Preliminary Evaluation of the State Board of Public Accountancy

Recommendations: **Waive from Full Evaluation**

Extend Termination Date by 10 Years to July 1, 2025

Require Follow-up Report by October 1, 2013

The Sunset Review Process

This evaluation was undertaken under the auspices of the Maryland Program Evaluation Act (§ 8-401 *et seq.* of the State Government Article), which establishes a process better known as "sunset review" because most of the agencies subject to review are also subject to termination. Since 1978, the Department of Legislative Services (DLS) has evaluated about 70 State agencies according to a rotating statutory schedule as part of sunset review. The review process begins with a preliminary evaluation conducted on behalf of the Legislative Policy Committee (LPC). Based on the preliminary evaluation, LPC decides whether to waive an agency from further (or full) evaluation. If waived, legislation to reauthorize the agency typically is enacted. Otherwise, a full evaluation typically is undertaken the following year.

The State Board of Public Accountancy last underwent a preliminary evaluation as part of sunset review in 2001. Both the 2001 and 1991 preliminary evaluations recommended waiver from full evaluation, which last took place in 1982. The most recent evaluation recommended extending the board's termination date by 11 years until July 1, 2015, based on the board's fulfillment of its mandated duties and service to the public and licensed community. The evaluation, however, required the board to submit a follow-up report by October 1, 2002, regarding exam administration, efforts to make the board self-supporting, and updates on the complaint-tracking database. The information presented in the follow-up report will be discussed in greater detail later in this report.

In conducting this preliminary evaluation, DLS staff reviewed applicable State law and regulations, recent legislative and regulatory actions, board minutes, prior sunset reviews, and other information provided by the board regarding revenues, expenditures, exams, licensing, complaints, and disciplinary actions. In addition, DLS staff interviewed or corresponded with current members of the board, the board's executive director, board administrative staff, the Commissioner of Occupational and Professional Licensing, the executive director of the Maryland Association of Certified Public Accountants (MACPA), and a representative of the Maryland Society for Accountants (MSA).

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The board reviewed a draft of this preliminary evaluation and provided the written comments attached at the end of this document as **Appendix 1**. Appropriate factual corrections and clarifications have been made throughout the document. Therefore, references in board comments may not reflect the final version of the report.

The Certified Public Accountancy Profession

Title 2 of the Business Occupations and Professions Article authorizes certified public accountants (CPAs) to conduct audits of financial statements and certify the correctness or fairness of information contained in various documents. CPAs perform work as individuals and as employees of firms that provide services to public and private entities of varying sizes and lines of business. Approximately 20,000 CPAs hold licenses in Maryland, making the profession the fourth largest under the Division of Occupational and Professional Licensing of the Department of Labor, Licensing, and Regulation (DLLR). As discussed later in this report, out-of-state licensed practitioners benefit from a "practice privilege" or "mobility" standard that allows them to perform certified public accountancy work without a Maryland license.

New Standards Clarify Scope of Practice Issues

The scope of practice for CPAs corresponds to the scopes of practice for related professions, such as accountancy and individual tax preparation. The terms "accountant" and "accountancy," however, are not defined in Maryland law. The board does not regulate nonlicensed accountants, such as bookkeepers, as they are not subject to any qualification standards or governmental oversight. As long as a nonlicensed person does not perform activities encompassed within the definition of "certified public accountancy," Title 2 does not bar the person from assisting a licensee or permit holder, performing the duties of public office or employment, or providing public bookkeeping and accounting services. By default, these activities define the limits of a nonlicensed accountant's scope of practice.

Prior to 2008, tax preparers that did not perform certified public accountancy services similarly were not required to be licensed, registered, or accredited by the State. Chapter 623 of 2008, however, established the State Board of Individual Tax Preparers. The legislation requires registration and renewal every two years for a person who provides "individual tax preparation services," which is defined as preparing, advising, or assisting in the preparation of, or assuming final responsibility for another person's preparation of a federal or State income tax return for valuable consideration. Actively licensed CPAs, among other professionals, are exempt from the registration requirement.

Corporate Scandals, Desire for Uniform Standards Lead to Federal Regulatory Activity

The complex nature of the practice of certified public accountancy, coupled with several high-profile corporate and accounting scandals, has led to increased demand for and regulation of CPAs over the last 10 years. A 2012 report by the U.S. Bureau of Labor Statistics projected 16% growth in employment opportunities for accountants and auditors from 2010 to 2020 based on "recent financial crises and subsequent financial regulations." In terms of regulation, on the federal level, the Sarbanes-Oxley Act of 2002 required auditors of publicly held companies to attest to and report on management's assessment of internal controls that are in place for financial reporting. More recently, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 increased and conformed regulation of financial planners and other professionals by the Securities and Exchange Commission, Federal Reserve, Commodity Futures Trading Commission, and Bureau of Consumer Financial Protection. The board and MACPA suggest that an exemption of CPAs from direct oversight by the Bureau of Consumer Financial Protection may have encouraged inactive licensees to seek reactivation or reinstatement. On the state level, the National Association of State Boards of Accountancy (NASBA) has coordinated the adoption of uniform standards in Maryland and other states regarding licensing criteria, reciprocity among states, peer review of audits, and other topics. The board anticipates continued increased demand for CPAs based on the federal and State regulatory climate and the expected retirement of a large proportion of current licensees in the near future.

The State Board of Public Accountancy

The board serves three primary functions: licensing, regulation, and enforcement. These responsibilities, discussed in greater detail later in this report, require the board to balance administrative tasks – such as processing a high volume of exam and license applications – and decisionmaking that affects both individuals and large sectors of the licensed community.

The board consists of seven members appointed by the Governor with the advice and consent of the Secretary of Labor, Licensing, and Regulation. Five of the members must be licensed CPAs – four actively practicing certified public accountancy and one serving as a full-time professor of accounting at an accredited college. The remaining two members must be consumer members of the public who (1) are not subject to the board's regulation; (2) do not otherwise qualify as members of the board; and (3) have not had a financial interest in or received compensation from a person regulated by the board within one year of appointment. As a conflict-of-interest safeguard, while serving on the board, consumer members may not have financial interests in or receive compensation from a person regulated by the board or grade any exam given by or for the board.

