fees, Obligations, and Communication, filed 09-27-95; and Amendment to 16 NMAC 60.2, Fees, Obligations, and Communications (filed 12-23-99), replaced by 16.60.1 NMAC, General Provisions effective 02-14-2002.

PART 2

CERTIFIED PUBLIC ACCOUNTANT (CPA)

EXAMINATION REQUIREMENTS

16.60.2.1 ISSUING AGENCY: State of New Mexico Public Accountancy Board.

[16.60.2.1 NMAC - Rp 16 NMAC 60.3.1, 02-14-2002]

16.60.2.2 SCOPE: General public: all individuals seeking to become a certified public accountant.

[16.60.2.2 NMAC - Rp 16 NMAC 60.3.2, 02-14-2002]

16.60.2.3 STATUTORY AUTHORITY: Public Accountancy Act, Sections 61-28B-1 to 61-28B-29 NMSA 1978.

[16.60.2.3 NMAC - Rp 16 NMAC 60.3.3, 02-14-2002]

16.60.2.4 DURATION: Permanent.

[16.60.2.4 NMAC - Rp 16 NMAC 60.3.4, 02-14-2002]

16.60.2.5 EFFECTIVE DATE: February 14, 2002, unless a later date is cited at the end of a section.

[16.60.2.5 NMAC - Rp 16 NMAC 60.3.5, 02-14-2002]

16.60.2.6 OBJECTIVE: To delineate uniform CPA examination application procedures, education requirements, examination administration, and board procedures for dealing with cheating on the CPA examination.

[16.60.2.6 NMAC - Rp 16 NMAC 60.3.6, 02-14-2002]

16.60.2.7 DEFINITIONS: [RESERVED]

[16.60.2.7 NMAC - Rp 16 NMAC 60.3.7, 02-14-2002]

16.60.2.8 APPLICATION PROCEDURES:

A. The board may contract as its agent CPA examination services (CPAES), the national association of state boards of accountancy (NASBA), or the American institute of certified public accountants (AICPA) or other entities it deems appropriate to undertake any aspects of examination development, delivery, administration, qualification, or application that the board considers necessary and appropriate in its oversight and administration of the uniform CPA examination.

B. Applicants for the CPA examination shall meet the requirements of Section 8 of the act and the provisions set forth in this rule.

C. An application will not be considered filed until all application/qualification fees and examination fees required by these rules and all required supporting documents have been received, including photographs, official transcripts, and proof that the applicant has completed the education requirement.

D. An applicant who fails to appear for the examination shall forfeit all fees charged for both the application and the examination.

E. Prospective applicants for the CPA examination shall demonstrate to the board's satisfaction that all education requirements are met.

F. The board or its designee shall forward notification of eligibility to NASBA's national candidate database.

G. Upon registering for any section of the examination, an applicant must sit for that section of the examination within six months from the date on which he is deemed eligible to sit for that section.

[16.60.2.8 NMAC - Rp 16 NMAC 60.3.9.1, 16 NMAC 60.3.9.2, & 16 NMAC 60.3.9.3, 02-14-2002; A, 01-15-2004; A, 12-30-2004; A, 06-30-2008]

16.60.2.9 EDUCATION REQUIREMENTS:

A. After July 1, 2008, Section 8C of the act requires an applicant for the uniform CPA examination to hold a baccalaureate degree or its equivalent conferred by a college or university acceptable to the board, with 30 semester hours in accounting or the equivalent as determined by the board.

B. After July 1, 2008, Section 8C of the act requires an applicant for a certificate to have at least 150 semester hours of college education or its equivalent earned at a college or university acceptable to the board. Any course for which credit has been awarded by the institution will be accepted toward meeting the 150-semester hour requirement.

C. The board will accept not fewer than 30 semester hours of accounting or audit related courses (3 semester hours may be in business law), without repeat, from a board-recognized educational institution. The recognized educational institution must have accepted them for the purposes of obtaining a baccalaureate degree or equivalent, and they must be shown on an official transcript.

D. A prospective CPA examination or CPA certificate candidate is considered as graduating from an accredited college or university acceptable to the board if, at the time the educational institution grants the applicant's degree, it is accredited at the appropriate level as outlined in these rules. As used in these rules, "accreditation" refers to the process of quality control of the education process. There are 3 different levels of accreditation referred to in these rules, and the degree to which the board relies on accreditation differs according to the level at which the degree granting institution is accredited. In reviewing and evaluating a candidate's educational credentials, the board may rely on accreditation by an accrediting agency at 3 different levels.

E. Level 1 accreditation is associated with the four-year, degree-granting college or university itself. The institution must be accredited by 1 or more of the following board-recognized regional accrediting agencies (or successor agencies):

- (1) middle states association of colleges and secondary schools;
- (2) New England association of schools and colleges;
- (3) north central association of colleges and secondary schools;
- (4) northwest association of schools and colleges;
- (5) southern association of colleges and schools;
- (6) western states association of schools and colleges; and
- (7) accrediting council for independent colleges and schools.

F. Level 2 accreditation is associated with a business school or college of business. The unit must be accredited by a national accreditation agency recognized by the board, such as the American assembly of collegiate schools of business (AACSB), following a specific and comprehensive review of its faculty, resources, and curricula. In evaluating a candidate's

credentials, the board may choose to rely on this accreditation as evidence that the institution's business school has met minimum overall standards of quality for such schools.

G. Level 3 accreditation is associated with an accounting program or department. The program or department must be accredited by a national accreditation agency recognized by the board such as the AACSB. Accounting programs or departments accredited in this manner have met standards substantially higher and much more specific than those required for level 1 or level 2 accreditation. For level 3 accreditation, the accounting program or department must meet a stringent set of standards that addresses faculty credentials, student quality, physical facilities, and curricula. Graduates who submit transcripts from accredited accounting programs may be deemed to have met the board's specific accounting and business course requirements.

H. If an educational institution was not accredited at the time an applicant's degree was received but is so accredited at the time the application is filed with the board, the institution will be deemed to be accredited for the purposes of this rule provided that it:

(1) certifies that the applicant's total educational program would qualify the applicant for graduation with a baccalaureate degree during the time the institution has been accredited; and

(2) furnishes the board satisfactory proof, including college catalogue course numbers and descriptions, that the pre-accrediting courses used to qualify the applicant as an accounting major are substantially equivalent to post-accrediting courses.

I. If an applicant's degree was received at an accredited educational institution as defined in this rule, but the educational program which was used to qualify the applicant as an accounting major included courses taken at non-accredited institutions, either before or after graduation, such courses will be deemed to have been taken at the accredited institution from which applicant's degree was received, provided the accredited institution either:

(1) has accepted such courses by including them in its official transcript; or

(2) certifies to the board that it will accept such courses for credit toward graduation.

J. A graduate of a four-year, degree-granting institution not accredited at the time the applicant's degree was received or at the time the application was filed will be deemed to be a graduate of a four-year accredited educational institution if:

(1) either the NASBA international evaluation service or a credentials evaluation service that is a member of the national association of credential evaluation services certifies that the applicant's degree is equivalent to a degree from an accredited educational institution defined in this rule; or if

(2) an accredited educational institution as defined in this rule accepts the applicant's non-accredited baccalaureate degree for admission to a graduate business degree program; the applicant satisfactorily completes at least 15 semester hours or the equivalent in

post-baccalaureate education at the accredited educational institution, of which at least 9 semester hours, or the equivalent, shall be in accounting; and the accredited educational institution certifies that the applicant is in good standing for continuation in the graduate program or has maintained a grade point average in these courses that is necessary for graduation.

K. Advanced subjects completed to qualify under the above section may not be used to satisfy education requirements.

L. The board may provide a mechanism to recognize educational institutions that are not accredited at the institutional, business school, accounting program, or department level.

M. The accounting education concentration or equivalent contemplated by the act shall consist of semester hours of credit earned as in a conventional college semester. Quarter hours will be converted by multiplying the quarter hours earned by two-thirds to determine semester hours earned. No more than 30 semester hours will be recognized for internships or life experience.

[16.60.2.9 NMAC - Rp 16 NMAC 60.3.8, 02-14-2002; A, 06-15-2004; A, 06-30-2008; A, 01-17-2013]

16.60.2.10 EXAMINATION ADMINISTRATION:

A. Time and place of examination: Eligible applicants shall independently contact a test center operator identified by the board to schedule the time and place for the examination at an approved test site.

B. Examination subjects: The examination required by the act shall test the knowledge and skills required for performance as an entry-level certified public accountant and shall include the subject areas of accounting and auditing and such related subjects as the board may require.

C. Provisional scores shall be released to the candidate following each testing window since 2004. All examination scores shall be considered provisional until approved by the board's administrative staff. Scores must be approved by the board's administrative staff prior to the issuance of certificates requiring such scores.

D. Pursuant to paragraph 1 of subsection D of 1.18.420.431 NMAC, once provisional scores have been approved by the board, they shall remain on file for 10 years beyond the date on which the final section of the examination was passed. If the candidate does not apply for an initial license within five years of passing the final section of the examination, the scores will be presented to the Board to determine validity.

[16.60.2.10 NMAC - Rp 16 NMAC 60.3.9.3, 02-14-2002; A, 01-15-2004; A, 06-30-2008; A, 12-01-2014]

16.60.2.11 [RESERVED]

[16.60.2.11 NMAC - N, 02-14-2002; Repealed, 06-30-2008]

16.60.2.12 CPA EXAMINATION CHEATING: Cheating by an applicant in applying for or taking the examination will be deemed to invalidate any grade otherwise earned by a candidate on any part of the examination and may warrant summary expulsion from the examination and disqualification from taking the examination for a specified number of subsequent sittings.

A. For purposes of this rule, the following actions, among others, may be considered cheating:

(1) falsifying or misrepresenting educational credentials or other information required for admission to the examination;

(2) communication between candidates inside or outside the examination room while the examination is in progress;

(3) communication with others outside the examination room while the examination is in progress;

(4) substitution of another person to sit in the examination room in the stead of a candidate and write one or more of the examination papers;

(5) possession of or reference to crib sheets, textbooks, electronic devices or other material inside or outside the examination room while the examination is in progress;

(6) copying or attempting to copy another candidate's answers;

(7) failure to cooperate with testing officials;

(8) any conduct that violates the standards of test administration or violates the verbal or written instructions given by examination administrators; or

(9) bringing prohibited items into the examination site.

