



GOVERNOR GREG ABBOTT

To: Manuel Cavazos, Presiding Officer
William Treacy, Executive Director
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Texas State Board of Public Accountancy

From: Erin Bennett, Director
Regulatory Compliance Division, Office of the Governor

Date: February 16, 2022

Subject: Proposed Title 22 Texas Administrative Code Section 523.132 (RCD Rule Review #2020-002) and Title 22 Texas Administrative Code Sections 523.144, 523.145, 523.146, and 523.147 (RCD Rule Review #2020-003)

I. Syllabus

The Texas State Board of Public Accountancy (“board”) filed an intent to review 22 TAC Chapter 523 pursuant to Section 2001.039, Texas Government Code.¹ Pursuant to Section 57.106(g), Texas Occupations Code, the Regulatory Compliance Division (“division”) initiated a review of §523.132, which establishes qualifications for instructors of ethics continuing professional education courses, as well as §§523.144-523.147, which relate to the regulation of board-registered continuing professional education sponsors. After internal review, the board subsequently proposed amendments to §523.132, replacing the board’s contractual relationship with ethics instructors with an authorization process.² The board submitted the rules to the division for review on November 23, 2021.³ The division invited public comments on the rules for a period ending December 30, 2021, and received one comment on the value of ethics instruction in the accounting profession. The division has determined that the rules are within the board’s authority to set up and administer a continuing professional education program for its licensees, and, thus, the rules may be readopted with the proposed amendments.

II. Analysis

¹ 45 Tex. Reg. 921 (2020) (notice of intent to review 22 TAC ch. 523) (published Feb. 7, 2020) (Tex. State Bd. Pub. Accountancy).

² 46 Tex. Reg. 7158 (2021) (to be codified at 22 TAC §523.132) (proposed Oct. 22, 2021) (Tex. State Bd. Pub. Accountancy).

³ Rule Submission Memorandum from the Texas State Board of Public Accountancy (Nov. 23, 2021) (22 TAC §523.132) (on file with the Regulatory Compliance Division of the Office of the Governor); Rule Submission Memorandum from the Texas State Board of Public Accountancy (Nov. 23, 2021) (22 TAC §§523.144-523.147) (on file with the Regulatory Compliance Division of the Office of the Governor).

Section 901.411(a), Texas Occupations Code, requires individual license holders to participate in a program of continuing professional education (“CPE”) designed to maintain professional competency that complies with board rules. This supports the general policy and purpose of the board’s governing statute that the state’s licensed certified public accountants (“CPAs”) “maintain high standards of professional competence, integrity, and learning,” as articulated in Section 901.005(e)(3). While Chapter 901 does not specifically authorize the regulation of CPE instructors or sponsors, instituting some oversight of instructors and sponsors is a reasonable exercise of the board’s authority to establish CPE program standards designed to maintain licensees’ competency. However, because regulation of CPE instructors and sponsors has the potential to reduce competition and increase prices for the CPE courses required of all licensed CPAs, the rules may affect competition pursuant to Section 57.105(d)(2), Texas Occupations Code, and were, consequently, required to be submitted to the division for review.

A. The board’s authorization requirements for ethics CPE instructors in proposed amended §523.132 are consistent with state policy.

Proposed amended §523.132 requires board authorization in order for an individual to teach an ethics CPE course. To qualify for board authorization, an instructor must either be a CPA licensed in Texas or team teach with a CPA licensed in Texas; have a clean disciplinary history; have an educational background and teaching experience in ethics; have spent at least 10 years performing accountancy-related activities; and be free of any actual or perceived conflicts of interest with the board. These requirements were originally developed as a result of the work of a task force created by the board’s Continuing Professional Education Committee in the early 2000s in response to a spate of accounting scandals — most notably, Enron and Arthur Andersen — that had eroded the profession’s credibility and generated greater interest in the ethical training of CPAs.⁴ The requirements were ultimately adopted as part of a broader overhaul of the board’s ethics instruction rules that the board found necessary to bolster the ability of CPAs to make ethical decisions and to protect the public interest.⁵

Although instructors of all types of CPE courses “must be qualified both with respect to program content and teaching methods used,” instructors of ethics CPE courses are the only instructors who must seek board authorization and meet a prescribed set of board requirements.⁶ However, given the highly specific content requirements for CPE ethics courses in 22 TAC §523.131, the need for instructors with certain education and experience to effectively teach those courses makes sense. Accordingly, the instructor requirements in proposed amended §523.132 were initially adopted in tandem with the CPE ethics course content requirements and relate to what must be taught in the courses.

⁴ Agency Response to Request for Additional Information (Jan. 18, 2022), at 2 and attachment *Ethics in the 21st Century* at 4-5 (on file with the Regulatory Compliance Division of the Office of the Governor).

