Exposure Draft

Uniform Accountancy Act

Seventh Edition

______, 2013

Revised Definitions

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[Note: Material being deleted is stricken. New material is underlined.]

(Comments must be received by October 17, 2013.)
EXPOSURE DRAFT OF UNIFORM ACCOUNTANCY ACT

This exposure draft contains revisions to the UAA, which are designed to incorporate a change in the definition of “attest.”

The needs of clients and the marketplace, and scope of services, are changing. Historically, even as little as five years ago, assurance and attestation services were discussed in the context of, and generally limited to, audits and reviews of historical financial statements and the UAA so defined the term “attest.” These services are the most important to the public because third parties rely on the licensee’s report concerning financial statements. As a result, they are the only professional accounting services that are reserved to licensees.

Despite this targeted focus in the UAA, the scope of the definition of attest can be impacted through a change in the referenced standards, as happened when SAS 70 was reissued as SSAE 16. Further was the question of whether other SSAE engagements should be incorporated into the definition of attest. Such a change would make the Act flexible enough so major amendments would not be needed as future developments occur in assurance standards or in marketplace demands for assurance services.

In recent years, CPAs have increasingly been asked to report on representations other than historical financial statements. Some non-CPAs have stepped in and provided such services, in some cases using CPA standards of practice to perform services, giving the impression to the public that they are as qualified as CPAs.

To deal with this issue, the proposal is to change the definition of “attest” in the UAA to include all services performed in accordance with the Statements on Standards for Attestation Engagements (“SSAEs”). This is accomplished by adding those services to the attest definition as a separate subsection in the definition, apart from the examinations of prospective financial information already covered in the definition. By so doing, we minimize changes in the provisions governing individual and firm mobility.

The exposure draft includes a more detailed explanation of the proposed revisions, as well as the text of the affected UAA statutory sections that are recommended for addition or change. Statutory provisions are in BOLD type. New language is underlined and language that would be deleted is stricken. To see the entire UAA and Model Rules, you may view them electronically at www.aicpa.org or www.nasba.org.

The AICPA and NASBA UAA Committees welcome your comments on the proposed revisions. The exposure period will end on Thursday, October 17, 2013. Please send your comments to definitionofattest@aicpa.org and lhaberman@nashba.org.

The UAA Committee plans to release in the coming weeks an Exposure Draft on firm mobility.

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SECTION 3
DEFINITIONS

When used in this Act, the following terms have the meanings indicated:

(b) “Attest” means providing the following financial statement services:

(1) any audit or other engagement to be performed in accordance with the Statements on Auditing Standards (SAS);

(2) any review of a financial statement to be performed in accordance with the Statements on Standards for Accounting and Review Services (SSARS);

(3) any examination of prospective financial information to be performed in accordance with the Statements on Standards for Attestation Engagements (SSAE); and

(4) any engagement to be performed in accordance with the standards of the PCAOB; and

(5) any examination, review, or agreed upon procedures engagement to be performed in accordance with the SSAE, other than an examination described in subsection (3).

The standards specified in this definition shall be adopted by reference by the Board pursuant to rulemaking and shall be those developed for general application by recognized national accountancy organizations, such as the AICPA, and the PCAOB.

COMMENT: Subject to the exceptions set out in Section 7, 14, and 23 (a)(4), these services are restricted to licensees and CPA firms under the Act and licensees can only perform the attest services through a CPA firm. Individual licensees may perform the services described in Section 3(f) as employees of firms that do not hold a permit under Section 7 of this Act, so long as they comply with the peer review requirements of Section 6(j). Other attestation professional services are not restricted to licensees or CPA firms; however, when licensees perform those services they are regulated by the state board of accountancy. See also the definition of Report. The definition also includes references to the Public Company Accounting Oversight Board (PCAOB) which make it clear that the PCAOB is a regulatory authority that sets professional standards applicable to engagements within its jurisdiction.

