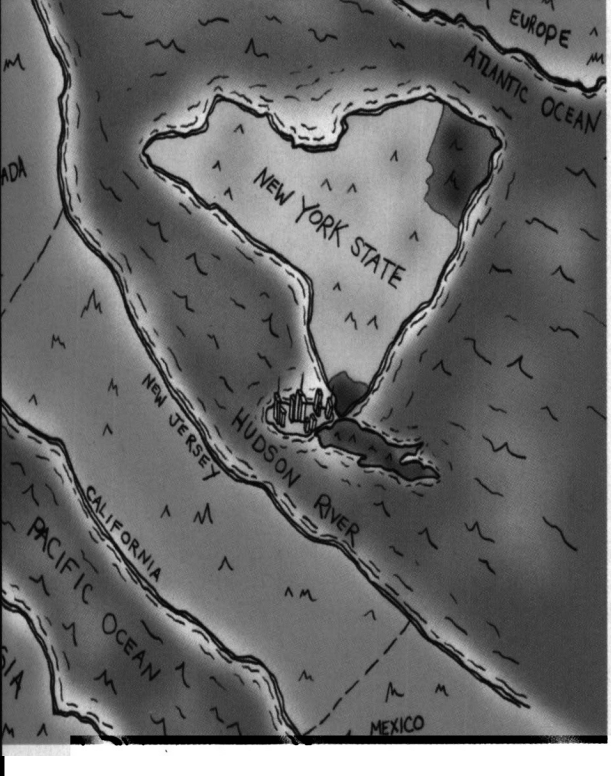
'Excelsior'

The Pursuit of Quality in the CPA Profession

By Kevin J. McCoy and Thomas E. Riley

Much is expected of New York State, given its motto, "Excelsior"—to strive ever upward. Its history is rich with examples of societal needs that motivated citizens to act. In 1807, New York launched a new era in transportation with the Fulton steamboat. Later in the 19th century, it opened its doors as a haven for the oppressed of Europe. It has served as America's principal port for overseas commerce, produced the first secretary of the treasury and first chief justice of the Supreme Court, and hosted the first women's rights convention. The New York Stock Exchange is also the home to the world's financial underpinnings.



"Striving ever upward" has permeated the accounting profession as well. The New York State legislature passed the first state accountancy law, establishing the CPA designation on April 17, 1896. This was followed shortly by the birth of the New York State Society of CPAs (NYSSCPA) in 1897.

In 1896, the founders of the profession in New York worked with the state legislature and the Regents of the University of the State of New York to set the bar for the regulation of the profession. In 2009, the state legislature raised the bar higher.

On January 27, 2009, Governor David A. Paterson signed into law a bill that sets higher standards for all CPAs practicing in the state, effective July 26, 2009. The scope of professional services now includes management advisory, financial advisory, and tax preparation services, as well as other services provided by CPAs to their non-CPA-firm employers (i.e., CPAs in industry, government, and academia). In bringing all New York State CPAs under state regulatory oversight, the law will mandate all CPAs to meet continuing professional education (CPE) requirements. Previously, only the attest, compilation, financial forecasts, and financial projection services fell under the law. The law will also require that most firms providing attest services will be required to undergo peer review every three years.

The changes are long overdue. Since the birth of the public accountancy profession in the United States, the world has changed substantially, to say the least. To understand how long it has taken New York to update its law, we must examine the era of its infancy.

Advent of a Profession

In 1897, William McKinley was president of the United States. Brooklyn was about to become part of New York City. The Alaska Gold Rush was in full swing. The word "computer" was used for the first time to describe a mechanical calculating device. Americans had elected McKinley during a time that the nation's focus was on the economy, particularly on the issues of the gold standard and free silver. The map of the United States in 1896 illustrates the election: McKinley, a Republican, became president with support in the Northeast, upper Midwest, and Pacific Coast states. His opponent, Democrat William Jennings Bryan, had support in the South, rural Midwest, and Rocky Mountain states. It was within this political and economic context that the public accountancy profession was born in the United States.

Time and society moved on. With the 1939 codification and the evolution of the income tax into a mass tax, the

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argument to include tax services under the scope of practice of CPAs began. From 1940 to 1945, increases in the income tax were used to fund a second World War. The year 1942 saw the introduction of payroll withholding at source. Fewer than 4 million returns were filed in 1939; by 1945 that number had increased to nearly 43 million returns.

