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**CHAPTER 35
GUAM ACCOUNTANCY ACT**

SOURCE: Title LVII, Chapter 1 of the Government Code, Public Accountancy, §§ 54000-54019, repealed and reenacted by P.L. 20-173 (May 17, 1990). Entire chapter repealed and reenacted by P.L. 27-058:2 (Dec. 19, 2003). All source references in this Chapter will refer to the law enacted by P.L. 27-058:2, and any amendments thereafter.

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§ 35101. Title.

This Chapter may be cited as the *'Guam Accountancy Act of 2003'*.

§ 35102. Purpose.

It is the policy of Guam, and the purpose of this Chapter, to promote the reliability of information that is used for guidance in financial transactions or for accounting for or assessing the financial status or performance of commercial, noncommercial, and governmental enterprises. The public interest requires that persons professing special competence in accountancy or offering assurance as to the reliability or fairness of presentation of such information shall have demonstrated their qualifications to do so, and that persons who have not demonstrated and maintained such qualifications, not be permitted to represent themselves as having such special competence or to offer such assurance; that the conduct of persons licensed as having special competence in accountancy be regulated in all aspects of their professional work; that a public authority competent to prescribe and assess the qualifications and to regulate the conduct of licensees be established; and that the use of titles that have a capacity or tendency to deceive the public as to the status or competence of the persons using such titles be prohibited.

§ 35103. Definitions.

When used in this Act, the following terms have the meanings indicated:

(a) *'AICPA'* means the American Institute of Certified Public Accountants.

(b) (1) *'Attest'* means providing the following services:

(A) any audit or other engagement to be performed in accordance with the Statements on Auditing Standards (SAS);

(B) any review of a financial statement to be performed in accordance with the Statements on Standards for Accounting and Review Services (SSARS);

(C) any examination of prospective financial information to be performed in accordance with the Statements on Standards for Attestation Engagements (SSAE);

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(D) any engagement to be performed in accordance with the standards of the PCAOB; and

(E) any examination, review, or agreed upon procedures engagement to be performed in accordance with the SSAE, other than an examination described in Subsection (3).

(2) The standards specified in this definition *shall* be adopted by reference by the Board pursuant to rulemaking and *shall* be those developed for general application by recognized national accountancy organizations such as the AICPA and the PCAOB.

(c) '*Board*' means the Guam Board of Accountancy established under § 35104 of this Chapter or its predecessor under prior law.

(d) '*Certificate*' means a certificate as certified public accountant issued under § 35105 of this Chapter or corresponding provisions of prior law, or a corresponding certificate as certified public accountant issued after examination under the law of any other state.

(e) '*Client*' means a person or entity that agrees with a licensee, or licensee's employer, to receive any professional service.

(f) '*Compilation*' means providing a service to be performed in accordance with Statements on Standards for Accounting and Review Services ('SSARS') that is presenting in the form of financial statements, information that is the representation of management (owners) without undertaking to express any assurance on the statements.

(g) '*CPA Firm*' means a sole proprietorship, a corporation, a partnership, a limited liability partnership, a professional limited liability company, or any other form of organization issued a permit under § 35107 of this Chapter.

(h) '*License*' means a certificate or license issued under § 35106 of this Chapter; a permit issued under § 35107 of this Chapter; or in each case, a certificate, license, or permit issued under corresponding provisions of prior law.

(i) '*Licensee*' means the holder of a license as defined in § 35103(h).

(j) '*Manager*' means a manager of a limited liability company.

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- (k) *'Member'* means a member of a limited liability company.
- (l) *NASBA'* means the National Association of State Boards of Accountancy.
- (m) *'Peer Review'* means a study, appraisal, or review of one (1) or more aspects of the professional work of a certificate holder, licensee, or CPA firm that issues attest or compilation reports, by a person or persons who hold licenses and who are not affiliated with the license holder or CPA firm being reviewed.
- (n) *'Permit'* means a Firm Permit to Practice as a CPA firm issued under § 35107 of this Chapter, or corresponding provisions of prior law, or under corresponding provisions of the laws of other states.
- (o) *'Professional'* means arising out of or related to the specialized knowledge or skills associated with CPAs.
- (p) *'Report,'* when used with reference to any attest or compilation service, means an opinion, report, or other form of language that states or implies assurance as to the reliability of the attested information or compiled financial statements and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the person or firm is an accountant or auditor, or from the language of the report itself. The term 'report' includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any positive assurance as to the reliability of the attested information or compiled financial statements referred to and/or special competence on the part of the person or firm issuing such language; and it includes any other form of language that is conventionally understood to imply such assurance and/or such special knowledge or competence.
- (q) *'Rule'* means any rule, regulation, or other written directive of general application duly adopted by the Board.
- (r) *'State'* means any State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands; except that *this State* means the Territory of Guam.

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(s) '*Substantial Equivalency*' is a determination by the Board of Accountancy or its designee that the education, examination, and experience requirements contained in the statutes and administrative rules of another jurisdiction are comparable to, or exceed the education, examination, and experience requirements contained in the Uniform Accountancy Act or that an individual CPA's education, examination, and experience qualifications are comparable to or exceed the education, examination, and experience requirements contained in the Uniform Accountancy Act. In ascertaining substantial equivalency as used in this Act, the Board *shall* take into account the qualifications without regard to the sequence in which experience, education, or examination requirements were attained.

(t) '*PCAOB*' means the Public Company Accounting Oversight Board.

(u) '*Principal place of business*' means the office location designated by the licensee for purposes of substantial equivalency and reciprocity.

(v) '*Home Office*' is the location specified by the client as the address to which a service described in § 35122(a)(4) is directed.

SOURCE: Subsection (b) amended by P.L. 28-118:2 (Apr 26, 2006), and P.L. 33-193:2 (Dec. 15, 2016). Subsection (r) amended by P.L. 28-118:3 (Apr 26, 2006), and P.L. 33-193:3 (Dec. 15, 2016). Subsection (t) added P.L. 28-118:4 (Apr 26, 2006). Subsection (u) added by P.L. 28-118:5 (Apr 26, 2006). Subsection (s) amended by P.L. 33-193:4 (Dec. 15, 2016). Subsection (v) added by P.L. 33-193:5 (Dec. 15, 2016). Subsection (p) amended by P.L. 33-193:38 (Dec. 15, 2016). Subsection (h) amended by P.L. 33-193:42 (Dec. 15, 2016).

2017 NOTE: Subitem designations added/alterd pursuant to the authority of 1 GCA § 1606.

§ 35104. Guam Board of Accountancy.

(a) There is hereby created the Guam Board of Accountancy, which *shall* have responsibility for the administration and enforcement of this Chapter.

(1) The Board *shall* consist of five (5) members appointed by *I Maga'låhi*, all of whom *shall* be residents of Guam and holders of licenses currently valid under § 35105 of this Chapter.

(2) The term of each member of the Board *shall* be four (4) years.

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(3) Vacancies occurring during a term *shall* be filled by appointment by *I Maga'låhi* for the unexpired remaining term.

(4) Upon the expiration of a member's term of office, such member *shall* continue to serve until a successor *shall* have been appointed and takes office.

(5) Any member of the Board whose license under § 35105 of this Chapter is revoked or suspended *shall* automatically cease to be a member of the Board.

(6) *I Maga'låhi* may, after a hearing pursuant to the Administrative Adjudication Law, remove any member of the Board for neglect of duty or other cause.

(b) The Board shall elect annually from among its members a chairman and such other officers as the Board may determine to be appropriate.

(1) The Board shall meet at such times and places as may be fixed by the Board.

(2) Meetings of the Board shall be open to the public except insofar as they are concerned with investigations under § 35110 of this Chapter and except as may be necessary to protect information that is required to be kept confidential by Board rules or by the laws of Guam.

(3) A majority of the Board members then in office shall constitute a quorum at any meeting duly called.

(4) The Board shall have a seal which shall be judicially noticed.

(5) The Board shall retain or arrange for the retention of all applications and all documents under oath that are filed with the Board and also records of its proceedings, and it shall maintain a registry of the names and addresses of all licensees under this Chapter.

(6) In any proceeding in court, civil or criminal, arising out of or founded upon any provision of this Chapter, copies of any of said records certified as true copies under the seal of the Board shall be admissible in evidence as tending to prove the contents of said records.

(c) Each member of the Board shall be reimbursed for the member's actual and necessary expenses incurred in the discharge of the member's official duties.

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(d) Notwithstanding the Central Accounting Act, all fees and money collected by the Board under this Chapter shall be accounted for by the Board and deposited in a special fund known as the 'Guam Board of Accountancy Fund.'

