



# 2021 Policy Outlook



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# Summary of key policies

## **Uniform Accountancy Act (UAA) changes and conforming recommendations**

### **CPA firm mobility for attest services**

As this initiative progresses, each state is urged to continue to consider firm mobility by updating its statute to harmonize the provision of attest services by out-of-state firms with those firms' requirements for non-attest services.

### **AICPA Code of Professional Conduct**

State society leaders are asked to confirm whether their board of accountancy adopted the AICPA Code of Professional Conduct (Code). If the Code has not been fully adopted, the AICPA State Regulation and Legislation Team is happy to work with state CPA societies and state boards of accountancy as they consider the adoption of the Code.

### **CPE reciprocity**

State CPA societies are asked to pursue relationships with the state boards of accountancy to adopt a rule similar to UAA Model Rule 6-5(c) to allow for CPE reciprocity. If not, they are asked to work with their state board of accountancy to adopt this UAA Model Rule language.

### **Protection of individual CPA mobility**

Profession leaders are asked to be vigilant in protecting their mobility regimes from any new proposals that would harm the existing law in any way.

### **Liability reform**

State CPA societies should make it a policy objective to review liability statutes to ensure they have the three core provisions found in the UAA. If the provisions are not present, we recommend that state societies include them in future legislation.

## **Appeal bonds**

State CPA societies should continue to seek opportunities to work with local and national groups to obtain resources and allies in support of state efforts to establish appeal bond caps as an important state law reform initiative.

## **State tax policy**

### **Taxes on professional services**

Taxes on services will likely be raised during the 2021–22 legislative sessions. This includes recommendations by state tax commissions or blue-ribbon panels to expand taxes to professional services.

### **State regulation of tax preparers**

As policy, state societies should continue to oppose licensing for state tax preparers and the creation of registries that are both ineffective in protecting the public and a threat to CPA mobility. If a state plans to go down this road, it is pertinent that CPAs and the employees of CPA firms be exempted from any effort to regulate tax preparers.

### **State tax tribunals**

The AICPA believes that laws creating or modifying state tax tribunals should ensure that all CPAs authorized to practice in the state can represent taxpayers before these bodies.

### **State conformity to partnership audit rules**

Since 2018, nine states have adopted partnership audit legislation that follows the Multistate Tax Commission model statute, and states will likely continue this trend in the 2021–22 legislative sessions.

### **Electronic signatures and electronic documents**

State CPA societies should work with their state tax authorities and state legislatures to allow electronic signatures on all state returns and alternatives to attachments to paper returns.

### One additional month state filing after federal filing

In states with return deadlines the same as the federal deadlines, state CPA societies are urged to work with state taxing authorities and state legislatures to enact model legislative language that would change the state filing deadlines to one additional month after the federal returns are due (including extensions).

### False Claims Act

State CPA societies are encouraged to monitor legislation regarding the False Claims Act.

### Anti-licensing proposals

The structure, funding, and independence and immunity/indemnification provisions of state boards of accountancy statutes are important to state boards of accountancy. Additionally, it is important to monitor regulatory reform legislation aimed at eliminating the need for licensure for professions and occupations to ensure boards are best positioned to do their jobs effectively.

### Cybersecurity

Cybersecurity proposals are growing and affecting CPA firms across the states. State CPA societies should be particularly mindful of proposals affecting data storage, use and retention, as well as proposals concerning how data breaches are handled.

Additionally, state CPA societies should be aware of legislation that would require state contractors to use software that automatically tracks keystroke and mouse movements and takes screenshots every several minutes to verify state-funded work.

### Other potential issues on the horizon

#### Providing services to marijuana-related businesses

State cannabis-related ballot initiatives seem to be ever-popular. Boards of accountancy are tasked with the development of position papers in this area and are asked to report significant events to the AICPA State Regulation and Legislation Team. State CPA societies are also asked to support board of accountancy efforts to adopt appropriate guidance on marijuana policy.

#### Exempting CPAs from other professions' regulations

State boards of accountancy already regulate CPAs for all services they provide to clients, including those that may also fall under other regulatory statutes. To avoid duplicative regulation, the CPA profession has increasingly sought to explicitly exclude CPAs from these other statutes and state CPA societies will continue this practice.

#### Audit rotation

Generally, in the context of state-mandated audits, there have been several state-level efforts to mandate firm or partner rotation or the mandatory retendering of contracts, which the profession has generally opposed. CPA societies should monitor this issue.

#### Human resource issues

State, county or municipal proposals that mandate universal leave or universal health care, prohibit employers from requesting compensation histories from prospective workers and prevent employers from using a non-compete clause are on AICPA's radar and we ask the same of state CPA societies. State CPA societies are encouraged to seek exemptions as appropriate.

# Introduction

Each year, the AICPA State Regulation and Legislation Team, through the State Policy Priorities (SPP) Task Force, reviews major state-level policy issues affecting the accounting profession to identify current and emerging issues that state policymakers may consider in the coming year. The SPP Task Force, consisting of representatives of state CPA societies, AICPA staff and individuals representing CPA firms active in state advocacy, is releasing this resource as a reference for state CPA societies.

The SPP Task Force hopes that this paper assists state societies, and their state policy partners, as they consider their respective 2021 agendas. It is not meant to be prescriptive or necessarily indicative of all the needs of all states and jurisdictions; each jurisdiction's issues and politics are different. However, it can serve to identify a broad range of issues that state societies may want to examine and ultimately bring to their policy-making committees, state legislatures, state executive branches and/or their state boards of accountancy.

A key resource of relevance to this paper is the AICPA's State of the States (SOS) Database. This large database, first released in summer 2014, lists information on over three dozen policy issues and the specific positions of each of the 55 U.S. jurisdictions. It is designed to be an evergreen document, covering not only conformity with the Uniform Accountancy Act (UAA) and the profession's state model act, but also other subject areas of interest.

