

Notice of Rulemaking Comment Period and Policy-Making Hearing

June 12, 2019

Notice is hereby given that the Nebraska Board of Public Accountancy will hold a policy-making hearing on **Friday, July 12, 2019 at 8:30am at the Board Office, 1526 K Street, Hearing Room 4D, Lincoln, Nebraska**. The purpose of this hearing is to receive public testimony on amendments to rules promulgated by the Board of Public Accountancy to address changes to the Uniform CPA Examination, proposed updates to educational requirements, and to supplement new law regarding allowing for firm ownership by Employee Stock Ownership Programs (ESOP). The subject matter and purpose of the rule making action is:

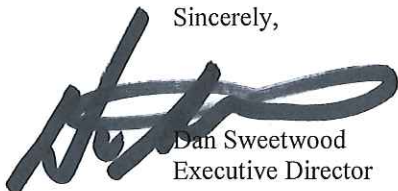
Proposed changes to the NAC Title 288 regulations include:

- *Chapter 6- It is anticipated the Uniform CPA Examination will allow for continuous testing within the same examination window in the future. Currently, an examination candidate cannot retake a failed section of the examination during the same test window. The proposed change would give the Board authority to approve continuous testing when applicable.*
- *Chapter 9 – The Board’s Education Advisory Committee recommended changes to modernize education requirements to sit for the Uniform CPA Examination. This includes consolidating, updating, and removing some educational requirements.*
- *Chapter 11- New law recently approved within the Public Accountancy Act will allow for Employee Stock Ownership Programs (ESOP). Recommended changes will harmonize and clarify these changes within Board regulations.*


The rule-making hearing is being conducted by virtue of the provisions of Nebraska Revised Statutes, Section 84-907, R.R.S. which provisions require that copies of the proposed rule or rule change are available for public examination at the office of the Board of Public Accountancy, 1526 Building, 1526 K Street, Suite 410, Lincoln, Nebraska 68508, (402) 471-3595, and at the office of the Secretary of State, Capitol Building, Lincoln, Nebraska. A complete statement on the fiscal impact of the proposed rules may be examined at the office of the Board of Public Accountancy at 1526 Building, 1526 K Street, Suite 410 Lincoln, Nebraska.

All interested persons are invited to attend and testify at the hearing. Interested persons may also submit written comments prior to the hearing, which comments will be made a part of the hearing record at the time of the hearing. Anyone needing reasonable accommodations to review the drafts or participate in this process, please contact the Board office at (402) 471-3595 or within Nebraska at 1-800-564-6111 or by emailing to Dan.Sweetwood@Nebraska.gov.

Sincerely,



Dan Sweetwood
Executive Director



Kristen VanWinkle
Administrator

Statement to the Governor and Explanatory Statement:

The Nebraska State Board of Public Accountancy held a public hearing July 12, 2019, 1526 K Street, Hearing Room 4D, Lincoln, NE to receive public comment relative to proposed rule changes within Board Rules & Regulations Title 288/ CHAPTER 6 – EXAMINATION.

Information on the proposed amendments as required by law:

CHAPTER 6 - EXAMINATION

Description of the proposed rule or regulation and the entities it will impact:

A change to Title 288 Chapter 6 is proposed based on anticipated changes to the Uniform CPA Examination that would allow “continuous testing” within an examination window in 2020. Currently, an examination candidate cannot retake a failed section of the examination during the same examination window. A window is defined as a two-month period for active testing while the next one-month period is required to set scores to determine successful passage. With the continued modernization of the examination, it is anticipated the AICPA Board of Examiners (BOE), who develop and score the examination, will be able to offer “continuous testing” based on enhanced test item development and other provisions to keep the examination secure. The goal is to provide candidates completing the difficult Uniform CPA examination with another option to assist in successfully completing the examination by allowing them another opportunity to sit for the test section they recently failed within the same testing window (two-month period). Since the examination is uniform for 55 State Boards of Accountancy, it is vital Nebraska offer “continuous testing” when available for Nebraska candidates and to remain a State Board uniform with the examination.

The recommended change:

As indicated, the proposed changes would directly impact Nebraska candidates sitting for the Uniform CPA examination by allowing them to sit within the same testing window after learning they had failed the test section.

Revising language in Chapter 6.005.03A would give the Board authority to allow for continuous testing when offered by the BOE and remain a uniform participating State Board.

An explanation of the necessity of the proposed rule or regulation, including the identification of the authorizing statute or legislative bill:

The revision to Chapter 6.005.03 would keep Nebraska uniform with other State Boards by giving the Board authority to allow for “continuous testing” when the BOE is ready to offer it in 2020. It would also allow the Board to wait until comfortable in allowing “continuous testing” and remain with current requirements.

Authorizing Statutes within the Nebraska Public Accountancy Act (PAA) include:

PAA 1-112: The board may adopt and promulgate rules and regulations of professional conduct appropriate to establish and maintain a high standard of integrity and dignity in the profession of public accountancy and to govern the administration and enforcement of the Public Accountancy Act. The rules and regulations shall be adopted and promulgated pursuant to the Administrative Procedures Act.

PAA 1-115: The board may make such use of all or any part of the Uniform Certified Public Accountants' Examination or Advisory Grading Services, or either of them, as it deems appropriate to assist it in performing its duties.

A statement that the proposed rule or regulation is consistent with legislative intent:

The Board's intent is to allow for rules to lessen the burden for prospective CPA candidates sitting for the Uniform CPA examination.

A statement indicating whether the proposed rule or regulation is the result of a state mandate on a local governmental subdivision and if the mandate is funded:

The Board's proposed amendments within Chapter 6 Title 288 are not the result of a state mandate.

A statement indicating whether the proposed rule or regulation is the result of a federal mandate on state government or on a local government subdivision and if the mandate is funded:

The Board's proposed amendments within Chapter 6 Title 288 are not the result of a federal mandate.

A description, including an estimated qualification, of the fiscal impact on state agencies, political subdivisions, and regulated persons:

See attached Fiscal Impact Statement. There will be no fiscal impact on regulated persons.

A statement that the agency will solicit public comment on the proposed rule or regulation before the public hearing and a statement indicating whether or not the agency has utilized the negotiated rulemaking process as provided for in the Negotiated Rulemaking Act with respect to the proposed rule or regulation:

See attached published Notice of Rulemaking Comment Period and Policy Making Hearing.