Currently, members represent an array of practices and geographic areas of the State. Both professional associations – MACPA and MSA – generally praise the board's accessibility and deliberative process.[1] Through use of a committee structure, the board delegates educational, experience, firm permit, peer review, and complaint matters to the appropriate

[1] MSA expresses satisfaction with the board's current framework but suggests that a nonlicensed accountant could be added to the board to enhance its decisionmaking. Currently, the board's only interaction with nonlicensed accountants is through disciplinary matters, due to unlicensed practice of certified public accountancy, and consumer relations.

committees for preliminary review and recommendation. Several of the committee chairs have experience in their given subject matter – for example, the full-time accounting professor member chairs the Education Committee – which helps to maximize the efficiency of the board's meetings. The board publishes notices in advance, holds its meetings open to the public, and publishes minutes and a quarterly newsletter on its website in an effort to operate in an open and accountable manner.

The board's balanced composition invites well-rounded discussion and feedback from the licensed community. DLS concurs with the board and MACPA that the existing membership adequately represents diverse perspectives on matters that affect the public and industry.

Legislative Changes Affecting the Board Since the 2001 Preliminary Sunset Review

The General Assembly substantially revised the law governing CPAs since the last preliminary evaluation. **Exhibit 1** summarizes 15 of those changes, which (1) alter the board's funding, licensing requirements, permitting framework, fee structure, enforcement authority, and administration of the Uniform CPA Exam; (2) establish a practice privilege standard; (3) require certain work to be subject to peer review; and (4) alter the level of education required to qualify for the exam. In terms of administrative changes, Chapter 156 of 2006 established the State Board of Public Accountancy Fund as a special, nonlapsing fund in DLLR. The transition from general funding to special funding was intended to give the board the resources necessary to fund technology advances and increase staffing. As discussed later in this report, the board used its new authority under Chapter 156 to increase licensing and permitting fees to move closer to its technology and staffing goals.

Exhibit 1

Major Legislative Changes Since 2001 Preliminary Sunset Evaluation

Year	Chapter	Change
2002	133	Extends the termination date for the State Board of Public Accountancy by 11 years from July 1, 2004, to July 1, 2015, and requires a sunset evaluation report of the board by July 1, 2014.
2002	196	Requires the board to offer licensing exams at least twice a year and authorizes the board to select an exam that is equivalent to the exam prepared by the American Institute of Certified Public Accountants (AICPA).

Year	**Chapter**	**Change**
2003	73	Alters the terms under which the board may issue limited permits for specific jobs to partnerships, limited liability companies, and corporations to be (1) a simple majority of the ownership of the entities, in terms of financial interests and voting rights, is licensed to practice certified public accountancy in Maryland or another state and (2) individuals with ownership interests that do not possess licenses to practice certified public accountancy must be active participants in the partnership, limited liability company, or corporation.
		Adds a conforming requirement that the board must license each member of a limited liability company who practices or intends to practice in Maryland under a limited permit.
2003	362	Requires the board to adopt regulations that establish the passing score for the exam to qualify for licensure as a CPA.
		Authorizes the board to send exam answers to AICPA by electronic transmission.
2004	496	Expands the grounds for disciplinary action by the board against an applicant or a licensee to include sanctions or denial of a renewed license by another state or sanctions by any unit of the State or the federal government that relate to the individual's fitness to practice.
2005	254	Authorizes a CPA licensed in another state to practice certified public accountancy in Maryland if the individual (1) verifies that the individual's principal place of business is located outside of Maryland; and (2) pays a $50 notification fee; and the board (3) verifies that the individual meets specified licensing and educational requirements.
		Specifies that an individual consents to the authority of the board by notifying the board of an intent to practice certified public accountancy in Maryland.
		Entitles an individual who meets specified standards to (1) practice in Maryland for two years with possible renewal by the board upon notice and payment of $50 and (2) represent to the public that he or she is authorized to practice certified public accountancy in Maryland.
2005	88	Requires firms or CPAs who offer specified services to (1) have an independent peer review once every three years as a condition of license renewal and (2) affirm the most recent peer review to the board at the time of renewal.
		Requires a peer reviewer to report to the board firms and individuals who receive certain deficient reviews and establishes procedures for disciplinary or corrective action for firms or individuals receiving such reports.
2006	156	Establishes the State Board of Public Accountancy Fund as a special, nonlapsing fund in DLLR.
		Requires the board to establish fees sufficient to cover the actual documented direct and indirect costs of the board.
		Limits fee increases to 12.5% of the existing and corresponding fee.

Year	Chapter	Change
2008	536	Establishes a "practice privilege" for CPAs licensed in another state who meet specified standards, without the need for notification to the board or payment of a fee.
		Modifies requirements for a partnership, limited liability corporation, or corporation to qualify for a firm permit.
2009	466	Allows the board to charge firms a reinstatement fee if they allow their permits to lapse but are otherwise entitled to be permitted.
2009	220	Modifies governing standards and procedures for peer reviews in the State for licensees and firms performing certified public accountancy services to reflect revised standards adopted by AICPA.
2009	30, 31	Repeal the provision that restricts CPAs to meeting no more than 40 hours of the continuing education requirement for license renewal through a course of home study or service as a teacher, lecturer, or discussion leader in a board-approved course.
2010	152	Specifies that the board may deny licensure or a permit to an applicant or discipline a licensee or firm permit holder if the applicant, licensee, or permit holder has been sanctioned by a regulatory entity established by law for an act or omission that directly relates to the fitness of a person to practice public accountancy.
		Establishes that a holder of a permit issued by the board may be fined up to $5,000 for each violation of the Maryland Public Accountancy Act.
2011	208	Specifies that a person may take the Uniform CPA Exam after completing 120 semester hours of college level course work and earning a baccalaureate degree.
		Requires a person who passes the exam to have completed 150 semester hours of course work and earned a baccalaureate degree in accounting or an equivalent field before being qualified for licensure with the board.
2011	228, 229	Establish, clarify, and modify the definitions of services that constitute the practice of certified public accountancy.
		Identify the conditions under which a nonlicensed individual may prepare a compilation.
		Require the board to specify, by regulation, standard language for a disclosure statement regarding exemption from peer review requirements.