B. In any case where it appears to a member of the board or its representative, while the examination is in progress, that cheating has or is occurring, the board may summarily expel the candidate involved from the examination.

C. In any case where the board believes that it has evidence that a candidate has cheated on the examination, and in every case where a candidate has been expelled from the examination, the board shall conduct a hearing expeditiously following the examination session for the purpose of determining whether or not there was cheating, and, if so, what remedy should be applied. In such hearings, the board shall decide:

- (1) whether the candidate shall be given credit for the section of the examination completed in that testing session;
- (2) whether the candidate shall be allowed to take additional sections of the examination in that same testing window; and
- (3) whether the candidate shall be barred from taking the examination in future testing windows, and if so, for how many testing windows.

D. In any case where the board permits a candidate to continue taking the examination, it may, depending on the circumstances:

- (1) admonish the candidate; and
- (2) notify the national candidate database, the AICPA, and the test center of the circumstances so that the candidate may be more closely monitored in future examinations.

E. In any case where a candidate is refused credit for parts of the examination taken or is expelled from the examination or disqualified from taking other parts, the board shall give the candidate a statement containing its findings, the evidence upon which the findings are based, and a notice of the right of the candidate to a formal rehearing by the board, with right of appeal, pursuant to the procedures provided in the Uniform Licensing Act, Sections 61-1-1 to 61-1-31 NMSA 1978, and Section 8B of the act.

F. In any case where a candidate is refused credit for any part of an examination taken, disqualified from taking any part of the examination, or barred from taking the examination in future sittings, the board will provide information as to its findings and actions taken to the board of accountancy of any other state to which the candidate may apply for the examination.

[16.60.2.12 NMAC - Rp 16 NMAC 60.3.9, 02-14-2002; A, 09-16-2002; A, 01-15-2004; A, 06-30-2008]

16.60.2.13 [RESERVED]

[16.60.2.13 NMAC - N, 01-15-2004; A, 07-30-2004; A, 01-17-2013; Repealed, 12-01-2014]

HISTORY OF 16.60.2 NMAC:

Pre-NMAC History: Material in the part was derived from that previously filed with the commission of public records-state records center and archives:

BPA Policy Statement 84-1, Cheating, filed 06-27-84.

BPA Policy Statement 84-2, Answers to Ethics Examination Questions, filed 06-27-84.

BPA Policy Statement 84-3, Exam ID Card, filed 06-27-84.

BPA Policy Statement 84-4, Questionnaire, filed 06-27-84.

BPA Policy Statement 84-5, Exam Photos, filed 06-27-84.

BPA Policy Statement 84-6, Meeting the Education Requirement, filed 08-27-84.

BPA Policy Statement 84-8, Transfer of Conditional Credit and Eligibility to Sit for Future Examinations, filed 08-27-84.

BPA 84-2, Purpose, Filed 07-09-84

Section 10, Examination of Applicants, filed 11-13-92

BPA 95-10, Certified Public Accountants, filed 04-21-95

History of Repealed Material:

16 NMAC 60.3, Public Accountants - CPA Examination; Educational Requirements and General Information, filed 09-27-95, repealed effective 02-14-2002.

Other History:

16 NMAC 60.3, Public Accountants - CPA Examination; Educational Requirements and General Information, filed 09-27-95 replaced by 16.60.2 NMAC, Certified Public Accountant (CPA) Examination Requirements, effective 02-14-2002.

PART 3

LICENSURE AND CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS

16.60.3.1 ISSUING AGENCY: State of New Mexico Public Accountancy Board

[16.60.3.1 NMAC - Rp 16 NMAC 60.4.1 & 16 NMAC 60.6.1, 02-14-2002]

16.60.3.2 SCOPE: General public: Individuals seeking to become certified public accountants (CPAs) CPAs and registered public accountants (RPAs) seeking to maintain their New Mexico certificate/license status through continuing professional education (CPE).

[16.60.3.2 NMAC - Rp 16 NMAC 60.4.2 & 16 NMAC 60.6.2, 02-14-2002]

16.60.3.3 STATUTORY AUTHORITY: 1999 Public Accountancy Act, Sections 61-28B-1 to 61-28B-29 NMSA 1978

[16.60.3.3 NMAC - Rp 16 NMAC 60.4.3 & 16 NMAC 60.6.3, 02-14-2002]

16.60.3.4 DURATION: Permanent.

[16.60.3.4 NMAC - Rp 16 NMAC 60.4.4 & 16 NMAC 60.6.4, 02-14-2002]

16.60.3.5 EFFECTIVE DATE: February 14, 2002, unless a later date is cited at the end of a section.

[16.60.3.5 NMAC - Rp 16 NMAC 60.4.5 & 16 NMAC 60.6.5, 02-14-2002]

16.60.3.6 OBJECTIVE: Protect the public interest by implementing provisions of the 1999 Public Accountancy Act (act) which provide for initial application issuance and renewal of CPA and RPA certificates/licenses; reinstatement of expired, cancelled, suspended or revoked CPA/RPA certificates; application and issuance of CPA certificates through interstate and international reciprocity; establishment of intent to practice privilege under substantial equivalency; maintenance of professional competency through continuing professional education (CPE) of CPA and RPA certificate/license holders; and change of status application procedures between active/inactive or retired status.

[16.60.3.6 NMAC - Rp 16 NMAC 60.4.6 & 16 NMAC 60.6.6, 02-14-2002]

16.60.3.7 DEFINITIONS: [RESERVED]

[16.60.3.7 NMAC - Rp 16 NMAC 60.4.7 & 16 NMAC 60.6.7, 02-14-2002]

16.60.3.8 APPLICATION REQUIREMENTS: All certificate/license applications and renewals shall be made on and meet all information requirements contained in board prescribed forms. Applications will not be considered complete and filed with the board until all required information and board prescribed fees have been received.

[16.60.3.8 NMAC - Rp. 16 NMAC 60.4.8.1, 02-14-2002]

16.60.3.9 INITIAL CERTIFICATE/LICENSE REQUIREMENTS:

A. An applicant for initial certification/licensure shall demonstrate to the board's satisfaction that he:

(1) is of good moral character and lacks a history of dishonest or felonious acts;

(2) meets the education, experience and examination requirements of the board; and

(3) passes the American institute of certified public accountants ethics examination with a score of 90 percent or higher.

B. Moral character requirements: The board may assess moral character requirements based upon applicant-provided character references and background checks to determine an applicant's history of dishonest or felonious acts. The board may request the presence at a board meeting of an applicant for whom it has unanswered questions.

C. Criminal history background check: Pursuant to Section 61-28B-8.1 of the act, all applicants for initial issuance or reinstatement of a certificate and license in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check. As of November 5, 2013, New Mexico Department of Public Safety (DPS) will no longer accept hardcopy fingerprint cards. Applicants will conduct a fingerprinting through the Cogent live scan location prescribed by DPS.

(1) The applicant will register online, through the Cogent website, with the Board's ORI number and make payment with registration. After the process is complete, the applicant will receive a Registration Confirmation.

(2) The applicant shall take their Registration Confirmation to an approved Cogent live scan facility and conduct the electronic fingerprinting process.

(3) Results will be sent to the Board electronically. The Board shall not issue a certificate or license until the applicant's background check has been successfully completed.

(4) Out-of-State Applicants, who are unable to visit a Cogent fingerprinting facility, may follow the same registration process and submit a hardcopy fingerprint card to Cogent CardScan in Dublin, OH. The results will be sent to the Board electronically. The Board shall not issue a certificate or license until the applicant's background check has been successfully completed.

D. Education and examination requirements: Education and examination requirements are specified in Section 8 of the act and are further delineated in Part 2 of board rules. An applicant who has passed the uniform CPA examination prior to July 1, 2004, is exempt from the 150-semester-hour requirement.

E. Experience required: Applicants documenting their required experience for issuance of an initial certificate pursuant to Section 7H of the act, and after July 1, 2004 Section 8H of the act shall:

(1) provide documentation of experience in providing any type of services or advice using accounting, attest, management advisory, financial advisory, tax or consulting skills; acceptable experience shall include experience gained through employment in industry, government, academia or public practice;

(2) have their experience verified by an active, licensed CPA as defined in the act or by an active, licensed CPA from another state; the board shall consider and evaluate factors such as complexity and diversity of the work in determining acceptability of experience submitted:

(a) one year of experience or it's 2,000 hour equivalent shall consist of full or part-time employment that extends over a period of no more than three years and includes no fewer than 2,000 hours of performance of services described above;

(b) the CPA verifying an applicant's experience must be employed by, or a consultant to, or provide professional services to, the same organization as the applicant;

(c) experience documented in support of an initial application must be obtained within the seven years immediately preceding passing of the examination or within seven years of having passed the examination upon which the application is based; this does not apply to applicants who qualified and sat for the examination during or prior to the November 2001 administration;

(d) any licensee requested by an applicant to submit evidence of the applicant's experience and who has refused to do so shall, upon request of the board, explain in writing or in person the basis for such refusal; the board may require any licensee who has furnished evidence of an applicant's experience to substantiate the information;

(e) the board may inspect documentation relating to an applicant's claimed experience; any applicant may be required to appear before the board or its representative to supplement or verify evidence of experience.

F. Certificate and license issuance: upon receipt of a complete application packet and successful completion of a fingerprint background check that revealed no arrests, board staff are authorized to approve and issue a certificate and license to an applicant for whom no licensing issues are present. Pursuant to Section I of 16.60.2.13 NMAC, uniform CPA examination scores must be approved by the board's administrative staff prior to the issuance of a certificate and license to an applicant who sat for the uniform CPA examination as a New Mexico candidate.

G. Swearing in ceremony: Every new licensee must participate in a swearing in ceremony before the board within one year from the date of the issuance of the initial license.

Swearing in ceremonies shall be held two times per year in locations to be determined by the board or the board's administrative staff. Upon good cause presented in writing prior to the expiration of the one-year period of initial licensure, the board may extend the period for being sworn in or arrange an alternate method for the licensee to be sworn in. If an extension for good cause is granted, the licensee shall arrange with the board's administrative staff to present him or herself for swearing in before the board within the time prescribed by the board. Failure to appear at a swearing in ceremony before the board may result in the imposition of a fine or other disciplinary action, as deemed appropriate by the board.