Not until 1947, more than a generation ago, did the New York legislature revisit the law that governed New York State accountants. At that time, Harry S. Truman was president. The United States had recently seen the birth of the International Organization of Standardization, the creation of the International Monetary Fund, and the proclamation of the Truman Doctrine. In 1947, Jackie Robinson broke the color barrier in professional baseball. In hopes of curbing the rise of Communism, the Marshall Plan for economic recovery in Europe was outlined. Princess Elizabeth announced her engagement and married Philip Mountbatten. The National Security Act of 1947 led to the creation of the Central Intelligence Agency, the Department of Defense, the Joint Chiefs of Staff, and the National Security Council. Pakistan and India gained independence from the United Kingdom. The United Nations voted to partition Palestine into Arab and Jewish states, eventually leading to the creation of the state of Israel.

The definition of public accountancy also includes but is not limited to "accounting, management advisory, financial advisory, and tax" services.

Legislation Meets the Real-World Economy

Due to its dated legislation, New York has lagged behind in the regulation of the accounting profession. As the world changed, the scope of New York's accountancy statute remained frozen in time.

The new law changes that. The definition of public accountancy is expanded beyond CPAs providing "core" attest and compilation services, and now applies to CPAs who offer to perform or perform professional services for clients "in any or all matters relating to accounting concepts and to the recording, presentation, or certification of financial information or data," which are incident to attest or compilation services.

The definition also includes but is not limited to "accounting, management advisory, financial advisory, and tax" services, "involving the use of professional skills or competencies of the licensed accountant as described in the rules of the New York Board of Regents." Also covered are professional services rendered by CPAs to their non-CPA firm employers (i.e., private industry, government, and academia) "in any and all matters related to accounting concepts and to the recording of financial data, or information or the preparation or presentation of financial statements." All CPAs falling within the expanded scope of practice will be required to register triennially with the New York State Education Department (SED) and take CPE courses.

While the scope of practice has been expanded by the new law, the mandatory CPE requirements for CPAs already in public practice remain the same—except that the required annual 24 hours of CPE concentrated in accounting, auditing, or taxation is expanded to 24 hours of CPE concentrated in any of the recognized areas of study, including accounting, attest, auditing, taxation, advisory services, specialized knowledge, and applications related to specialized industries and "such other areas appropriately related to the practice of accounting as acceptable to the SED."

All New York–licensed CPAs will be affected by the change to a calendar-year basis for annual completion of CPE requirements; however, the new legislation provides for a transition period that is expected to be addressed in SED regulations. CPAs will continue to have the option to pursue 40 hours of continuing education in broad-based areas instead of a 24-hour concentration in the expanded recognized areas of study.

The new accountancy law is expected to foster a new regulatory standard for experience requirements for CPA licensure that reflects the experience CPAs may gain in any of the diverse areas of practice—public practice, private industry, government, or academia. In 1998, the Board of Regents adopted a regulation to take effect on August 1, 2009, that will require all candidates for CPA licensure to have completed a minimum of 150 semester hours in accounting education and one year of experience, substantially in audit services. A new regulatory standard for experience is expected to be adopted in conjunction with the upcoming 150-hour education requirement for all candidates in New York.

It is anticipated that the Board of Regents and the SED will amend the current experience regulation to broaden the qualifying experience for candidates to encompass employment in any of the areas of service within the expanded scope of practice under the new accountancy law. The new law gives no guidance to regulators as to the duration of qualifying experience for licensure, nor does it specify the nature, quality, level, or scope of professional experience to be obtained. Furthermore, it gives no guidance to regulators as to whether every CPA candidate must have minimum percentages of experience in any one or more of the professional services included in the expanded scope of practice. The Memorandum in Support of Legislation submitted in the New York State Assembly is an important part of the legislative history for the new law, and it provides a strong statement of legislative intent that experience for CPA licensure should be expanded: "Due to the expansion of the scope of practice of public accountancy under this act, it would be appropriate for the Board of Regents to also expand the experience requirements, which may include accounting, attest, compilation, management advisory, financial advisory, tax preparation and advisory ser-

vices, or other professional services involving the use of professional skills or competencies of a licensed accountant."

Public Protection Paramount

Recent news stories about very high-profile financial failures have underscored the importance of public protection. In order to uphold the highest standards of the CPA profession and to improve public protection, all New York State CPA firms practicing attest or compilation services will have to be registered with the SED, and those with two or more accounting professionals that provide attest services will have to undergo quality (i.e., peer) review every three years, beginning in January 2012.

