NYS SOCIETY OF CPAs
NYSSCPA

December 18, 2017

Ms. Jennifer Winters, CPA
Executive Secretary
State Board for Public Accountancy
New York State Education Department
89 Washington Avenue
Albany, NY 12234

By e-mail: Jennifer.Winters@nysed.gov

Dear Ms. Winters,

The New York State Society of CPAs (the Society) appreciates the opportunity to comment on the changes that the New York State (NYS) Board for Public Accountancy (the Board) is proposing, regarding the ethics continuing professional education (CPE) requirement for Certified Public Accountants (CPAs).

The Society appreciates and shares the concern of the Board regarding the significant lack of compliance with the mandatory CPE requirements, and we would like to assist the Board in creating a regulation that is both equitable to our members and results in improved compliance by all licensees.

The Proposed 6–Credit–Hour Requirement

The Society opposes increasing the ethics CPE requirement to 6 credits over the triennial period. A review of the CPE requirements for the 23 states that report CPE on a triennial basis reveals that 15 of those states require 4 hours of ethics CPE, and an additional 4 states require less than 4 hours of ethics CPE. The largest concentration of CPAs in New York state probably live and/or work in the New York City metropolitan area. The nearest states to that area—New Jersey and Connecticut—each require 4 credits of ethics CPE per triennial reporting cycle. We believe that the only persuasive reason to increase the total number of CPE credits during the triennial year is if there were objective evidence that the CPAs of New York state are less ethical than those of neighboring states or of the country as a whole. The Society does not believe that the New York state CPE requirements should be more stringent than the approximately 83% of states that utilize the triennial reporting cycle.

The Proposed Annual 2–Credit–Hour Requirement

The Society opposes the establishment of an annual 2–credit ethics requirement within the triennial reporting period. Only 2 states have an annual ethics CPE requirement, of which one, Virginia, has an annual CPE reporting cycle. We are cognizant of the fact that this proposal is the result of the recent CPE audit findings, which concluded that 50% of those audited were determined not to be in compliance with the ethics CPE requirement. We are also mindful of the Board's belief that the more prescriptive requirement is offset by the benefit of simplified recordkeeping for the professional. The Society believes, however, that there are better alternatives for the Board to pursue before mandating such a prescriptive requirement. The first such alternative should be increased communication by the Board regarding the audit findings and the CPE requirements through such publications as *The CPA Journal*, *The Trusted Professional*, and others, as well as through mailings, both paper and electronic. Additional suggestions to improve the regulation follow below. Any final ethics CPE requirement that the Board approves should allow the licensee the flexibility of meeting the requirement on his or her own schedule.

Noncompliance Root Cause Analysis

The primary root causes cited by the Board for the lack of compliance with extant regulation 70.9.b.5 were as follows:

- The sponsor was not an approved sponsor of ethics CPE.
- There was confusion as to what constituted acceptable ethics CPE credits.
- Ethics courses were taken in states in which the practitioner was not licensed.
- There existed some confusion regarding the timing of the CPE requirement (registration cycle vs. triennial calendar CPE cycle).

The Society does not believe that the proposed regulation to increase the triennial ethics CPE requirement to 6 credits and impose an annual 2–credit ethics requirement will result in a significant improvement in compliance based upon the root causes identified in the recent CPE audits. We discuss each of the identified root causes below.

The first issue cited is that the sponsor was not an approved sponsor of NYS ethics. The extant regulation does not state that ethics CPE must be provided by a Board-approved sponsor. Licensees who are also active as CPE sponsors should be aware of this requirement, but those who are not could reasonably miss this nuance. Clearly, the onus for ensuring that a sponsor is providing only such CPE as that organization or individual is approved to provide rests with that CPE provider. In New Jersey, the regulations specifically state, "Each applicant for triennial license renewal shall complete, during the preceding triennial period, a four credit course on New Jersey law and ethics *approved by the Board* pursuant to N.J.A.C. 13:29-6.6(c)." (Emphasis added.) This puts the licensee on notice that only certain courses will qualify for ethics CPE. In addition, the New Jersey Board of Accountancy website has a link to a list of Board–approved law and ethics CPE providers. Neither the increase in total ethics credits nor the creation of a 2–credit annual minimum would assist the practitioner in ensuring that the CPE provider offering ethics CPE is licensed to do so in NYS. If the issue is that the practitioner is unaware of whether a CPE sponsor is licensed to provide ethics courses that will meet the requirements of the regulation, then we believe the better answer is for the Board, perhaps in cooperation with the Society, to develop a data base of approved CPE sponsors for NYS ethics that can be readily accessed by any licensee, regardless of whether he or she is a member of the Society.