(1) The Board shall maintain said Fund in a bank licensed to do business on Guam, and funds therein shall be paid out only upon a request for payment, or requisition, submitted by the Executive Director and countersigned by the Chairperson of the Board, or some other member specifically designated by the Board. All monies in this Fund are subject to legislative appropriation for the use of the Board in performing its duties. Said monies shall be expended solely to administer the provisions of this Chapter, and may include, but shall not be limited to,

(A) the cost of investigations, taking testimony and procuring the attendance of witnesses before the Board or its committees;

(B) all legal proceedings brought pursuant to this Chapter;
and

(C) educational programs for the benefit of the public and licensees and their employees.

(2) On or before January 30, 2009 for Fiscal Year 2010 and January 30th for each fiscal year thereafter, the Board shall approve and submit to *I Liheslatura* its annual budget for the following fiscal year. If the Board fails to submit a budget for the next fiscal year, or if *I Liheslatura* fails to approve the annual budget before the next fiscal year, the current fiscal year's budget shall become law for the next fiscal year, subject to legislative modification.

(e) The Board shall file an annual report of its activities with *I Maga'tahi, I Liheslatura*, [the Governor, the Legislature] and the Public Auditor, which report shall include a listing of all current licensees under this Chapter. The Board shall mail a copy of the annual report to any person requesting it and paying a reasonable charge therefor.

(f) The Board may employ or contract for the services of an executive director and such other personnel as it deems necessary in its administration and enforcement of this Chapter. It may appoint such committees or persons, to advise or assist it in such administration and enforcement, as it may see

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fit. It may retain its own counsel to advise and assist it in addition to such advice and assistance as is provided by the Attorney General of Guam.

(g) (1) The Board *shall* have the power to take all action that is necessary and proper to effectuate the purposes of this Chapter, including the power to sue and be sued in its official name as an agency of Guam.

(2) The Board *shall* also have the power to issue subpoenas to compel the attendance of witnesses and the production of documents; to administer oaths; to take testimony; to cooperate with the PCAOB and the appropriate State and federal regulatory authorities having jurisdiction over the professional conduct in question in investigation and enforcement concerning violations of this Chapter and comparable acts of other states; to cooperate in enforcement with appropriate foreign regulatory authorities in instances which have or may result in criminal conviction, loss of license or suspension, admonishment or censure; and to receive evidence concerning all matters within the scope of this Chapter.

(3) In case of disobedience of a subpoena, the Board may invoke the aid of any court or other appropriate regulatory authority in requiring the attendance and testimony of witnesses and the production of documentary evidence.

(4) For purposes of this Subsection, ‘appropriate foreign regulatory authorities’ *shall* be those foreign authorities granting substantially equivalent foreign designations in accordance with § 35106(h) of this Chapter.

(5) The Board, its members, and its agents *shall* be immune from personal liability for actions taken in good faith in the discharge of the Board’s responsibilities, and the government of Guam *shall* hold the Board, its members, and its agents harmless from all costs, damages, and attorneys’ fees arising from claims and suits against them with respect to matters to which such immunity applies.

(h) The Board may adopt rules governing its administration and enforcement of this Chapter and the conduct of licensees, including but not limited to:

(1) Rules governing the Board’s meetings and the conduct of its business;

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(2) Rules of procedure governing the conduct of investigations and hearings by the Board;

(3) Rules specifying the educational and experience qualifications required for the issuance of certificates under § 35105 of this Chapter and the continuing professional education required for renewal of licenses under § 35106 of this Chapter;

(4) Rules of professional conduct directed to controlling the quality and probity of services by licensees, and dealing among other things with independence, integrity, and objectivity; competence and technical standards; responsibilities to the public; and responsibilities to clients;

(5) Rules governing the professional standards applicable to licensees;

(6) Rules governing the manner and circumstances of use of the titles 'certified public accountant' and 'CPA';

(7) Rules regarding peer review that may be required to be performed under provisions of this Chapter;

(8) Rules on substantial equivalence to implement § 35122; and

(9) Such other rules as the Board may deem necessary or appropriate for implementing the provisions and the purposes of this Chapter.

(i) All rules or amendments thereto as promulgated under Subsection (h) of this § 35104, or under any other provision of this Chapter shall be adopted pursuant to the rule making procedures set forth in the Administrative Adjudication Law.

(j) Records, papers, and other documents containing information collected or compiled by the Board, its members, employees, contractors, or agents, including its legal counsel, as a result of a complaint, investigation, inquiry, or interview in connection with an application for examination, certification, or registration, or in connection with a licensee's professional ethics and conduct, *shall* not be considered public records within the meaning of Guam's public records laws. Additionally, any record, paper, or other document received by the Board as a result of a self-reporting requirement *shall* not be considered public records within the meaning of Guam's public records laws. When any such record, paper, or other

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document is admitted into evidence in a hearing held by the Board, it *shall* then be a public record within the meaning of Guam's public records laws. However, upon a showing of good cause, the presiding officer at such a hearing may order that confidential or privileged information be redacted or admitted under seal.

(1) Notwithstanding any other provision of this Chapter, information protected by this confidentiality provision *shall* not be disclosed to other authorities unless the recipient confirms in writing that it will assure preservation of confidentiality, and the licensee has been given reasonable notice that the information will be provided to another entity.

(2) Notwithstanding any contrary provision in Guam's public records laws, disclosures to law enforcement and regulatory authorities and, only to the extent deemed necessary to conduct an investigation, to the subject of the investigation, persons whose complaints are being investigated and witnesses questioned in the course of investigation, as provided in § 35110(b), *shall* not be considered public disclosures and *shall* not deprive such records of their confidential status.

(3) Nothing in this Subsection *shall* be construed as a waiver of any privilege, such as attorney-client privilege, which may also apply to any records covered by this Subsection.

(4) Nothing in this Subsection *shall* confer confidential status on any record collected under this Subsection that was a public record when collected or thereafter becomes a public record through other lawful means.

SOURCE: Subsection (a) amended by P.L. 27-104:5; P.L. 28-118:6 (Apr 26, 2006); and P.L. 33-193:6 (Dec. 15, 2016). Subsection (d) amended by P.L. 28-068:IV:51 (Sept. 30, 2005), P.L. 29-123:1 (Dec. 2, 2008). Repealed and reenacted by P.L. 29-002:VI:8 (May 18, 2007). Subsection (j) added by P.L. 28-068:IV:52 (Sept. 30, 2005) as subsection (i); relettered to (j) by the Compiler; repealed by P.L. 29-002:VI:9 (May 18, 2007). Subsection (j) added by P.L. 33-193:8 (Dec. 15, 2016). Subsection (g) amended by P.L. 33-193:7 (Dec. 15, 2016).

§ 35105. Qualifications for a Certificate as a Certified Public Accountant.

(a) The certificate of 'certified public accountant' shall be granted to persons of good moral character who meet the education, experience and examination requirements of the following Subsections of this § 35105 and

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rules adopted thereunder and who make application therefor pursuant to § 35106 of this Act.

(b) Good moral character for purposes of this §35105 means the propensity to provide professional services in a fair, honest, and open manner and a lack of a history of dishonest or felonious acts. The Board may refuse to grant a certificate or license on the ground of failure to satisfy this requirement only *if* there is a substantial connection between the lack of good moral character of the applicant and the professional responsibilities of a licensee and *if* the finding by the Board of lack of good moral character is supported by clear and convincing evidence. When an applicant is found to be unqualified for a certificate or license because of a lack of good moral character, the Board shall furnish the applicant a statement containing the findings of the Board, a complete record of the evidence upon which the determination was based, and a notice of the applicant's right of appeal.

(c) The education requirement for a certificate and license, which must be met before an applicant is eligible to take the examination prescribed in Subsection (d), *shall* be as follows:

(1) during the five (5)-year period immediately following the effective date of this amendment, at least a college education, including a baccalaureate, or higher, degree or its equivalent conferred by a college or university acceptable to the Board, the total educational program to include an accounting concentration, or equivalent, as determined by Board rule to be appropriate;

(2) After the expiration of the five (5)-year period immediately following the effective date of this amendment, at least one hundred fifty (150) semester hours of college education, including a baccalaureate, or higher, degree conferred by a college or university acceptable to the Board, the total educational program to include an accounting concentration or equivalent as determined by Board rule to be appropriate.

(d) Examination and Education.

(1) The examination required to be passed as a condition for the granting of a certificate *shall* be held regularly throughout the year, and *shall* test the applicant's knowledge of the subjects of accounting and auditing, and such other related subjects as the Board may specify by rule, including, but not limited to, business law and taxation.

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(A) The time for holding such examination *shall* be determined by the Board and may be changed from time to time.