To further ensure public protection, a firm's registration application must list all the states in which it is registered and all the states where it has received or applied for registration, license, or permit. It must also list suspensions, denials, and revocations of registration by other states within the past three years. In addition, every CPA firm that performs attest services for a New York State or municipal governmental entity will now have to undergo an external peer review in conformity with requirements pursuant to *Government Auditing Standards* (the Yellow Book), issued by the U.S. comptroller general.

The American Institute of Certified Public Accountants' (AICPA) peer review program was the first of its kind when established in 1977, and is directed by the AICPA's Peer Review Board, which educates, oversees, and sets standards for the practice. The NYSSCPA already administers the AICPA program in New York. State societies, groups of state societies, and the AICPA's National Peer Review Committee (NPRC) are all eligible to administer peer review. The NPRC oversees peer reviews of firms auditing public companies and registered with the Public Company Accounting Oversight Board (PCAOB). Peer review is required in more than 40 other states and jurisdictions—Colorado, Delaware, Puerto Rico, the U.S. Virgin Islands, and the Northern Mariana Islands are the only jurisdictions that do not have a requirement in place and are not working toward one.

More than 1,800 New York State CPA firms already voluntarily participate in peer review through the AICPA. AICPA member firms are required to complete peer review every three years if they have an auditing, attest, or compilation practice, defined as engagements performed under the Statements on Auditing Standards, Statements on Standards for Accounting and Review Services, Statements on Standards for Attestation Engagements, *Government Auditing Standards*, and audits of non-SEC issuers performed pursuant to PCAOB standards.

All CPA firms practicing attest or compilation services will have to be registered with the SED, and those with two or more professionals will have to undergo quality (i.e., peer) review every three years.

Mobility Under the New Law

New York's new accountancy law provides enhanced mobility for out-of-state CPAs. The state legislature has made remarkable progress on mobility—moving from virtually no cross-border practice privileges to a new temporary practice permit for attest and compilation services and a new "no notice, no permit, no fee" approach for nonattest services provided in New York by out-of-state CPAs. Technology enables—and sometimes requires—CPAs to provide their services across state lines, but New York state legislators had been hesitant to exchange public protection in order to make it easier for out-of-state CPAs to perform attest and compilation services.

New Temporary Practice Permit

The new accountancy law provides temporary practice permits for attest and compilation services by out-of-state CPAs. The definitions section of the new law defines both "attest" and "compilation." To obtain a permit, a CPA must hold a valid license from another state—the CPA's principal place of business—that the Board of Regents has determined to have significantly comparable licensure requirements to New York, or be a CPA whose licensure qualifications are deemed by the SED to be significantly comparable to New York's, as well as be in good standing.

Temporary practice permit applications will be submitted electronically through a procedure to be established by the education commissioner and will be processed within 30 days after the SED renders an initial determination that the applicant has submitted the necessary information. Applicants can practice during this time, but must cease practicing if the application is denied. CPAs practicing with a temporary practice permit and the firm that employs them to provide services in New York also consent to comply with the rules and regulations of the Board of Regents and the SED; to the regents' personal and subject matter jurisdiction and disciplinary authority; and to the secretary of state or another official in the state of the CPA's licensure or the firm's principal place of business, as agent for service of process in any action or proceeding by the SED against the CPA or firm.

Temporary practice permits are good for 180 days during a 12-month period beginning on the effective date of the permit. They can be renewed a maximum of three times, and the applicant can practice no more than four years within a five-year period. Permit fees will be determined by the Board of Regents through regulation. CPAs cannot have more than one temporary practice permit at any given time. If a CPA applies for licensure in New York on or before the expiration of a temporary practice permit, the law allows that individual to continue to practice under the temporary practice permit during the time the licensure application is pending.

Applicants who fail to meet the requirements will not receive a temporary practice permit and are subject to full licensing and registration requirements. In addition, temporary practice permit holders whose license is no longer valid or are

not in good standing—or if final disciplinary action was taken against the out-of-state CPA's license in any other state concerning the practice of public accountancy—can no longer practice or offer to practice attest and compilation services in New York, either individually or on behalf of their firm.

