CALIFORNIA BOARD OF ACCOUNTANCY

California Board of Accountancy
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California Board of Accountancy Proposed Written Responses to Issues in Background Paper

ISSUE #1:

Should the Legislature increase the CBA's statutory maximum for license renewal and initial permit fees?

Staff Recommendation: The CBA should explain to the Committees why it believes the increase of $250, is warranted. In addition, explanation around implementation and timing needs to be addressed.

Increasing the amounts authorized by statute from $250 to $500 would allow necessary revenue growth so the CBA may maintain an adequate reserve and sufficiently fund its operating expenses for the foreseeable future.

During the CBA's 2015 Sunset Review, the Legislature expressed concern regarding whether the CBA would be capable of, from both a funding and staffing perspective, investigating and prosecuting a case against a large accountancy firm. Therefore, the Legislature encouraged the CBA to maintain a 24-month spending reserve. As the CBA considers the adequacy of its revenue, it keeps this legislative guidance in view.

The CBA's current statutory maximum amounts for its license renewal and initial permit fees have been in place for approximately 30 years. Presently, the CBA is pursuing a rulemaking to place its license renewal and initial permit fees at $250, the maximum allowed by statute. However, the CBA now believes it requires additional fee increases to accommodate unanticipated enforcement expenses and obtain a 24-month spending reserve.

Whenever the CBA changes its fees through regulations, it must comply with the Administrative Procedure Act (APA), which governs the rulemaking process. The APA requires an agency to, among other requirements, establish the necessity of any proposed rulemaking. This law requires the CBA to show a clear need and justification for its proposed fees.

Any increases in the CBA's fees would be limited by Business and Professions Code section 128.5 (a), which requires the CBA to lower its fees if, at the end of any fiscal year, it has unencumbered funds in an amount equal to, or more than, its operating budget for the next two fiscal years. This law prevents the CBA from maintaining fee amounts beyond what is required to fund its operating expenses and maintain a prudent reserve.

ISSUE #2:

Should the CBA be allowed to consider certain applicants' past actions as grounds for the denial of an application for CPA licensure?

Staff Recommendation: Based upon conversations with Stakeholders and others staff recommend that it is not advisable to support the reversal back to "substantially related" or exempting CBA from that provision of the legislation in AB 2138. Reverting back to a "substantially related" standard for denial of licensure would weaken the effect of AB 2138 by allowing crimes that are only vaguely connected to a person's application for a license to be used as a basis for denying licenses once again.

However, the Committees should be comfortable with removing the term "fiduciary" and allowing CBA to consider federal and foreign government agencies and the Public Company Accounting Oversight Board disciplinary action when reviewing a licensure application. CBA should explain to the Committee why they believe this will be beneficial to the profession.

The CBA believes it is a commendable goal, under Assembly Bill (AB) 2138 to assist applicants who have a criminal history to obtain gainful employment and provide stakeholders a more clear understanding of how an occupational licensing board evaluates past criminal convictions.

To benefit consumers and further its mission, the CBA requests two statutory changes related to AB 2138:

1. *Remove the term "fiduciary" from its requirements to draft regulations related to financial crimes*.

AB 2138 directs the CBA to conduct a rulemaking related to financial crimes that are directly and adversely related to the "fiduciary" qualifications, functions, or duties of a CPA.

The CBA requests the term "fiduciary" be removed because many of the functions and duties a CPA performs for a client or employer do not have a fiduciary component. For example, CPAs who perform tax preparation and audit services don't necessarily have a fiduciary duty or relationship to their clients.

Removal of the "fiduciary" qualifier will ensure the CBA is able to consider the full range of appropriate financial crimes that are directly and adversely related to the practice of public accountancy.

2. *Allow the CBA to consider disciplinary action from federal agencies, including the Public Company Accounting Oversight Board, and foreign government agencies when reviewing a licensure application. The CBA presently has this authority, which is scheduled to be removed when AB 2138 takes effect on July 1, 2020.*

The CBA regularly monitors for discipline imposed by those entities. Two notable federal regulators are the U.S. Securities and Exchange Commission and the Public Company Accounting Oversight Board. CPAs must register to practice before these entities, which are authorized to discipline a CPA for unprofessional conduct, including acts such as insider trading, fraud, and filing false financial information.

Similarly, the CBA considers discipline imposed by government agencies outside the United States to be relevant, as it receives a number of applications from individuals who reside outside our country.

If a current CBA licensee was disciplined by a federal regulator or foreign government, that action would be reviewed to determine if further discipline by the CBA is appropriate.

Further, the CBA agrees with the committee staff recommendation to not return to a substantial relationship standard for the financial crimes described in the newly added Business and Professions Code section 480 (a)(1)(B).

The CBA greatly appreciates the time spent by staff from both committees, and Assemblymember Chiu's office, to address its concerns related to AB 2138.

ISSUE #3:

The CBA lacks automation and on-line services, which has impacted processing timeframes and its level of customer service. Does the Board have a plan to address this issue?

Staff Recommendation: CBA to report, at the hearing, on the current status of their efforts. The CBA is in the BreEZe Release 3, but with the support of, and collaboration with, the Department of Consumer Affairs, the CBA plans to develop a Business Modernization Project beginning in July 2019. The CBA will be able to select an information technology solution to fit its specific business needs, rather than attempting to change its processes to meet BreEZe requirements.

The Business Modernization Project has the same goal as BreEZe, which is to create/transition to a single enforcement and licensing database system that provides internal automation and online capabilities for CBA stakeholders.

The CBA has largely manual internal processes for its licensing and enforcement programs and its automated functions are few and limited. The CBA was scheduled for BreEZe Release 3, but is now in the preliminary planning process, in collaboration with DCA, on a Business Modernization Project.