Regarding SSAE engagements, subsection 3(b)(3) only includes SSAE engagements pertaining to the examination of prospective financial information, while subsection 3(b)(5) expressly includes other SSAE engagements. Thus, like other services included in this definition of “Attest,” they are all restricted to licensees and CPA firms.
However, Sections 7, 14 and 23 also mandate that certain types of “Attest” services must be rendered only through licensed CPA Firms. Specifically, Section 7(a)(1)(C) requires licensure of an out-of-state firm even if it does “not have an office in this state but performs attest services described in Section 3(b)(1), (3) or (4) of this Act for a client having its home office in this state.”

By identifying the other SSAE services (that is, other services but not “examinations of prospective financial information”) in a different subsection (5), they, along with the services described in subsections 3(b)(2) (reviews of financial statements according to SSARS), are “Attest” services restricted to CPAs, but out-of-state CPA Firms rendering these services do not have to obtain a permit in every state in which they provide that type of Attest service. Hence, although both 3(b)(3) and 3(b)(5) SSAE services are “Attest” services, only those SSAE services included in 3(b)(3) must be rendered through CPA Firms licensed in every state in which the services are provided. The differentiation between these two categories of SSAE services therefore reduces the burden of multistate licensure and enhances mobility for individual licensees as well as CPA Firms.

This definition of “attest” includes examinations of prospective financial information to be performed in accordance with the Statements on Standards for Attestation Engagements (SSAE) as well as any examination, review, or agreed upon procedures engagement to be performed in accordance with SSAE.

. . . .

(s) “Report,” when used with reference to financial statements any attest or compilation service, means an opinion, report, or other form of language that states or implies assurance as to the reliability of any the attested information or compiled financial statements and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the person or firm is an accountant or auditor, or from the language of the report itself. The term “report” includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any positive assurance as to the reliability of the attested information or compiled financial statements referred to and/or special competence on the part of the person or firm issuing such language; and it includes any other form of language that is conventionally understood to imply such assurance and/or such special knowledge or competence.

COMMENT: As has been explained in the introductory comments, the audit function, which this term is intended to define, is the principal kind of professional accounting service for which a license would be required under the Uniform Act. The term has its most important operative use in section 14(a) of the Act, which prohibits persons not licensed from performing that function as well as any attest or compilation services as defined above.
It is a point of fundamental significance that the audit function is defined, not in terms of the work actually done, but rather in terms of the issuance of an opinion or a report--that is, the making of assertions, explicit or implied--about work that has been done. It is such reports, or assertions, upon which persons using financial statements--attested information (whether clients or third parties) rely, reliance being invited by the assertion, whether explicit or by implication, of expertise on the part of the person or firm issuing the opinion or report. Thus, this definition is sought to be drawn broadly enough to encompass all those cases where either the language of the report itself, or other language accompanying the report, carries both a positive assurance regarding the reliability of the financial information in question, and an implication (which may be drawn from the language of the report itself) that the person or firm issuing the report has special competence which gives substance to the assurance.

The definition includes disclaimers of opinion when they are phrased in a fashion which is conventionally understood as implying some positive assurance, because authoritative accounting literature contemplates several circumstances in which a disclaimer of opinion in standard form implies just such assurances. The same reasoning that makes it appropriate to include disclaimers of opinion in conventional form within the definition of this term makes it appropriate to apply the prohibition on the issuance by unlicensed persons of reports, as so defined, on “reviews” and “compilations” and other communications with respect to “compilations” within the meaning of the AICPA’s Statements on Standards for Accounting and Review Services (SSARS), when the language in which the report or other compilation communication is phrased is that prescribed by SSARS. This is done in section 14(a). These prohibitions, again, do not apply to the services actually performed--which is to say that there is no prohibition on the performance by unlicensed persons of either reviews or compilations, in the sense contemplated by SSARS, but only on the issuance of reports or other compilation communications asserting or implying that their author has complied or will comply with the SSARS standards for such reviews and compilations and has the demonstrated capabilities so to comply.