The database shows profession leaders and policymakers whether their jurisdiction conforms to preferred profession positions on a host of issues, or if their jurisdiction's policy merits additional discussion and potential changes. It also allows state CPA societies the ability to assess where their state stands regarding multiple topics and to compare their state's policies to other states around the country.

The SPP Task Force and the AICPA State Legislation and Regulation Team welcome input on how this paper and its associated resources can be more useful to our state policy partners. As users of this paper identify additional issues, or if they have questions or resources needed not already covered, they should contact a member of the team whose contact information is included on page 22 of this document.



# UAA changes and conforming recommendations

The AICPA works closely with state CPA societies, the National Association of State Boards of Accountancy (NASBA), state boards of accountancy and individual CPAs and their firms to encourage uniformity across the 55 U.S. jurisdictions. Uniform policies from one state to another encourage consistency in compliance, regulatory oversight and requirements, and public protections and expectations. It also promotes ease of practice and more competition within the marketplace.

A key reference point for all state profession leaders is the Uniform Accountancy Act, the model state accountancy statute, which volunteers who sit on the joint AICPA-NASBA UAA Committee write and update. The UAA Committee, with guidance and final approval by the AICPA and NASBA Boards of Directors, works to ensure that the UAA and its accompanying Model Rules remain evergreen, protecting the public interest while also reflecting how CPAs and CPA firms operate.

Whenever possible, state profession leaders are encouraged to update their state statutes to streamline and conform to the model act. In January 2018, the AICPA and NASBA released the eighth edition of the UAA, which contains important new provisions regarding the definitions of compilation and the preparation of financial statements. This edition also includes provisions on CPE requirements for retired CPAs and on the granting of certificates to holders of a substantially equivalent foreign designation, without the need for mutual recognition of United States CPAs.

Most recently, state profession leaders successfully modernized their state statutes to adopt the comprehensive definition of attest. Other major initiatives that state CPA societies are asked to consider in the near term include adoption of CPA firm mobility for attest services, adoption of the AICPA Code of Professional Conduct by state boards of accountancy and adoption of the UAA Model Rules regarding CPE reciprocity. These initiatives strengthen the profession's system of cross-border practice that occupational licensing reform in the states threatens.

## CPA firm mobility for attest services

Given that individual CPA mobility is the law of the land throughout almost the entire country, profession leaders are returning to a promise they made in considering the operations of CPA firms across state lines. Under states' individual CPA mobility laws, CPAs operating within CPA firms can provide "non-attest" services in states in which they do not have a physical presence, and the provision of these services does not require the firms to register in the new state. ("Non-attest" services include items such as tax advice, financial planning and consulting services.) However, because the individual CPA mobility initiative had not yet been fully tested and vetted, profession leaders and regulators decided to retain a requirement in the model legislation that CPA firms providing "attest" services continue to register with the state board of accountancy in any state in which they do not have a physical presence.



Attest services are unique among the services that CPAs provide. They are the only services under state laws that only a CPA operating within a CPA firm can perform. Attest services generally include audits, reviews, engagements performed under the Statements on Standards for Attestation Engagements (SSAEs), and engagements that the Public Company Accounting Oversight Board (PCAOB) requires. (Some states do not cover all SSAE reports and some states include compilations in their attest definitions.)

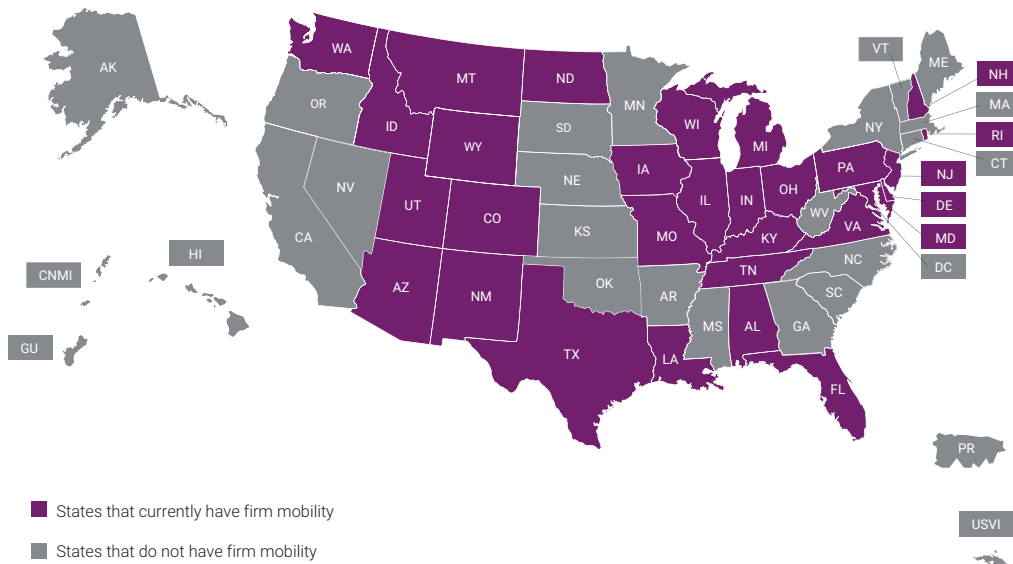
A broad array of individuals beyond the client (e.g., financial institutions, shareholders and other interested third parties) rely on the information provided in attest reports. It is especially critical to the public interest that only a competent, well-educated and appropriately regulated individual – operating within an appropriately regulated firm and with all the associated safeguards – provide these services. The public must be able to trust that the information is reliable and properly prepared.