Source: Laws of Maryland

Aside from administrative changes, many licensing changes establish new accountability measures, increase board oversight of CPAs and CPA firms, and conform Maryland law to the model Uniform Accountancy Act. MACPA's executive director favorably characterizes the changes, calling Maryland "the gold standard of licensing." The adoption of a peer review requirement in 2005, as discussed later in this report, constituted one such conforming change that brought Maryland in line with 36 other states.

Several other legislative changes lessened board interaction with out-of-state practitioners by facilitating "mobility," which allows CPAs licensed and principally based in other states to practice in Maryland without a Maryland license so long as they have a valid CPA firm permit. In particular, Chapters 73 of 2003, 254 of 2005, and 536 of 2008 eased the requirement for out-of-state practitioners from full State licensure to mobility. Practitioners licensed in other states that seek to establish businesses in Maryland remain subject to reciprocity licensing requirements and fees. According to AICPA, Maryland's mobility standard is in line with 48 states and the District of Columbia, which extend similar courtesies to Maryland CPAs working in their jurisdictions. MACPA "emphatically" supports the concept of mobility, which became effective October 1, 2008, because it (1) "eliminated costly and unnecessary registration and licensing" fees; (2) "enabled CPAs to serve clients whose businesses expanded into other states"; and (3) allowed regulators to enforce standards in both the state in which the service is performed and in the state of licensure. The board's executive director indicates that a potential disadvantage of the mobility standard is that the board is not notified that an out-of-state practitioner is working in Maryland unless a consumer files a complaint against the CPA. Even so, the board has not identified any specific problems with out-of-state practitioners or the new mobility standard.

Major Regulatory Changes Since the 2001 Preliminary Sunset Review

In addition to statutory changes, the board's regulations have been substantively changed at least 31 times since the last preliminary evaluation. **Exhibit 2** describes these changes, which include the establishment of peer review standards, modification of continued professional education (CPE) requirements, and alteration of the fee schedule. Most of the measures correspond to legislative changes and attempt to clarify new qualification standards for licensure, permit holding, and renewal.

Exhibit 2

Regulation Changes Since the 2001 Preliminary Sunset Review

Year	COMAR Provision	Change
2002	09.24.01.09A, B	Successive changes increase the fee that an applicant pays for the administration and grading of the Uniform CPA Exam.
2003	09.24.01.07	Adopts DLLR's regulations to govern administrative hearings.
	09.24.04.01-.04	Adopts standards governing the issuance of firm permits.
2004	09.24.01.09A, B	Increases the fees that an applicant pays for the administration and grading of the Uniform CPA Exam.
	09.24.01.02-.04	Repeals obsolete educational requirements.

Year	COMAR Provision	Change
	09.24.05.01-.06	Modifies the exam administration process to conform with changes occurring due to the transition to electronic testing. Alters the procedures that determine a candidate's conditional credit eligibility.
2005	09.24.01.05A-C	Modifies the procedure for transferring passing scores on the Uniform CPA Exam.
	09.24.01.09B	Increases the fees that an applicant pays to take sections of the Uniform CPA Exam.
	09.24.02.02	Requires a licensee to earn a minimum of four hours on professional ethics as part of the 90 hours of CPE required for license renewal. Effective October 1, 2006.
2006	09.24.01.09B	Increases the fees that an applicant pays to take sections of the Uniform CPA Exam.
	09.24.06.01-.04	Establishes procedures for the conduct and reporting of peer reviews.
	09.24.07.01-.06	Establishes requirements for practice privilege of a CPA licensed to practice in other states.
2007	09.24.01.09B	Increases the fees that an applicant pays to take sections of the Uniform CPA Exam.
	09.24.01.01, .06	Clarifies the definition of and Code of Professional Conduct standard governing a "contingent fee."
	09.24.02.02E, .04B	Clarifies the board's authority to audit a licensee based on CPE hours as part of the license renewal process.
	09.24.02.03H	Authorizes a licensee to use educational experience earned during participation on a firm's peer review team toward meeting the CPE requirements for license renewal to a specified extent.
	09.24.05.03	Modifies the education requirement that an applicant must meet to qualify for the Uniform CPA Exam.
2008	09.24.01.09B	Increases the fees that an applicant pays to take sections of the Uniform CPA Exam.
	09.24.01.09	Increases license, permit, and related service fees to facilitate the board's special fund operation.
2009	09.24.01.05A, .05D	Modifies license application requirements for an individual who has passed the Uniform CPA Exam in other states.
	09.24.02.02	Clarifies that four hours of professional ethics education is the minimum number of CPE hours required for renewal without carryover for excess hours.

Year	COMAR Provision	Change
	09.24.02.02, .03	Clarifies and alters the calculation and qualification standards for continuing professional education credits.
	09.24.04.04	Amends the firm permit regulation to recognize a statutory change that authorizes a nonlicensed person to have an ownership interest in a firm in which certified public accountancy is practiced.
	09.24.05.03A	Adds specified courses to the list of courses that qualify an applicant to take the Uniform CPA Exam.
	09.24.07.01-.06	Repeals obsolete requirements dealing with notification of intention to exercise the practice privilege.
2010	09.24.01.09	Establishes a reinstatement fee for a CPA firm that fails to renew its permit.
	09.24.02.02D	Increases the number of CPE hours that a teacher, lecturer, or discussion leader may claim in a given licensing period.
	09.24.02.02F	Requires specified applicants to earn 80 hours of CPE as a condition of initial licensure.
2011	09.24.05.03	Modifies the educational requirements for an applicant to take the Uniform CPA Exam.
	09.24.01.09	Increases the fees that an applicant pays to take sections of the Uniform CPA Exam.
2012	09.24.01.09	Reduces license, permit, and related service fees.
	09.24.01.10	Specifies the language that disclosure statements must include for specified peer review exemptions.