The Board's Education & Examination Committee has studied this proposed regulation in detail and concluded it would lessen the burden on CPA candidates and would allow Nebraska to remain uniform with other State Boards in administering the Uniform CPA examination. The Board also exposed this concept to its Education Advisory Committee and the Nebraska Society of CPAs.

Fiscal Impact Statement

Agency: Nebraska Board of Public Accountancy
Prepared By: Dan Sweetwood, Executive Director
Date Prepared: 6/10/2019
Telephone Number: (402) 471-3595

Title: 288 Chapter 6
Subject: Examination

Type of Fiscal Impact:

	<u>NBPA</u>	<u>Political Sub.</u>	<u>Regulated Public</u>
Fiscal Impact	X	X	X
Increased Costs	X	X	X
Decreased Costs	X	X	X
Increased Revenue	X	X	X
Decreased Revenue	X	X	X
Indeterminable			

~ - Fiscal Impact

X- None

* estimated/ possible

Provide an Estimated Cost & Description of Impact:

NBPA/State Agency:

No impact.

Political Subdivisions:

No impact.

Regulated Public:

No impact.

CHAPTER 6 – CERTIFIED PUBLIC ACCOUNTANT EXAMINATION

001 Time and Place for Filing Applications

001.01 Applications to take the Certified Public Accountant Examination must be made on a form provided by the Board or its designee and filed with the Board or its designee.

001.02 An application will not be considered filed until the application fee and examination fee required by these Rules and all required supporting documents have been received. Supporting documents shall include proof of identity as determined by the Board and specified on the application form, official transcripts, proof the Candidate has satisfied the education requirement, and disclosure of any conduct as outlined in 002.02.

001.03 The Board or its designee will forward notification of eligibility for the computer-based examination to NASBA's National Candidate Database.

002 Character and Fitness Standards

002.01 Purpose. The primary purpose of character and fitness screening for taking the Uniform CPA exam and licensure is to assure the protection of the public. The CPA licensing process is incomplete if only testing for competence is undertaken. The public is adequately protected only by a system that evaluates character and fitness as those elements relate to the character of the applicant and to the practice of public accountancy.

002.02 Causes for denial to sit for CPA examination or licensure. The revelation or discovery of any of the following facts from any jurisdiction shall be grounds for denial to sit for the CPA exam or issuance of a Board certificate or an initial permit to practice public accountancy:

1. A civil judgment, criminal conviction or civil penalty an element of which judgment, conviction, or penalty involves dishonesty, fraud, deceit, or misrepresentation;
2. violation of a court order;
3. denial of professional licensure or disciplinary action by a professional regulatory agency or professional organization;
4. conviction of a felony.

002.03 Denial to sit for the Uniform CPA Examination and licensure. The Board may refuse to allow a person to sit for the Uniform CPA Examination or to issue a Board certificate or an initial permit on the grounds of failure to meet the standards as outlined in Subsection 002. If a person is found to be ineligible to sit for the Uniform CPA Examination or to be issued a Board certificate or an initial permit the person shall have the right to a hearing before the Board.

002.04 USE OF INFORMATION. Upon appeal by applicant of a denial under Subsection 002.02, the Board will determine whether the present character and fitness of an applicant qualify the applicant to practice public accountancy, despite the existence of a cause under Subsection 002.02. In making this determination, the following factors should be considered in assigning weight and significance to prior conduct:

1. the applicant's age at the time of the conduct;
2. the recency of the conduct;
3. the reliability of the information concerning the conduct;

4. the seriousness of the conduct;
5. the factors underlying the conduct;
6. the cumulative effect of the conduct or information;
7. the evidence of rehabilitation;
8. the applicant's positive social contributions since the conduct;
9. the applicant's candor in the application process;
10. the materiality of any omissions or misrepresentations.

003 Time and Place of Examinations

003.01 Eligible Candidates shall independently contact the Board or a test center operator identified by the Board to schedule the time and place for the examination at an approved test site.

004 Conduct of Examinations

004.01 The Board may make use of the uniform certified public accountants examination prepared by the American Institute of Certified Public Accountants (AICPA) or another nationally recognized organization. The Board may also make use of the advisory grading service provided by the AICPA or another nationally recognized organization.

004.02 The candidate may be photographed or other biometric identification taken by the test administrator at each appearance for the examination. The candidate will be required to provide proof of identification.

004.03 Cheating by a Candidate in applying for, taking or subsequent to the examination will be deemed to invalidate any grade otherwise earned by a Candidate on any Test Section of the examination, and may warrant summary expulsion from the test site and disqualification from taking the examination for a specified period of time.

004.03A For purposes of this Rule, the following actions or attempted activities, among others, may be considered cheating:

- (1) Falsifying or misrepresenting educational credentials or other information required for admission to the examination;
- (2) Communication between Candidates inside or outside the test site or copying another Candidate's answers while the examination is in progress;
- (3) Communication with others inside or outside the test site while the examination is in progress;
- (4) Substitution of another person to sit in the test site in the stead of a Candidate;
- (5) Reference to crib sheets, textbooks or other material or electronic media (other than that provided to the Candidate as part of the examination) inside or outside the test site while the examination is in progress.
- (6) Violating the nondisclosure prohibitions of the examination or aiding or abetting another in doing so, or otherwise participating in the collection of Test Items for use, redistribution or sale.
- (7) Retaking or attempting to retake a Test Section by an individual holding a valid Certificate or by a Candidate who has unexpired credit for having already passed the same Test Section, unless the individual has been directed to retake a Test Section

pursuant to Board order or unless the individual has been expressly authorized by the Board to participate in a "secret shopper" program.

004.03B In any case where it appears cheating has occurred or is occurring, the Board or its representatives may either summarily expel the Candidate involved from the examination or move the Candidate to a position in the Test Center away from other examinees where the Candidate can be watched more closely.

004.03C In any case where the Board or its representative believes it has evidence a Candidate has cheated on the examination, including those cases where the Candidate has been expelled from the examination, the Board shall conduct an investigation and may conduct a hearing following the examination session for the purpose of determining whether or not there was cheating, and if so, what remedy should be applied. In such proceedings, the Board shall decide:

- (1) Whether the Candidate shall be given credit for any portion of the examination completed in that session; and
- (2) Whether the Candidate shall be barred from taking the examination and if so, for what period of time.