H. Replacement wall certificates and licenses to practice: Replacement wall certificates and licenses to practice may be issued by the board in appropriate cases and upon payment by the CPA or RPA of the fee as set by the board. A certificate/license holder is specifically prohibited from possessing more than one wall certificate and more than one license to practice as a CPA or RPA. When a replacement wall certificate or license to practice is requested, the certificate/license holder must return the original certificate/license or submit a notarized affidavit describing the occurrence that necessitated the replacement certificate or license.

I. Renewal requirements: Certificates/licenses for individuals will have staggered expiration dates based on the individual's birth month. Deadline for receipt of certificate/license renewal applications and supporting continuing professional education affidavits or reports is no later than the last day of the CPA or RPA certificate/license holder's birth month or the next business day if the deadline date falls on a weekend or holiday.

(1) The board may accept a sworn affidavit as evidence of certificate/license holder compliance with CPE requirements in support of renewal applications.

(2) Renewal applications and CPE reports received after prescribed deadlines shall include prescribed delinquency fees.

(3) Applications will not be considered complete without satisfactory evidence to the board that the applicant has complied with the continuing professional education requirements of Sections 9E and 12A of the act and of these rules.

(4) The board shall mail renewal application notices no less than 30 days prior to the renewal deadline.

J. Expedited licensure/ certification by reciprocity for military spouses licensed in another jurisdiction:

(1) If a military service member, the spouse of a military service member, or a recent veteran submits an application for a license or certification and is a qualified applicant pursuant to this part, the board shall expedite the processing of such application and issue the license as soon as practicable. The terms "military service member" and "recent veteran" are defined in the Uniform Licensing Act, NMSA 1978, Section 61-1-34. Any qualified veteran

applicant seeking expedited licensure pursuant to this section shall submit a copy of form DD214, Certificate of Release or Discharge from Active Duty, with the application.

(2) A license issued pursuant to this section shall not be renewed automatically, and shall be renewed only if the licensee satisfies all requirements for the issuance and renewal of a license pursuant to the 1999 Public Accountancy Act, including NMSA 1978, Section 61-28B-9 and 16.60.3.9(I) NMAC.

[16.60.3.9 NMAC - Rp 16 NMAC 60.4.8.2 & 16 NMAC 60.4.8.3, 02-14-2002; A, 01-15-2004; A, 06-15-2004; A, 12-30-2004; A, 04-29-2005; A, 07-29-2005; A, 11-30-2007; A, 06-30-2008; A, 02-27-2009; A, 01-17-2013; A, 12-01-2014;A, 09-15-2015]

16.60.3.10 BOARD ACCEPTANCE OF GRADE TRANSFER CERTIFICATE APPLICANTS:

A. The board will only accept grade transfers from applicants passing the uniform CPA examination in other jurisdictions/states for an initial CPA certificate application under the following situations:

(1) temporary change in residence to the state/jurisdiction where the applicant passed the uniform CPA examination while the grade transfer applicant was a student;

(2) temporary change in residence to the state/jurisdiction where the applicant passed the uniform CPA examination while the grade transfer applicant was on military duty;

(3) temporary change in residence to the state/jurisdiction where the applicant passed the uniform CPA examination while the candidate was on a temporary work assignment;

(4) presentation of documented evidence demonstrating current resident status in the state of New Mexico; or

(5) presentation of documented evidence demonstrating anticipated employment and residency in the state of New Mexico within 6 months of the application's date.

B. An applicant who resides in New Mexico and was issued a certificate in another state based upon passage of the examination but never received a license to practice will be considered for licensure by grade transfer.

C. The board may waive the above requirements due to hardship exceptions presented by a grade transfer certificate applicant.

[16.60.3.10 NMAC - N, 02-14-2002; A, 06-15-2004]

16.60.3.11 RELINQUISHING A CERTIFICATE/LICENSE:

A. Any individual certificate/license holder may at any time and for any reason, subject to the approval of the board, relinquish that certificate/license to the board. An individual relinquishing his certificate/license during the course of a disciplinary investigation or proceeding may not apply for reinstatement but may apply for the issuance of a new certificate/license upon completion of all requirements for the issuance of such certificate, including meeting all education, examination, experience, and ethics examination requirements of the act and board rules in effect at the time of the new application. This includes sitting for and passing the uniform CPA examination, meeting current experience requirements, and passing a current ethics examination.

B. This rule does not apply to a licensee who relinquished their license while in good standing and was not the subject of a board investigation or disciplinary proceeding at the time they relinquished their license. If an individual relinquishes their certificate/license during the course of a board disciplinary investigation or proceeding, this fact shall be disclosed in any later application for a new certificate and shall be considered before the issuance of a new certificate.

[16.60.3.11 NMAC - N, 02-14-2002]

16.60.3.12 REINSTATEMENT REQUIREMENTS:

A. Requests to reinstate a certificate/license that lapsed or expired as a result of non-renewal shall meet all board prescribed requirements for reinstatement including the current year's renewal fee and continuing professional education. An individual whose certificate/license has been subject to board disciplinary action pursuant to the Uniform Licensing Act, Sections 61-1-1 to 61-1-31 NMSA 1978, may, upon application in writing and for good cause, request reinstatement of the certificate/license after completion of all requirements contained in the board's original order or agreement.

B. A reinstatement application pursuant to Section 21 of the act and this rule will be processed by the board upon the basis of the materials submitted in support thereof and supplemented by such additional inquiries as the board may require. Upon receipt of a complete reinstatement application packet and successful completion of a fingerprint background check that revealed no arrests, board staff are authorized to reinstate a certificate and license to an applicant for whom no licensing issues are present. If the individual has not held an active license in any jurisdiction within the 10 years preceding the date of application for reinstatement, the approval of the board will be required. For reinstatement of a certificate/license, a hearing may be held, and the board may, at its discretion, impose terms and conditions on an application following procedures the board may find suitable for the particular case.

C. The reinstatement request shall set out in writing the reasons constituting good cause for the relief sought and shall be accompanied by at least 2 supporting recommendations, under oath, from practitioners who have personal knowledge of the activities of the applicant since board disciplinary action was imposed. In considering a reinstatement application, the

board may consider all activities of the applicant since the disciplinary action from which relief is sought was imposed; the offense for which the applicant was disciplined; the applicant's activities during the time the certificate/license was in good standing; the applicant's rehabilitative efforts; restitution to damaged parties in the matter for which the penalty was imposed; and the applicant's general reputation for trust and professional probity.

D. No application for reinstatement will be considered while the applicant is under sentence for any criminal offense, including any period during which the applicant is on court-imposed probation or parole.

[16.60.3.12 NMAC - Rp 16 NMAC 60.4.11, 02-14-2002; A, 12-30-2005; A, 01-17-2013]

16.60.3.13 RECIPROCITY REQUIREMENTS:

A. Interstate reciprocity: The board may issue a certificate/license to the holder of a certificate issued by a state other than New Mexico as defined under Sections 3O, 11B and D, and 26A of the act provided that the license from the other state is valid and in good standing and that the applicant:

(1) provides proof from a board-approved national qualifications service that their CPA qualifications are substantially equivalent to the CPA requirements of the act; or

(2) successfully completed the CPA examination in accordance with the rules of the other state at the time it granted the applicant's initial certificate; and

(3) meets the experience requirements under the act and these rules for issuance of the initial certificate; and

(4) has met the CPE requirement of the state in which he is currently licensed pursuant to the act and board rules.

B. All applicants for licensure by reciprocity shall have passed either the American institute of certified public accountants ethics examination with a score of 90 percent or higher or an ethics examination of another state board of accountancy with a score of 90 percent or higher.

C. An applicant who holds a certificate from another state based upon passage of the examination but who does not hold a license to practice shall not be eligible for licensure by reciprocity.

D. The board may rely on the national association of state boards of accountancy (NASBA), the American institute of certified public accountants (AICPA), or other professional bodies deemed acceptable to the board for evaluation of other state's CPA qualification requirements in making substantial equivalency determinations.

E. International reciprocity: The board may designate a professional accounting credential issued in a foreign country as substantially equivalent to a New Mexico CPA

certificate and may issue a certificate/license to the holder of a professional accounting credential issued in a foreign country.

(1) The board may rely on NASBA, AICPA, or other professional bodies deemed acceptable to the board for evaluation of foreign credentials in making equivalency determinations.

(2) The board may satisfy itself through qualifying examination(s) that the holder of a foreign country credential deemed by the board to be substantially equivalent to a CPA certificate possesses adequate knowledge of U.S. practice standards and the board's rules. The board will specify the qualifying examination(s) and may rely on NASBA, AICPA, or other professional bodies to develop, administer, and grade such qualifying examination(s).

(3) The board recognizes the existence of the international qualifications appraisal board (IQAB), a joint body of NASBA and AICPA, which is charged with:

(a) evaluating the professional credentialing process of certified public accountants, or their equivalents, from countries other than the United States; and

(b) negotiating principles of reciprocity agreements with the appropriate professional and governmental bodies of other countries seeking recognition as having requirements substantially equivalent to the requirements for the certificate of a certified public accountant in the United States.

(4) The board shall honor the terms of all principles of reciprocity agreements issued by IQAB.

(5) The board recognizes the international uniform CPA qualification examination (IQEX), written and graded by AICPA, as a measure of professional competency satisfactory to obtain a New Mexico certificate by reciprocity.

(6) The board may accept a foreign country accounting credential in partial satisfaction of its certificate/license requirements if:

(a) the holder of the foreign country accounting credential meets the issuing body's education requirement and has passed the issuing body's examination used to qualify its own domestic candidates; and

(b) the foreign country credential is valid and in good standing at the time of application for a certificate/license.

(7) The board shall accept the following foreign credentials in partial satisfaction of its certificate/license requirements:

(a) Canadian chartered accountant;

(b) Australian chartered accountant;

(c) Hong Kong institute of CPAs;

- (d) Mexican contador publicos certificado;
- (e) chartered accountants in Ireland;
- (f) New Zealand chartered accountant.

F. An applicant for renewal of a CPA certificate/license originally issued in reliance on a foreign country accounting credential shall:

- (1) meet all board prescribed certificate/license renewal requirements; and
- (2) present documentation from the foreign country accounting credential issuing body that the applicant's foreign country credential has not been suspended or revoked and is not the subject of a current investigation; and
- (3) report any investigations undertaken or sanctions imposed by a foreign country credential body against the CPA's foreign country credential.

G. If the foreign country credential has lapsed, expired, or been cancelled, the applicant must present proof from the foreign country credentialing body that the certificate holder/licensee was not the subject of any disciplinary proceedings or investigations at the time the foreign country credential lapsed.