The question before state profession leaders is whether their accountancy statutes should be amended so attest services are treated similarly to non-attest services when out-of-state firms perform them. Profession leaders have endorsed model language for states wishing to adopt a CPA firm mobility regime treating all services equally.

The Uniform Accountancy Act contains provisions that allow CPA firms to perform attest services and issue reports in states where they do not have a physical presence, without registering the firm or paying new fees, as long as they meet the peer review requirements and non-CPA ownership requirements of the state. Under firm mobility, CPA firms follow a model similar to that for individual CPA mobility, operating under “no notice, no fee and no escape.” The same strong regulatory protections remain in place to protect the public.



Figure 1: States with firm mobility



Several states have moved forward with UAA concepts as part of their effort to reduce unnecessary regulatory barriers. More than half the country does not require eligible out-of-state firms to register or pay fees when providing attest services, and their state boards of accountancy are not reporting any problems in their ability to regulate the profession.

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Fundamentally, CPA firm mobility for attest services is about creating a modern and effective regulatory regime for the accounting profession in the decades to come. It is about ensuring public protection, while providing clients with access to the CPA firm that best suits its needs.

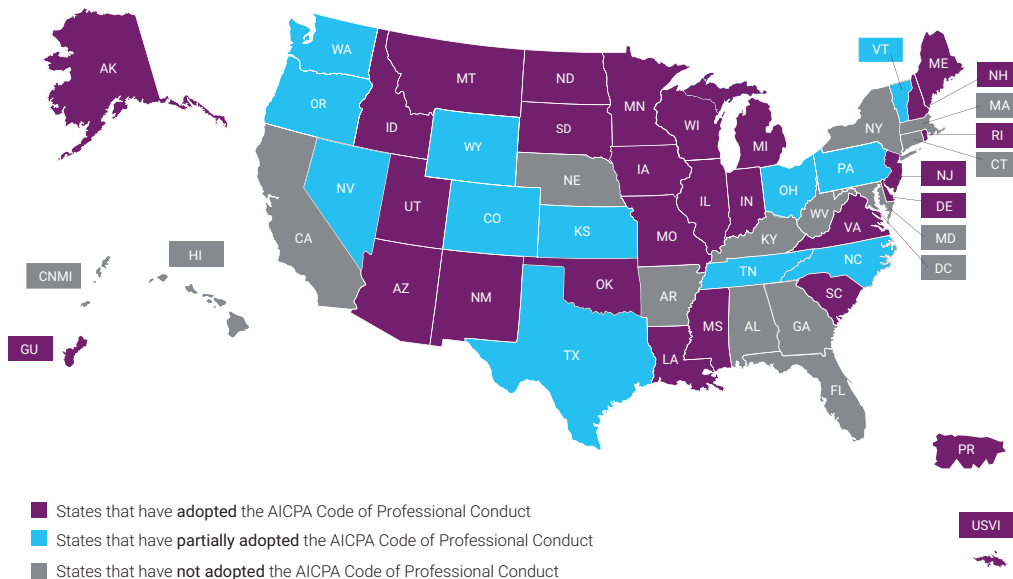
### AICPA Code of Professional Conduct

The AICPA and NASBA have joined together to promote uniform adoption of the AICPA Code of Professional Conduct by all state boards of accountancy. Such an initiative is consistent with and complementary to the profession's on-going firm mobility efforts.

PEEC includes a broad representation of profession voices, including state regulators who make up 20% of the committee. While some states have adopted the entire AICPA Code, others have adopted only part of the Code or have substituted pieces of the Code with other language.

Uniformity of ethics and independence standards is necessary to facilitate compliance with the rules, protect the public and to promote sound business practices. The current inconsistency across state lines can be confusing and problematic. To promote uniformity, PEEC is addressing differences that exist between the AICPA Code and various state boards' rules.

Figure 2: AICPA Code of Professional Conduct adoption



### CPE reciprocity

The successful implementation of individual CPA mobility has allowed many CPAs to give up the holding of multiple reciprocal licenses in various jurisdictions. However, in certain circumstances, a CPA may choose to continue to hold more than one license. For example, a CPA may wish to hold a license in their original state of licensure for sentimental reasons or because the CPA plans to return to that state. In another instance, a CPA may work near a border and find it important to hold a license in the CPA's home state as well as in the state where the firm maintains a second office.

Certain jurisdictions (outside the respective state boards of accountancy) require a CPA to have an active in-state license if they are performing certain types of attest work within a particular state (e.g., gaming industry regulations). Yet another example where CPAs may opt to hold two or more licenses is when they are assigned to a limited but multi-year engagement in another state, but know they will eventually return home (e.g., publicly traded companies require partner rotations every five years). For these reasons, the UAA Model Rules seek to provide reasonable accommodation regarding multiple license holders' Continuing Professional Education (CPE) requirements across state lines.

According to UAA Model Rule 6-4, all CPAs must obtain 120 hours of CPE every three years as a condition of licensure renewal. These hours must include four hours of ethics-specific training and not fewer than 20 hours of CPE in any given year. However, a CPA is exempt from meeting multiple jurisdictional CPE requirements as long as the licensee meets the CPE requirements of their principal or home jurisdiction.

The UAA Model Rules seek to provide a reasonable accommodation in regard to multiple license holders' Continuing Professional Education (CPE) requirements across state lines.