⁵ Agency Response to Request for Additional Information (Jan. 18, 2022), at 2 and attachment *Ethics in the 21st Century* at 5-7.

⁶ 22 TAC §523.140(c).

Importantly, the proposed rule allows the board to approve other education and experience and to waive consideration of past disciplinary actions in order to authorize individuals who may lack certain credentials but who the board finds otherwise qualified to teach ethics CPE courses. Thus, in light of its furtherance of quality ethics instruction critical to the maintenance of licensee competence, coupled with the flexibility it affords instructors seeking authorization, proposed amended §523.132 is a reasonable exercise of the board's authority and is consistent with state policy.

B. The board's registration process for CPE sponsors in §§523.144-523.147 is consistent with state policy.

Sections 523.144-523.147 set up a process for CPE sponsors to register with the board and establish requirements for sponsors to maintain their registration status. These rules were initially adopted to help licensees identify high quality, relevant CPE courses that promote licensee competence following numerous complaints received by the board regarding inadequate CPE course offerings.⁷ Section 523.144 creates the registration process for CPE sponsors who agree to adhere to certain standards for CPE courses, refrain from fraud and misrepresentation, and annually submit an application and fee to the board, unless exempted. Although CPE sponsor registration is voluntary, licensees may obtain no more than half of the required CPE in any three-year period through non-registered sponsors, and, thus, the board's CPE program requires at least some sponsors to be registered.⁸ However, hundreds of entities across the country have registered with the board as CPE sponsors, suggesting that registration requirements are not overly burdensome.⁹ Additionally, the obligations of registered CPE sponsors are fairly minimal.

Illustrative is §523.145, which requires each registered CPE sponsor to comply with the CPE course standards in 22 TAC §523.140 and to certify that the sponsor will: (1) use specific language in advertising board registration; (2) avoid false and misleading advertising and coercive or harassing conduct; (3) permit examination of records and courses for compliance with board rules; and (4) accept potential consequences of non-cooperation. Because *all* CPE sponsors are subject to the CPE course standards in §523.140 and are prohibited from committing fraud and engaging in deceptive practices, compliance with and certification of the same presents an insignificant prerequisite to the ability to advertise and provide courses as a registered sponsor. And, while §523.145(c) also requires registered CPE sponsors to participate in the board's sponsor review program and undergo a review at least once every three years, these reviews are narrowly designed to ensure ongoing fulfillment of registered CPE sponsors' limited obligations.

⁷ Rule Submission Memorandum from the Texas State Board of Public Accountancy (Nov. 23, 2021) (22 TAC §§523.144-523.147), at 2.

⁸ 22 TAC §523.119(b).

⁹ CPE Sponsor Lookup, <https://www.tsbpa.texas.gov/> (Under "CPE Sponsors" tab, follow "CPE Sponsor Lookup" hyperlink) (includes as least 653 active sponsors as of Dec. 9, 2021).

Thus, given that the registration process for CPE sponsors is voluntary and the registration requirements minimal, §§523.144 and 523.145 are a reasonable exercise of the board's authority over the CPE program and consistent with state policy.

Next, §523.146 clarifies that CPE sponsors who are also registered with the National Association of State Boards of Accountancy's ("NASBA") National Registry of CPE Sponsors must annually register with the board, comply with all board standards for CPE sponsors, and participate in the board's sponsor review program. However, these CPE sponsors are exempt from paying associated registration fees. As stated above, the board's requirements for registered CPE sponsors are minimal, and the registration process is designed to promote high quality CPE courses while curtailing fraudulent, misleading, and coercive conduct. Requiring NASBA-registered CPE sponsors to register with the board ensures consistency in oversight of CPE sponsors without significantly burdening NASBA-registered sponsors, particularly in light of the fee exemption, and, thus, §523.146 is a reasonable exercise of the board's authority over the CPE program and consistent with state policy.

Finally, §523.147 establishes the sponsor review program in which all registered CPE sponsors are required to participate as well as a committee to monitor the program and parameters for contracting with and utilizing reviewers. For example, §523.147(d) requires reviewers to assess whether registered CPE sponsors provide quality CPE courses in accordance with board rules and to also provide assistance in identifying and correcting deficiencies in programs. Section 523.147(e) allows reviewers, when monitoring registered CPE sponsors, to conduct random visits, hold meetings, review materials and course evaluations, and consider the content of courses, among other actions. These are common oversight functions the board could perform itself to ensure registered CPE sponsors' compliance with CPE course standards. Using contracted reviewers, as permitted by Section 901.151(c), simply allows board staff to focus on other tasks without sacrificing the integrity of the sponsor review program. Thus, because the purpose and structure of the sponsor review program are supported by the board's statutory authority, §523.147 is also consistent with state policy.

III. Determination

Based on the above analysis, proposed amended §523.132 and §§523.144-523.147 are approved by the division and may be readopted with the proposed amendments.