The Business Modernization Project has the same goal as BreEZe, which is to create and transition to a single enforcement and licensing database system that provides internal automation and online capabilities for its stakeholders. In July 2019, the CBA expects to begin the process to formally identify its business needs for this new system. While the development of this project is underway, the CBA has already begun to proactively develop interim steps and short-term solutions to improve services to its stakeholders. Presently, the CBA is exploring increased automated services to improve the processing timeframes for applications. These include:

- Increased ability to submit documents electronically
- Opportunities for applicants to obtain status information of the application electronically
- Improved communications

In December 2018, the CBA launched a system to allow licensees to pay their renewal fees via an online portal with a credit card and submit their renewal application and related paperwork via email. By summer 2019, the CBA expects to implement an online application for initial licensure. This would include email notifications that inform applicants of the status of their application as it moves through each stage of the process.

Although the Business Modernization Project is a few years away from completion, the CBA is leveraging its current technological capabilities to enhance the services provided to its stakeholders.

ISSUE #4:

The CBA is seeking to automate the delivery of its UPDATE newsletter to reduce its environmental impact and lower costs.

<u>Staff Recommendation</u>: The CBA should explain to the Committees why automating delivery of its newsletter will be beneficial.

The CBA is seeking authority to distribute its UPDATE newsletter in an electronic format. The CBA is presently required to mail a hard copy of its UPDATE newsletter as mandated by Business and Professions Code section 5008, which states the CBA "shall, from time to time, but not less than twice each year, prepare and distribute to all licensees, a report of the activities of the board … and may likewise distribute reports of other matters of interest to the public and to practitioners."

The CBA is one of the very few licensing boards/bureaus under the Department of Consumer Affairs that continues to print and mail its newsletter. Thirty-eight of the 41 Department of Consumer Affairs boards/bureaus do not print their newsletter and instead post it to their website.

The CBA spent approximately $280,000 in fiscal year 2017-18 on the printing, mailing, and postage costs for the UPDATE newsletter. This has increased 44 percent since fiscal year 2013-14 when the annual cost was approximately $194,000.

The CBA intends to allow UPDATE readers to continue receiving a paper copy, upon their request. However, transitioning to a primarily electronic distribution will save money, reduce impacts to the environment, and decrease the time it takes to produce and distribute the UPDATE newsletter.

ISSUE #5.

To enhance its communication capabilities, the CBA is seeking authority to require its licensees to provide an email address.

Staff Recommendation: The CBA should explain to the Committees the current situation which exists regarding communications efforts and how seeking email addresses would help efforts.

In 2014, the CBA pursued a legislative proposal, which was included in Senate Bill 1467 (Chapter 400, Statutes of 2014), to authorize the CBA to collect, but not require, a valid email address at the time of application for, or renewal of, a CPA license. As those provisions are optional, not every individual provides their email address to the CBA.

Presently, many of the CBA's communications efforts are paper-based. As discussed in Issue #4, current law requires the CBA to print and distribute paper copies of its UPDATE newsletter. To facilitate the transition to a primarily electronic-based distribution of the UPDATE, the CBA seeks statutory authority to require all applicants and licensees to provide a valid email address.

Because the CBA lacks email addresses for all of its licensees, it often must communicate with them via the United States Postal Service. However, if the CBA possessed a valid email address for all licensees, the CBA would be able to communicate with them more quickly.

ISSUE #6.

Why is it necessary or beneficial to the CBA's operations to hire additional permanent staff?

Staff Recommendation: The CBA should explain to the Committees why having permanent staff as opposed to temporary staff will assist in increasing workloads.

The CBA is presently operating at approximately the same number of permanent employees as it did in fiscal year 2011-12. During this same time the CBA's licensee population increased nearly 20 percent.

To address increased workload, in the absence of permanent positions, the CBA employs temporary help. Temporary employees often consist of seasonal clerks, intermittent positions, and limited-term staff.

On average, the CBA employs 18 temporary staff each year. There is high turnover in these positions as temporary employees often seek permanent positions. In fiscal year 2016-17, the CBA experienced a 44 percent turnover in its temporary help, with this rate growing to 53 percent in fiscal year 2017-18.

As turnover among temporary staff occurs, the CBA spends significant time to recruit and train new temporary staff. This continual transition has led to increased processing timeframes, backlogs of work, and the reliance on overtime to maintain the CBA's desired processing timeframes.

The CBA believes it is appropriate and fiscally responsible for permanent ongoing work to be performed by permanent staff.

ISSUE #7.

(CONTINUED REGULATION OF THE PROFESSION BY THE CBA?)
Should the licensing and regulation of certified public accountants be continued and be regulated by the current board membership?

Staff Recommendation: The CBA should explain to the Committees why the continued regulation of the profession should be continued.

The CBA plays a vital role in protecting consumers by ensuring only qualified licensees practice public accountancy in accordance with established professional standards. Certified public accountants and accounting firms provide a wide-variety of critical financial services to individuals, private and publicly-held companies, financial institutions, non-profit organizations, and governmental entities. The services they provide include accounting, auditing, tax preparation and planning, investment advice, and retirement and estate planning.

It is vital for the CBA to continue regulating the practice of public accountancy, which includes both licensing and enforcement functions of its more than 108,000 licensees.

The CBA respectfully requests that the Legislature extend its sunset date so it may continue its mission to protect consumers.

ISSUE #8:

Does the new test for determining employment status, as prescribed in the court decision* Dynamex Operations West Inc. v. Superior Court*, have any potential implications for licensees working in the accountancy as independent contractors?

<u>*Staff Recommendation*</u>*: The CBA should inform the committees of any discussions it has had about whether the* **Dynamex** *decision may somehow impact the current practice of accountancy.*

The CBA has not had any discussions about whether the Dynamex decision may impact the practice of public accountancy.