Nonattest Services by Out-of-State CPAs

Under the new accountancy law, out-of-state CPAs may perform nonattest services (excluding compilations) in New York without a temporary practice permit and without giving any notice to the SED. While a compilation is deemed by the profession to constitute a nonattest service, the new law requires an out-of-state CPA to obtain a temporary practice permit to perform attest and compilation services. Out-of-state CPAs providing nonattest services in New York—such as accounting, management advisory, financial advisory, or tax—and out-of-state CPAs rendering professional services to their New York non-CPA-firm employer—relating to accounting concepts and the recording of financial data or information or the preparation or presentation of financial statements—must have a valid license from another state, be in good standing, and practice public accountancy in another state that is the CPA's principal place of business.

Unlike the temporary practice permit provision, the new law grants no authority for a fee to be established by the Board of Regents for out-of-state CPAs rendering nonattest services in New York.

Out-of-state CPAs providing nonattest services in New York and the firms that employ them also consent to comply with the rules of the Board of Regents and regulations of the SED; to the regents' disciplinary authority; and to the secretary of state or another official in the state of the CPA's licensure or the firm's principal place of business, as agent for service of process in any action or proceeding by the SED against the CPA or firm.

In addition, if the out-of-state CPA's license is no longer valid or in good standing in the state of the CPA's principal place of business, or if final disciplinary action was taken against the out-of-state CPA's license in any other state concerning the practice of public accountancy, that CPA can no longer perform or offer to perform nonattest services in New York, either individually or on behalf of his firm.

The mobility provided in the new accountancy law for out-of-state CPAs to render nonattest services in New York is more liberal than the section 23 mobility in the model Uniform Accountancy Act (UAA) of the AICPA and the National Association of State Boards of Accountancy (NASBA), sometimes called "no notice, no fee, no escape." The threshold question under section 23 for out-of-state licensees is whether NASBA's National Qualification Appraisal Service (NQAS) has verified the licensure requirements of their state of licensure to be substantially equivalent to the CPA licensure requirements of the UAA, or, if the state of licensure is not so verified, whether the out-of-state CPA's individual licensure qualifications are verified by NQAS to be substantially equivalent to the UAA's CPA licensure requirements. Upon such verification by NQAS, the individual out-of-state CPA is presumed under section 23 to have qualifications substantially equivalent to the licensure requirements of the state entered, to offer or render professional services, whether in person, by mail, by telephone, or by electronic means, and to be granted practice privileges in such state without notice or other submission. With respect to the individual qualifications of a CPA who is licensed in a state that is not deemed substantially equivalent by NQAS, section 23 has a grandfather clause stating that any individual who passed the Uniform CPA Examination and holds a valid license issued by any other state prior to January 1, 2012, may be exempt from the education requirement for licensure under the 150-hour education requirement in UAA section 5(c)(2), for purposes of UAA section 23 substantial equivalency.

With respect to nonattest services, New York's new accountancy law—unlike the UAA—does not require any determination that the CPA's state of licensure is substantially equivalent to New York's or to the UAA's CPA licensure requirements, or that the out-of-state CPA's individual licensure qualifications are substantially equivalent to the UAA's licensure requirements.

For example, Louisiana and New York are two of 47 states deemed by the NQAS to be substantially equivalent to the CPA licensure requirements of the UAA; however, the State Board of CPAs of Louisiana does not deem New York to be substantially equivalent until August 1, 2009 (the date the 150-hour education requirement takes effect in New York). In contrast, under New York's new accountancy law, CPAs licensed and having their principal place of business in Louisiana or any other state will be allowed to practice nonattest services in New York without any determination by New York's Board of Regents or the SED that the licensure requirements of Louisiana are either substantially equivalent to the UAA licensure requirements or significantly comparable to New York's licensure requirements. The licensure requirements of the other state are irrelevant under the new provision for nonattest services in New York by out-of-state CPAs. It should be noted that the new law's definition of state includes the jurisdictions of the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam.

NQAS does not consider Colorado, New Hampshire, Vermont, Puerto Rico, or the U.S. Virgin Islands to have licensure requirements that are substantially equivalent to the UAA's licensure requirements. Under the new accountancy law in New York, CPAs in any state, including Colorado, New Hampshire, and Vermont (as well as the territories of Puerto Rico and the U.S. Virgin Islands) will be allowed to perform nonattest services in New York as long as the CPA holds a valid license in good standing to practice public accountancy in another state that is his principal place of business. Out-of-state CPAs from Colorado, New Hampshire Vermont, Puerto Rico, and the Virgin Islands, like CPAs licensed in any other state, automatically consent to New York's "no escape" provisions individually and on behalf of the CPA firm that employs them.