(B) The Board *shall* prescribe by rule the methods of applying for and conducting the examination, including the methods for grading and determining a passing grade required of an applicant for a certificate; provided, however, that the Board *shall* to the extent possible see to it that the examination itself, grading of the examination, and the passing grades, are uniform with those applicable in all other states.

(C) The Board may make such use of all or any part of the Uniform Certified Public Accountant Examination and Advisory Grading Service of the American Institute of Certified Public Accountants, and may contract with third parties to perform such administrative services with respect to the examination as it deems appropriate to assist it in performing its duties hereunder.

(2) Notwithstanding § 35105(c), the educational requirement, which must be met before an applicant is qualified to take the examination prescribed in § 35105(d)(1), may be fulfilled by the completion of such educational requirement within eighteen (18) months following an applicant's taking of the examination. No credit for the examination *shall* be granted if the education requirement is not completed within such time.

(e) The Board may charge, or provide for a third party administering the examination to charge, each applicant a fee, in an amount prescribed by the Board by rule.

(f) (1) An applicant for initial issuance of a certificate and inactive license under this § 35105 *shall* show that the applicant has met the education and examination requirements as defined herein and as prescribed by the Board by rule.

(2) An applicant for initial issuance of a certificate and active license under this § 35105 *shall* show

(A) that the applicant has met the education and examination requirements, and has had two (2) years of experience as defined herein as prescribed by the Board by rule; or

(B) if the applicant's educational qualifications comprise at least one hundred fifty (150) semester hours of college education,

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including a baccalaureate, or higher, degree conferred by a college or university acceptable to the Board, the total educational program to include an accounting concentration, or equivalent, as determined by Board rule to be appropriate, then that such applicant *shall* have had one (1) year of experience as defined herein and as prescribed by the Board by rule.

(i) This experience *shall* include providing any type of service or advice involving the use of accounting, attest, compilation, management advisory, financial advisory, tax, or consulting skills, all of which must be verified by an active licensee. Experience *shall* be acceptable if it was gained through employment in government, industry, academia, or public practice, meeting all the requirements prescribed by the Board by rule.

(iii) To be authorized to sign reports on attest engagements, an applicant *shall* show that the applicant has had experience in attest services as prescribed by the Board by rule. The type of experience now acceptable can be applied retroactively.

(3) An applicant for initial certification and active licensure who first sat for the exam as other than a Guam candidate and did not meet a one hundred fifty (150) hour educational requirement at the time of first sitting *shall* have had two (2) years of experience in the practice of public accountancy, meeting the requirements prescribed by the Board by rule.

(4) An applicant for initial certification and active licensure who first sat for the exam as other than a Guam candidate and did meet a one hundred fifty (150) hour educational requirement at the time of first sitting *shall* have had one (1) year of experience in the practice of public accountancy, meeting the requirements prescribed by the Board by rule.

(g) Upon the effective date of this Chapter, any person holding a valid certificate issued under *prior* Guam law shall be deemed to have met the requirements for certification set out in this § 35105. Individuals who held certificates issued prior to the effective date of this law will be marked 'inactive' unless they are issued licenses pursuant to and in accordance with § 35106.

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SOURCE: Subsection (b) amended by P.L. 28-118:7 (Apr 26, 2006). Subsection (c) amended by P.L. 28-118:8 (Apr 26, 2006), and P.L. 33-193:9 (Dec. 15, 2016). Subsection (d)(2) amended by P.L. 28-118:9, and P.L. 33-193:11 (Dec. 15, 2016). Subsection (f) amended by P.L. 28-118:10 (Apr 26, 2006), and P.L. 33-193:12 (Dec. 15, 2016). Subsection (g) amended P.L. 28-118:11 (Apr 26, 2006). Subsection (d)(1) added by P.L. 33-193:10 (Dec. 15, 2016).

2017 NOTE: Subsection/subitem designations added/alterd pursuant to the authority of 1 GCA § 1606.

§ 35106. Issuance and Renewal of Licenses, and Maintenance of Competency.

(a) The Board shall grant or renew licenses to persons who make application and demonstrate:

(1) that their qualifications, including where applicable, the qualifications prescribed by § 35105, are in accordance with the following Subsections of this Section, *or*

(2) that they are eligible under the substantial equivalency standard set out in § 35122 of this Chapter which requires licensure for those CPAs that establish their principal place of business in another state. The holder of a license issued under this Section may only provide attest services, as defined, in a CPA firm that holds a permit issued under § 35107 of this Chapter.

(b) Licenses shall be initially issued, and renewed, for periods of not more than three (3) years but in any event shall expire on the last day of June.

(1) Applications for such licenses shall be made in such form, and in the case of applications for renewal, between such dates, as the Board shall by rule specify, and the Board shall grant or deny any such application no later than sixty (60) days after the application is filed in proper form.

(2) In any case where the applicant seeks the opportunity to show that issuance or renewal of a license was mistakenly denied, or where the Board is not able to determine whether it should be granted or denied, the Board may issue to the applicant a provisional license, which shall expire ninety (90) days *after* its issuance or when the Board determines whether or not to issue or renew the license for which application was made, whichever shall first occur.

(c) Non-substantial equivalency reciprocity.

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(1) With regard to applicants that do not qualify for reciprocity under the substantial equivalency standard set out in §35122 of this Chapter, the Board shall issue a license to a holder of a certificate, license, or permit issued by another state upon a showing that:

(A) The applicant passed the uniform CPA examination;

(B) The applicant had four (4) years of experience outside of Guam of the type described in § 35105(f) or meets comparable requirements prescribed by the Board by rule, after passing the examination upon which the applicant's certificate was based and within the ten (10) years immediately preceding the application; and

(C) If the applicant's certificate, license, or permit was issued more than four (4) years prior to the application for issuance of an initial license under this Section, that the applicant has fulfilled the requirements of continuing professional education that would have been applicable under Subsection (d) of this Section.

(2) (A) As an alternative to the requirements of § 35106(c)(1) of this Chapter, a certificate holder licensed by another State who establishes their principal place of business in Guam *shall* request the issuance of a license and Guam CPA Firm Permit to Practice from the Board prior to establishing such principal place of business.

(B) The Board *shall* issue a certificate and license to such person who obtains from the NASBA National Qualification Appraisal Service verification that such individual's CPA qualifications are substantially equivalent to the CPA licensure requirements of the AICPA/NASBA Uniform Accountancy Act.

(3) An application under this Section may be made through the NASBA Qualification Appraisal Service.

(d) (1) For renewal of a license under this § 35106 each licensee *shall* participate in a program of learning designed to maintain professional competency. Such program of learning must comply with rules adopted by the Board.

(2) The Board may by rule create an exception to this requirement for licensees who do not perform or offer to perform for the public one

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(1) or more kinds of services involving the use of accounting or auditing skills, including issuance of reports on financial statements, or of one (1) or more kinds of management advisory, financial advisory or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters.

(A) Licensees granted such an exception by the Board must place the word 'inactive' or such other indicative wording as the Board may prescribe by rule, adjacent to their CPA title on any business card, letterhead or any other document or device, with the exception of their CPA certificate, on which their CPA title appears.

(B) A licensee availing of such exception who desires to resume performing or offering to perform services for the public as described in this Section must comply with the rules adopted by the Board for 'reactivation' of their license.

(e) The Board *shall* by rule require as a condition for renewal of a license under this Section, by any license holder who issues compilation reports for the public other than through a CPA firm, that such individual undergo, no more frequently than once every three (3) years, a peer review conducted in such manner as the Board *shall* by rule specify, and such review *shall* include verification that such individual has met the competency requirements set out in professional standards for such services.

(f) The Board shall charge a fee for each application for initial issuance, or renewal, of a license under this Section in an amount prescribed by the Board by rule.

(g) Applicants for initial issuance, or renewal, of licenses under this Section shall in their applications list all states in which they have applied for or hold certificates, licenses, or permits and list any past denial, revocation or suspension of a certificate, license or permit, and each holder of or applicant for a license under this § 35106 shall notify the Board in writing, within thirty (30) days after its occurrence, of any issuance, denial, revocation, or suspension of a certificate, license or permit by another state.

