

# CSI - Ohio

The Common Sense Initiative

## Business Impact Analysis

Agency Name: Accountancy Board of Ohio\_\_\_\_\_

Regulation/Package Title: August 2012 Rule Filing\_\_\_\_\_

Rule Number(s): 4701-7-04, 4701-7-08, 4701-9-01, 4701-9-05, 4701-11-03, 4701-17-08

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Date: August 3, 2012\_\_\_\_\_

**Rule Type:**

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|---|--|
| <input type="checkbox"/> New                | <input type="checkbox"/> 5-Year Review |
| <input checked="" type="checkbox"/> Amended | <input type="checkbox"/> Rescinded     |

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

### **Regulatory Intent**

1. Please briefly describe the draft regulation in plain language.

*Please include the key provisions of the regulation as well as any proposed amendments.*

The six rules cover the following topics:

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- Rule 4701-7-04 defines the terms “public accounting” and “regulated services.” These are the only two groups of services regulated by the Accountancy Board. Public accounting services must always be in accordance with applicable professional standards and must be performed in a registered public accounting firm. Regulated services refer to certain services performed outside a public accounting firm in which a CPA is both using the CPA designation and expected to follow the professional standards.
  - Rule 4701-7-08 defines the “Inactive” designation required for CPAs who do not hold a permit to practice public accounting.
  - Rule 4701-9-01 describes the general ethical principles of integrity and objectivity as they apply to CPAs.
  - Rule 4701-9-05 defines the professional standards for attestation services. Attestation services are ones in which a CPA makes an assertion about a client’s financial data for the benefit of creditors or third-party investors.
  - Rule 4701-11-03 prohibits contingent fees for engagements in which the CPA must be independent and not an advocate for the client. Contingent fees are dependent upon attaining a certain result and are not related to the quantity of work performed.
  - Rule 4701-17-08 describes the surcharge to the license fee earmarked for the education assistance fund.
2. **Please list the Ohio statute authorizing the Agency to adopt this regulation.** Section 4701.03, Revised Code, for all rules except 4701-17-08; section 4701.26 for rule 4701-17-08.
  3. **Does the regulation implement a federal requirement? No Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program? No** *If yes, please briefly explain the source and substance of the federal requirement.*
  4. **If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.** Not applicable; see #3.
  5. **What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?** The reasoning is as follows:
    - The main purpose of the Accountancy Board of Ohio is to regulate the practice of public accounting, and rule 4701-7-04 defines those activities the Board regulates.

- The Board is of the opinion that a CPA with an inactive license (Ohio registration: only a fee is required for license renewal) must designate that fact as opposed to a CPA with an active license (Ohio permit). Hence there is a need for rule 4701-7-08.
- Rule 4701-9-01 clarifies the general ethical principles listed in paragraph (A) of the rule with specific guidance concerning common professional situations.
- Rule 4701-9-05 refers to a broad class of professional standards (attestation standards) that CPAs are expected to follow.
- A contingent fee (rule 4701-11-03) is dependent on a certain outcome. When a fee is dependent upon the amount of profit shown on a company's books or the "tax savings" that can be found, there is potential for distortion of a fair presentation of the client's financial situation.
- The education assistance program (Chapter 4701-17 of the Administrative Code) is not a regulation *per se*, but implements part of the statute (section 4701.26 of the Revised Code) providing aid to students completing the fifth year of study for the CPA certificate.

**6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?** CPAs tend to view outputs and outcomes as functions of the private sector. It is difficult for a government agency to focus on outputs or outcomes because compliance with the law is not under an agency's direct control. Also, focusing on internal outcomes can lead to unintended results because whether a CPA should be disciplined for a violation of the accountancy law should not be related to any "goal" of X licensees should be disciplined or there shall be an X per cent increase in "disciplinary activity" from one fiscal year to the next. The Accountancy Board of Ohio is essentially a law enforcement agency. We enforce the provisions of Chapter 4701 of the Revised Code, and if we administer the statute fairly and impartially there will be no way we can predict any "outputs" or "outcomes."

However, in terms of "office management," and in comparison to other state accountancy boards, we rank very high on measures such as number of licensees served per staff person and cost per licensee.