H. Suspension or revocation of, or refusal to renew, the CPA's foreign accounting credential by the foreign credentialing body shall be considered evidence of conduct reflecting adversely upon the CPA's fitness to retain the certificate and may be a basis for board action.

I. Conviction of a felony or any crime involving dishonesty or fraud under the laws of a foreign country is evidence of conduct reflecting adversely on the CPA's fitness to retain a certificate/license and is a basis for board action.

J. The board shall notify the appropriate foreign country credentialing authorities of any sanctions imposed against a CPA. The board may participate in joint investigations with foreign country credentialing bodies and may rely on evidence supplied by such bodies in disciplinary hearings.

[16.60.3.13 NMAC - Rp 16 NMAC 60.4.9, 02-14-2002; A, 09-16-2002; A, 01-15-2004; A, 06-15-2004; A, 12-30-2004; A, 04-29-2005; A, 06-30-2008; A, 11-13-2009; A, 01-17-2013]

16.60.3.14 SUBSTANTIAL EQUIVALENCY/INTENT TO PRACTICE REQUIREMENTS:

A. Effective July 1, 2008, a person whose principal place of business is not New Mexico and who has a valid certificate/license as a certified public accountant from another state shall be presumed to have qualifications substantially equivalent to New Mexico's requirements if the person meets the requirements of Section 26, Subsection A of the act.

B. The board may rely on NASBA, AICPA, or other professional bodies approved as acceptable to the board to provide qualification appraisal in determining whether an applicant's qualifications are substantially equivalent to New Mexico's requirements.

C. A person exercising the practice privilege afforded by Section 26 of the act shall be deemed to have:

(1) submitted to the personal and subject matter jurisdiction and disciplinary authority of the board;

(2) agreed to full compliance with the act and related board rules; and

(3) consented to appointment of the state board that issued the license as agent upon whom process may be served in an action or proceeding by the New Mexico public accountancy board against the licensee.

D. A person exercising the practice privilege afforded by Section 26 of the act shall cease offering or rendering professional attest services in New Mexico in the event the license from the state of the person's principal place of business is no longer valid.

E. An individual who qualifies for practice privileges pursuant to Section 26 of the act may offer or render professional services whether in person or by mail, telephone, or electronic means without the need to notify the board or remit a fee.

F. Pursuant to the Uniform Accountancy Act, an individual entering into an engagement to provide professional services via a web site pursuant to Section 23 shall disclose, via any such web site, the individual's principal state of licensure, license number, and an address as a means for regulators and the public to contact the individual regarding complaints, questions, or regulatory compliance.

G. Reporting moral character violations.

(1) Any individual using practice privileges in New Mexico shall notify the board within 30 days of any occurrence described in board rule Subsection B of 16.60.5.11 NMAC.

(2) Any licensee of New Mexico using practice privileges in another state shall notify the New Mexico board and the state board of any other state in which said licensee uses practice privileges within 30 days of any occurrence described in board rule Subsection B of 16.60.5.11 NMAC.

[16.60.3.14 NMAC - N, 02-14-2002; A, 07-30-2004; A, 07-29-2005; A, 06-30-2008; A, 01-17-2013]

16.60.3.15 CONTINUING PROFESSIONAL EDUCATION (CPE) REQUIRED TO OBTAIN OR MAINTAIN AN "ACTIVE" CPA LICENSE:

A. The following requirements of continuing professional education apply to certificate/license renewals and reinstatements pursuant to Sections 9E and 12A of the act. An applicant for certificate/license renewal shall show completion of no less than 120 clock hours of CPE, complying with these rules during the 36-month period ending on the last day of the certificate/license holder's birth month.

(1) Any applicant seeking a license/certificate or renewal of an existing license shall demonstrate participation in a program of learning meeting the standards set forth in the statement on standards for continuing professional education (CPE) programs jointly approved by NASBA and AICPA or standards deemed comparable by the board. An initial license is the first license issued to an individual. CPE reporting will begin on the first day following the licensee's initial expiration date (birth month) for license renewal. No CPE will be required for the period between issue date and first expiration date (birth month).

(2) Each person holding an active CPA certificate/license issued by the board shall show completion of no less than 120 hours of continuing professional education complying with these rules during the preceding 36-month period ending on the last day of the certificate/license holder's birth month, with a minimum of 20 hours completed in each reporting year. For any CPE reporting period which begins on or after January 1, 2010, continuing professional education must include a minimum of four hours of ethics education during the 36-month period after January 1, 2010. Licensees shall report CPE completion on board prescribed forms including a signed statement indicating they have met the requirements for participation in the CPE program set forth in board rules.

(3) The board may, at its discretion, accept a sworn affidavit as evidence of certificate/license holder compliance with CPE requirements in support of renewal applications in lieu of documented evidence of such. Reciprocity and reinstatement applications shall require documented evidence of compliance with CPE provisions.

(4) Deadline for receipt of license renewal applications and supporting CPE reports or affidavits is no later than the last day of the certificate/license holder's birth month. Renewal applications and supporting CPE affidavits or reports shall be postmarked or hand-delivered no later than the renewal deadline date or the next business day if the deadline date falls on a weekend or holiday.

(5) In the event that a renewal applicant has not completed the requisite CPE by the renewal deadline, he shall provide a written explanation for failure to complete CPE and shall also submit a written request for an extension for completion of the required CPE.

(a) The approval of an extension request is not automatic. The board has the discretion to grant or deny a request.

(b) The request for extension shall include documentation of the extenuating circumstances that prevented him from completing the CPE. A written plan of

action to remediate the deficiency must accompany the renewal application and extension request.

(c) If a request for extension is received in the board office after the expiration date of the license, the license shall not be renewed, and the file shall be referred to the board for possible disciplinary action.

(d) An extension up to 60 days beyond the expiration date of the license may be granted by board staff; extenuating circumstances beyond the control of the licensee necessitating an extension beyond 60 days requires the approval of the board. Failure to complete the required CPE within the extension period shall result in disciplinary action against the licensee.

(e) The board may waive this fine for good cause.

(f) If all CPE requirements are not met within 90 days beyond the expiration date of the license, the license shall be subject to cancellation.

(6) Renewal applications and CPE reports received after prescribed deadlines shall include prescribed delinquency fees.

(7) Applications will not be considered complete without satisfactory evidence to the board that the applicant has complied with the CPE requirements of Sections 9E and 12A of the act and of these rules.

(8) Reinstatement applicants whose certificates/licenses have lapsed shall provide documented evidence of completion of 40 hours of CPE for each year the certificate/license was expired, not to exceed 200 hours. If the license was expired for longer than 36 months, at least 120 of the hours must have been earned within the preceding 36 months. For any post-2009 year for which the certificate/license was expired, the continuing professional education must include a minimum of four hours of ethics education during the 36 months preceding reinstatement.

(a) The length of expiration shall be calculated from the date the license expired to the date the application for reinstatement was received by the board office.

(b) If the license was expired for less than one year, documented evidence of 40 hours of CPE earned within the 12 months immediately preceding the date of application for reinstatement must be provided.

(c) If the license was expired for longer than one year, for the purpose of determining the number of CPE hours required, the length of expiration shall be rounded down to the last full year if the partial year was less than six months and rounded up to the next full year if the partial year was more than six months.

B. Exemption from CPE requirements through change of certificate/license status between inactive/retired and active status.

(1) Pursuant to Section 9E of the act, the board may grant an exception to CPE requirements for certificate holders who do not provide services to the public. Public means any private or public corporate or governmental entity or individual. An individual who holds an inactive certificate/license is prohibited from practicing public accounting and may only use the CPA-inactive designation if they are not offering accounting, tax, tax consulting, management advisory, or similar services either in New Mexico or in another state or country. Persons desiring exemption from CPE rules requirements may request to change from "active" to "inactive" or "retired" certificate/license status, provided that they:

(a) complete board-prescribed change-of-status forms and remit related fees;

(b) not practice public accountancy as defined in Section 3M of the act; public accountancy means the performance of one or more kinds of services involving accounting or auditing skills, including the issuance of reports on financial statements, the performance of one or more kinds of management, financial advisory or consulting services, the preparation of tax returns or the furnishing of advice on tax matters; and

(c) place the word "inactive" or "retired" adjacent to their CPA or RPA title on a business card, letterhead or other documents or devices, except for a board-issued certificate.

(2) Persons requesting to change from "inactive" or "retired" to "active" certificate/license status shall:

(a) complete board-prescribed change-of-status forms and remit related fees; and

(b) provide documented evidence of 40 hours of CPE for each year the certificate/license was inactive, not to exceed 200 hours; if the license was inactive for longer than 36 months, at least 120 of the hours must have been earned within the preceding 36 months. For any post-2009 year for which the certificate/license was inactive, the continuing professional education must include a minimum of four hours of ethics education during the 36 months preceding application for change of status to "active".

(c) If an individual has not held an active license within 10 years preceding the date of the application for "change of status", the approval of the board will be required.

C. Hardship exceptions: The board may make exceptions to CPE requirements for reason of individual hardship including health, military service, foreign country residence, or other good cause. Requests for such exceptions shall be subject to board approval and presented in writing to the board. Requests shall include such supporting information and documentation as the board deems necessary to substantiate and evaluate the basis of the exception request.

D. Programs qualifying for CPE credit: A program qualifies as acceptable CPE for purposes of Sections 9E and 12A of the act and these rules if it is a learning program contributing to growth in professional knowledge and competence of a licensee. The program must meet the minimum standards of quality of development, presentation, measurement, and reporting of credits set forth in the statement on standards for continuing professional education programs jointly approved by NASBA and AICPA, by accounting societies recognized by the board, or such other standards deemed acceptable to the board.

(1) The following standards will be used to measure the hours of credit to be given for acceptable CPE programs completed by individual applicants:

- (a) an hour is considered to be a 50-minute period of instruction;
- (b) a full one day program will be considered to equal eight hours;
- (c) only class hours or the equivalent (and not student hours devoted to preparation) will be counted;
- (d) one-half credit increments are permitted after the first credit has been earned in a given learning activity;
- (e) for reporting periods on or after January 1, 2010, acceptable ethics topics may include, but are not limited to, instruction focusing on the AICPA code of professional conduct, the New Mexico occupational and professional licensing code of professional conduct applicable to certified public accountants, Treasury Circular 230, malpractice avoidance, organization ethics, moral reasoning, and the duties of the CPA to the public, clients, and colleagues; ethics hours may be earned as part of any professional development program otherwise qualifying under this rule, provided the ethics content and the time devoted to such content are separately identifiable on the program agenda.