Model rule 6-5 (c) provides the specific exemption:

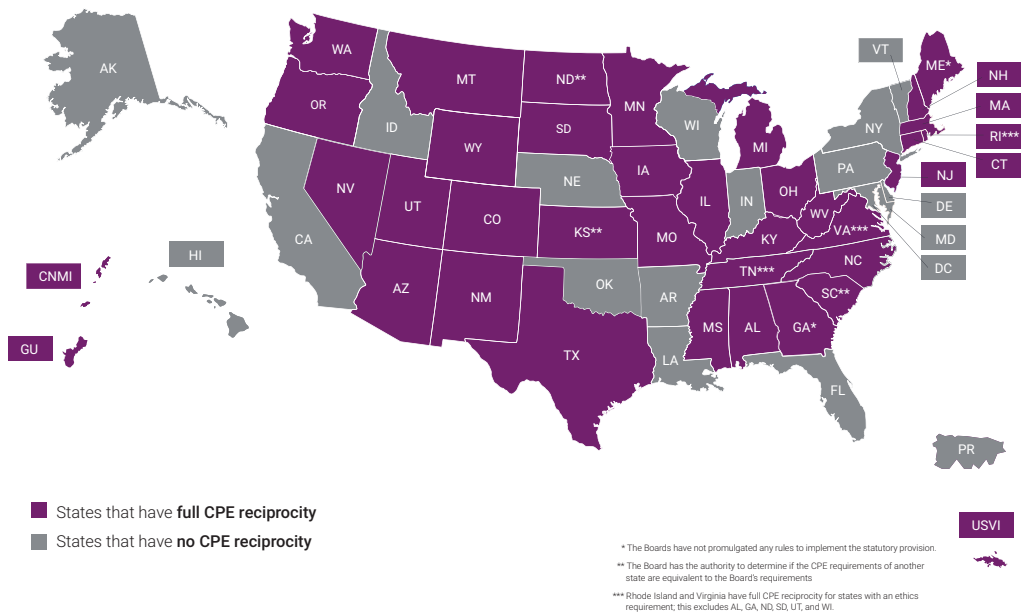
A non-resident licensee seeking renewal of a certificate in this state shall be determined to have met the CPE requirement – including the requirements of Rule 6-4(a) of this rule – by meeting the CPE requirements for renewal of a certificate in the state in which the licensee’s principal place of business is located.

1. Non-resident applicants for renewal shall demonstrate compliance with the CPE renewal requirements of the state in which the licensee’s principal place of business is located by signing a statement to that effect on the renewal application of this state.
2. If a non-resident licensee’s principal place of business state has no CPE requirements for renewal of a certificate, the non-resident licensee must comply with all CPE requirements for renewal of a certificate in this state.

## Thirty-seven states have full CPE reciprocity.

Such a rule is a logical and helpful exemption, ensuring CPAs are continuing their CPE while also avoiding complex multi-state compliance regimes. Unfortunately, not every state board of accountancy has adopted this provision, and this can lead to some holders of multiple licenses having to meet multiple state CPE requirements. Thirty-seven states have full CPE reciprocity.

Figure 3: CPE reciprocity adoption



### Protection of individual CPA mobility

New legislation in state legislatures can sometimes be drafted in a way that has unintended consequences for a state's CPA mobility law. The profession must monitor these bills to safeguard the public interest and the profession's regulatory regime. Quite often, the lawmaker introducing the legislation is not particularly familiar with the state's mobility laws and simply needs to be educated on how to rewrite the language to allow for mobility. In other more problematic situations, the lawmaker is intentionally seeking a protectionist requirement in the legislative proposal. Such efforts may occur in tandem with attempts to deregulate professions.

Two recent areas in which the profession has regularly seen legislative efforts that could harm CPA mobility include the creation of film tax incentives and the establishment of state tax tribunals. There are, of course, other legislative areas – such as mandatory audits of various state programs, grants or initiatives – where such risks of problematic legislation also remain high.

### Liability reform

An appropriate and reasonable legal liability regime is critical to a successful profession, as well as the protection of clients and the general public. The UAA contains three key provisions designed to address this critical balance – privity of contract, a statute of limitations and proportionate liability.

The privity of contract section of the UAA embodies the common law rule that only persons in privity of contract (i.e., a direct contractual relationship), or a relationship close enough to approach that of privity, may sue an accountant for negligence. This ensures that CPAs and their firms are held accountable for their work but are not subject to inappropriate third-party claims. The statute of limitations component of the model act establishes a uniform statute of limitations of one year from the date of discovery of the claim for accountants' negligence and breach of contract actions.

Additionally, the statute of limitations is extended to no more than three years from the date of the completion of the accounting services that are the subject of the complaint, or the date of the initial issuance of the accountant's report, whichever is earliest. It is intended to reduce the uncertainty of potential liability exposure under differing state limitation periods.

The third component of the UAA addressing proportionate liability establishes a general principle of proportionate liability in all actions for money damages (both common law and statutory) against accountants, except in fraud actions. Generally applicable rules continue to govern fraud actions. A licensee is liable under the model language for the portion of the plaintiff's injury caused by the licensee's conduct, the CPA would not be required to compensate the plaintiff for harm caused by others.



Accountants' liability cases frequently involve situations in which a licensee issues a report on the financial statements of a company that subsequently becomes insolvent or has serious financial difficulties. Investors or creditors who allegedly relied on the audit report then sue the CPA and the company. The company being sued is often either bankrupt or has no available assets, making the licensee is, in a disproportionately large number of cases, the only solvent defendant left to answer the damages claim. Under a rule of joint and several liability, the CPA and the CPA firm would be required to bear the burden of the entire damages award, even if the harm was caused principally by others, such as the company's management. This provision is intended to prevent that unfair result. All three of these provisions, when included in a state accountancy statute, are designed to ensure a fair but limited set of parameters around profession liability.

### Appeal bonds

When a defendant, such as a CPA firm, loses a case at trial and a monetary judgment is awarded in favor of the plaintiff, the defendant needs to obtain a stay. A stay is essentially a court order that prevents the plaintiff from enforcing the judgment (and getting the defendant's money) until after the appellate process has run its course. Access to appellate review is critical for defendants, who, in many cases, rely on legal principles to protect against unjustified jury verdicts. Appellate courts that can view a case objectively frequently vindicate these legal principles.