(h) The Board shall issue a license to a holder of a substantially equivalent foreign designation, provided that:

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(1) The foreign authority which granted the designation makes similar provision to allow a person who holds a valid license issued by Guam to obtain such foreign authority's comparable designation; and

(2) The foreign designation was:

(A) duly issued by a foreign authority that regulates the practice of public accountancy and the foreign designation has not expired or been revoked or suspended;

(B) entitles the holder to issue reports upon financial statements; and

(C) was issued upon the basis of educational, examination, and experience requirements established by the foreign authority or by law; and

(3) The applicant:

(A) received the designation, based on educational and examination standards substantially equivalent to those in effect in Guam, at the time the foreign designation was granted;

(B) completed an experience requirement, substantially equivalent to the requirement set out in § 35105(f), in the jurisdiction which granted the foreign designation or has completed four (4) years of professional experience in Guam; or meets equivalent requirements prescribed by the Board by rule, within the (10) ten years immediately preceding the application; and

(C) passed a uniform qualifying examination in national standards and, if the Board requires in its rules, an examination on the laws, regulations and code of ethical conduct in effect in Guam.

(i) An applicant under § 35106(h) shall in the application list all jurisdictions, foreign and domestic, in which the applicant has applied for or holds a designation to practice public accountancy, and each holder of a license issued under this Subsection shall notify the Board in writing, within thirty (30) days after its occurrence, of any issuance, denial, revocation or suspension of a designation or commencement of a disciplinary or enforcement action by any jurisdiction.

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(j) The Board has the *sole* authority to interpret the application of the provisions of Subsections (h) and (i) of this Section.

(k) Upon the effective date of this Chapter, any person holding a currently valid Individual Permit to Practice issued under prior Guam law shall be automatically issued a License.

SOURCE: Subsection (c)(1) amended by P.L. 28-118:12 (Apr. 26, 2006). Subsection (d) amended by P.L. 28-118:13 (Apr. 26, 2006), and amended by P.L. 33-193:41 (Dec. 15, 2016). Subsection (e) repealed by P.L.28-118:14 (Apr. 26, 2006), added by P.L. 33-193:16 (Dec. 15, 2016). Subsection (a)(2) amended by P.L. 33-193:13 (Dec. 15, 2016). Subsection (c)(2) amended by P.L. 33-193:14 (Dec. 15, 2016). Subsection (j) amended by P.L. 33-193:15 (Dec. 15, 2016).

2017 NOTE: Subsection/subitem designations added/alterd pursuant to the authority of 1 GCA § 1606.

§ 35107. Firm Permits to Practice, Attest and Compilation Competency and Peer Review.

(a) The Board *shall* grant or renew permits to practice as a CPA firm to applicants that demonstrate their qualifications therefor in accordance with this Section.

(1) The following must hold a permit issued under this Section:

(A) any firm with an office in Guam performing attest services as defined in § 35103(b) of this Chapter;

(B) any firm with an office in Guam that uses the title ‘CPA’ or ‘CPA firm’; or

(C) any firm that does not have an office in Guam but performs attest services described in § 35103(b)(1), (3), (4), or (5) of this Chapter for a client having its home office in Guam.

(2) A firm which does not have an office in Guam may perform services described in § 35103(b)(2) or § 35103(f) for a client having its home office in Guam and may use the title ‘CPA’ or ‘CPA firm’ without a permit issued under this Section only if:

(A) it has the qualifications described in Subsections (d) and (i) of this Section; and

(B) it performs such services through an individual with practice privileges under § 35122 of this Chapter.

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(3) A firm which is not subject to the requirements of Subsections (a)(1)(C) or (a)(2) of this Section may perform other professional services while using the title 'CPA' or 'CPA firm' in Guam without a permit issued under this Section only if:

(A) it performs such services through an individual with practice privileges under § 35122 of this Chapter; and

(B) it can lawfully do so in the State where said individuals with practice privileges have their principal place of business.

(b) Firm Permits to Practice shall be initially issued and renewed for periods of not more than three years but in any event expiring on the last day of June in the year of expiration. Applications for Firm Permits to Practice shall be made in such form, and in the case of applications for renewal, between such dates as the Board may by rule specify, and the Board shall grant or deny any such application no later than sixty (60) days after the application is filed in proper form.

(c) In any case where the applicant seeks the opportunity to show that issuance or renewal of a Firm Permit to Practice was mistakenly denied or where the Board is not able to determine whether it should be granted or denied, the Board may issue to the applicant a provisional Firm Permit to Practice, which shall expire ninety (90) days after its issuance or when the Board determines whether or not to issue or renew the Firm Permit to Practice for which application was made, whichever shall first occur.

(d) An applicant for initial issuance or renewal of a Firm Permit to Practice under this Section shall be required to show that:

(1) Notwithstanding any other provision of law, a simple majority of the ownership of the CPA firm, in terms of financial interests and voting rights of all partners, officers, shareholders, members, or managers, belongs to holders of a certificate who are licensed in some state, and such partners, officers, shareholders, members, or managers, whose principal place of business is in Guam, and who perform professional services in Guam hold a valid license issued under § 35106 or the corresponding provision of prior law. Although CPA firms may include non-licensee owners, the CPA firm and its ownership must comply with rules promulgated by the Board. An individual who has practice privileges under § 35122 who performs services for which a firm permit is required under § 35122(a)(4) *shall*

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not be required to obtain a license from Guam pursuant to § 35106 of this Chapter.

(2) Any CPA firm as defined in this Chapter may include non-licensee owners, provided that:

(A) the CPA firm designates a licensee of Guam, or in the case of a firm which must have a permit pursuant to § 35122(a)(4), a licensee of another State who meets the requirements set out in §§ 35122(a)(1) or 35122(a)(2), who is responsible for the proper registration of the firm and identifies that individual to the Board;

(B) all non-licensee owners are of good moral character and active individual participants in the CPA firm or affiliated entities; and

(C) the CPA firm complies with such other requirements as the Board may impose by rule.

(3) Any individual licensee and any individual granted practice privileges under this Chapter who is responsible for supervising attest or compilation services and signs or authorizes someone to sign the accountant's report on behalf of the CPA firm, *shall* meet the competency requirements set out in the professional standards for such services as prescribed by the Board by rule.

(4) Any individual licensee and any individual granted practice privileges under this Chapter who signs or authorizes someone to sign the accountant's report on behalf of the CPA firm *shall* meet the competency requirement of Subsection (d)(3) of this Section.

(e) An applicant for initial issuance or renewal of a Firm Permit to Practice under this Section shall be required to register each office of the firm within Guam with the Board and to show that all attest and compilation services as defined herein rendered in Guam are under the charge of a person holding a valid license issued under either § 35106, a corresponding provision of prior Guam law, or the law of another state.

(f) The Board shall charge a fee for each application for initial issuance, or renewal, of a permit under § 35107 in an amount prescribed by the Board by rule.

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(g) Applicants for initial issuance or renewal of Firm Permits to Practice under § 35107 shall in their applications list all states in which they have applied for or hold permits as CPA firms and list any past denial, revocation or suspension of a permit by any other state, and each holder of or applicant for a Firm Permit to Practice under § 35107 shall notify the Board in writing, within thirty (30) days after its occurrence, of any change in the identities of owners, partners, officers, shareholders, members or managers whose principal place of business is in Guam, any change in the number or location of offices within Guam, any change in the identity of the persons in charge of such offices, and any issuance, denial, revocation, or suspension of a license or permit by any other state.

(h) CPA Firms which fall out of compliance with the provisions of § 35107 due to changes in CPA firm ownership or personnel, after receiving or renewing a Firm Permit to Practice, shall take corrective action to bring the CPA firm back into compliance as quickly as possible. The Board may grant a reasonable period of time for a CPA firm to take such corrective action. Failure to bring the CPA firm back into compliance within a reasonable period as defined by the Board will result in the suspension or revocation of the Firm Permit to Practice.

(i) The Board shall by rule require, as a condition to renewal of Firm Permits to Practice under § 35107, that applicants undergo, no more frequently than once every three (3) years, peer reviews conducted in such manner as the Board shall specify, and such review shall include a verification that individuals in the CPA firm who are responsible for supervising attest and compilation services and sign or authorize someone to sign the report on the financial statements on behalf of the CPA firm meet the competency requirements set out in the professional standards for such services, provided that any such rule:

(1) shall be promulgated reasonably in advance of the time when it first becomes effective;

(2) shall include reasonable provision for compliance by an applicant showing that it has, within the preceding three (3) years, undergone a peer review that is a satisfactory equivalent to peer review generally required pursuant to this § 35107(I);

(3) may require, with respect to peer reviews contemplated by § 35107(i)(2), that they be subject to oversight by the Board or an oversight body established or sanctioned by Board rule, which body

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shall periodically report to the Board on the effectiveness of the review program under its charge, and provide to the Board a listing of CPA firms that have participated in a peer review program that is satisfactory to the Board; and

(4) shall require, with respect to peer reviews contemplated by § 35107(i)(2), that the peer review processes be operated and documents maintained in a manner designed to preserve confidentiality, and that neither the Board nor any third party (other than the oversight body) shall have access to documents furnished or generated in the course of the review.