004.03D In any case where the Board or its representative permits a Candidate to continue taking the examination, it may, depending on the circumstances:

- (1) Admonish the Candidate;
- (2) Seat the Candidate in a segregated location;
- (3) Keep a record of the Candidate's seat location and identifying information, and the names and identifying information of the candidates in close proximity of the Candidate; and/or
- (4) Notify the National Candidate Database and the AICPA and/or the Test Center of the circumstances, so the Candidate may be more closely monitored in future examination sessions.

004.03E In any case where a candidate is refused credit for a Test Section taken, or is disqualified from taking other sections, the Board or its designee shall give the candidate a statement containing its findings, the evidence upon which the findings are based, and a notice of the right of the candidate to a formal hearing by the Board, with rights of appeal, pursuant to the Administrative Procedure Act.

004.03F In any case in which the Candidate is refused credit for any Test Section of an examination taken, disqualified from taking any Test Section, or barred from taking the examination in the future, the Board will provide to the Board of Accountancy of any other state to which the Candidate may apply for the examination information as to the Board's findings and actions taken.

004.03G Notwithstanding any other provisions under these rules, the Board may postpone scheduled examinations, the release of grades, or the issuance of certificates due to a breach of examination security, unauthorized acquisition or disclosure of the contents of an examination; suspected or actual negligence, errors, omissions, or irregularities in conducting an examination; or for any other reasonable cause or unforeseen circumstance.

004.04 All supplies necessary for the examination will be furnished by the Board or its designee. All supplies furnished by the Board or the test administrator shall remain the administrator's property and must be returned whether used or not.

004.05 The Board or its designee will communicate to each candidate the decisions reached by the Board in his or her case, and shall state the grade received by the candidate on each Test Section.

In no event will any information concerning a candidate's answers be given to anyone other than the candidate himself nor will any of the candidate's examination be accessible for inspection except as otherwise provided for in these regulations.

004.06 Candidates may request a score review to ensure that their exam was scored consistent with the scoring guides, and/or they may request a score appeal to review their incorrect responses under the auspices of the Board of Accountancy.

005 Examination Subjects and Requirements

005.01 The examination shall test the knowledge and skills required for performance as an entry-level certified public accountant. The examination shall include the subject areas of accounting and auditing and related knowledge and skills as the Board may require.

005.02 A Candidate shall be required to pass all Test Sections of the examination in order to qualify for certification. Upon receipt of advisory grades from the examination provider, the Board will review and may adopt the examination grades and will report the official results to the Candidate. The Candidate must, on each test section, attain the uniform passing grade established through a psychometrically acceptable standard-setting procedure.

005.03 A Candidate shall be required to pass all sections of the examination in order to qualify for certification.

005.03A A Candidate may take the required Test Sections individually and in any order. Credit for any Test Section(s) passed shall be valid for eighteen months from the actual date the Candidate took that Test Section (regardless of the date on which the testing candidate receives actual notice of the passing grade), without having to attain a minimum score on any failed Test Section(s) and without regard to whether the Candidate has taken other Test Sections.

1) Candidates must pass all four Test Sections of the Uniform CPA Examination within a rolling eighteen-month period, which begins on the date the first Test Section(s) passed is taken.

2) (a) Subject to subsection 2(b). Candidates cannot retake a failed Test Section(s) in the same examination window. An examination window refers to a three-month period in which Candidates have an opportunity to take the CPA examination (comprised of two months and 10 additional days as approved by the Board in which the examination is available to be taken and 21 days of less one month in which the examination will not be offered while routine maintenance is performed and the item bank is refreshed). Thus, Candidates will be able to test no less than two out of three months within an examination window.

2) (b) If the Board determines that the examination system changes necessary to eliminate the test window limitations have been implemented, subsection (a) will no longer be effective, and a Candidate can retake a Test Section once their grade for the previous attempt of the same Test Section has been released.

3) In the event all four Test Sections of the Uniform CPA Examination are not passed within the rolling eighteen-month period, credit for any Test Section(s) passed outside the eighteen-month period will expire and that Test Section(s) must be retaken.

005.03B A Candidate shall retain credit for any and all Test Sections of an examination passed in another state provided the Candidate meets the requirements of Nebraska for granting credit.

005.03C Notwithstanding the requirements of subsections 005.03A, 005.03B, upon showing that the credit was lost by reason of circumstances beyond the Candidate's control, the Board may, on a case-by-case basis, extend the transition period.

005.03D A Candidate shall be deemed to have passed the Uniform CPA Examination once the Candidate holds at the same time valid credit for passing each of the four Test Sections of the examination. For purposes of this section, credit for passing a Test Section of the ~~computer-based~~ examination is valid from the actual date of the Testing Event for that Test Section, regardless of the date the Candidate actually receives notice of the passing grade.

006 Ethics Examination. All successful candidates for the CPA examination seeking certification shall pass an examination in professional ethics as approved by the Board.

007 Examination Fee. The Candidate shall, for each Test Section scheduled by the Candidate to the Board or its designee, pay a Candidate Testing Fee that includes the actual fees charged by the AICPA, National Association of State Boards of Accountancy (NASBA), and the Test Delivery Service Provider, as well as reasonable application fees established by the Board.

A candidate who fails to appear for the examination shall forfeit all fees charged for both the application and the examination unless the Candidate notifies the Board or its designee in writing within 30 days after the examination with an acceptable reason for failing to sit for the examination as scheduled. Acceptable reasons for not sitting shall include a documented illness verified by a medical doctor, death in the immediate family, call to active military service, or any other reason that the Board determines to be unavoidable. Each refunded examination application fee shall be subject to a 25 percent processing fee.

008 Reciprocal Fee. Applications for a Nebraska CPA certificate by reciprocity shall be accompanied by the fee established by the Board.

Statement to the Governor and Explanatory Statement:

The Nebraska State Board of Public Accountancy held a public hearing July 12, 2019 1526, K Street, Hearing Room 4D, Lincoln, NE to receive public comment relative to proposed rule changes within Board Rules & Regulations Title 288/ CHAPTER 9 –EDUCATION.