(2) Service as a lecturer, discussion leader, or speaker at continuing education programs or as a university professor/instructor (graduate or undergraduate levels) will be counted to the extent that it contributes to the applicant's professional competence.

(3) Credit as a lecturer, discussion leader, speaker, or university professor/instructor may be allowed for any meeting or session provided that the session would meet the continuing education requirements of those attending.

(4) Credit allowed as a lecturer, discussion leader, speaker or university professor/instructor will be on the basis of two hours for subject preparation for each hour of teaching and one hour for each hour of presentation. Credit for subject preparation may only be claimed once for the same presentation.

(5) Credit may be allowed for published articles and books provided they contribute to the professional competence of the applicant. The board will determine the amount of credit awarded.

(6) Credit allowed under provisions for a lecturer, discussion leader, speaker at continuing education programs, or university professor/instructor or credit for published articles and books may not exceed one half of an individual's CPE requirement for a three year reporting period (shall not exceed 60 hours of CPE credit during a 3-year reporting period).

(7) For a continuing education program to qualify under this rule, the following standards must be met:

- (a)** an outline of the program is prepared in advance and preserved;
- (b)** the program is at least one hour in length;
- (c)** a qualified instructor conducts the program; and
- (d)** a record of registration or attendance is maintained.

(8) The following programs are deemed to qualify, provided the above are met:

(a) professional development programs of recognized national and state accounting organizations;

(b) technical sessions at meetings of recognized national and state accounting organizations and their chapters; and

(c) no more than four hours CPE annually may be earned for board meeting attendance.

(9) University or college graduate-level courses taken for academic credit are accepted. Excluded are those courses used to qualify for taking the CPA exam. Each semester hour of credit shall equal 15 hours toward the requirement. A quarter hour credit shall equal 10 hours.

(10) Non-credit short courses - each class hour shall equal one hour toward the requirement and may include the following:

(a) formal, organized in-firm educational programs;

(b) programs of other accounting, industrial, and professional organizations recognized by the board in subject areas acceptable to the board;

(c) formal correspondence or other individual study programs which require registration and provide evidence of satisfactory completion will qualify with the amount of credit to be determined by the board.

(11) The board may look to recognized state or national accounting organizations for assistance in interpreting the acceptability of the credit to be allowed for individual courses. The board will accept programs meeting the standards set forth in the

NASBA CPE registry, AICPA guidelines, NASBA quality assurance service, or such other programs deemed acceptable to the board.

(12) For each three year reporting period, at least 96 of the hours reported shall be courses, programs or seminars whose content is in technical subjects such as audit; attestation; financial reporting; tax, management consulting; financial advisory or consulting; and other areas acceptable to the board as directly related to the professional competence of the individual.

(13) Effective for CPE reporting periods ending on or after July 31, 2007, for each three year reporting period, at least 24 of the hours reported shall not include CPE sponsored by the licensee's firm, agency, company, or organization but may include all methods of CPE delivery, provided that each hour meets the standards specified in paragraphs (1) through (10) of this subsection.

(14) For each three year reporting period, credit will be allowed once for any single course, program or seminar unless the individual can demonstrate that the content of such course, program or seminar was subject to substantive technical changes during the reporting period.

E. Programs not qualifying for CPE:

- (1) CPA examination review or "cram" courses;
- (2) industrial development, community enhancement, political study groups or similar courses, programs or seminars;
- (3) courses, programs or seminars that are generally for the purpose of learning a foreign language;
- (4) partner, shareholder or member meetings, business meetings, committee service, and social functions unless they are structured as formal programs of learning adhering to the standards prescribed in this rule.

F. Continuing professional education records requirements: When applications to the board require evidence of CPE, the applicants shall maintain such records necessary to demonstrate evidence of compliance with requirements of this rule.

(1) Reinstatement and reciprocity applicants shall file with their applications a signed report form and statement of the CPE credit claimed. For each course claimed, the report shall show the sponsoring organization, location of program, title of program or description of content, the dates attended, and the hours claimed.

(2) Responsibility for documenting program acceptability and validity of credits rests with the licensee and CPE sponsor. Such documentation should be retained for a period of five years after program completion and at minimum shall consist of the following:

(a) copy of the outline prepared by the course sponsor along with the information required for a program to qualify as acceptable CPE as specified in this rule; or

(b) for courses taken for scholastic credit in accredited universities and colleges, a transcript reflecting completion of the course. For non-credit courses taken, a statement of the hours of attendance, signed by the instructor, is required.

(3) Institutional documentation of completion is required for formal, individual self-study/correspondence programs.

(4) The board may verify CPE reporting information from applicants at its discretion. Certificate holders/licensees or prospective certificate holders/licensees are required to provide supporting documentation or access to such records and documentation as necessary to substantiate validity of CPE hours claimed. Certificate holders/licensees are required to maintain documentation to support CPE hours claimed for a period of five years after course completion/CPE reporting. Should the board exercise its discretion to accept an affidavit in lieu of a CPE report, the board shall audit certificate/license holder CPE rules compliance of no less than 10 percent of active CPA/RPA licensees annually.

(5) In cases where the board determines requirements have not been met, the board may grant an additional period of time in which CPE compliance deficiencies may be removed. Fraudulent reporting is a basis for disciplinary action.

(6) An individual who has submitted a sworn affidavit on their renewal application as evidence of compliance with CPE requirements and is found, as the result of a random audit, not to be in compliance will be subject to a minimum \$250.00 fine and any other penalties deemed appropriate by the board as permitted by Section 20B of the act.

(7) The sponsor of a continuing education program is required to maintain an outline of the program and attendance/registration records for a period of five years after program completion.

(8) Licensees reporting of CPE must document their participation and retain evidence for a period of five years after course completion. Documentation and/or evidence must include, at minimum:

- (a)** sponsor name and identification number;
- (b)** title and description of content;
- (c)** date(s) of completion;
- (d)** location; and
- (e)** number of credit hours.

(9) The board may, at its discretion, examine certificate holder/licensee or CPE sponsor documentation to evaluate program compliance with board rules. Non-compliance with established standards may result in denial of CPE credit for non-compliant programs and may be a basis for disciplinary action by the board for fraudulent documentation and

representation by a CPE sponsor or certificate holder/licensee of a knowingly non-compliant CPE program.

[16.60.3.15 NMAC - Rp 16 NMAC 60.6.6, 02-14-2002; A, 09-16-2002; A, 06-15-2004; A, 07-30-2004; A, 12-30-2004; A, 04-29-2005; A, 12-30-2005; A, 05-15-2006; A, 07-29-2007; A, 02-27-2009; A, 9-15-2010; A, 01-17-2013; A, 12-01-14; A, 09-15-2015; A, 03-03-2017]

PART 4

FIRM PERMIT, PEER REVIEW REQUIREMENTS, AND BUSINESS NAME PROHIBITIONS

16.60.4.1 ISSUING AGENCY: State of New Mexico Public Accountancy Board.

[16.60.4.1 NMAC - Rp 16 NMAC 60.11.1, 02-14-2002]

16.60.4.2 SCOPE: General Public - All certified public accountant (CPA) and registered public accountant (RPA) business entities seeking authority to practice as a CPA or RPA firm.

[16.60.4.2 NMAC - Rp 16 NMAC 60.11.2, 02-14-2002]

16.60.4.3 STATUTORY AUTHORITY: 1999 Public Accountancy Act, Sections 61-28B-1 to 61-28B-29 NMSA 1978.

[16.60.4.3 NMAC - Rp 16 NMAC 60.11.3, 02-14-2002]

16.60.4.4 DURATION: Permanent.

[16.60.4.4 NMAC - Rp 16 NMAC 60.11.4, 02-14-2002]

16.60.4.5 EFFECTIVE DATE: February 14, 2002, unless a later date is cited at the end of a section.

[16.60.4.5 NMAC - Rp 16 NMAC 60.11.5, 02-14-2002]

16.60.4.6 OBJECTIVE: To prescribe requirements for firm permit application, renewal and reinstatement, business name prohibitions and peer review program implementation, administration and oversight.

[16.60.4.6 NMAC - Rp 16 MAC 60.11.6, 02-14-2002]

16.60.4.7 DEFINITIONS: [RESERVED]

[16.60.4.7 NMAC - Rp 16 NMAC 60.11.7, 02-14-2002]

16.60.4.8 FIRM PERMIT APPLICATION, RENEWAL, REINSTATEMENT AND NOTIFICATION REQUIREMENTS:

A. Pursuant to Sections 12B and 13A, B, E, F, and L of the act, any CPA or RPA acting as the sole proprietor, partner, shareholder or member of a legal business entity who performs or offers to perform accountancy for a client or potential client by holding themselves out to the public must obtain a firm permit to be granted authority to practice public accountancy as a CPA or RPA firm. Pursuant to Section 13I of the act, each office of the firm within New Mexico must obtain a firm permit. All firm permit applications for initial issue, renewal, or reinstatement shall be made on board-prescribed forms and meet all information and fee requirements to be considered complete and filed with the board.

B. Renewal requirements: Deadline for receipt of firm permit renewal applications is no later than 30 calendar days prior to the expiration date printed on the firm permit. Renewal applications shall be postmarked or hand-delivered no later than the last day of the month preceding the month of expiration or the next business day if the deadline falls on a weekend or holiday. The board shall mail firm permit renewal application forms to firm permit holders no less than 30 days prior to the renewal deadline date.

C. Reinstatement requirements:

(1) Reinstatement due to non-renewal/expiration: Requests to reinstate a firm permit that lapsed or expired as a result of non-renewal shall be made on board-prescribed forms and meet all board-prescribed requirements for reinstatement including the current year's renewal fee and peer review program requirements. This rule shall not apply to firms whose permits lapsed or expired for a period of three years or more.

(2) Reinstatement applications for relief from disciplinary penalties: A firm whose permit to practice has been subject to board disciplinary action may apply to the board for modification of the board action after completion of all requirements contained in the board's original order:

(a) the application shall be in writing and substantiate the reasons constituting good cause for the relief sought; and

(b) shall be accompanied by at least two supporting recommendations, under oath, from practitioners who have personal knowledge of the activities of the applicant since the board action was imposed.

D. Action by the board: An application pursuant to Section 21 of the act will be processed by the board upon the basis of the application materials submitted, supplemented by such additional inquiries the board may require. At the board's discretion, a hearing may be held on an application following procedures the board may find suitable for the particular case.