SOURCE: Subsection (d)(4) amended by P.L. 28-118:15 (Apr 26, 2006), and P.L. 33-193:21 (Dec. 15, 2016). Subsection (i)(3) amended by P.L.28-118:16 (Apr 26, 2006). Subsection (a) amended by P.L. 33-193:17 (Dec. 15, 2016). Subsection (d)(1) amended by P.L. 33-193:18 (Dec. 15, 2016). Subsection (d)(2) amended by P.L. 33-193:19 (Dec. 15, 2016). Subsection (d)(3) amended by P.L. 33-193:20 (Dec. 15, 2016).

§ 35108. Appointment of Director of the Department of Revenue and Taxation as Agent.

Application by a person or a CPA firm not a resident of Guam for a license under § 35106, or a Firm Permit to Practice under § 35107, shall constitute appointment of the Director of the Department of Revenue and Taxation as the applicant's agent upon whom process may be served in any action or proceeding against the applicant arising out of any transaction or operation connected with or incidental to services performed by the applicant while a licensee within Guam.

§ 35109. Enforcement and Grounds for Discipline.

(a) After notice and hearing pursuant to § 35111 of this Chapter, the Board may revoke any certificate, licenses, or Firm Permit to Practice issued under § 35105, § 35106, or § 35107 or corresponding provisions of prior law, or revoke or limit privileges under § 35122; suspend any such certificate, license or Firm Permit to Practice or refuse to renew any such certificate, license, or Firm Permit to Practice for a period of not more than five (5) years; reprimand, censure, or limit the scope of practice of any licensee; impose an administrative fine not exceeding Five Thousand Dollars (\$5,000), or place any licensee on probation, all with or without terms, conditions, and limitations, for any one (1) or more of the following reasons:

- (1) Dishonesty, fraud or deceit in obtaining a license;

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(2) Cancellation, revocation, suspension, or refusal to renew a license or privileges under § 35122 for disciplinary reasons in any other state for any cause;

(3) Failure, on the part of a licensee under § 35106 or Firm Permit to Practice under § 35107, to maintain compliance with the requirements for issuance, or renewal of such license or Firm Permit to Practice, or to report changes to the Board under § 35106(g) or § 35107(g);

(4) Revocation or suspension of the right to practice before any State or federal regulatory authority or by the PCAOB;

(5) Dishonesty, fraud, deceit or gross negligence in the performance of services as a licensee or individual granted privileges under § 35122, or in the filing or failure to file one's own income tax returns, or other required tax filings;

(6) Violation of any provision of this Chapter, or rule promulgated by the Board under this Chapter, or violation of professional standards;

(7) Violation of any rule of professional conduct promulgated by the Board under § 35104(h)(4) of this Chapter;

(8) Conviction of a felony, or of any other crime an element of which is dishonesty, deceit or fraud, under the laws of the United States, of Guam, or of any other state, *if* the acts involved would have constituted a crime under the laws of Guam;

(9) Performance of any fraudulent act while holding a certificate, license, Firm Permit to Practice, or § 35122 privilege issued under this Chapter, or prior law;

(10) Any conduct reflecting adversely upon the licensee's fitness to perform services while a licensee, or individual granted privileges under § 35122;

(11) Making any false or misleading statement or verification, in support of an application for a certificate or Firm Permit to Practice filed by another; or

(12) Failure to pay child support as determined by the Child Support Enforcement Division of the Office of the Attorney General of Guam.

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(b) In lieu of, or in addition to any remedy specifically provided in § 35109(a), the Board may require of a licensee or the holder of a certificate under § 35105, or prior law:

(1) A peer review conducted in such fashion as the Board may specify; and/or

(2) Satisfactory completion of such continuing professional education programs as the Board may specify; or both.

(c) In any proceeding in which a remedy provided by § 35109(a) or § 35109(b) is imposed, the Board may also require the respondent licensee to pay the costs of the proceeding and fees including reasonable attorneys fees incurred by the Board.

SOURCE: Section title amended by P.L. 28-118:17 (Apr 26, 2006). Subsection (a) amended by P.L. 28-118:18 (Apr 26, 2006). Subsection (c) amended by P.L. 28-118:19 (Apr 26, 2006). Subsection (a)(4) amended by P.L. 33-193:22 (Dec. 15, 2016). Subsection (a)(11) amended by P.L. 33-193:23 (Dec. 15, 2016).

§ 35110. Enforcement Procedures - Investigations.

(a) The Board may, upon receipt of a complaint or other information suggesting violations of this Chapter or of the rules of the Board, conduct investigations to determine whether there is probable cause to institute proceedings under § 35111, § 35114, § 35115, or any other Section of this Chapter, against any person or firm for such violation, but an investigation under § 35110 shall not be a prerequisite to such proceedings in the event that a determination of probable cause can be made without investigation. In aid of such investigations, the Board or the chairperson thereof may issue subpoenas to compel witnesses to testify and/or to produce evidence.

(b) The Board may designate a member, or any other person of appropriate competence, to serve as investigating officer to conduct an investigation. Upon completion of an investigation, the investigating officer shall file a report with the Board. The Board shall find probable cause, or lack of probable cause, upon the basis of the report or shall return the report to the investigating officer for further investigation. Unless there has been a determination of probable cause, the report of the investigating officer, the complaint, if any, the testimony and documents submitted in support of the complaint or gathered in the investigation, and the fact of pendency of the investigation shall be treated as confidential information and shall *not* be disclosed to any person except law enforcement authorities and, to the extent deemed necessary in order to conduct the investigation, the subject of the

investigation, persons whose complaints are being investigated, and witnesses questioned in the course of the investigation.

(c) Upon a finding of probable cause, if the subject of the investigation is a licensee, holder of a certificate, or an individual with privileges under § 35122 of this Chapter, the Board shall direct that a complaint be issued under § 35111 of this Chapter, and if the subject of the investigation is not a licensee, holder of a certificate, or an individual with privileges under § 35122, the Board shall take appropriate action under § 35114 or § 35115 of this Chapter. Upon a finding of no probable cause, the Board shall close the matter and shall thereafter release information relating thereto only with the consent of the person or firm under investigation.

(d) The Board may review the publicly available professional work of licensees, holders of certificates, or individuals with privileges under § 35122 of this Act on a general or random basis, without any requirement of a formal complaint or suspicion of impropriety. In the event that as a result of such review the Board discovers reasonable grounds for a more specific investigation, the Board may proceed under Subsections (a) through (c) of this Section.

§ 35111. Enforcement Procedures Hearings by the Board.

(a) In any case where probable cause with respect to a violation by a licensee, holder of a certificate, or an individual with privileges granted under § 35122 of this Chapter has been determined by the Board, whether following an investigation under § 35110 of this Chapter, or upon receipt of a written complaint furnishing grounds for a determination of such probable cause, or upon receipt of notice of a decision by the Board of Accountancy of another state furnishing such grounds, the Board shall issue a complaint setting forth appropriate charges and set a date for hearing before the Board on such charges. The Board shall, not less than thirty (30) days prior to the date of the hearing, serve a copy of the complaint and notice of the time and place of the hearing upon the licensee, holder of a certificate, or an individual with privileges granted under § 35122 of this Chapter, together with a copy of the Board's rules governing proceedings under this Section, either by personal delivery, or by mailing a copy thereof by registered mail to the licensee or holder of a certificate at the licensee's or certificate holder's address last known to the Board. In the case of an individual exercising privileges under § 35122, service shall be by registered mail to the address last known to the Board, or pursuant to § 35122(a)(3)(c).

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(b) A licensee, a holder of a certificate, or an individual with privileges under § 35122, against whom a complaint has been issued under this § 35111 shall have the right, reasonably in advance of the hearing, to examine and copy the report of investigation, *if* any, and any documentary or testimonial evidence and summaries of anticipated evidence in the Board's possession relating to the subject matter of the complaint. The Board's rules governing proceedings under this Section shall specify the manner in which such right may be exercised.

(c) In a hearing under this § 35111 the respondent licensee, holder of a certificate, or an individual with privileges granted under § 35122 may appear in person (or, in the case of a firm, through a partner, officer, director, shareholder, member or manager) and/or by counsel, examine witnesses and evidence presented in support of the complaint, and present evidence and witnesses on the licensee's or an individual's own behalf. The licensee, holder of a certificate, or an individual granted privileges under § 35122 shall be entitled, on application to the Board, to the issuance of subpoenas to compel the attendance of witnesses and the production of documentary evidence.