In almost every state that requires a bond, a defendant that loses at trial can obtain an automatic stay preventing enforcement of a monetary judgment until after resolution of the appeal if the defendant posts a bond in the amount of the judgment plus projected interest and costs (called a "supersedeas bond"). When the judgment is very large, however, posting a bond in the required amount is, at best,

extremely expensive and difficult and may frequently be impossible. These bonds can be especially problematic for CPA firms and other professionals, such as architects and engineers, that typically do not own large assets, such as factories or other commercial property, that can be used instead of a bond. Although many courts have the discretion to stay enforcement even if the defendant does not post a full bond, the rules that govern the exercise of that discretion are varied and the outcome of their application is unpredictable.

A losing defendant that cannot post a sufficient bond or obtain a discretionary stay may be forced to declare bankruptcy or settle the case, foregoing an appeal. Most significantly, the mere prospect of a very large, unbondable judgment frequently causes defendants to accept a coercive settlement before the case goes to trial. The bond requirement is thus another element of the current litigation system that enables plaintiffs' lawyers to coerce defendants to settle without regard to the merits of the underlying case.

For these reasons, the current rules governing automatic stays and appeal bonds simply are not suited to our era of judgments ranging from eight to ten figures. Reform that considers the realities of litigation in today's courts is necessary. When properly designed, a new bond limit would achieve the goal of the current rule by maintaining the status quo during the appeal and establishing a certain predictable standard for obtaining an automatic stay in circumstances where posting a full bond is not practicable.

# State tax policy

CPAs, CPA firms and their clients are profoundly affected by state-level tax policy. Although tax policies are not addressed directly in the UAA, tax-related policy decisions can have an enormous impact on how CPAs practice. While it is not practicable to discuss all tax policies across the states, some major issues include the scope of taxes levied on the profession, the potential regulation of state tax preparers, the appeal rights of state taxpayers and administrative issues related to state tax compliance.

## Taxes on professional services

As states continue to explore a variety of solutions to budget constraints, they often return to the idea of taxing professional services as a potential source for financial relief. The issue of expanding such taxes to accounting services, and others, becomes active during periods of low tax revenue, as states seek to fill their coffers by broadening the numbers of those who are taxed. In the past several years, dozens of states considered taxes on professional services, and with the current economic climate, the trend is expected to remain steady.

“Broadening the base,” or expanding taxes on services or goods, can appear to have political appeal, especially when coupled with a reduction of corporate or personal income taxes as a trade-off. The most prominent underlying argument for combining a tax on services with a reduction in a state’s personal income tax has been that reduction or elimination of a personal income tax will make the state more attractive for businesses either to expand or locate in the state. An often-unstated reason for linking the two is the increased political attraction a decrease in income tax may have, generally enough to offset or split opposition to taxation by those whose services would have otherwise been taxed such as CPAs, lawyers, doctors, etc.

The profession should oppose a tax on services in all instances and should not accept tradeoffs, including a reduction in income tax. While legislators may suggest offsetting a services tax with a decreased income tax, there is a risk that future legislatures may reinstate or increase the income tax rate. Applying a tax on services is an administrative nightmare for the business community. Additionally, states that face higher-than-expected cost-of-doing-business and difficulty in implementing the tax or lower than expected revenue may seek additional tax changes that negatively affect the profession and business community. Even more compelling, states that implement such taxes are likely to put their marketplace at a competitive disadvantage to those states around them without a similar tax system.

**As states continue to explore a variety of solutions to budget constraints, they often return to the idea of taxing professional services as a potential source for financial relief.**

State CPA societies are encouraged to consider the risks to their members should this issue arise in 2021. Attention should also be given to small or limited taxes on defined services, such as a sale and use tax on computing services. While these proposals have failed to garner momentum thus far, there could be renewed interest in this topic due to possible negative state budget outlooks caused by the ongoing pandemic. Passage of such a proposal, in any state, could lead the momentum for passage elsewhere around the country. As such, this issue cannot be considered in isolation.

### State regulation of tax preparers

The regulation of tax preparers continues to be a growing issue of concern by policymakers at the federal and state levels. State CPA societies can anticipate that some lawmakers are likely to introduce regulatory proposals in the 2021 state legislative sessions, in part due to uncertainty about the future of the Federal Tax Preparer Registration Program. Seven states — California, Delaware, Illinois, Maryland, Michigan, New York and Oregon — regulate individuals who prepare state-level tax returns.

The AICPA does not support an expansion of regulation for tax preparers at the state level, as there are several issues and serious concerns, including threats to CPA mobility. The AICPA believes that there are more effective ways to protect the public from unqualified and/or unscrupulous tax preparers, and the AICPA State Regulation and Legislation Team, in conjunction with the AICPA Tax Policy and Advocacy Team, prepared a [position paper](#) on this subject for CPA societies to use.

### State tax tribunals

Many states have created, or are proposing, independent state tax tribunals to resolve tax appeal disputes between taxpayers and state departments of revenue before litigation. Thirty-five states and the District of Columbia have tax tribunals located in either the executive or judicial branches of government. The AICPA believes that laws creating or modifying state tax tribunals should ensure that all CPAs authorized to practice in the state can represent taxpayers before these bodies.

The AICPA State Regulation and Legislation Team, along with the AICPA Tax Executive Committee, has developed the AICPA State Tax Tribunals position paper, which explains how proposed state tax tribunals can account for mobility. The paper also includes model legislative language that is based on the American Bar Association's model language for states to use as a guide. The AICPA also developed a [chart of states with and without tribunals](#) to assist state CPA societies. State societies that identify legislation in their state, related to state tax tribunals, are encouraged to ensure that mobility is protected under the proposal.