...
(C) Any firm that does not have an office in this state but performs attest services described in Section 3(b)(1), (3) or (4) of this Act for a client having its home office in this state.

(2) A firm which does not have an office in this state may perform services described in subsections 3(b)(2), 3(b)(5) or 3(f) for a client having its home office in this state and may use the title “CPA” or “CPA firm” without a permit issued under this Section only if:

(A) it has the qualifications described in subsections 7(c) [ownership] and 7(h) [peer review], and

(B) it performs such services through an individual with practice privileges under Section 23 of the Act.

(3) A firm which is not subject to the requirements of 7(a)(1)(C) or 7(a)(2) may perform other professional services while using the title “CPA” or “CPA firm” in this state without a permit issued under this Section only if:

(A) it performs such services through an individual with practice privileges under Section 23 of the Act, and,

(B) it can lawfully do so in the state where said individuals with practice privileges have their principal place of business.

(c) An applicant for initial issuance or renewal of a permit to practice under this Section shall be required to show that:

(1) Notwithstanding any other provision of law, a simple majority of the ownership of the firm, in terms of financial interests and voting rights of all partners, officers, shareholders, members or managers, belongs to holders of a certificate who are licensed in some state, and such partners, officers, shareholders, members or managers, whose principal place of business is in this state, and who perform professional services in this state hold a valid certificate issued under Section 6 of this Act or the corresponding provision of prior law or are public accountants registered under Section 8 of this Act. Although firms may include non-licensee owners the firm and its ownership must comply with rules promulgated by the Board. For firms of public accountants, at least a simple majority of the ownership of the firm, in terms of financial interests and voting rights, must belong to holders of registrations under Section 8 of this Act. An individual who has practice privileges under Section 23 who performs services for which a firm permit is required under
Section 23(a)(4) shall not be required to obtain a certificate from this state pursuant to Section 6 of this Act.

COMMENT: The limitation of the requirement of certificates to partners, officers, shareholders, members and managers who have their principal place of business in the state is intended to allow some latitude for occasional visits and limited assignments within the state of firm personnel who are based elsewhere. If those out-of-state individuals qualify for practice privileges under Section 23 and do not have their principal places of business in this state, they do not have to be licensed in this state. In addition, the requirement allows for non-licensee ownership of licensed firms.

(2) Any CPA or PA firm as defined in this Act may include non-licensee owners provided that:

(A) The firm designates a licensee of this state, or in the case of a firm which must have a permit pursuant to Section 23(a)(4) a licensee of another state who meets the requirements set out in Section 23(a)(1) or in Section 23(a)(2), who is responsible for the proper registration of the firm and identifies that individual to the Board.

(B) All non-licensee owners are active individual participants in the CPA or PA firm or affiliated entities.

(C) The firm complies with such other requirements as the board may impose by rule.

(3) Any individual licensee and any individual granted practice privileges under this Act who is responsible for supervising attest or compilation services and signs or authorizes someone to sign the accountant’s report on the financial statements on behalf of the firm, shall meet the competency requirements set out in the professional standards for such services.

(4) Any individual licensee and any individual granted practice privileges under this Act who signs or authorizes someone to sign the accountants’ report on the financial statements on behalf of the firm shall meet the competency requirement of the prior subsection.

COMMENT: Because of the greater sensitivity of attest and compilation services, professional standards should set out an appropriate competency requirement for those who supervise them and sign attest or compilation reports. However, the accountant’s report in such engagements may be supervised, or signed, or the signature authorized for the CPA firm by a practice privileged individual.
SECTION 14
UNLAWFUL ACTS

(a) Only licensees and individuals who have practice privileges under Section 23 of this Act may issue a report on financial statements of any person, firm, organization, or governmental unit or offer to render or render any attest or compilation service, as defined herein. This restriction does not prohibit any act of a public official or public employee in the performance of that person’s duties as such; or prohibit the performance by any non-licensee of other services involving the use of accounting skills, including the preparation of tax returns, management advisory services, and the preparation of financial statements without the issuance of reports thereon. Non-licensees may prepare financial statements and issue non-attest transmittals or information thereon which do not purport to be in compliance with the Statements on Standards for Accounting and Review Services (SSARS).