(d) The evidence supporting the complaint shall be presented by the investigating officer, by a Board member designated for that purpose, or by counsel. A Board member who presents the evidence, or who has conducted the investigation of the matter under § 35110 of this Chapter, shall not participate in the Board's decision of the matter.

(e) In a hearing under this § 35111, the Board may be advised by counsel, who shall not be the same counsel who presents, or assists, in presenting the evidence supporting the complaint under Subsection (d) of this § 35111.

(f) In a hearing under this § 35111, the Board shall not be bound by technical rules of evidence.

(g) In a hearing under this § 35111, a stenographic or electronic record, shall be made and filed with the Board. A transcript need *not* be prepared unless review is sought under Subsection (j) of this § 35111, or the Board determines that there is other good cause for its preparation.

(h) In a hearing under this § 35111, a recorded vote of a majority of all members of the Board then in office (excluding members disqualified by reason of Subsection (d) of this § 35111) shall be required to sustain any charge and to impose any penalty with respect thereto.

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(i) *If*, after service of a complaint and notice of hearing as provided in Subsection (a) of this § 35111, the respondent licensee, holder of a certificate, or individual granted privileges under § 35122, fails to appear at the hearing, the Board may proceed to hear evidence against the licensee, holder of a certificate, or an individual granted privileges under § 35122, and may enter such order as it deems warranted by the evidence, which order shall be final *unless* the licensee, holder of a certificate, or an individual granted privileges under § 35122 petitions for review thereof under Subsection (j) of this § 35111, provided, however, that within thirty (30) days from the date of any such order, upon a showing of good cause for the licensee's, certificate holder's, or an individual's failure to appear and defend, the Board may set aside the order and schedule a new hearing on the complaint, to be conducted in accordance with applicable Subsections of this § 35111.

(j) Any person or firm adversely affected by any order of the Board entered after a hearing under this § 35111 may obtain review thereof by filing a written petition for review with the Superior Court of Guam within thirty (30) days after the entry of said order. The procedures for review and the scope of the review shall be as specified in the Administrative Adjudication Law. However all hearings conducted pursuant to this Section shall be conducted in accordance with the procedures specified in this Section rather than those under the Administrative Adjudication Law.

(k) In any case where the Board renders a decision imposing discipline under §§ 35109, 35111, or 35122, against a licensee or CPA firm, or an individual granted privileges under § 35122, the Board *shall* examine its records to determine whether the licensee or CPA firm, or individual holds a license or permit or practice privilege in any other State or is subject to the PCAOB's authority; and if so, the Board *shall* notify the State Boards of Accountancy and any other regulatory authorities, including the PCAOB if applicable, of its decision, immediately in the case of a consent order and in all other cases when the time for petitioning for review of the Board's decision has expired. Such immediate notice *shall* indicate whether or not the consent order has been petitioned for review and whether or not the subject order has been stayed. Subject to § 35104(j) of this Chapter, the Board may also furnish information relating to proceedings resulting in disciplinary action to other public authorities and to private professional organizations having a disciplinary interest in the licensee or CPA firm or individual. Where a petition for review has been filed pursuant to § 35111(j), the notification and furnishing of information provided for in this Subsection

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shall await the resolution of such review and, if the resolution is in favor of the licensee or CPA firm, or individual granted privileges under § 35122 of this Chapter, no such notification or furnishing of information *shall* be made.

(l) A licensee, a holder of a certificate, or an individual with privileges under §35122 against whom a complaint has been issued under this §35111 may waive in writing his right to a hearing before the Board on such charge(s), thus sustaining the charge(s), and accepting such penalty as may be imposed by the Board with respect thereto.

SOURCE: Subsection (l) added by P.L. 28-118:20 (Apr 26, 2006). Subsection (k) amended by P.L. 33-193:24 (Dec. 15, 2016).

§ 35112. Reinstatement.

(a) In any case where the Board has suspended or revoked or refused to renew a certificate, license, a Firm Permit to Practice, or privileges under §35122, the Board may, upon application in writing by the person or firm affected and for good cause shown, modify the suspension, or reissue the certificate, license, or Firm Permit to Practice, or remove the limitation or revocation of privileges under § 35122.

(b) The Board shall by rule specify the manner in which such applications shall be made, the times within which they shall be made, and the circumstances in which hearings will be held thereon.

(c) Before reissuing, or terminating the suspension of, a certificate, license, or Firm Permit to Practice under this § 35112 or of privileges under § 35122, and as a condition thereto, the Board may require the applicant therefor to show successful completion of specified continuing professional education; and the Board may make the reinstatement of a certificate, license, or Firm Permit to Practice or of privileges under § 35122 conditional and subject to satisfactory completion of a peer review conducted in such fashion as the Board may specify.

SOURCE: Subsection (a) amended by P.L. 28-118:21 (Apr 26, 2006).

§ 35113. Unlawful Acts.

(a) Only licensees and individuals who have practice privileges under § 35122 of this Chapter may issue a report on financial statements of any person, firm, organization, or governmental unit, or offer to render or render any attest or compilation service, as defined herein. This restriction does not prohibit any act of a public official or public employee in the performance of that person's duties as such; or prohibit the performance by any non-licensee

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of other services involving the use of accounting skills, including the preparation of tax returns, management advisory services, and the preparation of financial statements without the issuance of reports thereon. Non-licensees may prepare financial statements and issue non-attest transmittals or information thereon which do not purport to be in compliance with the Statements on Standards for Accounting and Review Services (SSARS).

(b) Licensees and individuals who have practice privileges under § 35122 of this Chapter performing attest or compilation services must provide those services in accordance with applicable professional standards.

(c) No person not holding a valid license in accordance with § 35106, or a practice privilege pursuant to § 35122 of this Chapter, *shall* use or assume the title ‘certified public accountant’, or the abbreviation ‘CPA’, or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant.

(d) No firm *shall* provide attest services or assume or use the title ‘certified public accountants’, or the abbreviation ‘CPAs’, or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such firm is a CPA firm unless the firm holds a valid permit issued under § 35107 of this Chapter; and ownership of the firm is in accord with this Chapter and rules promulgated by the Board.

(e) [Repealed.]

(f) No person or firm not holding a valid license or permit issued under §§ 35106 or 35107 of this Chapter, or a practice privilege pursuant to § 35122 of this Chapter, *shall* assume or use the title ‘*certified accountant*,’ ‘*chartered accountant*,’ ‘*enrolled accountant*,’ ‘*licensed accountant*,’ ‘*registered accountant*,’ ‘*accredited accountant*,’ ‘*public accountant*,’ or any other title or designation likely to be confused with the title ‘*certified public accountant*,’ or use any of the abbreviations ‘CA,’ ‘LA,’ ‘RA,’ ‘AA,’ ‘PA,’ or similar abbreviation likely to be confused with the abbreviation ‘CPA.’ The title ‘*Enrolled Agent*’ or ‘EA’ may only be used by individuals so designated by the Internal Revenue Service.

(g) Non-licensees, non-firms use of titles and language.

(1) Non-licensees may *not* use language in any statement relating to the affairs of a person or entity which is conventionally used by licensees in reports on financial statements or on any attest service as

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defined herein. In this regard, the Board *shall* issue safe harbor language that non-licensees may use in connection with such financial information.

(2) No person or firm not holding a valid license or Firm Permit to Practice issued under § 35106 or § 35107 of this Chapter shall assume or use any title or designation that includes the words ‘accountant,’ ‘auditor,’ or ‘accounting,’ in connection with any other language (including the language of a report) that implies that such person or firm holds such a license or Firm Permit to Practice, or has special competence as an accountant or auditor provided, however, that this Subsection does not prohibit any officer, partner, member, manager or employee of any firm or organization from affixing that person’s own signature to any statement in reference to the financial affairs of such firm or organization with any wording designating the position, title, or office that the person holds therein nor prohibit any act of a public official or employee in the performance of the person’s duties as such.

(h) No person holding a license or firm holding a permit under this Chapter *shall* use a professional or firm name or designation that is misleading about the legal form of the firm, or about the persons who are partners, officers, members, managers, or shareholders of the firm, or about any other matter; provided, however, that the names of one (1) or more former partners, members, managers, or shareholders may be included in the name of a firm, or its successor. A common brand name, including common initials, used by a CPA firm in its name, is not misleading if said firm is a Network Firm as defined in the AICPA Code of Professional Conduct (Code) in effect on December 15, 2014 and, when offering or rendering services that require independence under AICPA standards, said firm must comply with the Code’s applicable standards on independence.