In passing the new accountancy law, New York legislators recognized that nonattest services are already provided in New York by non-CPAs, either with or

without a principal place of business in New York, so it appeared inconsistent to require a permit from out-of-state CPAs for the same nonattest services. Similar to New York CPAs, out-of-state CPAs performing nonattest services will be subject to disciplinary action by the Board of Regents via the automatic consent, "no escape" provision in the new law.

History of Mobility

NASBA and the AICPA created the UAA in 1984. It was written as a comprehensive piece of model legislation that could be enacted by states to replace existing state law entirely or added in sections to existing state laws. Only state legislatures have the power to enact the UAA or its provisions. The UAA's section 23 was introduced in 1998 and provided for mobility in states that were "substantially equivalent" to the licensure requirements of the UAA. Section 23 substantial equivalency was intended to afford a CPA with a license in good standing from a state with CPA licensing requirements essentially equal to those in the UAA to be granted practice privileges in another state that is not her principal place of business. In practice, however, section 23 resulted in a patchwork of notice requirements and fees among many states and yielded a lack of uniformity for cross-border practice privileges.

Section 23 was amended by NASBA and the AICPA in 2007 to remove any notification requirement for out-of-state CPAs practicing under substantial equivalency. The amendments also strengthened a "no escape" provision, whereby a CPA automatically consents to be subject to the accountancy rules, regulations, and disciplinary procedures of any state, as well as consents to appointment of the state board of the CPA's principal place of business for service of process. While the "no escape" provisions of the UAA are similar to the "no escape" language in New York's temporary practice permit provisions for attest and compilation services, the New York law differs from UAA section 23 because New York lawmakers, with the NYSSCPA's support, rejected the UAA section 23's "no notice" and "no fee" provisions with respect to attest and compilation services.

New York State legislators believed the "no notice" provision raised a public protection issue, and they did not want out-of-state CPAs practicing attest and compilation services in New York without first notifying the state that they are here and being subject to a determination by the Board of Regents that the other state of licensure has licensing requirements that are significantly comparable to New York's, or that the individual's out-of-state CPA's licensure qualifications are significantly comparable to New York's. Under New York's new accountancy law, attest and compilation services are exclusive services of the CPA profession, and the other state's or individual licensee's licensure qualifications are important considerations for the rendering of these services. In New York, applicants for a temporary practice permit to perform attest or compilation services must give notice to the state via the aforementioned electronic application, and fees will be determined by the Board of Regents. For nonattest services in New York by out-of-state CPAs whose principal place of business is in another state, New York legislators believed that "no notice, no fee" was justified, so long as there was "no escape" from the disciplinary authority of the Board of Regents by the out-of-state CPA and the firm employing such CPA to render such services in New York.

With legislative efforts finally culminating in revolutionary changes that affect CPA mobility, New York has become a prime example of how other states and jurisdictions can achieve mobility while still protecting the public.

A mobility map, issued in a February 9, 2009, AICPA "Mobility Update" (www.aicpa.org/Legislative+Activities+and+State+Licensing+Issues/Mobility+and+State+Licensing+Issues/) marked New York as having no action on attaining mobility. With legislative efforts finally culminating in revolutionary changes that affect CPA mobility, New York has become a prime example of how other states and jurisdictions can achieve mobility while still protecting the public.

Balancing the Needs of the Public and Profession

The progress that the accountancy profession in New York has achieved with the new accountancy law, Chapter 651 of the New York Laws of 2008, exemplifies New York's motto. Aiming ever upward, the law has moved the profession into the 21st century without losing sight of the public that the profession is licensed to serve. The New York law is the culmination of 10 years of work by the NYSSCPA, in partnership with the SED, and raises the bar for practice in New York while addressing the mobility challenges of a modern world.

On January 27, when the governor signed the accountancy reform bill, New York differentiated itself from the rest of the country. We are now entering the period for development of the regulations that are expected to be in place before the effective date of the new law. These regulations, to be developed by the SED and approved by the Board of Regents, are critical for effective implementation of the statute. After many years of work by the NYSSCPA, the accountancy law that had not been significantly changed since 1947 has not only been updated, it has created a model that other states and jurisdictions can use. ❑

Kevin J. McCoy, CPA, *is a past president of the NYSSCPA's Northeast Chapter and also a past chair of the Legislative Task Force.* ***Thomas E. Riley, CPA,*** *is a past president of the NYSSCPA and chair of the NYSSCPA's Legislative Task Force.*