Source: Code of Maryland Regulations, *Maryland Register*

Licensing and Permitting Levels Are Stable, Even as Demand Increases

The board regulates approximately 20,000 CPAs. Each year, about half of those licensees and permit holders seek renewal based on staggered two-year license and permit terms. Legislative changes since the last preliminary evaluation prompted changes to the board's license and permitting process. For example, the mobility legislation alone eliminated notification, limited license, and limited firm permit categories. Despite the elimination of these categories, however, the board regulates more individuals than it did in 2001. As **Exhibit 3** illustrates, the board has experienced fairly stable licensing and permitting activity over the last six fiscal years across almost all categories.

Exhibit 3
Licensing and Permits Issued
Fiscal 2008-2013

License/Permit/Notification	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013*
CPA						
License – Initial	547	483	507	521	576	634
License – Renewal	6,297	6,394	6,400	6,486	6,358	6,702
Inactive License – Renewal	2,788	2,815	2,740	2,826	2,660	2,660
Notification – Initial**	65	26	--	--	--	--
Notification – Renewal**	14	1	--	--	--	--
Limited License – Initial***	40	12	--	--	--	--
Corporation						
Permit – Initial	60	44	55	37	16	18
Permit – Renewal	194	190	225	226	257	291
Limited Permit – Initial***	10	0	--	--	--	--
Partnership						
Permit – Initial	1	1	7	1	0	2
Permit – Renewal	28	2	25	3	31	33
Limited Permit – Initial***	10	0	--	--	--	--
Limited Liability Company						
Permit – Initial	63	31	38	43	28	31
Permit – Renewal	50	60	98	95	108	167
Limited Permit – Initial***	3	0	--	--	--	--
Limited Liability Partnership						
Permit – Initial	3	3	20	13	6	31
Permit – Renewal	18	19	15	23	28	65
Limited Permit***	15	1	--	--	--	--
Total	**10,206**	**10,082**	**10,130**	**10,274**	**10,068**	**10,634**

*Projected licensing figures.
**Chapter 536 of 2008 repealed the notification requirement for out-of-state licensees.
***Chapter 536 of 2008 repealed the board's authority to issue limited licenses and limited firm permits.

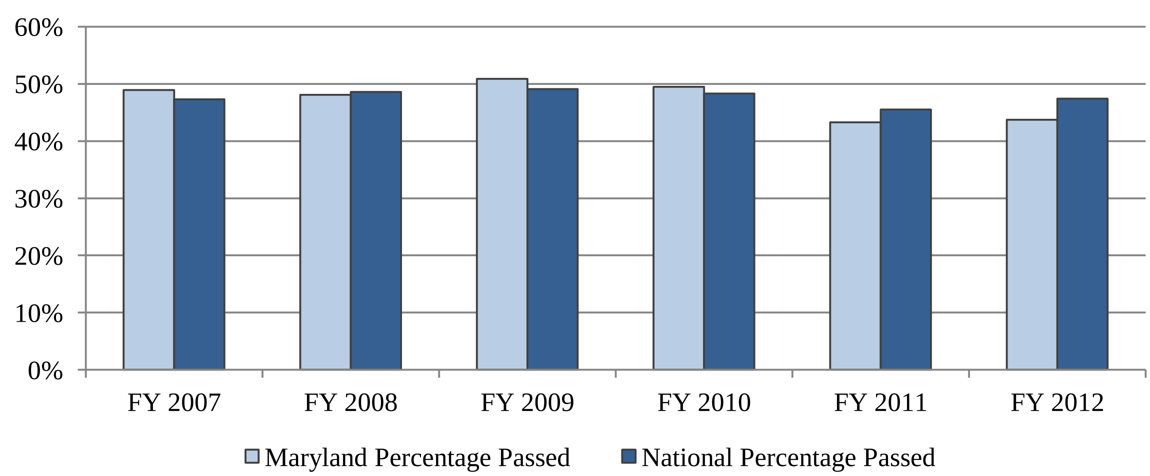
Source: State Board of Public Accountancy, Laws of Maryland

Increased demand for CPAs has resulted in increased participation in the standardized exam that is required for licensure by each of the 55 public accountancy boards. In Maryland, applicants become eligible to take the Uniform CPA Exam by completing 120 semester hours or equivalent related course work, earning a baccalaureate or higher degree from an accredited institution, and submitting an exam application to the board. Once an applicant is authorized to sit for the Uniform CPA Exam, the applicant takes a four-part, 14-hour test that covers (1) Auditing and Attestation; (2) Business Environment and Concepts; (3) Financial Accounting and Reporting; and (4) Regulation. Previously, the exam was offered twice a year at two locations around the State. In order to pass the exam, applicants were required to take multiple parts of the exam over a two-day span of time and earn a score of at least 75 on two sections and at least 50 on the remaining sections. A new computerized exam format enables applicants to take and pass each section separately, so long as the applicant passes all four sections within an 18-month timeframe. Exam sections are now administered on a daily basis during eight months of the year at seven Maryland locations and locations in other states.

Applicants who have passed the exam become eligible for licensure once they obtain a total of 150 semester hours of related instruction and complete one year (2,000 hours) of practical work experience. CPA firms qualify to obtain the required firm permit by meeting guidelines that are specific to the firm's corporate structure.

Although nearly twice as many Maryland applicants have passed the exam over the last five fiscal years, the overall pass rate has declined over the last two fiscal years as the number of applicants taking the exam has also increased. **Exhibit 4** compares exam pass rates of Maryland applicants to national average pass rates from fiscal 2007 through 2012. The executive director suggests that changes to the exam format and recent legislation to allow applicants with 120 semester hours of relevant course work to sit for the exam may explain the slightly lower Maryland pass rate.