### State conformity to partnership audit rules

The AICPA and other state tax organizations collectively approved the Multistate Tax Commission [model partnership audit statute](#). For a state to collect its share of liabilities flowing from the Internal Revenue Service (IRS) partnership audit and not face substantial legal and administrative concerns, a state should adopt the model statute. State CPA societies are encouraged to work with their departments of revenue in moving the model statute forward.

In November 2015, Congress enacted the Bipartisan Budget Act of 2015 with changes to the federal partnership audit rules set forth by the Internal Revenue Code (IRC). The new system under the IRC took effect Jan. 1, 2018, with IRS audits likely to start in 2021. The new regime centralizes the IRS's ability to audit, assess and collect any determined underpayment directly from a partnership at the entity level, subject to certain available elections.

The model statute incorporates the changes needed for states to conform to the new federal regime and establishes more uniform standards for reporting federal audit adjustments for all taxpayers to the states. It also addresses significant changes made to federal audit procedures by the system that impacts state-specific issues, such as residency and apportionment. As of 2021, nine states passed partnership audit legislation that generally follows the model statute. To assist state CPA societies on this issue, AICPA has developed a [position paper](#), one-pager, [bullet points](#), a [map](#) and an [update](#).

#### Electronic signatures and electronic documents

Practitioners and clients working remotely during the COVID-19 pandemic are finding it is challenging to obtain “wet signatures” and burdensome to print and mail state tax return-related documents. The AICPA encourages state CPA societies to work with their state tax authorities and state legislatures to allow electronic signatures on all state returns and alternative attachments to paper returns. Sixteen states have provided pandemic-related guidance on electronic signatures. To assist state CPA societies with this effort, AICPA developed various [resources](#), including [model legislative language](#), [model guidance](#), [recommendations and examples](#), a [chart of state return signature requirements](#), [information on practitioner needs](#) and a [map](#).

State CPA societies should work with state tax authorities to permit electronic filing, electronic submission, and secure email transmission of tax documents, including allowing a secure email of a PDF or electronic copy of tax documents, including returns and attachments. State CPA societies should also encourage their state tax authorities to provide automatic acceptance into state electronic filing programs, if accepted by the IRS.

#### One additional month State Filing after Federal Filing

State filing an additional month after federal filing provides time for taxpayers and practitioners to accurately calculate state allocation and apportionment. Changing the filing deadline should not affect the tax payment deadline, and therefore, should not impact state revenue. State CPA societies in states with return deadlines that are the same as federal deadlines are urged to work with state taxing authorities and state legislatures to enact AICPA’s [model legislative language](#) to extend the state filing deadlines to an additional month after the federal returns are due, including extensions. To assist state CPA societies with the effort, the AICPA developed [model legislative language](#), [bullet points](#), [information](#) and a [map](#).

#### False Claims Act

In 2020, the False Claims Acts (FCA) in tax related matters started to move across states and municipalities, all of which came out of the federal FCA. The legislation is harmful because it could lead to unnecessary litigation due to potential filing errors. These bills also contain a significant retroactive clause and may be a major liability to tax practitioners. For tax laws to be consistently and equitably administered, a single agency must control the enforcement. Allowing private parties to intervene in the administration, interpretation or enforcement of the tax law usurps the authority of the tax agency, creates uncertainty and results in inequitable treatment of taxpayers. It is inappropriate for persons or governmental entities outside the tax agency to initiate civil suits claiming under collection or underpayment of a tax (false claims act suits). State laws that permit false claims actions in tax matters should be amended to exclude taxes. States contemplating the enactment of a false claims act should expressly exclude all state and local taxes before adopting such laws. State CPA societies are encouraged to monitor this legislation.

# Anti-licensing proposals

Effective and well-functioning state boards of accountancy are critical to both a thriving profession and the protection of the public interest. The UAA specifically provides for the establishment of a state board of accountancy and defines both its powers and responsibilities, allowing some flexibility for states to make decisions that best reflect the size and regulatory operations within their state. Decisions by lawmakers will differ from state to state depending on the board's size, scope of powers, funding sources, and whether it is an independent agency or housed under an umbrella state regulatory agency. These decisions can have a profound impact on the board's operations and success. In some cases, a board may need more independence or additional staff in order to be most successful. In other situations, boards may face underfunding or encounter state lawmakers eager to take back surplus funds from a state board's coffers.

One issue that could seriously affect state boards of accountancy is the U.S. Supreme Court's 2015 North Carolina State Board of Dental Examiners v. F.T.C (NC Dental) ruling. The decision now requires that licensee-controlled State Boards be "actively supervised" by a neutral state entity in order to enjoy immunity from federal antitrust law. While the details of the case are particular to dentists and the ruling itself was vague regarding "active supervision," the ramifications apply equally to many state regulatory boards. It specifically puts state boards of accountancy members at potential risk of being personally sued for the actions they take as board members, which presents a problem for individual board members and the profession as a whole.

On the federal level, AICPA with NASBA and other coalition partners, recently introduced the Occupational Licensing Board Antitrust Damages Relief Act of 2020 (H.R.8680), which protects state licensing boards, their board members and staff from legal damages while performing licensing regulation duties that protect the public interest. In addition to federal efforts, the AICPA recommends that state CPA societies consider supporting immunity, exempting individuals from lawsuits for certain actions, and indemnification, offering to cover legal costs for lawsuits, legislation for boards of accountancy and their members.