COMMENT: This provision, giving application to the definition of attest in section 3(b) and report in section 3(s) above, is the cornerstone prohibition of the Uniform Act, reserving the performance of those professional services calling upon the highest degree of professional skill and having greatest consequence for persons using financial statements attested information--namely, the audit function and other attest and compilation services as defined herein--to licensees. It is so drafted as to make as clear and emphatic as possible the limited nature of this exclusively reserved function and the rights of unlicensed persons to perform all other functions. This wording addresses concerns that this exemption could otherwise, by negative implication, allow non-licensees to prepare any report on a financial statement other than a SSARS--i.e., other attestation standards. Consistent with Section 23, individuals with practice privileges may render these reserved professional services to the same extent as licensees in this state.

This provision is also intended to extend the reservation of the audit function to other services that also call for special skills and carry particular consequence for users of financial statements attested information, albeit in each respect to a lesser degree than the audit function: namely, the performance of compilations and reviews of financial statements, in accordance with the AICPA’s Statements on Standards for Accounting and Review Services, which set out the standards to be met in a compilation or review and specify the form of communication to management or report to be issued and attestation engagements performed in accordance with Statements on Standards for Attestation Engagements which set forth the standards to be met and the reporting on the engagements enumerated in the SSAEs. The subsection is intended to prevent issuance by non-licensees of reports or communication to management using that standard language or language deceptively similar to it. Safe harbor language which may be used by non-licensees is set out in Rule 14-2.

(b) Licensees and individuals who have practice privileges under Section 23 of this Act performing attest or compilation services must provide those services in accordance with applicable professional standards.

(c) No person not holding a valid certificate or a practice privilege pursuant to Section 23 of this Act shall use or assume the title “certified public accountant,” or the
abbreviation “CPA” or any other title, designation, words, letters, abbreviation, 
sign, card, or device tending to indicate that such person is a certified public 
accountant.

COMMENT: This subsection prohibits the use by persons not holding certificates, or practice 
privileges, of the two titles, “certified public accountant” and “CPA,” that are specifically and 
inextricably tied to the granting of a certificate as certified public accountant under section 6.

(d) No firm shall provide attest services or assume or use the title “certified public 
accountants,” or the abbreviation “CPAs,” or any other title, designation, words, 
letters, abbreviation, sign, card, or device tending to indicate that such firm is a 
CPA firm unless (1) the firm holds a valid permit issued under Section 7 of this Act, 
and (2) ownership of the firm is in accord with this Act and rules promulgated by 
the Board.

COMMENT: Like the preceding subsection, this one restricts use of the two titles “certified 
public accountants” and “CPAs,” but in this instance by firms, requiring the holding of a firm 
permit to practice. It also restricts unlicensed firms from providing attest services.

(e) No person shall assume or use the title “public accountant,” or the abbreviation 
“PA,” or any other title, designation, words, letters, abbreviation, sign, card, or 
device tending to indicate that such person is a public accountant unless that person 
holds a valid registration issued under Section 8 of this Act.

COMMENT: This subsection, and the one that follows, reserve the title “public accountant” and 
its abbreviation in the same fashion as subsections (c) and (d) do for the title “certified public 
accountant” and its abbreviation. The two provisions would of course only be required in a 
jurisdiction where there were grandfathered public accountants as contemplated by section 8.

(f) No firm not holding a valid permit issued under Section 7 of this Act shall provide 
attest services or assume or use the title “public accountant,” the abbreviation 
“PA,” or any other title, designation, words, letters, abbreviation, sign, card, or 
device tending to indicate that such firm is composed of public accountants.