Exhibit 4
Maryland and National CPA Exam Pass Rates
Fiscal 2007-2012



Source: State Board of Public Accountancy, National Association of State Boards of Accountancy

Tax-related Complaints and Mandated Peer Reviews Affect Complaint Backlog

Certain types of misconduct give rise to disciplinary action by the board that can include denial of a license, reprimand, suspension or revocation, or the imposition of civil fines or penalties. When the board receives a complaint, staff reviews it to determine whether the board has jurisdiction and sends a letter to the affected practitioner or firm requesting a response to the complaint within 30 days. Staff then refers the matter to the board's complaint committee for a more comprehensive review. The complaint committee consults legal counsel and DLLR's investigative services division if necessary and determines whether to close the complaint or refer it for adjudication. Generally, based on the nature of the complaints it receives, the board closes complaints without formal action or a hearing. If a complaint requires further action, legal counsel generates a pre-charge letter to send to the affected practitioner or firm explaining the charges and any rights under the law. The board, which does not refer cases to the Office of Administrative Hearings, then conducts an open hearing during a board meeting and discusses appropriate action in executive session with legal counsel. Rather than pursue costly administrative action, the board often reaches private settlement agreements with affected practitioners or firms. MACPA and MSA describe the board's disciplinary role as both fair and consistent.

Tax-related complaints represent the highest volume of complaints received since fiscal 2008, followed by board-initiated complaints for failure of CPE audits and other conduct such as misrepresentation, "records hostage" or failure to return work papers, unlicensed practice, and fee disputes. Failure of a CPE audit arises when an active licensee does not obtain or properly document 80 hours of qualifying CPEs during every two-year licensing term except the first renewal. The board becomes aware of noncompliance when a part-time consultant fails to verify a licensee's reported CPE hours based on audits on a random selection of applicants for renewal. Failed CPE audits become formal board-initiated complaints against the practitioners. Since April 2010, the CPE auditor has completed approximately 400 audits and initiated 63 complaints, leading to sanctioning of 26 licensees.

Exhibit 5 details the board's complaint management over the last five fiscal years. The board maintains a low ratio of average yearly number of complaints relative to the number of licensees at 0.4%. The three larger DLLR-regulated boards report similar ratios with the State Board of Cosmetologists at 0.4%, the State Real Estate Commission at 1.2%, and the State Board for Professional Engineers at 0.01%. From fiscal 2009 to 2010, the number of complaints rose by approximately 20, representing a 35% increase. The executive director attributes this increase to the receipt of complaints meant for the newly established State Board of Individual Tax Preparers and tracking of complaints based on CPE violations.

On average, the board meets its Managing for Results goal of closing complaint files within six months. However, a consistently high proportion of complaints carry over from one fiscal year to the next. The executive director attributes the backlog to staff illness and turnover and the coincidence of tax season and the end of the fiscal year, which means that a large volume of complaints arrives just before the end of the fiscal year. Additionally, the executive director explains that the proportionately high number of complaints resolved by formal action in fiscal 2011 resulted from the initiation of automated CPE audits.

Exhibit 5
Resolution of Complaints Received
Fiscal 2008-2012

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
New Complaints Processed	53	55	74	76	71
Complaints Carried Over from the Prior Fiscal Year	48	39	36	34	24
Complaints Resolved*	62	58	76	86	44
*Formal Action***	11	1	2	31	5
Informal Action	1	4	2	4	2
No Action	50	53	72	51	37
Resolved within Six Months	32	42	59	61	38
Resolved in More Than Six Months	30	16	17	25	6
Average Months for Resolution	12	5-6	5-6	7-8	3-4

*Complaints resolved includes only those complaints on which the board took some action – including a decision to take no formal action, based on a finding of no violation – and those complaints opened in previous years.
**Formal action includes settlements, consent orders, and orders from the board following hearings, among other actions.

Source: State Board of Public Accountancy

The board anticipates a modest future increase in complaints due to implementation of the peer review requirement, which authorizes the board to initiate disciplinary action against noncompliant licensees. Under Chapter 22 of 2005, an independent evaluator known as a “peer reviewer” must review some individual’s or firm’s accounting and auditing practices once every three years depending on the types of accounting services they provide. The board’s executive director indicates that a “vast majority” of licensees do not require peer reviews of the type of work they perform. “Systems reviews” more broadly evaluate policies or procedures, while “engagement reviews” evaluate specific reports and documents that a firm or individual has prepared. Both types of reviews are designed to demonstrate competency as gauged by professional, State, and federal standards. A licensee or permit holder fails a peer review if it identifies “one or more significant deficiencies in performing or reporting in conformity with professional standards." A report indicating "pass with deficiencies" is similarly based on "one or more deficiencies."

AICPA oversees peer review program implementation nationwide and identifies peer reviewers who are authorized to conduct the evaluations. MACPA administers peer reviews for AICPA in Maryland and oversees the performance of peer reviewers who, according to Maryland law, must forward a peer review report to the board if a licensee or permit holder (1) fails to take necessary corrective action; (2) receives a second consecutive report indicating "pass with deficiencies"; or (3) receives a failing report.

Implementation of the peer review process has been a major collaborative effort, but enforcement and communication between MACPA and the board are still lacking. MACPA advises that 22 licensees or permit holders failed their peer reviews in calendar 2011, and 16 have failed their peer reviews to date in calendar 2012. According to State law, findings from these reports should have been forwarded to the board, but the board advises that it has received a total of two reports for potential disciplinary action. **Therefore, DLS recommends that the board, in consultation with MACPA, take steps to resolve the inconsistent reporting of failed peer reviews to the board and, as appropriate, take corrective action with respect to licensees and permit holders that have previously failed a peer review.**

Board Manages Chronic Resource Constraints

At the time of the last sunset evaluation, the board employed an executive director who also served as executive director of the State Board of Foresters, one full-time professional, and one part-time professional. Based on input from the professional associations, DLS concluded that staffing levels did not correspond to the number of licensees and "extremely high" workload. The 2001 evaluation referenced difficulty in "simply reaching a receptionist by telephone" and noted that the board's efforts to reduce reliance on staff through technology changes were sometimes stalled due to lack of resources.

The establishment of State Board of Public Accountancy Fund improved the board's immediate access to resources, which enabled it to retain the shared executive director and other employees and add two full-time contractual employees. The contractual employees process complaints and CPE audits, among other administrative duties. The board advises that the contractual nature of the positions has led to high turnover among staff. For example, the last two contractual employees left the board for permanent State employment within one year of starting. The executive director expresses frustration over the fact that, given State hiring freezes and new personnel restrictions, the board lacks authority to make these positions permanent or otherwise expedite the hiring of replacements. Based on past experience, the executive director estimates that the employee who left the board in August 2012 will not be replaced until January 2013.

