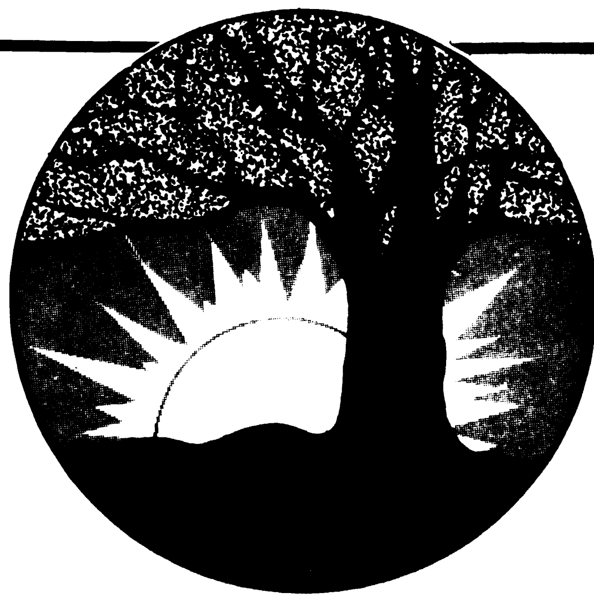
PERFORMANCE AUDIT

Tennessee State Board of Accountancy
September 2007



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Comptroller of the Treasury

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John G. Morgan
Comptroller

September 7, 2007

The Honorable Ron Ramsey
Speaker of the Senate
The Honorable Jimmy Naifeh
Speaker of the House of Representatives
The Honorable Thelma M. Harper, Chair
Senate Committee on Government Operations
The Honorable Mike Kernell, Chair
House Committee on Government Operations
and
Members of the General Assembly
State Capitol
Nashville, Tennessee 37243

Ladies and Gentlemen:

Transmitted herewith is the performance audit of the State Board of Accountancy. This audit was conducted pursuant to the requirements of Section 4-29-111, *Tennessee Code Annotated,* the Tennessee Governmental Entity Review Law. This report is intended to aid the Joint Government Operations Committee in its review to determine whether the board should be continued, restructured, or terminated.

Sincerely,

John G. Morgan
Comptroller of the Treasury

JGM/js
07-048

State of Tennessee

Audit Highlights

Comptroller of the Treasury — Division of State Audit

Performance Audit

State Board of Accountancy

September 2007

AUDIT OBJECTIVES

The objectives of the audit were to determine the following: the authority and responsibility mandated to the board by the General Assembly, whether there were issues with statutory noncompliance by the Department of Commerce and Insurance, the effectiveness of the complaint-handling processes of the board, whether the board is self-sufficient, and whether board members sign annual conflict-of-interest statements. Additional objectives were to summarize and assess information documenting the board's compliance with Title VI requirements and to recommend possible alternatives for legislative or administrative action that might result in more efficient and effective operation of the board.

FINDINGS

Without Statutory Authority, the State Board of Accountancy Is Being Required by the Department of Commerce and Insurance to Submit Board Expenditures to the Department for Approval

We believe the Department of Commerce and Insurance has been restricting the expenditures, particularly the travel related expenditures, of the State Board of Accountancy. This can create increased pressure surrounding expenditures by the board and potentially higher travel costs (page 10).

The State Board of Accountancy Needs to Expedite Complaint Processing

The Division of Regulatory Boards established guidelines for handling complaints. We selected 40 complaint files and found they took significantly more time to process than the 180-day standard. The average processing time for resolved cases was 398 days. Without timely processing, the board is limited in how it can protect the consumer against Certified Public Accountant or Public Accountant misconduct (page 15).

Observations and Comments

The audit also discusses the following issues: the board's self-sufficiency pursuant to 62-1-121(e), *Tennessee Code Annotated*; problems with the 2006 renewal process; board members not signing conflict-of-interest statements annually; and the termination of the former executive director (page 3).

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INTRODUCTION

PURPOSE AND AUTHORITY FOR THE AUDIT

This performance audit of the State Board of Accountancy was conducted pursuant to the Tennessee Governmental Entity Review Law, *Tennessee Code Annotated*, Title 4, Chapter 29. Under Section 4-29-229, the State Board of Accountancy is scheduled to terminate June 30, 2008. The Comptroller of the Treasury is authorized under Section 4-29-111 to conduct a limited program review audit of the agency and to report to the Joint Government Operations Committee of the General Assembly. The performance audit is intended to aid the committee in determining whether the board should be continued, restructured, or terminated.

OBJECTIVES OF THE AUDIT

The objectives of the audit were

1. to determine the authority and responsibility mandated to the board by the General Assembly;
2. to determine whether there are issues of statutory non-compliance by the Department of Commerce and Insurance;
3. to determine the effectiveness of the complaint-handling processes of the board including whether the board members have adequate information to make decisions in complaint and disciplinary cases;
4. to determine whether the board is self-sufficient;
5. to determine whether board members sign annual conflict-of-interest statements;
6. to summarize Title VI-related information for the board; and
7. to recommend possible alternatives for legislative or administrative action that may result in more efficient and effective operation of the board.

