



September 13, 2017

The Honorable Tom Marino, Chairman
U.S. House of Representatives
Judiciary Subcommittee on Regulatory
Reform,
Commercial, and Antitrust Law
2138 Rayburn House Office Building
Washington, D.C. 20515

The Honorable David Cicilline, Ranking
Member
U.S. House of Representatives
Judiciary Subcommittee on Regulatory
Reform,
Commercial, and Antitrust Law
2138 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Marino and Ranking Member Cicilline,

The American Institute of CPAs (AICPA) is pleased to submit comments regarding the House Judiciary Subcommittee on Regulatory Reform, Commercial and Antitrust Law hearing, “Occupational Licensing: Regulation and Competition.” We appreciate the Subcommittee’s interest in the issues raised in this hearing and recognize that there are multiple factors when considering how licensure, and the functioning of licensing boards, impacts professions, occupations and the American public.

The AICPA is the world’s largest member association representing the CPA profession, with more than 418,000 members in 143 countries, and a history of serving the public interest since 1887. AICPA members represent many areas of practice, including business and industry, public practice, government, education and consulting. The AICPA sets ethical standards for its members and U.S. auditing standards for private companies, nonprofit organizations, federal, state and local governments. It develops and grades the Uniform CPA Examination, offers specialized credentials, builds the pipeline of future talent and drives professional competency development to advance the vitality, relevance and quality of the profession.

CPAs are regulated at the state level by state boards of accountancy comprised of professional and public members appointed by a state’s governor. Boards of accountancy are charged with utilizing their regulatory authority to protect the public. This includes approving and issuing licenses to individual CPAs and CPA firms, investigating complaints, taking enforcement action for violations of ethical and professional standards, ensuring compliance with continuing education requirements and performing other key functions to ensure that those practicing as CPAs in their states are operating in the public interest.

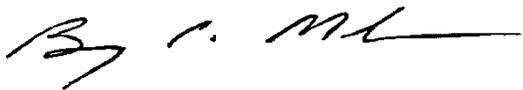
In 2015, in *North Carolina State Board of Dental Examiners v. Federal Trade Commission (NC Dental)*, the Supreme Court ruled that the NC Dental Board was not entitled to so-called “state action” immunity from antitrust laws because its actions were not actively supervised by the state. The Court reasoned that active supervision is necessary for state agencies composed of

active market participants because their private interests are so strong that they create an increased risk of anti-competitive conduct that may not be readily apparent to them. The Court's decision has left questions about the manner in which boards conduct their activities. The AICPA is particularly concerned about the willingness of board members to serve on state accountancy boards in light of the risk of personal liability in lawsuits relating to actions taken in the members' official capacities. The end result is that state professional boards could lose qualified and experienced members. For example, in Florida, the lack of immunity and indemnification for state board members led several board members from the Florida Board of Podiatric Medicine to resign rather than face potential litigation. The entire Florida Board of Employee Leasing Companies resigned because of the lack of state indemnification.

There is widespread agreement regarding the importance of well-functioning licensing boards, in such learned professions as medical, legal, accounting, engineering, architecture and more, to promote and protect public health, safety and welfare. Therefore, the AICPA believes that a federal solution is important to ensure that current and prospective state board members are not deterred from serving because they are uncertain as to any potential liability that could arise from their public service. Such legislation should provide a balanced approach to protecting the public while also allowing for competition in the marketplace for consumers.

Again, the AICPA appreciates the Subcommittee's interest in this area. We encourage the Committee to consider the important role that licensing boards play, and their effective functioning, as it considers both changes to the antitrust laws and any licensing reforms. We are happy to discuss these issues with you and members of the entire Judiciary Committee as you move forward.

Sincerely,

A handwritten signature in black ink, appearing to read "Barry Melancon". The signature is fluid and cursive, with a long horizontal stroke at the end.

Barry Melancon, CPA, CGMA
President and CEO

cc: Members of the House Judiciary Committee