Information on the proposed amendments as required by law:

CHAPTER 9 - EDUCATION

Description of the proposed rule or regulation and the entities it will impact:

A change to Title 288 Chapter 9 is largely based on recommendations from the Subject Area Review Task Force (SART) and the Board's Education Advisory Committee (EAC). In October 2017, the SART initially met, made up of three long time educators and a current practicing CPA while being current members of the EAC, to discuss educational prerequisites to meet the 150-hour educational requirement as outlined within the Public Accountancy Act (PAA) under section 1-116.

Chapter 9 outlines the requirements for a candidate to sit for the CPA Exam, including business and accounting subject areas to be met. Chapter 9 was initially drafted by the EAC, made up of Nebraska educators and CPAs, in the attempt to assist candidates in passage of the CPA Exam. Additionally, as much flexibility for course development within Nebraska educational institutions with an accounting curriculum was taken into consideration along with recommended national requirements. It should be noted it is not the intent in any way to prescribe specific curricula to Nebraska educational institutions as outlined within Chapter 9.004 and PAA 1-116.

The SART's charge by the EAC was to evaluate the current subject area requirements within Chapter 9 to ensure the necessity of the requirements and to modernize them, if necessary, based on the current CPA Exam Blue Prints. The Blue Prints provide general content of the CPA Exam and are published by the Board of Examiners (BOE), a senior committee of the American Institute of CPAs (AICPA), that develops and scores the CPA Exam.

The recommended changes include:

- Reducing the number of required semester hours in general business from 36 to 30.
- Consolidated the Micro and Macro Economic requirement into one subject area.
- Removed the Business Communication requirement and placed it as a recommended subject area.
- Removed the Quantitative Applications in Business requirement and placed it as a recommended subject area.
- Included Data Analytics as a recommended subject area.

- Consolidated regulations to allow the remaining 90 semester hours to be completed within general education and electives.

The SART made these recommendations and, in October of 2018, the EAC met to review the recommendations. After discussion, the EAC recommended the changes to Chapter 9 as proposed.

The Board will hold a public hearing on July 12, 2019 for public comment.

Candidates completing the education requirements to sit for the CPA exam could be positively impacted by the proposed changes to Chapter 9. The goal of these changes is to provide more flexibility for the student to choose an additional two courses (business or non-business) while still receiving an accounting education that assists in passage of the CPA Exam.

It could also positively impact non-traditional accounting students who choose to make accounting a career after receiving a Bachelor's degree in another field of study by not requiring two additional business courses to meet the requirement.

The changes could also impact Nebraska educational institutions by allowing more flexibility in creating their accounting curriculums tied to the 150-hour requirement.

An explanation of the necessity of the proposed rule or regulation, including the identification of the authorizing statute or legislative bill:

The proposed changes to regulations within Chapter 9 update and modernize the subject area requirements for those interested in sitting for the CPA Exam as a Nebraska candidate. Additionally, it allows greater flexibility to select and prepare coursework for Nebraska educational institutions with an accounting curriculum.

PAA Section 1-116 outlines the 150-hour requirement to sit for the CPA Exam and the purpose of Chapter 9:

"...Any person...shall be eligible to take the examination if he or she has completed at least one-hundred fifty semester hours...of postsecondary academic credit...The person shall demonstrate that accounting, auditing, business, and other subjects at the appropriate academic level as required by the board are included within the required hours of postsecondary credit..."

PAA Section 1-113 outlines the duties of the EAC and recommendations within Chapter 9:

"...The advisory committee shall meet at the direction of the board and shall advise the board upon rules and regulations for section 1-116 relating to educational requirements..."

A statement that the proposed rule or regulation is consistent with legislative intent:

The Board's intent is to follow the recommendations of the Education Advisory Committee as directed in PAA 1-113.

A statement indicating whether the proposed rule or regulation is the result of a state mandate on a local governmental subdivision and if the mandate is funded:

The Board's proposed amendments within Chapter 9 Title 288 are not the result of a state mandate.

A statement indicating whether the proposed rule or regulation is the result of a federal mandate on state government or on a local government subdivision and if the mandate is funded:

The Board's proposed amendments within Chapter 9 Title 288 are not the result of a federal mandate.

A description, including an estimated qualification, of the fiscal impact on state agencies, political subdivisions, and regulated persons:

See attached Fiscal Impact Statement. There will be no fiscal impact on regulated persons.

A statement that the agency will solicit public comment on the proposed rule or regulation before the public hearing and a statement indicating whether or not the agency has utilized the negotiated rulemaking process as provided for in the Negotiated Rulemaking Act with respect to the proposed rule or regulation:

See attached published Notice of Rulemaking Comment Period and Policy Making Hearing.

The Board has utilized the Education Advisory Committee. The committee members include representatives from Nebraska educational institutions, Board members and CPAs. The Board also exposed the proposed changes to the Nebraska Society of CPAs.

Fiscal Impact Statement

Agency: Nebraska Board of Public Accountancy
Prepared By: Dan Sweetwood, Executive Director
Date Prepared: 6/10/2019
Telephone Number: (402) 471-3595

Title: 288 Chapter 9
Subject: EDUCATION

Type of Fiscal Impact:

	<u>NBPA</u>	<u>Political Sub.</u>	<u>Regulated Public</u>
Fiscal Impact	X	X	X
Increased Costs	X	X	X
Decreased Costs	X	X	~
Increased Revenue	X	X	X
Decreased Revenue	X	X	X
Indeterminable			

~ - Fiscal Impact

X- None

* estimated/ possible

Provide an Estimated Cost & Description of Impact:

NBPA/State Agency:

No impact.

Political Subdivisions:

No impact.

Regulated Public:

It could positively impact non-traditional accounting students who choose to make accounting a career after receiving a Bachelor's degree in another field of study by not requiring two additional business courses to meet the requirement.

1 **CHAPTER 9 – EDUCATION**

2
3 **001 Definitions:**

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5 **001.01** “Accreditation” means the quality control of the education process provided by generally
6 recognized regional and/or programmatic accreditation organizations. These Rules refer to three levels
7 of accreditation. Level 1 represents the most comprehensive review at the accounting program level
8 and Level 3 is the least comprehensive review at the college or university level. Colleges or
9 universities without accreditation, as defined below, would generally lack any level of accreditation
10 including the college or university, the business school or program (“business school”), and/or the
11 accounting department or program (“accounting program”).