Board members are citizen volunteers who provide their professional insights and their subject matter expertise to protect the public. Therefore, states should be willing to make clear that members are not subject to personal liability as a result of their service on the board. The state should also indemnify boards and members for actions taken in their official capacities. Indemnification provides assurance to current and potential board members that they will not bear the costs of potential antitrust liability and fosters the likelihood of continued interest in service on state boards, providing the state with the expertise required to regulate licensed professionals. The UAA already contains a model immunity and indemnification provision in Section 4(g)(2), and the AICPA State Regulation and Legislation Team has developed model language for state CPA societies that are considering broader legislation outside of their accountancy statute.





If enacting or expanding an immunity and indemnification statute is politically unfeasible, states may consider increasing their supervision of professional boards. Although the Supreme Court failed to define “active supervision,” and such measures would not provide the clear protection of an effective indemnification and immunity statute, increased supervision could provide some legal support for board activities while courts navigate what actions are subject to successful anti-trust challenges. It is important to monitor such legislative proposals to ensure they properly augment oversight without unintended and harmful consequences to regulation.

Following the NC Dental decision, the CPA profession, as with all professions, must defend the legitimacy and efficacy of state licensure against threats to reduce or eliminate occupational licensure. Some states have attempted to pass similar legislation under the guise of sunset reviews that include harmful language against

professions that use certifications, such as the CPA profession. In conjunction with these threats, other states have also been looking at regulatory consolidation to save money and create certain economies of scale.

Finally, several states are now examining how to increase mobility by lowering regulatory barriers to reciprocal licensing. In 2020, twenty states have introduced “Universal Licensing” legislation. While these proposals may save money, it is often unclear whether they benefit licensees and the public, or just cut costs. Any such proposals should be scrutinized for their impact on professional regulation and oversight. State CPA societies, working in direct partnership with their boards of accountancy, can also serve a key role in advocating before their state legislatures for an effective, appropriately funded, and adequately empowered board of accountancy.



## Cybersecurity

### Cybersecurity

CPA firms collect and maintain financial and personal client information, including social security numbers, addresses and financial reports. Given the sensitive nature of this information, state legislatures often consider legislation related to how the data are stored, used, disposed of and protected. Firms that operate in multiple states must be mindful of each state's standards on data protection and privacy.

Cybersecurity has a growing public profile, and the issue is likely to appear in many states in 2021. Proposals in previous legislation sessions have included establishing specific data protection requirements and altering data-breach reporting statutes. State CPA societies should consider monitoring these proposals in 2021, as they may seek to establish overly burdensome regulatory systems. State CPA societies should also be mindful of proposals

that implement strict liability on data breaches and limit disclosure of materials or information. Additionally, there is a trend in state legislation that gives third parties the ability to file suit on behalf of the state when a data breach occurs, even if proper notification followed the breach. All CPA firms retain sensitive data in the ordinary course of business, therefore creating new rights of action will broadly impact the profession.

In 2020, 16 states introduced legislation that would require state contractors to use software that automatically tracks keystroke and mouse movements and take screenshots every several minutes to verify state-funded work. The legislation comes with a number of concerns, including risks to security and privacy. Software companies with an interest in the type of software required are helping push the legislation. A renewed effort to pass legislation is expected in 2021.



## Other potential issues on the horizon

Throughout the country, there are a number of issues that may arise and are not directly related to the UAA or the profession. Some of these issues may, nevertheless, threaten the licensing and regulatory regime of the profession, while others are part of a larger policy debate affecting businesses and the economy. While not an exhaustive list, below are some of the major issues that the SPP Task Force identified as meriting careful consideration in the year ahead.

### **Providing services to marijuana-related business**

In 10 states, marijuana is currently legal for adults and is regulated and taxed like alcohol. Vermont and the District of Columbia both have legalized marijuana, but do not allow marijuana sales, while twenty-two states have medical marijuana laws. As more states continue to look at legalizing medical and recreational marijuana, federal law still prohibits its production, sale, and consumption. Despite this dichotomy, marijuana-related businesses are increasingly requesting services from CPA firms (e.g., tax, audits, advisory and consulting services). In fact, several states that have legalized marijuana mandate that retailers undergo an annual audit, which poses unique challenges to CPAs. CPAs must weigh the benefits and drawbacks of providing such services to firms that are operating legally within state laws but face uncertainty under federal law.

Thus far, 13 state boards of accountancy have issued guidance to CPAs who wish to provide services to marijuana-related businesses. In general, boards in Arizona, Arkansas, Colorado, Connecticut, Florida, Iowa, Maryland, Massachusetts, Michigan, New Mexico, Nevada, Oregon and Washington have determined that licensees in their respective jurisdictions will not face any action related to a violation of the state's Code of Professional Conduct or state accountancy statute solely for providing services to the state's legal marijuana industry.

The AICPA State Regulation and Legislation Team, in conjunction with the Washington Society of CPAs and the Colorado Society of CPAs, prepared a [white paper](#) examining the history of this issue that broadly raises questions CPAs should consider before undertaking an engagement for this type of business.

### **Exempting CPAs from other professions' regulations**

CPAs are often asked to provide services that may fall under another profession's regulatory statutes. One prime example is the provision of a forensic audit, which can sometimes be considered a regulated activity under a state's private investigators statute. Other examples of common CPA services that may reside in other professions' statutes include client services that are also performed by real estate appraisers and financial management experts.

CPAs are already regulated by their state boards of accountancy for all services they provide to clients, including those that may also fall under other regulatory statutes. In order to avoid duplicative regulation, the CPA profession has increasingly sought to explicitly exclude CPAs from these other statutes. Over the coming years, state CPA societies will continue to review this issue and seek out exemptions from other state regulatory oversight requirements.