### **Development of the Regulation**

**7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

*If applicable, please include the date and medium by which the stakeholders were initially contacted.*

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Our major stakeholders are the Ohio Society of Certified Public Accountants (OSCPA) and the Ohio Association of Independent Accountants (OAIA)/National Society of Accountants (NSA). The rules were first proposed at the June 8, 2012 Board meeting. The rule changes and rule explanations were posted on the Board website (<http://acc.ohio.gov>). At its July 13, 2012 meeting, the Accountancy Board of Ohio voted unanimously to begin the rule filing process.

**8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

During the initial review period, we received no comments on the proposed changes from the OSCPAs or the NSA, nor did we receive any emails or comments from the general public.

**9. What scientific data was used to develop the rule or the measurable outcomes of the rule? There were no scientific studies conducted regarding the drafting of the rule language, but we approach every rule change with the view that the rule should be understandable and not confusing. How does this data support the regulation being proposed? Not applicable.**

**10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? The Board considers all rule changes to be an improvement on the current language. The Accountancy Board of Ohio rules are short enough that an alternative regulation, if adopted, would likely result in rescission of a rule and possibly its replacement by a better rule. If none, why didn't the Agency consider regulatory alternatives? Not applicable.**

**11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.* None of the Board rules specify any particular process that must be followed in order to achieve compliance with the rule.**

**12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation? The Accountancy Board of Ohio is the only state agency that regulates the CPA profession. We do not believe that it is likely that any other state agency would promulgate rules similar to those of the Board.**

**13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community. The Board has long believed that any regulation that cannot be applied consistently and predictably should not be promulgated in the first place.**

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## **Adverse Impact to Business**

**14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

- a. Identify the scope of the impacted business community;** The impacted business community will consist of individual certified public accountants and the few remaining public accountants. The use of the term “CPA” in this document also refers to the public accountants.
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance);** The impact is as follows:
  - Rule 4701-7-04 applies only to those CPAs who are performing services that the national CPA professional standards define as being subject to those standards.
  - Rule 4701-7-08 applies only to those CPAs who do not perform services described in rule 4701-7-04 and who wish to obtain the Ohio registration (inactive license).
  - Rule 4701-9-01(A) is mentioned in the national CPA professional standards. Paragraphs (B) and (C) were added for clarification.
  - Rule 4701-9-05 is mentioned in the national CPA professional standards.
  - Rule 4701-11-03 is mentioned in the national CPA professional standards.
  - Rule 4701-17-08 defines the surcharge to the regular license fee earmarked for the CPA education assistance fund for minority students and students demonstrating financial need.

**and**

- c. Quantify the expected adverse impact from the regulation.**  
*The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.*

- We do not consider the impact of rules 4701-7-04, 4701-7-08, 4701-9-01, 4701-9-05, and 4701-11-03 to be adverse since the defining characteristic of most professions is a body of professional standards to which the practitioners are expected to adhere.
- Rule 4701-17-08 assesses a \$10 fee per year (\$30 for the normal three-year license) in addition to the regular license fee. This fee is authorized by statute

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(division (H)(1)(b) of section 4701.10 of the Revised Code). This surcharge represents the only increase in the amount paid by CPAs for a license since 1991.

- 15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?** When the bill was passed in 1992, the General Assembly specified if the requirement for the CPA certificate were to increase by one year of college, then assistance should be available for qualifying students for that extra year.

### **Regulatory Flexibility**

- 16. Does the regulation provide any exemptions or alternative means of compliance for small businesses?** No. **Please explain.** A large number of CPAs work in small businesses, so the Board is cognizant of the regulatory burden on those businesses. The Board has filed its rules with the Office of Small Business since that agency began accepting rule filings.
- 17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?** Five of the six rules do not generate any paperwork. The education assistance surcharge is added to the regular license fee so licensees do not have any additional paperwork.
- 18. What resources are available to assist small businesses with compliance of the regulation?** We believe that compliance with these rules is straightforward. All CPAs are expected to comply with rules 4701-7-04, 4701-9-01, 4701-9-05, and 4701-11-03 simply by being licensed CPAs. Rule 4701-7-08 only applies to CPAs not performing work defined in rule 4701-7-04. All CPAs must comply with rule 4701-17-08 but the Board does not believe that an extra \$10 per year assessment is excessive.