- 12
13 1. Level 1 accreditation – the accounting program. In a Level 1 accreditation, the college or
14 university; business school; and the accounting program are separately accredited. This level
15 applies to an accounting program that is accredited by an organization recognized by the
16 Council of Higher Education Accreditation (CHEA) as a specialized or professional
17 accrediting organization, such as the Association to Advance Collegiate Schools of Business-
18 International (AACSB). Accredited accounting programs have met standards substantially
19 higher and much more specific than those required for Level 2 or Level 3 accreditation.
20
21 2. Level 2 accreditation – the business school. In a Level 2 accreditation, the college or
22 university and the business school are separately accredited, but the accounting program is not
23 separately accredited. This level applies to a business school that is accredited by an
24 organization recognized by the Council of Higher Education Accreditation (CHEA) as a
25 specialized or professional accrediting organization, such as the AACSB or the Association of
26 Collegiate Business Schools and Programs (ACBSP).
27
28 3. Level 3 accreditation – the college or university. In a Level 3 accreditation, the college or
29 university is accredited, but neither the business school nor the accounting program meet Level
30 1 or Level 2 requirements. This level applies to a degree-granting college or university that is
31 not accredited at Level 1 or Level 2, but is accredited by an organization currently recognized
32 by the Council of Higher Education Accreditation as a regional accrediting organization or a
33 regional accrediting body recognized by the United States Department of Education.

34
35 **001.02** “College(s) or university(s)” means Board-recognized institution(s) of higher education
36 accredited by regional accrediting organizations.

37
38 **002 Recognized Standing.**

39 An applicant for certification must demonstrate proof that he has earned a four-year degree from a
40 college or university of recognized standing. An applicant who has earned a four-year degree conferred by
41 a college or university which is accredited by a regional accrediting body recognized by the United States
42 Department of Education is deemed to have met that statutory requirement.

43 Four year colleges or universities not accredited by a regional accrediting body recognized by the
44 United States Department of Education are considered for purposes of these rules to be unaccredited or non-
45 accredited colleges or universities.

46
47 **003 Non-accredited Degree**

48 A graduate of a four-year degree granting institution not accredited at the time the applicant’s degree
49 was received or at the time of filing his or her application for certification will be deemed to have met the
50 statutory education requirement, provided;

51
52 **003.01** An accredited college or university, as defined above, accepts the applicant’s non-accredited
53 degree for admission to a graduate degree program; and

1
2 **003.02** The applicant presents evidence satisfactory to the Board that the education received from
3 the non-accredited college or university through which the applicant received his or her four-year
4 degree is comparable to an accredited college or university. Evidence satisfactory to the Board may
5 include, but is not limited to:

6
7 **003.02A** letters of recommendation regarding the applicant or the non-accredited institution;

8
9 **003.02B** material from accounting firms regarding the quality of the educational program
10 or the candidates from the non-accredited institution;

11
12 **003.02C** evaluations of the applicant regarding his or her educational background, from
13 faculty members of accredited institutions;

14
15 **003.02D** listings of the non-accredited institution in directories or publications which attest
16 to the quality of the educational programs at that institution;

17
18 **003.02E** membership of the non-accredited institution in organizations which attest to the
19 quality of the non-accredited institution; and any other material acceptable to the Board.
20

21 **004 Educational Requirements;**

22 Preface: The Nebraska State Board of Public Accountancy is dedicated to insuring that the
23 educational preparation of CPAs reflects a broad based educational program which incorporates the latest
24 information and knowledge in the areas of accounting, auditing and general business as well as an
25 understanding of the world and the relationships between business enterprises, government, and not-
26 for-profit entities.

27 The Board will not furnish or prescribe specific curriculum which colleges or universities should
28 adopt; rather it urges colleges and universities to adopt innovative approaches and programs designed to best
29 meet the needs of the profession and society.
30

31 **004.01 CPA Candidates** - For the Purpose of Nebraska Revised Statutes, Section 1-106 et. seq., as
32 revised, the education requirements for certification, which must be met no later than the date of
33 application for the candidate's first sitting for the Uniform CPA Examination, shall be a
34 baccalaureate or higher degree which contains, as a minimum, 150 semester hours or 225 quarter
35 hours from an accredited college or university (as defined and specified in Title 288, Chapter 9-001
36 and 9-002).
37

38 **004.02 Eligibility.** The candidate will be required, as a condition of acceptance for sitting for the
39 first time for the Uniform CPA Examination, to provide the Board or its designee with an official
40 transcript or transcripts that show his or her postsecondary education program has included, as
41 follows:
42

43 **004.02A** 30 semester or 45 quarter hours in accounting beyond principles of accounting.
44 The subjects to be covered in these hours shall include, at a minimum:

- 45 (1) Financial accounting theory and problems
- 46 (2) Cost and managerial accounting
- 47 (3) Tax preparation and planning
- 48 (4) Auditing
- 49 (5) Accounting Information systems
- 50 (6) Governmental and not-for-profit accounting.

51
52 **004.02B** 36 30 semester or 54 45 quarter hours in general business. The subjects to be
53 covered in these hours shall include, at a minimum:

- 54 (1) Macro and microeconomics

- (2) Microeconomics
- (3) Business law
- (4) Marketing
- (5) Management
- (6) Finance
- (7) Business Communication
- (8) Business Ethics
- (9) Quantitative applications in business
- (10) Principles of accounting

The following subject areas are not required, but may be used as general business credit hours to meet this requirement:

- (1) Business communication
- (2) Quantitative applications in business
- (3) Data analytics

004.02C The remaining 90 semester or 135 quarter hours in general education and electives, which could include general business courses. The subjects to be covered in these hours shall include, at a minimum:

- (1) Oral and written communication skills
- (2) Mathematics
- (3) Arts, natural sciences, social sciences and or humanities
- (4) Statistics

004.02D The remaining 24 semester or 36 quarter hours would be in electives.

004.03 Any person making initial application to take the Uniform CPA examination shall be deemed to have met the educational requirement contained in the law and these rules if the applicant has earned a graduate degree in accounting from an accounting program or department that is accredited in accounting by an accrediting agency recognized by the Board.