### Audit rotation

Over the past several years, debate has existed, outside the United States, regarding efforts to implement mandatory audit firm rotation for public companies. The European Union has already passed an audit firm rotation law and individual countries are now implementing those measures. The United States Public Company Accounting Oversight Board (PCAOB) also considered this policy measure, although they tabled the issue after Congress overwhelmingly voted to oppose such an initiative by the PCAOB. Nevertheless, the actions in Europe and the larger debate on the concept has made it likely that related proposals could appear periodically at the state-level. There have been a handful of state-level efforts to mandate firm or partner rotation or the mandatory retendering of contracts, generally in the context of state-mandated audits.

The profession has generally opposed mandatory firm rotation, as well as mandatory retendering. Mandatory firm rotation has not been proven to increase audit quality. Evidence to the contrary suggests that rotation can introduce risks to audit quality, particularly in the early stages of an engagement when a new auditor is learning about the client. There are also additional costs to the client associated with audit rotation, yet the benefits are uncertain. While it does not appear that mandatory firm rotation is a growing trend, it is an ongoing risk that state CPA societies should watch out for during the state legislative sessions. Additionally, some states have considered mandatory auditor rotation proposals at the administrative level, most notably the state auditor's office.

### Human resources issues

Due to a perceived lack of federal action, state and local governments are increasingly examining human resource policies that affect employers and their employees. Some topics currently under consideration are universal leave, ban the box, compensation histories, anti-arbitration provisions, and non-compete clauses.

Universal leave provides employees residing in a jurisdiction with a set amount of paid family or medical leave. The federal Family Medical Leave Act of 1993 applies to employers with 50 or more employees and provides up to 12 weeks of unpaid leave, during a 12-month period, to care for a newborn, adopted or foster child, to care for a family member, or to attend to the employee's own serious medical health condition. States and localities have begun to expand this law to mandate guaranteed paid leave for employees to address family or medical issues.

"Ban the Box" legislation is the prohibition of state agencies and employers from inquiring into, or considering, an applicant's conviction history in relation to a job until after the applicant has received a conditional job offer. This type of legislation is being considered in many states and attempt to clear obstacles to employment stemming from past criminal activities. States should watch for more proposals in 2021.



States are also considering legislation that prohibits employers from asking about candidates' past compensation before making a job offer, and from requiring non-compete clauses for employees. Lawmakers believe the practice contributes to perpetuating the lower salaries that women and minorities are more likely to receive. While proponents of anti-arbitration legislation believe they are promoting parity between employers and employees, data suggests that arbitration is a cost-efficient alternative to litigation. Arbitration proceedings are administered by retired professionals that adhere to strict and neutral guidelines.

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The CPA profession is a strong champion of comparable pay and comparable promotion, two workforce issues currently under consideration at the state-level. Comparable pay and comparable promotion refer to the elimination of gender and race discrimination from the wage-setting process and the corporate ladder, respectively. Additionally, state and local governments are seeking changes to arbitration provisions in government vendor contracts. As state and local governments consider these proposals, the AICPA recommends they include specific language that ensures an appropriate litigation regime.

The AICPA recommends that state CPA societies monitor their local governments for similar proposals and, if they do arise, ensure that such proposals include exemptions as appropriate.



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# 2021 Legislative/regulatory tracking terms

AICPA's State Regulation and Legislation Team uses the following key words to search for legislation related to the CPA profession:

**Licensing issues** • CPA experience • Attest • Biometrics • Continuing professional education – CPE • CPA Examination – Exam subjects – “Auditing and Attestation” or “Business Environment and Concepts” or “Financial Accounting or Reporting” or “Regulation” • CPA license or licensing • Ethics • Fingerprinting • Least restrictive • License reciprocity • Mobility (individual/firm) • Mutual recognition agreement • Practice privilege • Substantial equivalency • Uniform Accountancy Act (UAA) • Universal Licensing

**Legal issues** • Abusive work environment • Alternative dispute resolution (ADR) • Appeal bonds • Award caps • Civil justice reform • Comparative negligence • Consumer Protection Act • Contingency fee/commission • Contributory negligence • Damages • Dodd-Frank Wall Street Reform • Indemnification agreement • Joint or several or proportionate with liability • Mandatory arbitration • MSA bond • Privity of contract • Punitive damages • Tort reform • Qui tam • Reporting of improper or illegal business • Supersedeas bond • Unauthorized practice of law • Unlawful Practice of Law • Whistleblower or whistle blower

**State board of accountancy issues** • Accounting standards • Audit standards • Board of accountancy – Board of public accountancy - CPA board – National Association of State Boards of Accountancy • Board consolidation • Board independence • Board sunset • CPA firm ownership • Peer review • Regulatory reduction • Public accounting

**General** • 501(c) • Accountant – Certified Public Accountant - CPA • Accountant confidentiality • Accounting gross receipts tax • Accounting Services Tax - Sales/use tax on services - Sales/use tax on professional services • Electronic signatures • Digital signature • Accounting firm rotation • Audit firm rotation • Audit or auditor independence • Audit partner rotation • Auditor rotation • Ban the Box - Obstacles to employment due to criminal activities • CARES Act • Confidential client information • Cybersecurity • Debt counseling - Debt management, debt settlement, financial planner, investment adviser, private investigator, real estate appraiser, tax preparer – (registration/ licensing/ certification/ regulation) • eXtensible Business Reporting Language (XBRL) • Government Accounting Standards Board (GASB) Standards – State pension standards • Insurance audit • Keystroke • Limited liability partnership • Mandatory retendering • Marijuana – Medical marijuana – Cannabis • Mobile Workforce • Model Audit Rule • National Association of Insurance Commissioners (NAIC) • Non-profit charity • Outsourcing or outsource with state funds or state agencies or government contracts • Partnership audits • Pass-through entity • Patent infringement • Pension/investment/retirement/ securities with fraud or defraud • Pension reform • Procurement rules • Retention of accounting records • Sarbanes-Oxley (SOX) • Taxpayer Bill of Rights • Tax preparer • Tax tribunal



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