COMMENT: See the comments following subsections (d) and (e).

(g) No person or firm not holding a valid certificate, permit or registration issued under 
Sections 6, 7, or 8 of this Act shall assume or use the title “certified accountant,” 
“chartered accountant,” “enrolled accountant,” “licensed accountant,” “registered 
accountant,” “accredited accountant,” or any other title or designation likely to be 
confused with the titles “certified public accountant” or “public accountant,” or use 
any of the abbreviations “CA,” “LA,” “RA,” “AA,” or similar abbreviation likely to 
be confused with the abbreviations “CPA” or “PA.” The title “Enrolled Agent” or 
“EA” may only be used by individuals so designated by the Internal Revenue 
Service.
COMMENT: This provision is intended to supplement the prohibitions of subsections (c) through (f) on use of titles by prohibiting other titles that may be misleadingly similar to the titles specifically reserved to licensees or that otherwise suggest that their holders are licensed.

(h)(1) Non-licensees may not use language in any statement relating to the financial affairs of a person or entity which is conventionally used by licensees in reports on financial statements or on any attest service as defined herein. In this regard, the Board shall issue safe harbor language non-licensees may use in connection with such financial information.

(2) No person or firm not holding a valid certificate, permit or registration issued under Sections 6, 7, or 8 of this Act shall assume or use any title or designation that includes the words “accountant,” “auditor,” or “accounting,” in connection with any other language (including the language of a report) that implies that such person or firm holds such a certificate, permit, or registration or has special competence as an accountant or auditor, provided, however, that this subsection does not prohibit any officer, partner, member, manager or employee of any firm or organization from affixing that person’s own signature to any statement in reference to the financial affairs of such firm or organization with any wording designating the position, title, or office that the person holds therein nor prohibit any act of a public official or employee in the performance of the person’s duties as such.

COMMENT: This provision clarifies the language and titles that are prohibited for non-licensees. Like the preceding subsection, subsection (h)(2) of this provision is intended to supplement the prohibitions of subsections (c) through (f), by prohibiting other titles which may be misleadingly similar to the specifically reserved titles or that otherwise suggest licensure. In the interest of making the prohibition against the issuance by unlicensed persons of reports on audits, reviews, and compilations and reports issued under the SSAE as tight and difficult to evade as possible, there is also some overlap between this provision and the prohibitions in subsection (a). Safe harbor language is set out in Rule 14-2.

(i) No person holding a certificate or registration or firm holding a permit under this Act shall use a professional or firm name or designation that is misleading about the legal form of the firm, or about the persons who are partners, officers, members, managers or shareholders of the firm, or about any other matter, provided, however, that names of one or more former partners, members, managers or shareholders may be included in the name of a firm or its successor. A common brand name, including common initials, used by a CPA Firm in its name, is not misleading if said firm is a Network Firm as defined in the AICPA Code of Professional Conduct (“Code”) in effect July 1, 2011 and, when offering or rendering services that require independence under AICPA standards, said firm must comply with the Code’s applicable standards on independence.

COMMENT: With regard to use of a common brand name or common initials by a Network Firm, this language should be considered in conjunction with Rules 14-1 (c) and (d), which provide further clarity and guidance.
(j) None of the foregoing provisions of this Section shall have any application to a
person or firm holding a certification, designation, degree, or license granted in a
foreign country entitling the holder thereof to engage in the practice of public
accountancy or its equivalent in such country, whose activities in this State are
limited to the provision of professional services to persons or firms who are
residents of, governments of, or business entities of the country in which the person
holds such entitlement, who performs no attest or compilation services as defined
and who issues no reports as defined in this Act with respect to the information
financial statements of any other persons, firms, or governmental units in this State,
and who does not use in this State any title or designation other than the one under
which the person practices in such country, followed by a translation of such title or
designation into the English language, if it is in a different language, and by the
name of such country.