004.04 Review of Transcripts; Appropriate level of coursework; transfer hours. For purposes of meeting the educational requirements, an applicant's official transcript or transcripts shall be reviewed by the Board or its designee to determine if the applicant's educational program complies with the requirements of the law and these rules. In reviewing the transcript or transcripts, hours in courses which have contained the required subjects listed in 9-004.02A, B, and C which have been earned at a non-four year institution and are transferred to a four year institution shall be considered as acceptable in meeting the educational requirements.

004.04A A maximum of 12 semester or 18 quarter hours of electives required under 9-004-02C can be earned at a two year institution after a four year degree has been granted. Any elective hours included on the four year degree transcript are not subject to the 12 semester or 18 quarter hour maximum rule.

004.05 Reciprocal Certificates. An applicant for a reciprocal certificate shall be deemed to have met the requirements of Nebraska Revised Statutes, Section 1- 106, et. seq. if he or she meets the following conditions:

004.05A Holds a current and unrevoked certificate then in full force and effect in any state; and

004.05B Has a postsecondary education which is substantially equivalent to the requirements contained in Nebraska Revised Statutes, Section 1-106, et. seq. The Board or its designee shall determine, based upon information provided by the applicant for a

1 reciprocal certificate, if the applicant has education which is substantially equivalent to the
2 requirements contained in Nebraska Revised Statutes.
3

4 **004.06 Application procedures.** Any person making initial application to take the Uniform CPA
5 Examination shall be required to submit an official transcript or transcripts showing that the
6 applicant has satisfied the educational requirements as prescribed in these rules. The Board or its
7 designee shall determine whether the applicant is eligible to sit for the Uniform CPA Examination.
8 If the Board or its designee cannot readily determine that an applicant has satisfied the educational
9 requirements as prescribed in these rules, notification shall be made to the applicant. The burden of
10 showing that the applicant's educational records contain compliance with the educational
11 requirements contained in these rules shall rest solely with the applicant.
12

13 Statutory Authority: Section 1-113 R.R.S. 1943
14

Statement to the Governor and Explanatory Statement:

The Nebraska State Board of Public Accountancy held a public hearing on Friday, July 12, 2019 at 8:30am at 1526 K Street, Hearing Room 4D, Lincoln, NE to receive public comment relative to proposed rule changes within Board Rules & Regulations Title 288/ CHAPTER 11.

Information on the proposed amendments as required by law:

CHAPTER 11- PUBLIC ACCOUNTING PARTNERSHIPS AND PROFESSIONAL CORPORATIONS

Description of the proposed rule or regulation and the entities it will impact:

In March of 2019, Legislative Bill 49 was passed by the Legislature and approved by Governor Ricketts amending the Nebraska Public Accountancy Act (PAA). LB 49 authorized the Board to allow for ownership of CPA firms by Employee Stock Ownership Programs (ESOPs) and additionally providing elements on how to apply the specific non-CPA ownership provisions and other aspects of ESOPs.

ESOPs are seen as significant succession tools for some CPA firms that will choose to employ them within their ownership structure. They give the firm several options to allow for a more orderly succession of ownership. They also allow for CPA firm employees including non-CPA employees to become part of the ownership structure of the firm, including enhanced compensation and retirement planning.

The Board was approached last year by a Nebraska CPA firm requesting the ability to allow for ESOP ownership. After review, it was determined the current PAA did not allow for this type of ownership. Based on the request and foregoing comments above, the Board chose to move forward and utilize the Board Attorney and others to draft and prepare the provisions within LB 49.

After LB 49 was passed, the Board approved the Board Attorney and others to continue to review and draft regulations under NAC Title 288. Focus was directed to Chapter 11 and the proposed regulations amendments are included within this request. The proposed regulations harmonize the new law and provide additional input within the Chapter. They include:

- Clarifying an owner can be a direct or indirect owner of a CPA firm.
- Adding a new section that addresses how CPA firms that employ ESOPs can only apply their plans according to current law and how shares of the ESOP can be distributed, including reporting requirements.
- Additional clarification on how the ESOP Trustee can act within the ESOP of the CPA firm.

Additionally, while developing the regulations for ESOPs, staff also reviewed the Chapter to determine if any duplicative regulations were identified within the PAA. This process is in conjunction within the understanding of the Governor's initiatives to lessen regulations by eliminating redundancy with regulations that mirror language within the Statute. Several regulations are struck within the proposal reflecting this redundancy.

An explanation of the necessity of the proposed rule or regulation, including the identification of the authorizing statute or legislative bill:

The proposed changes to regulations within Chapter 11 harmonize the requirements of the recently passed LB 49 that allows for ESOP ownership by CPA firms. It is important the proposed regulations provide further input to CPA firms considering developing ESOPs for their ownership and to clarify certain areas of ESOPs, including share distributions and trustee requirements.

LB 49 enacted in September 2019 by the Legislature and approved by the Governor allows for ESOP ownership by registered CPA firms in Nebraska.

A statement that the proposed rule or regulation is consistent with legislative intent:

The Board's intent is to follow the new law within the Public Accountancy Act under section 1-162.01 regarding Employee Stock Ownership Programs (ESOP).

A statement indicating whether the proposed rule or regulation is the result of a state mandate on a local governmental subdivision and if the mandate is funded:

The Board's proposed amendments within Chapter 11 Title 288 are not the result of a state mandate.

A statement indicating whether the proposed rule or regulation is the result of a federal mandate on state government or on a local government subdivision and if the mandate is funded:

The Board's proposed amendments within Chapter 11 Title 288 are not the result of a federal mandate.

A description, including an estimated qualification, of the fiscal impact on state agencies, political subdivisions, and regulated persons:

See attached Fiscal Impact Statement. There will be no fiscal impact on regulated persons.

A statement that the agency will solicit public comment on the proposed rule or regulation before the public hearing and a statement indicating whether or not the agency has utilized the negotiated rulemaking process as provided for in the Negotiated Rulemaking Act with respect to the proposed rule or regulation:

See attached published Notice of Rulemaking Comment Period and Policy Making Hearing.

The Board has involved the Nebraska Society of CPAs and the National Association of State Boards of Accountancy (NASBA) in drafting the regulations.