(i) None of the foregoing provisions of this § 35113 *shall* have any application to a person or firm holding a certification, designation, degree, or license granted in a foreign country entitling the holder thereof to engage in the practice of public accountancy or its equivalent in such country, whose activities in Guam are limited to the provision of professional services to persons or firms who are residents of, governments of, or business entities of the country in which the person holds such entitlement, who performs no attest or compilation services as defined in this Chapter and who issues no reports as defined in this Chapter with respect to the information of any other persons, firms, or governmental units in Guam, and who does not use in

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Guam any title or designation other than the one under which the person practices in such country, followed by a translation of such title or designation into the English language, if it is in a different language, and by the name of such country.

(j) No holder of a license issued under § 35106 of this Chapter shall perform attest services through any business form that does not hold a valid permit issued under § 35107 of this Chapter.

(k) No individual licensee shall issue a report in standard form upon a compilation of financial information through any form of business that does *not* hold a valid permit issued under § 35107 of this Chapter unless the report discloses the name of the business through which the individual is issuing the report, and the individual:

(1) signs the compilation report identifying the individual as a CPA,

(2) meets the competency requirement provided in applicable standards, and

(3) undergoes no less frequently than once every three years, a peer review conducted in such manner as the Board shall by rule specify, and such review shall include verification that such individual has met the competency requirements set out in professional standards for such services.

(l) Nothing herein shall prohibit a practicing attorney or firm of attorneys from preparing or presenting records or documents customarily prepared by an attorney or firm of attorneys in connection with the attorney's professional work in the practice of law.

(m) Commissions and referral fees.

(1) A licensee shall *not*, for a commission, recommend or refer to a client any product or service, or for a commission, recommend or refer any product or service to be supplied by a client, or receive a commission, when the licensee also performs for that client,

(A) an audit or review of a financial statement; or

(B) a compilation of a financial statement when the licensee expects, or reasonably might expect, that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence; or

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(C) an examination of prospective financial information.

This prohibition applies during the period in which the licensee is engaged to perform any of the services listed above and the period covered by any historical financial statements involved in such listed services.

(2) A licensee who is *not* prohibited by this Section from performing services for, or receiving a commission and who is paid or expects to be paid, a commission shall disclose that fact to any person or entity to whom the licensee recommends, or refers, a product or service to which the commission relates.

(3) Any licensee who accepts a referral fee for recommending or referring any service of a licensee to any person or entity, or who pays a referral fee to obtain a client shall disclose such acceptance or payment to the client.

(n) Contingent fees.

(1) A licensee shall not:

(A) perform for a contingent fee any professional services for, or receive such a fee from a client for whom the licensee or the licensee's firm performs,

(i) an audit or review of a financial statement; or

(ii) a compilation of a financial statement when the licensee expects, or reasonably might expect, that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence; or

(iii) an examination of prospective financial information; or

(B) Prepare an original or amended tax return or claim for a tax refund for a contingent fee for any client.

(2) The prohibition in (1) above applies during the period in which the licensee is engaged to perform any of the services listed above and the period covered by any historical financial statements involved in any such listed services.

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(3) Except as stated in the next sentence, a contingent fee is a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged *unless* a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. Solely for purposes of this Section, fees are not regarded as being contingent *if* fixed by courts or other public authorities, or, in tax matters, *if* determined based on the results of judicial proceedings or the findings of governmental agencies. A licensee's fees may vary depending, for example, on the complexity of services rendered.

(o) Notwithstanding anything to the contrary in this Section, it *shall* not be a violation of this Section for a firm that does not hold a valid permit under § 35107 of this Chapter, and that does not have an office in Guam, to provide its professional services in Guam so long as it complies with the requirements of § 35107(a)(2) or (3) of this Chapter, whichever is applicable.

SOURCE: Subsection (b) amended by P.L. 28-118:22 (Apr 26, 2006). Subsection (a) amended by P.L. 33-193:25 (Dec. 15, 2016). Subsection (b) amended by P.L. 33-193:26 (Dec. 15, 2016). Subsection (c) amended by P.L. 33-193:27 (Dec. 15, 2016). Subsection (d) amended by P.L. 33-193:28 (Dec. 15, 2016). Subsection (h) amended by P.L. 33-193:29 (Dec. 15, 2016). Subsection (o) added by P.L. 33-193:30 (Dec. 15, 2016). Subitem (g)(1) amended by P.L. 33-193:39 (Dec. 15, 2016). Subsection (i) amended by P.L. 33-193:40 (Dec. 15, 2016). Subsection (e) repealed by P.L. 33-193:43 (Dec. 15, 2016). Subsection (f) amended by P.L. 33-193:44 (Dec. 15, 2016).

§ 35114. Injunctions against Unlawful Acts.

Whenever, as a result of an investigation under § 35110 of this Chapter or otherwise, the Board believes that any person or firm has engaged, or is about to engage, in any acts or practices which constitute or will constitute a violation of § 35109, § 35113, or any other provision of this Chapter, or any rule adopted by the Board, the Board may make application to the Superior Court of Guam for an order enjoining such acts or practices, and upon a showing by the Board that such person or firm has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order, or other order as may be appropriate shall be granted by the court.

§ 35115. Criminal Penalties.

(a) Whenever, by reason of an investigation under § 35110 of this Chapter or otherwise, the Board has reason to believe that any person or firm has knowingly engaged in acts or practices that constitute a violation of §

35113, or any other provision of this Chapter, or any rule adopted by the Board, the Board may bring its information to the attention of the Attorney General of Guam or any State (or other appropriate law enforcement officer) who may, in the officer's discretion, cause appropriate criminal proceedings to be brought thereon.

(b) Any person or firm who knowingly violates any provision of § 35113 or other provision of this Chapter shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not more than Five Thousand Dollars (\$5,000) for each violation or to imprisonment for not more than one (1) year, or to both such fine and imprisonment.

SOURCE: Subsection (a) amended by P.L. 33-193:31 (Dec. 15, 2016).

§ 35116. Single Act Evidence of Practice.

In any action brought under § 35111, § 35114 or § 35115 of this Chapter, evidence of the commission of a single act prohibited by this Chapter shall be sufficient to justify a penalty, injunction, restraining order, or conviction, respectively, without evidence of a general course of conduct.

§ 35117. Confidential Communications.

Except by permission of the client for whom a licensee performs services, or the heirs, successors, or personal representatives of such client, a licensee under this Chapter *shall* not voluntarily disclose information communicated to the licensee by the client relating to and in connection with services rendered to the client by the licensee. Such information *shall* be deemed confidential; provided, however, that nothing herein *shall* be construed as prohibiting the disclosure of information required to be disclosed by the standards of the public accounting profession in reporting on the examination of financial statements or as prohibiting compliance with applicable laws, government regulations, or PCAOB requirements, disclosures in court proceedings, in investigations or proceedings under §§ 35110 or 35111 of this Chapter, in ethical investigations conducted by private professional organizations, or in the course of peer reviews, or to other persons active in the organization performing services for that client on a need to know basis or to persons in the entity who need this information for the sole purpose of assuring quality control.

SOURCE: Amended by P.L. 33-193:32 (Dec. 15, 2016).

§ 35118. Licensees' Working Papers; Clients' Records.

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(a) Subject to the provisions of § 35117, all statements, records, schedules, working papers, and memoranda made by a licensee or a partner, shareholder, officer, director, member, manager or employee of a licensee, incident to, or in the course of, rendering services to a client while a licensee except the reports submitted by the licensee to the client and except for records that are part of the client's records, shall be and remain the property of the licensee in the absence of an express agreement between the licensee and the client to the contrary.

(1) No such statement, record, schedule, working paper, or memorandum shall be sold, transferred, or bequeathed, without the consent of the client or the client's personal representative or assignee, to anyone other than one (1) or more surviving partners, stockholders, members or new partners, new stockholders, or new members of the licensee, or any combined or merged firm or successor in interest to the licensee.

(2) Nothing in this § 35118 should be construed as prohibiting any temporary transfer of work papers or other material necessary in the course of carrying out peer reviews or as otherwise interfering with the disclosure of information pursuant to § 35117.

(b) A licensee shall furnish to a client or former client, upon request and reasonable notice:

(1) A copy of the licensee's working papers, to the extent that such working papers include records that would ordinarily constitute part of the client's records and are not otherwise available to the client; and

(2) Any accounting or other records belonging to, or obtained from or on behalf of, the client that the licensee removed from the client's premises or received for the client's account; the licensee may make and retain copies of such documents of the client when they form the basis for work done by the licensee.

(c) Nothing herein shall require a licensee to keep any work paper beyond the period prescribed in any other applicable statute.

2017 NOTE: Subitem designations added pursuant to the authority of 1 GCA § 1606.

§ 35119. Privity of Contract.

(a) This section applies to all causes of action of the type specified herein filed on or after the effective date of the enactment of this section.