Four years into the board's transition to special funding, MACPA and MSA report continued difficulty in reaching a receptionist or receiving a return telephone call. The addition of two contractual employees has assisted the board's overall operations, but high staff turnover contributes to a complaint backlog. DLLR should work with the Department of Budget and Management (DBM) to convert the contractual positions to permanent positions to reduce turnover and maximize the use of the board's special fund resources.

Technology Streamlines Administrative Processes, but Challenges Persist

Following the last preliminary evaluation, the board undertook a campaign to streamline administrative processes through automation and use of the Internet. In 2002 and 2003, the board adopted a "lockbox banking" process and eliminated the manual processing of payment for re-exam[2] registration. This change reduced burden on staff who had previously processed checks, prepared deposit slips, and reconciled deposits by hand for approximately 3,000 payments per year. During that same timeframe, the board activated its Complaint Management System database. According to the executive director, 2004 served as a "watershed year for technology" based on the transition to electronic registration, testing, and score verification for the Uniform CPA Exam. In 2005, the executive director developed databases to track license applications, initial exam qualification applications, and license verification requests. In 2006, the board began electronically notifying exam applicants of their qualification to sit for the Uniform CPA Exam. In 2008, the board established an online process for reporting requirements associated with peer reviews and shared content on its website detailing newly enacted mobility standards. In 2009, the board began issuing *Account Balance*, a quarterly electronic newsletter. In 2010, the board started to randomly select licensees seeking renewal for audits based on their reported CPE hours. In 2011, the board launched a comprehensive online database that processes initial exam applications and electronic payments. The same year, the board joined the CPA Verify national licensing database, which is discussed later in this report. In 2012, the board developed an electronic licensing portal that enables individuals to access and print their own licenses without involvement of board staff. In the near future, the board expects to (1) establish a mechanism for real-time online tracking of CPE hours; (2) finish transitioning all forms to the board's website; and (3) begin networking with other public accountancy boards to electronically transfer licensing information.

Despite extensive technological advances, staff still spends a considerable proportion of its time processing applications for the Uniform CPA Exam. MACPA suggests that the board should outsource the exam application review process to NASBA to further streamline administrative processes and make staff available to perform other tasks. The CPA Exam Services division of NASBA offers a range of services, including exam processing, credential evaluation, score reporting, and customer service interaction, with the mission of enhancing the effectiveness of public accountancy boards. The last preliminary evaluation mandated a follow-up report on options for outsourcing future exam administration based on the pending transition to computerized testing and a 2000 incident where the former exam vendor filed for bankruptcy. The October 2002 follow-up report indicated that DLLR had received and was in

[2] The board continued to manually process initial exam applications until October 2011.

the process of reviewing a proposal from NASBA to administer the computer-based exam. The report did not, however, discuss outsourcing of the exam application review process.

At the August 2012 board meeting, the executive director distributed a report on the exam review process for fiscal 2005 through 2012. According to the report, staff processes 50% of all exam applications within 5 days after the date an application is complete and 90% within 30 days. The executive director contends that the board is best suited to handle exam applications based on the board's ability to interact with applicants and continually improve administrative processes. Additionally, the executive director indicates that the State's procurement process would not guarantee that NASBA would earn the contract to process the exam applications. DLS notes that such a procurement may be eligible for a sole source procurement.

Assuming that the board continues to operate with the same level of staffing, it should reconsider outsourcing the processing of exam applications to allow staff to focus on processing complaints and license and permit applications. In reconsidering the issue, the board should, as needed, consult with DBM and NASBA regarding the use of a sole source procurement and report to the General Assembly by October 1, 2013, on the feasibility, costs, benefits, and potential terms of an outsourcing contract.

Board Fully Participates in National Electronic Licensing Database

The presence of another regulatory agency – the State Board of Individual Tax Preparers – has enhanced oversight of professionals that provide accounting-type services, but the board and MACPA indicate that members of the public often fail to appreciate important differences among the professions. To better inform consumers about licensed and nonlicensed professionals, the board's website links to CPA Verify, a free, publicly accessible database run by NASBA. The database allows consumers to verify a CPA's licensure status in 33 participating jurisdictions and a CPA firm's permit status in 16 participating jurisdictions. Maryland shares information with NASBA on both CPAs and CPA firms. **The board should continue to share information with NASBA and develop content on its website to inform consumers of the differences between CPAs and related professionals.**

Transition to Special Funding Provides Stable Revenue

The board struggled to cover its expenses under general funding. As discussed in the 2001 preliminary evaluation, the board's revenues did not cover both direct and indirect costs, causing it to function with a "negative balance."[3] Although revenues exceeded direct costs, large portions of estimated revenues and budgetary appropriations represented revenues and expenditures attributable to a separate special fund that administers the Uniform CPA Exam. Accordingly, DLS expressed "concern about the lack of staff resources available to the board" and required the board to report on efforts to become self-supporting. In its mandated follow-up report, the board indicated that DLLR planned to introduce legislation to make "most Boards in

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[3] The board was supported entirely by general funds, so it did not actually operate at a deficit.

the Division" self-sufficient beginning in fiscal 2004. As noted above, legislation creating the board's special fund did not pass until the 2006 session and did not become effective until July 1, 2007 (Chapter 156). The legislation restricted future fee increases to 12.5% per year – a restriction that could have presented significant challenges for the board if the new special fund could not cover costs.

The board now manages two special funds – one to perform its regulatory duties and the other to administer the Uniform CPA Exam. **Exhibit 6** summarizes the board's management of the regulatory fund over the last four fiscal years. As shown in **Exhibit 7**, following the board's transition to special fund status, the board increased license, permit, and related service fees in September 2008 to become self-sustaining and account for future costs. The fee increases covered both direct and indirect costs, allowed the board to maintain relatively stable revenue figures, and caused the regulatory fund to build a surplus well in excess of DLLR's target fund balance.[4] Effective June 1, 2012, the board reduced[5] license, permit, and related service fees out of a concern that the board's sustained and excessive surplus would lead to a budget transfer to the general fund. As a result, one month of lower fees contributed to a reduction in revenues for fiscal 2012; DLLR projects revenues of approximately $600,000 on an annualized basis beginning in fiscal 2013.