Fiscal Impact Statement

Agency: Nebraska Board of Public Accountancy
Prepared By: Dan Sweetwood, Executive Director
Date Prepared: 6/10/2019
Telephone Number: (402) 471-3595

Title: 288 Chapter 11
Subject: Public Accounting Partnerships and Professional Corporations

Type of Fiscal Impact:

	<u>NBPA</u>	<u>Political Sub.</u>	<u>Regulated Public</u>
Fiscal Impact	X	X	X
Increased Costs	X	X	X
Decreased Costs	X	X	X
Increased Revenue	X	X	X
Decreased Revenue	X	X	X
Indeterminable			

~ - Fiscal Impact

X- None

* estimated/ possible

Provide an Estimated Cost & Description of Impact:

NBPA/State Agency:

No impact.

Political Subdivisions:

No impact.

Regulated Public:

No Impact

CHAPTER 11 – PUBLIC ACCOUNTING PARTNERSHIPS AND PROFESSIONAL CORPORATIONS

001 Definitions

001.01 For purposes of these rules, “actively participate” means the providing of personal services in the business entity licensed in Nebraska to practice public accounting, in the nature of management, performance of services for clients, or similar activities. Non-natural persons and individuals whose primary source of income from the business entity is provided as a result of passive investment will not be considered as actively participating in the business entity.

001.02 For purposes of these rules, an “owner” is defined as a person who directly or indirectly (a) has an interest in profits and losses of such business entity, or (b) owns all, or any portion, of the equity capital of such business entity, or (c) has a vote with respect to matters of such business entity.

001.03 For purposes of these rules, a “principal” is defined as an owner who actively participates in a business entity licensed in Nebraska to practice public accounting, and who is not licensed in this state or any other state or jurisdiction as a certified public accountant.

001.04 For purposes of these rules, “profits and losses” are defined as the net taxable income or loss, determined prior to payment of any form of compensation to owners, of a business entity licensed in Nebraska to practice public accounting.

001.05 For purposes of these rules, “equity capital” is defined as (a) capital stock, capital accounts, capital contributions, or undistributed earnings of a business entity licensed in Nebraska to practice public accounting; and (b) loans and advances to a business entity licensed in Nebraska to practice public accounting, made or held by its owners. “Equity capital” does not include an interest in bonuses, profit sharing plans or defined benefit plans or loans to a business entity licensed in Nebraska to practice public accounting from banks, financial institutions or other third parties that do not actively participate in such business entity.

001.06 For purposes of these rules, a “business entity” is defined as a proprietorship, partnership, professional corporation, limited liability company or any other permissible form of practice which is licensed in Nebraska to practice public accounting.

001.07 For purposes of these rules and the Public Accountancy Act, “holding themselves out to the general public” is intended to encompass those situations dealing primarily with the promoting, marketing, and practice of public accountancy with clients and potential clients. It is not intended to encompass business and similar situations where disclosure of one’s status as an owner, partner, shareholder, limited liability company member, director or otherwise would not be in violation of the general intent of these rules and is reasonable or necessary under the circumstances of a particular situation or business transaction.

002 Form of Practice and Name. A licensee may practice public accountancy, whether as an owner or employee, only in the form of a proprietorship, a partnership, a professional corporation, a limited liability company or any other permissible form of practice. A licensee shall not practice under a firm name which includes any name that would have the capacity or tendency to deceive or mislead or is misleading as to the type of organization (proprietorship, partnership, professional corporation, limited liability company or other permissible form of practice). Fictitious names are not precluded from consideration under this rule. However, names of one or more past partners, shareholders or limited liability company members may be

included in the firm name of a successor partnership, corporation, limited liability company or other permissible successor business entity. A firm name is deemed misleading if it includes the name of a person who is not a CPA. A firm name is deemed misleading if it includes the terms "& Associates," "& Company," or "Group," or similar plural terms, if the firm has only one individual practicing in the firm with a current permit to practice as a CPA. A permit holder surviving the death or withdrawal of all other permit holders may continue to practice under the firm name for up to two years after becoming the sole practicing permit holder in the firm.

Any CPA firm that has continuously used an assumed name approved by the Board prior to July 19, 2005 may continue to use the assumed name, so long as the CPA firm is only owned by an individual practitioner, partner, or shareholder, who obtained such Board approval.

003 Professional Corporations. A corporation registered under Section 1-134 of the Act and any corporation granted a permit under Section 1-136 of the Act shall be subject to the Rules of Professional Conduct. Any shareholder who ceases to be eligible to be a shareholder shall be required to dispose of all of his or her shares within a reasonable period to a person qualified to be a shareholder or to the corporation.

004 Partnerships, Professional Corporations, Limited Liability Companies and other Permissible Forms of Practice; General Requirements; Ownership.

~~004.01 A If a natural person who is not a certified public accountant in this or some other state or jurisdiction is permitted under Section 1-162.01 of the Act to be an owner but who actively participates in the business of a business entity licensed in Nebraska to practice public accounting may be an owner, director, officer, limited liability company member, or manager in any such business entity, under the following conditions then:~~

004.01A Such person shall not hold himself or herself out as a certified public accountant.

004.01B Such person shall not hold himself or herself out to the general public or any client of such business entity licensed in Nebraska by the use of the term owner, partner, shareholder, director, officer or limited liability company member for purposes of describing his or her status in the business entity, regardless of whether such person may occupy such position by reason of common law, statutory law, ownership, or election unless with a disclaimer indicating such person is not a CPA. Such person may hold himself or herself out as a principal.

004.01C The name of such person shall be provided to the Board by a business entity in connection with the granting or renewal of a permit in Nebraska to such business entity, and such person shall be in compliance with the provisions of Section 1-162.01(1)(b) through (i) and (2) of the Public Accountancy Act.