(1) The board may impose appropriate terms and conditions for firm permit reinstatement or modification of board disciplinary action.

(2) In considering a reinstatement application, the board may consider:

(a) all activities of the applicant since the disciplinary penalty from which relief is sought was imposed;

(b) the offense for which the applicant was disciplined;

(c) the applicant's activities during the time the firm permit was in good standing;

(d) the applicant's rehabilitative efforts;

(e) restitution to damaged parties in the matter for which the penalty was imposed; and

(f) the applicant's general reputation for trust and professional probity.

(3) No application for reinstatement will be considered while the applicant is under sentence for any criminal offense, including any period during which the applicant is on court imposed probation or parole.

E. Notification requirements: A firm registered pursuant to Section 13 of the act shall file written notification with the board of any of the following events concerning the practice of public accountancy within this state within 30 days of occurrence:

(1) formation of a new firm;

(2) change in legal form or name of a firm;

(3) firm termination;

(4) establishment of a new branch office, (register by obtaining a new firm permit for the new branch office, pursuant to Section 61-28B-13I, NMSA 1978) or the closing or change of address of a branch office in this state; or

(5) the occurrence of any event or events which would cause such firm not to be in conformity with the provisions of the act or these rules.

[16.60.4.8 NMAC - Rp 16 NMAC 60.4.11, 02-14-2002; A, 04-29-05; A, 05-15-2006; A, 06-30-2008; A, 09-15-2015]

16.60.4.9 FIRM BUSINESS NAMES PROHIBITIONS:

A. Misleading firm names: A firm name or trade name is misleading pursuant to Section 19 of the act if, among other things, the firm name or trade name:

- (1) is not the lawful and registered name of the firm;
- (2) implies the existence of a corporation when the firm is not a corporation such as through the use of the words “corporation”, “incorporated”, “Ltd.”, “professional corporation”, or an abbreviation thereof as part of the firm name if the firm is not incorporated or is not a professional corporation;
- (3) implies the existence of a partnership when there is not a partnership such as by use of the term “partnership”, “limited liability partnership”, the abbreviation “LLP”, “limited liability company”, or the abbreviation “LLC” if the firm is not such an entity;
- (4) includes the name of an individual who is not a CPA if the title “CPAs” is included in the firm name or trade name, except as provided for in Subsection B of 16.60.4.9 NMAC;
- (5) includes information about or indicates an association with persons who are not members of the firm, except as permitted pursuant to Section 14(i) of the Uniform Accountancy Act;
- (6) includes the terms “& company”, “& associate”, or “group”, but the firm does not include, in addition to the named partner, shareholder, owner, or member, at least one other licensee;
- (7) contains any representation that would be likely to cause a reasonable person to have a false or unjustified expectation of favorable results or capabilities, through the use of a false or unjustified statement of fact as to any material matter;
- (8) claims or implies the ability to influence a regulatory body or official;
- (9) includes the name of an owner whose certified public accountant license has been revoked for disciplinary reasons by the board, whereby the licensee has been prohibited from practicing public accountancy or prohibited from using the title CPA or holding himself out as a certified public accountant for more than 90 days after revocation of the license.

B. Permissible firm names: The following types of CPA firm names are not in and of themselves misleading and are permissible:

(1) a firm name or trade name that includes the names of one or more former or present owners;

(2) a firm name or trade name that excludes the names of one or more former or present owners;

(3) a firm name or trade name that uses the “CPA” title as part of the firm name when all named individuals are owners of the firm who hold such title or are former owners who held such title at the time they ceased to be owners of the firm;

(4) a firm name or trade name that includes the name of a non-CPA owner if the “CPA” title is not a part of the firm name.

C. Name of firm formed as a single member limited liability company (LLC): A firm which is organized as a single member LLC under the Limited Liability Company Act, Sections 53-19-1 to 53-19-74 NMSA 1978, or similar acts of other states may be required by the applicable LLC act to include the word “company” or “Co.” in its name. For purposes of compliance with the act, the firm name shall not include more than one person’s name and shall not include “and”, “&” or a similar term with respect to “company” or “Co.” in a manner which would imply that there was more than 1 owner of the firm.

D. Network firms: A network firm as defined in the AICPA code of professional conduct in effect July 1, 2011 may use a common brand name, or share common initials, as part of the firm name. Such a firm may use the network name as the firm’s name, provided it also shares one or more of the following characteristics with other firms in the network:

(1) common control, as defined by generally accepted accounting principles in the United States, among the firms through ownership, management, or other means;

(2) profits or costs, excluding costs of operating the association, costs of developing audit methodologies, manuals and training course, and other costs that are immaterial to the firm;

(3) common business strategy that involves ongoing collaboration among the firms whereby the firms are responsible for implementing the association’s strategy and are held accountable for performance pursuant to that strategy;

(4) significant part of professional resources;

(5) common quality control policies and procedures that participating firms are required to implement and that are monitored, as defined by peer review standards, by the association.

[16.60.4.9 NMAC - Rp 16 NMAC 60.4.10, 02-14-2002; A, 06-30-2008; A, 01-17-2013]

16.60.4.10 PEER REVIEW REQUIREMENTS:

A. Participation: A firm seeking to obtain or renew a firm permit to provide accounting and auditing services in New Mexico must be enrolled in a peer review program and undergo a peer review pursuant to Section 6.60.4.10 B of the 1999 Public Accountancy Act [61-28B-1 NMSA 1978], Peer review program objectives are established pursuant to Section 13L of the act to monitor compliance with applicable accounting and auditing standards adopted by generally recognized standard-setting bodies. Emphasis is on education, including appropriate education programs or remedial procedures that may be recommended or required where reporting does not comply with appropriate professional standards.

(1) Firms contracting to perform audits of state agencies as defined in the audit act must also comply with peer review standards applicable to those audits.

(2) Participation is required of each firm registered with the board who provides accounting or auditing services pursuant to Subsection 13L of the act.

B. Timing of peer reviews:

(1) Each holder of a board-issued firm permit shall enroll in a board approved peer review program and arrange, schedule, complete and allow time for the sponsoring organization to consider their peer reviews for acceptance prior to the June 30 renewal period.

(a) Firms need to ensure that their peer review year ends and corresponding due dates allow for compliance with Subsection 13E of the act.

(b) Firms may need to consider changing their current peer review year ends and the timing of when their peer reviews are performed in order to comply.

(2) When a firm performs its first engagement requiring its initial peer review, the firm shall be enrolled in a board approved peer review program by the report date of the first engagement, and the due date ordinarily will be 18 months from the report date of that engagement.

(a) The initial peer review must report on the firm's practice for a full year.

(b) The requirements of Subsection 13L of the act regarding permit renewal are initially applicable to the firm the first June 30 renewal period after the 18 month due date.

(c) Hardship Exceptions: The board may make exceptions to the requirements set out in this section for hardships. All hardship requests must be in writing, setting forth detailed reasons for the request, and must be submitted no later than six months prior to expected completion date of the peer review.

(4) The board may grant extensions up to 180 days from the original due date in order for the firm to comply with the peer review requirements in Subsection 13E and 13L of the act. All requests for extensions shall be submitted to the board in writing by the firm no later

than 30 days prior to renewal date and should include any extensions approved by the sponsoring organization. The board may recognize extensions granted by the sponsoring organization. The board has the authority at its sole discretion to grant any reasonable extensions that it deems necessary and extensions are ordinarily granted for the following reasons:

- (a) health;
- (b) military service; or
- (c) other good cause clearly outside the control of the firm.

C. Hardship Exceptions: The board may make exceptions to the requirements set out in this section for hardships. All hardship requests must be in writing, setting forth detailed reasons for the request, and must be submitted no later than six months prior to expected completion date of the peer review.

D. Exemptions: A firm which does not perform accounting or auditing engagements, including but not limited to audits, reviews, compilations, attestations, forecasts, or projections is exempt from the peer review program and shall re-certify annually to the board as to this exempt status as part of the firm permit renewal process. A previously exempt firm which begins providing the above described services must initiate and complete a review within 18 months of the date the services were first provided.

E. Reporting to the board: Firms are required to submit a copy of the following documents related to its most recently accepted peer review to the board:

- (1) peer review report which has been accepted by the sponsoring organization;
- (2) the firm's letter of response (accepted by the sponsoring organization), if applicable;
- (3) the acceptance letter from the sponsoring organization;
- (4) letter(s) signed by the firm acknowledging that the firm agrees to take any actions required by the sponsoring organization, if applicable;
- (5) the completion letter signed by the sponsoring organization notifying the firm that required actions have been appropriately completed, if applicable.
- (6) Upon request of the board, any correspondence from the sponsoring organization regarding the scheduling or completion of a peer review.

F. Submission of documents: the above documents shall be submitted by the firm to the board via mail, or electronically or digitally as follows:

- (1) The documents in Paragraph (1) through (3) of Subsection E of 16.60.4.10 NMAC shall be submitted within 30 days of the sponsoring organization's acceptance.

(2) The documents in Paragraph (4) of Subsection E of 16.60.4.10 NMAC within 30 days from the date the letter is signed by the firm, or with submission of firm renewal application, whichever occurs first.

(3) The documents in Paragraph (5) of Subsection E of 16.60.4.10 NMAC shall be submitted to the board within 30 days of the date of the letter.

(4) The documents in Paragraph (6) of Subsection E of 16.60.4.10 NMAC shall be submitted to the board within 30 days of receiving the documents by the firm or upon request by the board.

(5) If the firm cannot submit the documents in Paragraphs (1) through (5) of Subsection E of 16.60.4.10 NMAC within the stated timeframe or, at the maximum, 180 days after the scheduled due date of the peer review, the firm must submit a letter to the board via mail, electronically or digitally explaining its failure to comply. The board may take disciplinary action for failure to comply.

(6) Firms may also satisfy this document submission requirement by having the sponsoring organization make the documents described in Paragraphs (1) through (5) of Subsection E of 16.60.4.10 NMAC available to the board within the stated time frames via the AICPA facilitated state board access (FSBA) secure website process.