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(b) This section governs any action based on negligence brought against any accountant, or firm of accountants, practicing in Guam by any person or entity claiming to have been injured as a result of financial statements or other information examined, compiled, reviewed, certified, audited or otherwise reported or opined on by the defendant accountant or in the course of an engagement to provide other services.

(c) No action covered by this section may be brought unless:

(1) The plaintiff

(A) is issuer (or successor of the issuer) of the financial statements or other information examined, compiled, reviewed, certified, audited or otherwise reported or opined on by the defendant and

(B) engaged the defendant licensee to examine, compile, review, certify, audit or otherwise report or render an opinion on such financial statements or to provide other services; or

(2) The defendant licensee or firm:

(A) was aware at the time the engagement was undertaken that the financial statements or other information were to be made available for use in connection with a specified transaction by the plaintiff who was specifically identified to the defendant accountant,

(B) was aware that the plaintiff intended to rely upon such financial statements or other information in connection with the specified transaction, and

(C) had direct contact and communication with the plaintiff and expressed by words or conduct the defendant accountant's understanding of the reliance on such financial statements or other information.

SOURCE: Section title amended by P.L. 28-118:23 (Apr 26, 2006).

2017 NOTE: Subitem designations altered pursuant to the authority of 1 GCA § 1606.

§ 35120. Uniform Statute of Limitations.

(a) This section applies to all causes of action of the types specified herein filed on or after the effective date of the enactment of this section.

(b) This section governs any action based on negligence or breach of contract brought against any licensee, or any CPA firm practicing in Guam by any person or entity claiming to have been injured as a result of financial statements or other information examined, compiled, reviewed, certified, audited or otherwise reported or opined on by the defendant licensee as a result of an engagement to provide services.

(c) No action covered by this section may be brought unless the suit is commenced on or before the earlier of:

(1) One (1) year from the date the alleged act, omission or neglect is discovered or should have been discovered by the exercise of reasonable diligence;

(2) Three (3) years after completion of the service for which the suit is brought has been performed; or

(3) Three (3) years after the date of the initial issuance of the accountant's report on the financial statements or other information.

§ 35121. Proportionate Liability.

(a) This Section applies to all causes of action of the type specified herein filed on or after the effective date of the enactment of this section.

(b) This Section governs any claim for money damages brought against any licensee or any CPA firm registered, licensed, or practicing in Guam; or any employee or principal of such firm by any person or entity claiming to have been injured by the defendant licensee or other person or entity.

(c) No judgment for money damages may be entered against any licensee, firm, employee, or principal described in Subsection (b) in an action covered by this Section except in accordance with the provisions of this Subsection.

(1) *If* the party seeking a judgment for damages against the licensee proves that the licensee acted with the deliberate intent to deceive, manipulate or defraud for the licensee's own direct pecuniary benefit, the liability of the licensee shall be determined according to the principles that generally apply to such an action.

(2) *If* the licensee is *not* proven to have acted with the deliberate intent to deceive, manipulate or defraud for the accountant's own direct pecuniary benefit, the amount of the accountant's liability in damages shall be determined as follows:

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(A) The trier of fact shall determine the percentage of responsibility of the plaintiff, of each of the defendants, and of each of the other persons or entities alleged by the parties to have caused or contributed to the harm alleged by the plaintiff. In determining the percentages of responsibility, the trier of fact shall consider both the nature of the conduct of each person and the nature and extent of the causal relationship between that conduct and the damage claimed by the plaintiff.

(B) The trier of fact shall next determine the total amount of damage suffered by the plaintiff caused in whole or in part by the plaintiff, the defendants, and other persons alleged to have caused or contributed to the damage.

(C) The trier of fact shall then multiply the percentage of responsibility of the licensee (determined under (A)) by the total amount of damages (determined under (B)) and shall enter a judgment or verdict against the licensee in an amount no greater than the product of those two (2) factors.

(D) In no event shall the damages awarded against or paid by a licensee exceed the amount determined under (C) or twenty (20) times the total fee paid, or to be paid, to licensee by plaintiff, whichever is less. The licensee shall not be jointly liable on any judgment entered against any other party to the action.

(E) Except where a contractual relationship permits, no defendant shall have a right to recover from a licensee any portion of the percentage of damages assessed against such other defendant.

SOURCE: Subsection (c)(2)(D) amended by P.L. 28-118:24 (Apr 26, 2006).

§ 35122. Substantial Equivalency.

(a) An individual whose principal place of business is not in Guam.

(1) An individual whose principal place of business is not in Guam and who holds a valid license as a certified public accountant from any State which the NASBA National Qualification Appraisal Service has verified to be in substantial equivalence with the CPA licensure requirements of the AICPA/NASBA Uniform Accountancy Act *shall* be presumed to have qualifications substantially equivalent to Guam's requirements, and *shall* have all the privileges of licensees of Guam

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without the need to obtain a license under §§ 35105 or 35106 of this Chapter. Notwithstanding any other provision of law, an individual who offers or renders professional services, whether in person, by mail, telephone or electronic means, under this Section *shall* be granted practice privileges in Guam, and no notice or other submission *shall* be provided by any such individual. Such an individual *shall* be subject to the requirements in Subsection (a)(3) of this Section.

(2) An individual whose principal place of business is not in Guam and who holds a valid license as a certified public accountant from any State which the NASBA National Qualification Appraisal Service has not verified to be in substantial equivalence with the CPA licensure requirements of the AICPA/NASBA Uniform Accountancy Act *shall* be presumed to have qualifications substantially equivalent to Guam's requirements, and *shall* have all the privileges of licensees of Guam without the need to obtain a license under §§ 35105 or 35106 of this Chapter, if such individual obtains from the NASBA National Qualification Appraisal Service verification that such individual's CPA qualifications are substantially equivalent to the CPA licensure requirements of the AICPA/NASBA Uniform Accountancy Act. Any individual who passed the Uniform CPA Examination and holds a valid license issued by any other State prior to January 1, 2012 may be exempt from the education requirement in § 35105(c)(2) of this Chapter for purposes of this Subsection. Notwithstanding any other provision of law, an individual who offers or renders professional services, whether in person, by mail, telephone, or electronic means, under this Section *shall* be granted practice privileges in Guam, and no notice or other submission *shall* be provided by any such individual. Such an individual *shall* be subject to the requirements in Subsection (a)(3) of this Section.

(3) Any individual licensee of another State exercising the privilege afforded under this Section and the firm which employs that licensee hereby simultaneously consents, as a condition of the grant of this privilege:

(A) to the personal and subject matter jurisdiction and disciplinary authority of the Board;

(B) to comply with this Chapter and the Board's rules;

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(C) that in the event the license from the State of the individual's principal place of business is no longer valid, the individual will cease offering or rendering professional services in Guam individually and on behalf of a firm; and

(D) to the appointment of the State Board which issued their license as their agent upon whom process may be served in any action or proceeding by this Board against the licensee.

(4) Any individual who has been granted practice privileges under this Section who performs any attest service described in § 35103(b) may only do so through a firm which meets the requirements of § 35107(a)(1)(C) or which has obtained a permit issued under § 35107 of this Chapter.

(b) A licensee of Guam offering or rendering services or using their CPA title in another state shall be subject to disciplinary action in Guam for an act committed in another state for which the licensee would be subject to discipline for an act committed in the other state. Notwithstanding § 35110(a), the Board shall be required to investigate any complaint made by the board of accountancy of another state.

(c) [Repealed.]

SOURCE: Subsection (a)(2) amended by P.L.28-118:25 (Apr. 26, 2006), and P.L. 33-193:34 (Dec. 15, 2016). Subsection (d) amended by P.L. 28-118:26 (Apr. 26, 2006) and designated to (c) by the Compiler to maintain the section's outline sequence, repealed by P.L. 33-193:37 (Dec. 15, 2016). Subsection (a)(1) amended by P.L. 33-193:33 (Dec. 15, 2016). Subsection (a)(3) amended by P.L. 33-193:35 (Dec. 15, 2016). Subsection (a)(4) added by P.L. 33-193:36 (Dec. 15, 2016).

§ 35123. Construction; Severability.

If any provision of this Chapter or the application thereof to any person or entity or in any circumstances is held invalid, the remainder of the Chapter and the application of such provision to others or in other circumstances shall not be affected thereby.

§ 35124. Repeal of Prior Law.

All other acts or parts of acts in conflict herewith are hereby repealed; provided, however, that nothing contained in this Chapter shall invalidate or affect any action taken or any proceeding instituted under any law in effect prior to the effective date hereof.

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§ 35125. Effective Date.

This Chapter shall take effect upon its enactment.