[4] DLLR indicates that its target fund balance of $250,000 to $300,000 is "not premised on a specific ratio, but more protective" in light of potential budget transfers and plans for technology projects and increased staffing.

[5] The fees are set in regulation, rather than statute, to give the special-funded board flexibility in altering the fee schedule.

Exhibit 6

Financial History of the State Board of Public Accountancy

Fiscal 2008-2012

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Beginning Balance		$31,941	$273,027	$559,547	$807,066
Revenues	$491,615	790,813	907,338	889,767	853,715
Total Available Funds	**491,615**	**822,754**	**1,180,365**	**1,449,314**	**1,660,781**
Direct Costs	362,582	455,182	518,033	526,316	569,129
Indirect Costs	30,159	35,012	32,849	32,281	32,210
Legal Services Costs	66,933	59,533	69,936	76,151	72,030
Total Expenditures	**459,674**	**549,727**	**620,818**	**634,748**	**673,369**
Transfer to General Fund	0	0	0	7,500	0
Ending Fund Balance	**$31,941**	**$273,027**	**$559,547**	**$807,066**	**$987,412**
Balance as % of Expenditures	7%	50%	90%	128%	147%
Target Fund Balance	$250-300,000	$250-300,000	$250-300,000	$250-300,000	$250-300,000

Source: State Board of Public Accountancy

Exhibit 7
Comparison of Board Fees: 2008 Fees Versus Current Fees

	Fees Effective Before September 22, 2008	Fees Effective as of September 22, 2008	Fees Effective June 2012
Exam Application Fees			
Original exam application fee	$40	$60	$60
Exam section fees (set by AICPA)			
(1) Auditing and Attestation	249	249	200
(2) Financial Accounting and Reporting	237	237	200
(3) Regulation	211	211	180
(4) Business Environment and Concepts	198	198	180
Accountant Fees			
License fee	$15	$20	20
Renewal fee	40	80	50
Application for inactive status	20	40	25
Renewal for inactive status	20	40	25
Reinstatement for inactive status*	40	60	50
Reactivation from inactive status	40	80	50
Reinstatement of expired license*	60	120	100
Application for reciprocity	50	60	60
Firm Permit Fees			
Firm application fee	$25	$80	$60
Firm permit fee	25	80	60
Firm renewal fee	80	160	120
Firm reinstatement fee*	--	--	240
Miscellaneous Fees			
Transfer of grades application	$25	$60	$60
License verification certificate	25	25	25
Duplicate license certificate	50	50	50
Proctoring fee	75	75	--

* Licensees and permit holders pay reinstatement fees in addition to the applicable renewal fee.

Source: State Board of Public Accountancy; Code of Maryland Regulations 09.24.01.09; *Maryland Register*

The exam special fund maintains a similarly excessive surplus, despite its primary purpose of serving as a mechanism to pass through funds to NASBA. The board uses some of the remaining funds to accommodate test-takers under the federal Americans with Disabilities Act and handle other administrative matters, but the fund balance remains high because of refund checks the board receives from NASBA when applicants do not take sections of the exam for which they have registered. AICPA determines when to change exam section fees, which the board collects in the exam fund and passes on to AICPA. Section fees have increased several times since the last preliminary evaluation, bringing the total cost of registering for and taking four sections one time each to $820.

The board had sought to use surplus funds in the regulatory fund to cover new operational expenditures, increase staffing, and account for future licensee attrition due to the new mobility standard and other industry changes. Cost-containment measures and personnel policies across State government, however, have limited the board's ability to use the funds for these purposes. The executive director expresses frustration that the board lacks authority to use some of the available funds to address staffing challenges. The Commissioner of Occupational and Professional Licensing indicates, and DLS concurs, that the board could accommodate additional employee salary and benefits even with the fee reductions. Nevertheless, the board's ability to cover increased costs will diminish as its revenues and fund balance decline due to recent fee reductions. The statutory limit on increasing fees will then restrict the board's ability to raise revenue in a short period of time to cover any additional costs.

In light of the staffing concerns and the availability of excess surplus, the board should work with DLLR to request from DBM at least one new contractual staff position if the board is unable to make the contractual positions permanent. The board should also issue a follow-up report by October 1, 2013, detailing fund balances and future plans to use any remaining surplus.

Recommendations

The board serves the public and licensed community by regulating the CPA profession to the best of its ability, given constrained resources. The board's diverse representation of industry and consumer interests encourages thoughtful and transparent decisionmaking. DLS concurs with the board and MACPA that inclusion of a nonlicensed member is not necessary because the existing membership adequately represents the perspectives that MSA suggests a nonlicensed accountant member could contribute. The board should continue its efforts to educate consumers on the range of accounting-type services available. **Further, DLS recommends that LPC waive the State Board of Public Accountancy from full evaluation and that legislation be enacted to extend the board's termination date by 10 years to July 1, 2025.**

By automating several key administrative processes, the board anticipated and appropriately responded to significant legislative and regulatory changes and an increased volume of complaints and exam, license, and permit applications. However, DLS finds that more should be done to maximize existing resources. In particular, DBM should consider converting the two contractual positions to permanent positions. This conversion would reduce staff turnover, encourage longer-term professional development, and maximize the board's resources. Alternatively, if the board is unable to convert the positions, it should work with DLLR to request from DBM at least one new contractual staff position to avoid increased backlogs in complaints, CPE audits, and exam applications. In the event of any increases or changes to current staffing levels, the board should direct as many resources as practicable to its processing of complaints.

Assuming that the board is forced to continue operating with the same level of staffing, DLS encourages the board to reconsider outsourcing the processing of exam applications. In considering this change, the board should consult with DBM and NASBA to determine costs, benefits, and potential terms of an outsourcing contract.