COMMENT: The right spelled out in this provision, of foreign licensees to provide services in
the state to foreign-based clients, looking to the issuance of reports only in foreign countries, is
essentially what foreign licensees have a right to do under most laws now in effect, simply
because no provision in those laws restricts such a right. The foreign titles used by foreign
licensees might otherwise run afoot of standard prohibitions with respect to titles (such as one on
titles misleadingly similar to “CPA”) but this provision would grant a dispensation not found in
most laws now in force.

(k) No holder of a certificate issued under Section 6 of this Act or a registration issued
under Section 8 of this Act shall perform attest services through any business form
that does not hold a valid permit issued under Section 7 of this Act.

COMMENT: See the comments following Sections 6(a), 7(a) and 8.

(l) No individual licensee shall issue a report in standard form upon a compilation of
financial information through any form of business that does not hold a valid permit
issued under Section 7 of this Act unless the report discloses the name of the
business through which the individual is issuing the report, and the individual:

(1) signs the compilation report identifying the individual as a CPA or PA,

(2) meets the competency requirement provided in applicable standards, and

(3) undergoes no less frequently than once every three years, a peer review
conducted in such manner as the Board shall by rule specify, and such review
shall include verification that such individual has met the competency
requirements set out in professional standards for such services.

(m) Nothing herein shall prohibit a practicing attorney or firm of attorneys from
preparing or presenting records or documents customarily prepared by an attorney
or firm of attorneys in connection with the attorney’s professional work in the
practice of law.
(n)(1) A licensee shall not for a commission recommend or refer to a client any product or service, or for a commission recommend or refer any product or service to be supplied by a client, or receive a commission, when the licensee also performs for that client,

(A) an audit or review of a financial statement; or

(B) 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 licensee’s compilation report does not disclose a lack of independence; or

(C) an examination of prospective financial information.

This prohibition applies during the period in which the licensee is engaged to perform any of the services listed above and the period covered by any historical financial statements involved in such listed services.

(2) A licensee who is not prohibited by this section from performing services for or receiving a commission and who is paid or expects to be paid a commission shall disclose that fact to any person or entity to whom the licensee recommends or refers a product or service to which the commission relates.

(3) Any licensee who accepts a referral fee for recommending or referring any service of a licensee to any person or entity or who pays a referral fee to obtain a client shall disclose such acceptance or payment to the client.

(o)(1) A licensee shall not:

(A) perform for a contingent fee any professional services for, or receive such a fee from a client for whom the licensee or the licensee’s firm performs,

(i) an audit or review of a financial statement; or

(ii) 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 licensee’s compilation report does not disclose a lack of independence; or

(iii) an examination of prospective financial information; or

(B) Prepare an original or amended tax return or claim for a tax refund for a contingent fee for any client.

(2) The prohibition in (1) above applies during the period in which the licensee is engaged to perform any of the services listed above and the period covered by any historical financial statements involved in any such listed services.
(3) Except as stated in the next sentence, a contingent fee is a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. Solely for purposes of this section, fees are not regarded as being contingent if fixed by courts or other public authorities, or, in tax matters, if determined based on the results of judicial proceedings or the findings of governmental agencies. A licensee’s fees may vary depending, for example, on the complexity of services rendered.

COMMENT: Section 14(n) on commissions is based on Rule 503 of the AICPA Code of Professional Conduct. Section 14(o) on contingent fees is based on Rule 302 of the AICPA Code of Professional Conduct.

(p) Notwithstanding anything to the contrary in this Section, it shall not be a violation of this Section for a firm which does not hold a valid permit under Section 7 of this Act and which does not have an office in this state to provide its professional services in this state so long as it complies with the requirements of Section 7(a)(2) or 7(a)(3), whichever is applicable.

COMMENT: Section 14(p) has been added along with revisions to Sections 23 and 7, to provide that as long as an out-of-state firm complies with the requirements of new Section 7(a)(2) or 7(a)(3), whichever is applicable, it can do so through practice privileged individuals without a CPA firm permit from this state.