The extant NYS regulations specify, "A registered licensee who is subject to the continuing education requirement shall be required to complete at least four credit hours in professional ethics during the three calendar year period." The extant regulation does not specify what constitutes "professional ethics"—NYS-specific ethics, regulatory ethics, or behavioral ethics. The New Jersey regulation is very specific as to what will qualify for ethics CPE. The language used in the NYS regulation is more ambiguous. Increasing the triennial requirement will not improve the clarity of the phrase "professional ethics" in the NYS regulation. Only a revision and clear definition of what constitutes acceptable "professional ethics" can do that. The Society believes that clarifying the language in the extant regulation so as to be in "plain English" would dispel much of the confusion between what courses qualify as regulatory ethics and those that qualify as behavioral ethics. This confusion was cited as one of the key findings in the CPE audit. Additionally, the Board could mandate that CPE providers in New York state clearly identify the nature of the ethics course being offered. Most CPE courses merely indicate that ethics will be provided but not whether the ethics are regulatory or behavioral. Finally, any changes to the proposed regulations should include clear guidelines for what courses qualify as regulatory ethics and behavioral ethics, such as was outlined in the "Recommendations by the Education Committee to the Full Board." We found that guidance to be very clearly written and understandable, and believe that most practitioners would benefit from such clarified language.

As cited above, the extant regulation states that the licensee has to obtain four credits of professional ethics CPE. As written, it does not specify that the CPE has to be NYS–specific. Again, we refer to the New Jersey regulation, which is very specific; the course has to be NJ law and ethics. If a licensee is working for a firm that has offices in several states, it is not unreasonable that he or she may believe that professional ethics is not state–specific and that any ethics course is the same as any other. We believe a clarification of the language in the regulation, such as that discussed above, is required to resolve this root cause, not an increase in the number of hours.

Finally, the confusion regarding the triennial registration cycle vs. the triennial CPE cycle is common to many CPAs. The easiest remedy for this issue would be for the Board to change the registration cycle for all licensees to a triennial calendar-year cycle.

In the Society's opinion, of the four principal root causes of noncompliance with the mandatory ethics CPE requirements, none would be resolved by the addition of 2 ethics credit hours per triennial cycle and the imposition of an annual 2–credit–hour ethics requirement.

Other Matters to Consider

There is no provision in the proposed regulation to address the CPA who holds a license in New York state as well as in other jurisdictions. The regulation should provide relief to those practitioners who no longer live and/or work in New York state but who chose to maintain their New York state CPA license. If those practitioners are subject to the ethics requirements of another state, we do not believe it is equitable to require them to also take a New York state–specific CPE course or be subject to a 6–credit–hour requirement if their new state requires only 4 credits. Such individuals should be held to the requirements of the state in which they principally practice, and NYS should recognize the individual's compliance with that state's requirements.

The proposed regulation is set to take effect January 1, 2018. What happens to CPAs who have already taken their ethics requirement for their current triennial? Must they take two rounds of ethics in the same triennial period because of the 2–credit minimum? The Society does not believe this is equitable to our members or any NYS licensee. The Society proposes an effective date with a sufficiently delayed implementation to allow for adequate communication of any changes in the regulation to not only our members but to all NYS licensees. Without timely, effective communication of any final change in the current CPE requirements, we believe the next round of CPE audit findings will be worse.

The proposed regulation leaves open whether the additional 2 credits of CPE would be counted toward the annual requirement in the calendar year in which they are taken. If the Board advances the proposed increase in ethics CPE proposal, the Society is of the opinion that the additional 2 ethics credits should be included for those practitioners who obtain 40 CPE credits per calendar year, but should not be included in the concentration requirement of 24 credits. In the 40–credit case, disallowing such inclusion would effectively raise the triennial CPE requirement to 126 credits. In the case of the concentration exception, we believe that devoting 2 credits of the concentration credit hours to ethics diminishes the intent of the provision.

The Society does not believe that there should be a separate NYS-specific ethics requirement. We are unconvinced that the ethics specific to NYS are sufficiently more onerous than other regulatory bodies as to warrant a special CPE requirement. We, therefore, believe that 4 credits of regulatory ethics would be more than sufficient to produce ethically minded practitioners. This proposal would eliminate the application of behavioral ethics courses toward the satisfaction of the ethics CPE requirement.

Conclusion

Based on the above, the New York State Society of CPAs recommends that the New York State Board for Public Accountancy re-examine the root causes of the lack of compliance with the mandatory ethics CPE requirements and reassess the most effective means to address those. The Society suggests that much of the issue lies in the ambiguity of the language in the extant regulation. We strongly urge the Board to provide interpretive guidance in a plain-English manner that clarifies the requirements of the regulation, while leaving the current ethics CPE requirement of 4 credit hours over the triennial CPE reporting cycle intact. The Society believes that these minor amendments, coupled with additional enhanced communications of the actual requirements using various communication channels, will be sufficient to improve compliance in the future. Furthermore, we believe that the ethics CPE should be maintained at the current 4 credit hours per triennial CPE cycle in order to remain comparable to and competitive with the requirements of surrounding states.

Again, the Society appreciates the opportunity to be heard an on issue this important to our members. If you would like to further explore any of our recommendations, we would be happy to do so.

Yours truly,

Harold L. Deiters III, CPA
President

cc: Jan Herringer, CPA
Elliot L. Hendler, CPA
Joanne S. Barry, CAE