DLS further recommends that the board submit a follow-up report to the Senate Education, Health, and Environmental Affairs Committee and the House Economic Matters Committee by October 1, 2013, that details:

- **fund balances, changes to the target fund balances, and future plans to use any remaining surplus;**
- **findings and recommendations related to the outsourcing of exam application processing; and**
- **the number of peer reviews conducted in each of the previous three calendar years; the number of licensees and permit holders that failed, passed with deficiencies, or failed to take corrective action; reasons why the board did not previously receive a vast majority of failed peer reviews; steps taken by the board with respect to licensees and permit holders who previously failed a peer review; and actions taken to resolve the inconsistent reporting of failed peer reviews to the board.**

Appendix 1. Written Comments of the State Board of Public Accountancy

STATE OF MARYLAND
DLLR
DEPARTMENT OF LABOR, LICENSING AND REGULATION

DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING
Office of the Commissioner
500 N. Calvert Street, 3rd Floor
Baltimore, MD 21201

November 19, 2012

Michael C. Rubenstein
Principal Policy Analyst
Department of Legislative Services
Office of Policy Analysis
Maryland General Assembly
90 State Circle
Annapolis, Md. 21401-1991

Re: Preliminary Evaluation of the State Board of Public Accountancy

Dear Mr. Rubenstein:

Pursuant to your letter of November 5, 2012, I am pleased to present this response on behalf of the Department of Labor, Licensing and Regulation and the State Board of Public Accountancy regarding the draft sunset report forwarded to us for review and comment. Our substantive response to the draft report is attached with comments, clarifications, and factual corrections referenced by page and paragraph number.

The Department and the Board appreciates the professional manner in which Ms. Atas conducted the review. We look forward to working with legislative staff to address issues that were raised in the report as well as any future issues that may arise. If your office should require additional information, please do not hesitate to contact me at (410) 230-6225.

Sincerely,

Michael Vorgetts
Deputy Commissioner

Cc: Secretary Leonard Howie, III
Commissioner Harry Loleas
Mr. Dennis Gring, Executive Director
Mr. Thomas Murphy, Chair

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Comments, Clarifications, and Factual Corrections of the Department of Labor, Licensing and Regulation and the State Board of Public Accountancy

I. Proposed Changes to the Report's Narrative

On page 2, in the third paragraph: A reference is made to "unlicensed accountants." The Department and Board advise that describing regular accountants who are not certified public accountants as "unlicensed" is accurate, but misleading. Unlicensed practice in most industries regulated by the Department connotes unauthorized practice. In the accountancy industry, certain accountants may perform bookkeeping and other such services without having to become licensed and are not in violation of the CPA law. The report acknowledges this fact; however, the Board would prefer the use of a different term, such as "nonlicensed" accountants, which would indicate that these individuals are not required to hold a license from the Board. The Board advises that other references to "unlicensed accountants" should also be changed.

On page 3, in the second paragraph: The Board's three major functions are described as "licensing, regulation, and complaints." The Department and the Board advise that it would be more appropriate to describe the Board's functions as "licensing, regulation, and enforcement."

On page 11, in the first paragraph: The second to last sentence states: "A new computerized exam format enables applicants to take and pass each section separately, so long as the applicant passes all four sections within a two-year timeframe." This statement should be amended to reflect the fact that the time frame for successful passage of the four sections is 18 months.

On page 11, in the first paragraph: The last sentence states: "Exam sections are now administered on a daily basis during eight months of the year at seven Maryland locations." Applicants do not have to take the exam in Maryland. The Board advises that a more accurate statement would be: "Exam sections are now administered on a daily basis during eight months of the year at seven Maryland locations or any other testing center in the United States."

On page 14, in the fourth paragraph: The term "contractual employees" should replace the term "temporary employees." Other references to "temporary employees" should also be changed.

II. Response to Recommendations

On page 21, regarding conversion of contractual positions to permanent positions or – alternatively, if such a conversion is not feasible – the addition of a contractual employee to the Board's staff:

The Board's productivity would benefit greatly if its contractual employees were to be converted to permanent positions. As the report acknowledges, Board operations are significantly inhibited by turnover of contractual employees. Turnover results in prolonged vacancies, and reduced functionality and forgone institutional memory. Moreover, the contractual employees perform functions that are substantially similar to those performed by permanent employees of other boards and commissions, yet they receive significantly less compensation and benefits. The Department and Board strongly support the conversion of contractual employees to permanent status. If such a conversion is not viable due to the State's fiscal condition, the Department and Board would support the alternative recommendation for the addition of a contractual employee.

On page 21, regarding outsourcing of examination applications:

The bifurcation of the education qualification criteria for the exam and for licensure has added another step in the licensing process. Prior to October 2011 applicants who met the qualifying education requirements for the exam at the same time met the education requirements for licensure. Current practice dictates that the Board is required to conduct an additional education evaluation to determine an applicant's education requirements for licensure sometime after passage of the examination. The Department and the Board strongly believe that it is not prudent to segment one portion of the licensing process to a third party and have another portion of an education review done by the Board.

The Board provides local, personalized, and timely customer service as was reflected in an August 2012 analysis of the newly instituted application process. Over the past decade, the examination review staff has developed professional relationships with college registrars, accounting department chairs, and other industry members. These strong linkages have enabled the Board to provide the highest possible quality of examination candidate qualification. In addition, most issues involving the appropriateness of required course work is resolved quickly without formal appeal to the Board. Transitioning to a third party vendor, in all likelihood, would result in the Board to having to hear a larger volume of appeals and the dedication of more time at regular business meetings to appeals hearings.

Furthermore, new processes for the management of applicant files would have to be created to accommodate the transfer of files to the Board. The Board would have to create a regular scheduled delivery of examination files as well as processes of cataloging and filing approved applications from a vendor for later use during a licensing review.

The reporting requirement specified by this evaluation will analyze the merits of outsourcing the exam evaluation and will take into consideration the above issues as well as the impact on the process of the staffing structure that exists as of fiscal year 2014.

On page 21, regarding peer review management:

The Board, its peer review oversight committee, the MACPA, and other approved administrative entities are still working on a meaningful and practicable process for the reporting of failing peer reviews. The purpose of the peer review oversight committee is to evaluate the performance of the peer review administration entities. The Board needs to further analyze the deficiencies cited in peer reviews that result in a failure as to their severity and what is prescribed by peer reviewers to correct those deficiencies. The reporting requirement specified by this evaluation will analyze the peer review process and will examine these issues.