G. Additional information to be provided by firms or the sponsoring organization, upon request by the board, shall provide written permission for the sponsoring organization to provide information to the board. Permission may be granted annually on the firm renewal form. Such information may include the following (or similar) types of objective information about a firm's review, if known:

- (1) the date the review is or was scheduled to take place;
- (2) the name of the reviewing firm, team captain or review captain;
- (3) if the field work on the peer review has commenced;
- (4) the date the exit conference was expected to or did occur;
- (5) a copy of any extension approval letters;
- (6) whether the peer review working papers have been received by the sponsoring organization;
- (7) whether a must select engagement was included in the scope of engagements reviewed;
- (8) if a technical review is in progress;
- (9) whether the review has been presented to a report acceptance body (RAB);

(10) the date the review is expected to be presented to the report acceptance body;

(11) if the firm is going through fair procedures to determine whether it is cooperating with the peer review.

H. Approved peer review sponsoring organizations, programs and peer review standards:

(1) The board shall approve sponsoring organizations, peer review program(s) and standards.

(2) The board adopts the American institute of certified public accountants (AICPA) as an approved sponsoring organization and its peer review program and the New Mexico society of CPAs (NMSCPA) or its successor and other peer review programs administered by entities fully involved in the administration of the AICPA peer review program. These organizations are not required to submit a plan of administration to the board for approval. The board may approve other sponsoring organizations and peer review programs.

(3) Any board approved peer review program and any peer reviewer performing a peer review under this section shall utilize standards for performing and reporting on peer reviews by a recognized national accountancy organization whose standards are generally accepted by other regulatory authorities in the United States, including but not limited to the AICPA *standards for performing and reporting on peer review*.

(4) The board may terminate its approval of a sponsoring organization for cause following notice and opportunity for hearing. For purposes of this paragraph, “cause” includes but is not limited to failure to maintain an ongoing compliance with the requirements.

(5) For an organization, not specifically identified in these rules as board-approved, to receive board approval for its peer review program and standards, the organization must submit evidence to the satisfaction of the board. At a minimum, the evidence shall include the standards, procedures, guidelines, oversight process, training materials and related documents used to administer, perform, and accept peer reviews. The board has the authority to request any other documents/ information from an organization about its peer review program in determining whether to grant approval.

(6) For firms required to be registered with an inspected by the public company accounting oversight board (PCAOB), the board approves the PCAOB’s inspection process for reviewing practices subject to its authority (which are not included in the scope of peer review programs). Firms receiving inspections under the PAOB are also required to meet the peer review requirements under a board-approved peer review program that covers the portion of the firm’s practice not subject to the PCAOB inspection process, should the firm have such a practice.

I. Authority and function of peer review oversight committee:

(1) The board *may* appoint up to five individuals licensed in this or another state to a peer review oversight committee to monitor programs administered by the sponsoring organization and report periodically to the board. Peer review oversight committee members shall not be current members of the board or perform any enforcement related work for regulator or governmental bodies, professional organizations (including but not limited to an AICPA ethics committee, AICPA joint trial board or state professional ethics committee) or similar groups or subgroups, including consultants and other similar arrangements for the board; and may be removed or replaced by the board at its discretion.

(2) Each committee member shall annually sign a confidentiality statement indicating they will not divulge any information to the board or any other person or entity that would identify any firm, licensee, or peer reviewer/reviewing firm.

(3) The peer review oversight committee may conduct oversight of approved sponsoring organization to provide reasonable assurance that the program it is administering is complying with the minimum standards for performing and reporting on peer reviews. The committee shall report to the board any modifications to the sponsoring organization and shall make the recommendations regarding their continued approval.

(a) Oversight procedures to be performed by the peer review oversight committee may consist of, but are not limited to, the following activities:

(i) visit the sponsoring organization for the approved peer review program;

(ii) review the sponsoring organization's procedures for administering the program;

(iii) meet with the sponsoring organization's RAB during consideration of peer review documents;

(iv) review the sponsoring organization's compliance with their programs.

(b) The peer review oversight committee shall verify that firms comply with peer review requirements as follows:

(i) verification may include review of the peer review report, the firm's response to the matters discussed in the peer review report, and the acceptance letter outlining any additional corrective or monitoring procedures, and the letter(s) signed by the sponsoring organization notifying the firm that required actions have been appropriately completed;

(ii) any other actions deemed necessary by the peer review oversight committee to assure compliance with peer review standards.

J. Disciplinary action:

(1) The board shall take disciplinary action against a firm for failure to comply with peer review requirements. Actions may include, but are not limited to, remedial and corrective procedures, fines, and denial of firm registration.

(2) In the event a firm is unwilling or unable to comply with established standards, or a firm's professional work is so egregious as to warrant disciplinary action, the board shall take appropriate action to protect the public interest.

(3) Peer review documents must be submitted to the board office in accordance with Subsection F of 16.60.4.10 NMAC.

(a) For each day the firm is delinquent in submitting the documents, the board may assess a fine of \$10 per day not to exceed \$1,000.

(b) If peer review documents are submitted more than 100 days late, a notice of contemplated action may be issued against all licensees listed on the most recent firm permit renewal application as owners of the firm.

(4) Requests for extensions must be submitted no later than 30 days prior to renewal date as required by Paragraph (4) of Subsection B of 16.60.4.10 NMAC.

K. Privileged information: A report, statement, memorandum, transcript, funding record, or working paper prepared for and an opinion formulated in connection with any positive enforcement or peer review is privileged information held by the sponsoring organization and may not be subject to discovery, subpoena, or other means of legal compulsion for release to any person and is not admissible as evidence in any judicial or administrative proceeding except for a board hearing.

L. In the event a firm is merged, otherwise combined, dissolved, or separated, the sponsoring organization shall determine which firm is considered to be the succeeding firm, if any. The succeeding firm shall retain its peer review status and the review due date.

[16.60.4.10 NMAC - Rp 16 NMAC 60.11.8 & 16 NMAC 60.11.9, 02-14-2002; A, 06-15-2004; A, 12-30-2005; A, 06-30-2008; A, 09-15-2015; A, 10-1-2016]

16.60.4.11 [RESERVED]

[16.60.4.11 NMAC - Rp 16 NMAC 60.4.10 through 60.4.16, 02-14-2002; A, 01-15-2004; A, 09-15-2015; Repealed, 10-01-2016]

HISTORY OF 16.60.4 NMAC:

History of Repealed Material:

16 NMAC 60.4, Public Accountants - Certification; Experience Requirements and Procedures, filed 09-27-95 and 16 NMAC 60.11, Public Accountants - Peer Review Requirements, filed 02-27-98, repealed effective 02-14-2002.

Other History:

16 NMAC 60.4, Public Accountants - Certification; Experience Requirements and Procedures, filed 09-27-95 and 16 NMAC 60.11, Public Accountants - Peer Review Requirements, replaced by 16.60.4 NMAC, Firm Permit, Peer Review Requirements, and Business Name Prohibitions, effective 02-14-2002.

PART 5

CODE OF PROFESSIONAL CONDUCT

16.60.5.1 ISSUING AGENCY: State of New Mexico Public Accountancy Board.

[16.60.5.1 NMAC - Rp 16 NMAC 60.7.1, 02-14-2002]

16.60.5.2 SCOPE: This part applies to the code of professional conduct as promulgated under the authority granted by applicable New Mexico statutes, which delegates to the State of New Mexico Public Accountancy Board the power and duty to prescribe rules of professional conduct for establishing and maintaining high standards of competence and integrity in the profession of public accountancy.

[16.60.5.2 NMAC - Rp 16 NMAC 60.7.2, 02-14-2002]

16.60.5.3 STATUTORY AUTHORITY: Public Accountancy Act, Sections 61-28B-1 to 61-28B-29 NMSA 1978.

[16.60.5.3 NMAC - Rp 16 NMAC 60.7.3, 02-14-2002]

16.60.5.4 DURATION: Permanent.

[16.60.5.4 NMAC - Rp 16 NMAC 60.7.4, 02-14-02]

16.60.5.5 EFFECTIVE DATE: February 14, 2002, unless a later date is cited at the end of a section.

[16.60.5.5 NMAC - Rp 16 NMAC 60.7.5, 02-14-2002]

16.60.5.6 OBJECTIVE: The code of professional conduct prescribes the obligation that persons engaged in the practice of public accountancy have to their clients and to the public to maintain independence of thought and action; to strive continuously to improve one's thought and action; to strive continuously to improve one's professional skills; to observe, where applicable, generally accepted accounting principles and generally accepted auditing standards; to promote sound and informative financial reporting; to hold the affairs of clients in confidence; to uphold the standards of the public accountancy profession; and to maintain high standards of personal conduct in all matters affecting one's fitness to practice public accountancy.

[16.60.5.6 NMAC - Rp 16 NMAC 60.7.6, 2-14-2002]

16.60.5.7 DEFINITIONS: [RESERVED]

[16.60.5.7 NMAC - Rp 16NMAC 60.7.7, 02-14-2002]

16.60.5.8 DUTY TO ABIDE BY CODE OF PROFESSIONAL CONDUCT:

A. In addition to its own rules of conduct, the board adopts the American institute of certified public accountants' (AICPA) professional standards: code of professional conduct. All certified public accountants and registered public accountants holding a current certificate and all holders of firm permits shall comply with the board's rules of conduct and the AICPA code of professional conduct or any successor code of professional conduct promulgated by AICPA in meeting and maintaining their responsibilities and requirements of ethical and professional conduct in the practice of public accountancy. This code of professional conduct is on file and available for review at the offices of the board and is available from AICPA.

B. By accepting licensure to engage in the practice of public accountancy or to use titles which imply a particular competence so to engage, the licensee also accepts the obligations of the profession and the duty to abide by the board's rules of conduct and the AICPA code of professional conduct.

C. Any departure from either the rules of conduct or the code of conduct must be justified, and individuals who do not adhere to them may be subject to board disciplinary action.

[16.60.5.8 NMAC - Rp 16 NMAC 60.7.6, 02-14-2002]

16.60.5.9 BOARD DISCIPLINARY ACTION:

A. Any licensee whose certificate or firm permit issued by the board is subsequently suspended or revoked shall promptly return such certificate/license to be board.

B. Decisions by the board following hearings under the Uniform Licensing Act and the Public Accountancy Act will, if a charge is sustained, be made public.

(1) Decisions that do not sustain a charge or are subject to agreement in lieu of a hearing may be made public at the board's discretion.

(2) A list of all individuals whose licenses have been suspended or revoked will be published on quarterly basis in a newspaper of general circulation as well as in the newspaper of circulation closest to the individual's place of business.

