



GOVERNOR GREG ABBOTT

To: Mr. Manuel Cavazos, IV, Chair
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: May 10, 2021

Subject: Proposed Title 22 Texas Administrative Code Section 513.1 (RCD Rule Review #2021-003)

I. Syllabus

The Texas State Board of Public Accountancy (“board”) proposed amended 22 TAC §513.1, which precludes one method for accountants with foreign credentials to be authorized to practice public accountancy in Texas.¹ The Regulatory Compliance Division (“division”) initiated a review of the proposed rule pursuant to Section 57.106(g), Texas Occupations Code, and the board submitted proposed §513.1 to the division for review on March 24, 2021. The division invited public comments on the proposed rule for a 32-day period ending April 26, 2021, but received no comments. Although the effect of the proposed rule on market competition would likely be minimal, statute does not support the board’s decision to remove that method of application in the proposed rule. For that reason, the division has determined that proposed §513.1 is inconsistent with state policy, and, thus, it is disapproved for final adoption.

II. Analysis

For decades, Section 901.355, Texas Occupations Code, has allowed a person who holds a certificate, license, or degree to practice public accountancy in a foreign country to register with the board if the standards under which the person was certified or otherwise authorized to practice public accountancy were at least as high as those in Texas at the time that authority was

¹ Rule Submission Memorandum from the Texas State Board of Public Accountancy (Mar. 24, 2021), at 1 (on file with the Regulatory Compliance Division of the Office of the Governor); 46 Tex. Reg. 697 (2021) (to be codified at 22 TAC §513.1) (proposed Jan. 29, 2021) (Tex. State Bd. of Pub. Accountancy). Although, since June 7, 2017, language has existed in the rule precluding applicants from using the registration option, proposed §513.1 makes clear that this method is precluded for all new applicants but may be maintained for those previously registered. Given these amendments, the division has analyzed the entirety of the prohibition against use of the registration option in conducting its review. *Id.*; see 22 TAC §513.1 (2017) *adopted in* 42 Tex. Reg. 2934 (2017).

granted (“registration option”). In 2001, Section 901.260 was added to allow applicants to become certified in Texas if they hold a substantially equivalent credential from another country (“certification option”).² Proposed §513.1 maintains the registration option only for those who have previously been granted a registration, allowing for ongoing renewal and practice by those accountants, but clarifies that all future applicants with foreign credentials must apply to practice in Texas using the certification option in Section 901.260.³ By precluding applicants from using the registration option, the proposed rule creates a barrier to market participation and, thus, affects competition pursuant to Section 57.105(d)(1).

While accountants with foreign credentials may practice in Texas through either the registration or certification option, the two are not coterminous. According to the board, registered accountants may not perform attest services, which are a major function of accountants in many settings, whereas the scope of practice of certified accountants includes those services.⁴ Additionally, not all accountants who have qualified through the registration option would currently qualify through the certification option and would instead need to fulfill the education, examination, and experience requirements to qualify through the traditional application process for new accountants.⁵ These factors indicate that the proposed rule could have a negative effect on market competition. However, the predicted practical impact of the proposed rule suggests otherwise. The fees for the registration option are the same as for the certification option, but, as explained above, the scope of practice is more complete as a certified accountant.⁶ As such, applicants with foreign credentials are better served by using the certification option, and, consistent with that conclusion, no applicant has pursued the registration option since 2001.⁷ Thus, the tangible effect of proposed §513.1, applied retroactively, would have been virtually insignificant for nearly two decades and would likely continue to be minimal going forward.⁸

Despite the likely minimal effect of the proposed rule on market competition, the threshold question to be answered by the division pursuant to Section 57.106(a) is whether the proposed rule is consistent with state policy as established in statute. Section 901.355 provides for the right of a qualified applicant to register with the board: “[t]he holder of a certificate, license, or degree authorizing the person to practice public accountancy in a foreign country *may register with the*

² Acts of 2001, 77th Leg., R.S., ch. 1497 (S.B. 1358), at section 17.

³ Applicants with foreign credentials may also apply for certification pursuant to Section 901.259(b), Texas Occupations Code, if required by a United States treaty, but that process is not affected by the proposed amendment.

⁴ Agency Response to Request for Additional Information (April 5, 2021), at 1 (on file with the Regulatory Compliance Division of the Office of the Governor).

⁵ *Id.* at 2; Clarification to Agency Response to Request for Additional Information (April 6, 2021) (on file with the Regulatory Compliance Division of the Office of the Governor); National Association of State Boards of Accountancy, *Mutual Recognition Agreements*, <https://nasba.org/international/mra/> (April 6, 2021).

⁶ Agency Response to Request for Additional Information (April 5, 2021), at 2.

⁷ Rule Submission Memorandum from the Texas State Board of Public Accountancy (Mar. 24, 2021), at 2. At the time of submission of the proposed rule to the Regulatory Compliance Division, only 47 accountants were registered with the board, including 16 individuals currently in “retired status” and no longer actively practicing.

⁸ Despite language in the rule requiring applicants to defer to the certification option since June 7, 2017, the division acknowledges the 16 years during which the board did not dissuade applicants from availing themselves of the registration option yet still did not receive a new application for registration.

board [.]” Read plainly, Section 901.355 allows qualified applicants with foreign credentials to choose to register with the board; alternatively, they may pursue the certification option or, if they do not qualify for that, the traditional application process for new accountants. Importantly, statute provides that flexibility to the applicant, whereas the board is not given discretion to deny registration or compel applicants to become certified instead.⁹ While Section 901.355 no longer reflects how the majority of accountants with foreign credentials apply to practice in Texas, the meaning of the statute is not altered nor is the board’s duty changed as a result of disuse. Thus, the elimination of the registration option in proposed §513.1 is inconsistent with state policy.

III. Determination

The division recognizes that proposed §513.1 would likely have a minimal effect on market competition given the historical evidence of disuse. However, the elimination of the registration option at the discretion of the board contradicts the plain language of Section 901.355. Consequently, proposed §513.1 is disapproved by the division.

The division offers the following precise instruction for revision:

Remove language in proposed §513.1(e) that prohibits new applicants with foreign credentials from applying for registration pursuant to Section 901.355.

The board may adopt the proposed rule without resubmission to the division if it adheres to the precise instruction for revision and makes no additional substantive changes to the proposed rule. Alternatively, the board may take a different approach to address the inconsistency identified by the division, but must resubmit the rule for approval by the division prior to adoption.

⁹ Compare Section 901.260, Texas Occupations Code (“The board may issue a certificate to an applicant who holds a substantially equivalent foreign credential[.]”).