~~004.01D— Such person shall not have ultimate responsibility for the performance of audits, reviews or compilations of financial statements or other forms of attestation related to financial information.~~

~~004.02— Limitations; Percentage Ownership. Persons who are not certified public accountants in this or any other state or jurisdiction but who are owners of a business entity licensed in Nebraska to practice public accounting, may not exceed forty nine percent (49%) of the total number of owners of such business entity.~~

004.023 Limitations; Equity Ownership. ~~Natural P~~persons who are not certified public accountants in this or any other state or jurisdiction but who are owners of a business entity licensed in Nebraska to practice public accounting, shall not directly or indirectly, including as a beneficiary, (a) hold, in the aggregate, more than forty-nine (49%) of such business entity's equity capital or voting rights, ~~or~~ (b) receive, in the aggregate, more than forty-nine (49%) of such business entity's profits or losses, ~~or~~ (c) exceed in number 49% of the total number of natural persons who are owners of such business entity.

004.034 Limitations; Use of Designation Principal. A person who is an owner and who is licensed in this state or any other state or jurisdiction as a certified public accountant may not hold himself or herself out as a principal.

004.045 Other forms of practice. These rules shall be applied to individuals and to any business entity licensed in Nebraska to practice public accounting in a manner consistent with carrying out the intent of these rules.

004.056 Eligibility; Disqualification; Owners. With respect to owners who are not licensed in this state or any other state or jurisdiction as certified public accountants, if at any time the board determines that any such owner no longer is eligible to be an owner by virtue of not being in compliance with the criteria set forth in Section 1-162.01 of the Public Accountancy Act, such owner and the business entity in which ownership exists shall be notified that if a board hearing is not requested within thirty (30) days of the date of mailing notification of such determination, an order will then be entered that such owner must divest himself, ~~or~~ herself or itself of ownership in the business entity within sixty (60) days of entry of the order.

004.067 Professional Corporations; other requirements. The principal executive officer of a professional corporation licensed in Nebraska to practice public accounting shall be ~~a shareholder an~~ owner and a director who is a licensed certified public accountant. Directors and officers who are not licensees shall not exercise any authority whatsoever over professional matters relating to the practice of public accountancy.

004.078 A non-natural person (hereafter "Parent Company"), ~~other than an employee stock ownership plan, permitted under Section 1-162.01 of the Act to be an owner which actively participates in the business~~ of a business entity licensed in Nebraska under Section 1-136 of the Act (hereafter "Nebraska permit holder") ~~may be an owner of such Nebraska licensed CPA firm under the following conditions shall:~~

~~004.08A — The Parent Company must hold a permit under Section 1-136 of the Act as a Nebraska licensed CPA firm.~~

~~004.07A8B Provide to the Board~~ The name of the Parent Company and the names of all owners ~~the natural persons referred to in 004.08D (2) shall be provided to the Board~~ in connection with the granting or renewal of a permit in Nebraska of the Nebraska permit holder; and

~~004.08C — The Parent Company shall not have ultimate responsibility for the performance of audits, reviews or compilations of financial statements or other forms of attestation relating to financial information; and~~

~~004.07B8D The Parent Company shall be~~ Remain in compliance with the provisions of Section 1-162.01 of the Act, ~~provided, however, that it shall comply with 1-162.01 (1) & (2)~~

~~of the Act by demonstrating and demonstrate~~ to the Board upon application or renewal for a firm permit for the Nebraska permit holder, that (1) any other non-natural person owning any profits and losses, equity or voting interest in the Parent Company also meets the requirements of 11.004.078 and; (2) ~~the~~ natural persons who are either owners or who have an ownership or beneficial interest, directly or indirectly, in such Parent Company shall, as if all were direct owners of the Nebraska Permit holder, meet the requirements of Section 1-162.01(1)(b) through (i) of the Act ~~except subpart (7) thereof.~~

004.08 If an owner of a business entity licensed in Nebraska to practice public accountancy is an employee stock ownership plan (“ESOP”), it shall comply with the following conditions:

004.08A No shares of stock in the licensed business entity may be held by a nonemployee, former employee, or person not actively participating in the licensed business entity. Shares of stock distributed from an ESOP and immediately put back to the business entity for repurchase shall not be considered to be held by a terminated participant or beneficiary. The licensed business entity must meet any requirements of law that would allow the business entity to restrict ownership of shares of stock to active employees and the ESOP and to restrict participants’ right to demand a distribution in the form of stock in the ESOP.

004.08B Unallocated shares under the ESOP shall be treated for the purposes of compliance with Section 1-162.01(b) through (e) of the Act as if such unallocated shares are allocated each year to eligible participants in the ESOP based on a uniform allocation method as allowed by laws governing an ESOP. The trustees of the ESOP shall specify the results of such allocation in connection with the granting or renewal of a permit in Nebraska of the Nebraska permit holder.

004.08C If under Section 1-162.01(k) a special independent trustee or fiduciary is appointed, the special trustee or fiduciary may not exercise any authority whatsoever over professional matters relating to the practice of public accountancy.

004.08D Although the trustee of the ESOP may be the legal owner of the shares of stock held in the ESOP, the Board shall look through the ESOP to all beneficial owners in the ESOP to determine compliance with Section 1-162.01(b) through (e) of the Act. The Board shall disregard any vesting rights to any shares of stock in determining the beneficial ownership under the ESOP. Furthermore, only those participants who have a stock account in the ESOP shall be taken into account as beneficial owners of the licensed business entity.

004.08E All shares of stock allocated, directly or allocated pursuant to 004.08B, to beneficial owners in an ESOP shall be aggregated with any shares of stock directly owned by such natural persons to determine compliance with Section 1-162.01(b) through (e) of the Act.

005 Application procedures; forms.

005.01 Each applicant for registration as any type of licensed business entity shall register with the Board of Public Accountancy prior to performing public accounting work in the state of Nebraska. Such registration form must include an affidavit signed by a general partner or officer of such business entity who is a certified public accountant of Nebraska in good standing, attesting to the accuracy of the information in the application materials.

005.02 After the Board of Public Accountancy has accepted the initial registration application and has issued a permit to practice, the registered business entity may practice in the state of Nebraska under the title which appears on the permit to practice as the name of the business entity.

005.03 Nebraska registered business entities shall renew their registration on an annual basis, on forms provided by the Board of Public Accountancy. Failure or refusal to provide complete and accurate responses to all questions on the registration renewal forms by the deadline noted on such forms may be grounds for refusal to renew such registration.

005.04 Nebraska registered business entities shall include on their initial registration with the board, and subsequent renewal of such registration, a complete listing of the names and the state of residency of all owners.

Statutory Authority: Section 1-162.01 R.R.S. 1994.