[16.60.5.9 NMAC - N, 02-14-2002; A, 01-15-2004]

16.60.5.10 BOARD AUTHORITY TO REVIEW DOCUMENTS: The board may solicit and receive publicly available reports and related financial statements from clients, public agencies, banks, and other users of financial statements of certificate holders/licensees and firm-permit holders and individuals with privileges under the act on a general and random basis without regard to whether an application for renewal of the particular licensee is then pending or whether there is any formal complaint or suspicion of impropriety on the part of any particular licensee or individual. The board may review such reports and otherwise proceed with respect to the results of any such review under provisions, authorities, and remedies of the act.

[16.60.5.10 NMAC - N, 02-14-2002]

16.60.5.11 RULES OF CONDUCT: In addition to abiding by the AICPA code of professional conduct, New Mexico CPA/RPA certificate/license holders shall abide by the following board rules:

A. Responses to board communications. An individual certificate/license or firm permit holder shall, when requested, substantively and honestly respond in writing to all communications from the board requesting a response within 30 days of the mailing of such communications by registered or certified mail to the last address furnished the board by the applicant, certificate or registration holder.

(1) Failure to respond substantively and honestly to written board communications or failure to furnish requested documentation or working papers constitutes

conduct indicating lack of fitness to serve the public as a professional accountant and shall be grounds for disciplinary action.

(2) Each applicant, certificate or firm permit holder and each person required to be registered with the board under the act shall notify the board, in writing, of any and all changes in such person's mailing address and the effective date thereof within 30 days before or after such effective date.

B. Reportable events. A licensee shall report in writing to the board the occurrence of any of the following events within 30 days of the date the licensee had knowledge of these events:

(1) Receipt of a final peer review report indicating “pass with deficiencies” or “fail” or a public company accounting oversight board (PCAOB) firm inspection report containing deficiencies or identifying potential defects in the quality control systems. For the purposes of Subsection B of 16.60.5.11 NMAC, “deficiency reports” are reports indicating either “pass with deficiencies” or “fail” as defined in the AICPA peer review standards.

(2) Receipt of a second consecutive deficiency peer review report.

(3) Imposition upon the license of discipline, including, but not limited to, censure, reprimand, sanction, probation, civil penalty, fine, consent decree or order, suspension, revocation, or modification of a license, certificate, permit, or practice rights by:

(a) the securities and exchange commission (SEC), the PCAOB, or the internal revenue service (IRS); or

(b) another state board of accountancy for any cause other than failure to pay a professional license fee by the due date or failure to meet the continuing professional education requirements of another state board of accountancy; or

(c) any other federal or state agency regarding the licensee’s conduct while rendering professional services; or

(d) any foreign authority or credentialing body that regulates the practice of accountancy.

(4) The occurrence of any matter reportable that must be reported by the licensee to the PCAOB pursuant to Sarbanes Oxley Action Section 102(b)(2)(f) and PCAOB Rules and forms adopted pursuant thereto.

(5) Notice of disciplinary charges filed by the SEC, the PCAOB, the IRS, or another state board of accountancy, or a federal or state taxing, insurance or securities regulatory authority, or a foreign authority or credentialing body that regulates the practice of accountancy.

(6) Unless prohibited by the terms of the agreement, any judgment, award or settlement of a civil action or arbitration proceeding of \$150,000 or more in which the licensee was a party if the matter included allegations of gross negligence, violation of specific standards

of practice, fraud, or misappropriation of funds in the practice of accounting; provided, however, licensed firms shall only notify the board regarding civil judgments, settlements, or arbitration awards directly involving the firm's practice of public accounting in this state.

(7) Criminal charges, deferred prosecution or conviction or plea of no contest to which the licensee is a defendant if the crime is:

(a) any felony under the laws of the United States or of any state of the United States or any foreign jurisdiction; or

(b) a misdemeanor if an essential element of the offense is dishonesty, deceit, or fraud.

C. Frivolous complaints. An individual certificate/license or firm permit holder who, in writing to the board, accuses another certificate/license or firm permit holder of violating the act or board rules shall assist the board in any investigation or prosecution resulting from the written accusation. Failure to do so, such as not appearing to testify at a hearing or to produce requested documents necessary to the investigation or prosecution, without good cause, is a violation of this rule.

D. Compliance with the Parental Responsibility Act. If an applicant for a certificate/license or a CPA or RPA certificate/license or firm permit holder is identified by the state of New Mexico human services department (HSD) as not in compliance with a judgment and order for support, the board or its legally authorized designee shall: deny an application for a license; deny the renewal of a license; have grounds for suspension or revocation of a license; and shall initiate a notice of contemplated action under provisions of the Uniform Licensing Act.

(1) If an applicant or licensee disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensee should contact the HSD child support enforcement division. An applicant or licensee can provide the board with a subsequent statement of compliance, which shall preclude the board from taking any action based solely on the prior statement of non-compliance from HSD.

(2) When a disciplinary action is taken under this section solely because the applicant or licensee is not in compliance with a judgment and order for support, the order shall state that the application or license shall be reinstated upon presentation of a subsequent statement of compliance. The board may also include any other conditions necessary to comply with board requirements for reapplications or reinstatement of lapsed licenses.

E. Specialty designations. A CPA/RPA certificate/license holder may only represent a claim of special expertise through the use of "specialty designations" in conjunction with the CPA/RPA designation if the specialty designation is:

(1) consistent with designations prescribed by national or regional accreditation bodies offering the designations pursuant to a prescribed course of study, experience, or examination, and

(2) cannot be construed by the public or clients of the CPA/RPA practitioner to be a false fraudulent, misleading, or deceptive claim unsubstantiated by fact.

[16.60.5.11 - Rp 16 NMAC 60.7, 16 NMAC 60.9, and 16 NMAC 60.10, 02-14-2002; A, 06-30-2008; A, 01-01-2011; A, 01-17-2013; A, 09-15-2015]

16.60.5.12 CONFLICT OF INTEREST PROVISIONS:

A. A licensee shall not perform services for a client if the performance of such services will be directly or substantially adverse to another client unless:

(1) the licensee reasonably believes the performance of such services for one client will not adversely affect the relationship with the other client; and

(2) after consultation, each client consents in writing to allow the licensee to provide services to the other client.

B. Divorce proceedings, business dissolutions, and similar transactions are deemed to be directly or substantially adverse to a client.

C. A licensee shall not perform services for a client if the licensee's ability to perform such services may be materially limited by his responsibilities to another client or a third person or by his own interests unless:

(1) the licensee reasonably believes the performance of services will not adversely affect the relationship with the client;

(2) the relationship is disclosed to the client; and

(3) the client consents in writing after consultation.

D. A licensee shall not enter into a business transaction with a client for services other than public accountancy or knowingly acquire an ownership, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the licensee acquires the interest are fair and reasonable to the client;

(2) the terms are fully disclosed and transmitted in writing to the client in a manner that can be reasonably understood by the client;

(3) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and

(4) the client consents in writing thereto.

E. A licensee shall not use information relating to the performance of services for a client to the disadvantage of the client.

F. A licensee who performs services for two or more clients involved in a dispute shall not participate in making an aggregate settlement of the claims of or against the clients unless each client consents in writing after consultation. Consultation shall include disclosure of the existence and nature of all the claims or pleas involved and of the participation of each party involved in the settlement.

[16.60.5.12 NMAC - N, 05-15-2006; A, 1-1-2007]

16.60.5.13 UNAUTHORIZED USE OF THE CPA TITLE:

A. Pursuant to Section 61-28B-26 and 61-28B-13 NMSA 1978, a person whose principal place of business is not in New Mexico can use the term CPA while serving clients in New Mexico as long as (1) the CPA is actively licensed in good standing in his principal place of business and is eligible for practice privileges in New Mexico, and (2) the out-of-state firm obtains a New Mexico firm permit if attest services are performed through mobility for New Mexico clients. However, anyone residing in this state who is not licensed by the New Mexico public accountancy board as a CPA or not granted the practice privilege by 61-28B-26 of the 1999 Public Accountancy Act is restricted to using the term “accountant” in connection with his or her name on all reports, letters of transmittal, or advice, and on all stationery and documents used in connection with his or her services as an accountant, and must refrain from the use in any manner of any other title or designation in such practice while in this state. The exception to this restriction is when an individual residing in this state who is licensed by another jurisdiction wishes to provide a résumé to a prospective employer, the individual may use “CPA” or “certified public accountant” on his or her résumé. However, the individual must clearly indicate the jurisdiction in which he or she holds a CPA certificate as well as the status of that certificate if other than active (inactive, lapsed, retired, etc.). Pursuant to Section 61-28B-17 NMSA 1978, it is unlawful for any person who has not received a certificate as a certified public accountant or not been granted a practice privilege, under Section 61-28B-26 NMSA 1978, admitting the person to practice as a certified public accountant to assume or use such a title, or to use any words, letters, abbreviations, symbols or other means of identification to indicate that the person using same has been admitted to practice as a certified public accountant.

B. A person licensed as a CPA in another jurisdiction who moves to New Mexico with the intention of using the CPA title (whether in public practice, industry, government, or education) must obtain a certificate of from the board prior to using the CPA title in any way in this state. Oral or written statements such as “I am a licensed CPA in another jurisdiction” when used in connection with the individual’s name on all reports, letters of transmittal, or advice, and on all stationery and documents used in connection with the individual’s services as an accountant do not exempt the individual from obtaining a certificate of qualification from the board. Non-resident CPAs who wish to practice in New Mexico may do so only in accordance with Section 61-28B-26 NMSA 1978.

[16.60.5.13 NMAC - N, 09-15-2015]

HISTORY OF 16.60.5 NMAC:

Pre-NMAC History: Material in the part was derived from that previously filed with the Commission of Public Records-State Records Center and Archives;

BPA 84-1, Code of Professional Conduct, filed 07-09-84.

BPA 95-1, Board; Powers and Duties, filed 04-21-95.

History of Repealed Material:

16 NMAC 60.7, Code of Professional Conduct, filed 09-27-95; 16 NMAC 60.9, Specialty Designations, filed 09-27-95; and 16 NMAC 60.10, Parental Responsibility Act, filed 09-27-95, repealed effective 02-14-2002.

Other History:

16 NMAC 60.7, Code of Professional Conduct, filed 09-27-95; 16 NMAC 60.9, Specialty Designations, filed 09-27-95; and 16 NMAC 60.10, Parental Responsibility Act, filed 09-27-95, replaced by 16.60.5 NMAC, Code of Professional Conduct effective 02-14-2002.