SCOPE AND METHODOLOGY OF THE AUDIT

We reviewed the State Board of Accountancy's activities and procedures, including fiscal years 2004 through 2006, and the practices in effect during that time and the time of fieldwork, January through April 2007. The audit was conducted in accordance with the standards applicable to performance audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States and included

1. review of applicable legislation, policies, and procedures;
2. examination of prior performance audit and financial and compliance audit reports on similar boards, as well as on the Division of Regulatory Boards of the Department of Commerce and Insurance;
3. examination of the board's records, reports, and information summaries; and
4. interviews with board members and their staff, and with Department of Commerce and Insurance staff who interact with the board and board staff.

ORGANIZATION AND STATUTORY RESPONSIBILITIES

The General Assembly created the first State Board of Accountancy with Chapter 33 of the Public Acts of 1925. The purpose of the board is to protect the public interest by ensuring that persons professing special competence in accountancy or those offering assurance regarding financial statement presentation have demonstrated their qualifications to do so.

The board is administratively attached to the Department of Commerce and Insurance, Division of Regulatory Boards. The board-appointed Executive Director supervises six staff. As of January 2007, there are 13,178 actively licensed CPAs, 60 actively licensed public accountants, and 2001 actively licensed firms in the State of Tennessee. The board's revenues—derived solely from license fees and penalties—and expenditures are shown below for the last three fiscal years.

Fiscal Year	Revenue	Expenditures	Year-End Reserve Balance
2006	$727,132	$747,750	$1,259,076
2005	$676,579	$752,825	$1,280,694
2004	$852,607	$766,446	$1,352,258

The Governor appoints the 11 board members, who serve staggered three-year terms. As outlined in Section 62-1-104, *Tennessee Code Annotated*,

> nine of the members shall be certified public accountants holding a certificate issued by, and residing in, the state of Tennessee. One member shall be an attorney licensed to practice in the highest court of the state. One member shall be a public member possessing expertise in one or more significant portions of the board's regulated activities. Neither the attorney nor the public member shall be the holder of a certified public accountant's certificate or license to practice as a public accountant.

In addition, the Governor should appoint at least one member who is 60 years old or older and at least one member of a racial minority. Based on our review of board minutes, the board meets at least four times a year.

The State Board of Accountancy established an audit committee in 2006, prior to June 30, and was subsequently informed that it was exempt from the Audit Committee Act of 2005, requiring an audit committee. The board was granted an exemption to the Act by the Comptroller of the Treasury on June 3, 2006, with the understanding that the Department of Commerce and Insurance would assume the duties of an audit committee for the board. The board did not disband the audit committee, however, and the executive committee (which also serves as the audit committee) is considering ways to utilize the audit committee in the future.

OBSERVATIONS AND COMMENTS

The topics discussed below did not warrant findings but are included in this report because of their effect on the operations of the State Board of Accountancy and on the citizens of Tennessee.

CONTRARY TO THE DETERMINATION OF THE DEPARTMENT OF COMMERCE AND INSURANCE, THE STATE BOARD OF ACCOUNTANCY IS SELF-SUFFICIENT PURSUANT TO 62-1-121(E), *TENNESSEE CODE ANNOTATED*

According to Sections 4-29-121 and 4-3-1011, *Tennessee Code Annotated*, all regulatory boards are required to be financially self-sufficient over a two-year period. Statute directs the Commissioner of Finance and Administration to assess the boards each year and to send a list to the Senate and to the House Government Operations Committees and to the Tennessee Code Commission. The list should include "the name of each regulatory board, commission, and entity administratively attached to the Division of Regulatory Boards . . . that did not, during such fiscal year, collect fees in an amount sufficient to pay the cost of operating the board, commission, or entity." The statute goes on to say that "any such board, commission, or entity that is so certified by such Commissioner during any two consecutive fiscal years shall be reviewed by a joint evaluation committee, and shall be subject to a revised termination date of June 30 of the fiscal year immediately following the second consecutive fiscal year during which such board, commission, or entity operated at a deficit."

We found that the Commissioner of the Department of Finance and Administration does not report self-sufficiency status of any board and the chairs of the House and the Senate Government Operations Committees do not recall ever receiving a certified list on this matter, even though the chairs know there are entities that are not self-sufficient. The committees rely on the Division of State Audit to make determinations during regular audit work.

Section 62-1-121(e), *Tennessee Code Annotated*, provides that the amount of the budget for the State Board of Accountancy shall not exceed the fees to be received by the board, including the excesses accumulated in the fund of the board. Thus, the board's accumulated reserve account balance should be used when making the determination of its self-sufficiency.

The Department of Commerce and Insurance concluded that the State Board of Accountancy posted deficits for fiscal years 2005 and 2006 of $76,246 and $21,618. However, the department made this determination using improper guidance. These figures do not take into account the accumulated reserve balance of the board. The reserve account at the end of fiscal year 2006 was $1,259,076, well in excess of the previous two fiscal years' deficits. If the department followed Section 62-1-121, *Tennessee Code Annotated*, the board would not have been labeled as having a deficit.

Response of the Department of Commerce and Insurance:

Division management recognizes TCA 62-1-121 and any other laws pertaining to the Division and entities within the Division. While it is expected that entities should collect enough revenue to cover expenditures each fiscal year, as required by TCA 4-29-121, TCA 62-1-121 allows the reserves of the Board of Accountancy to be used for budgeted expenses. Self sufficiency would then be determined by whether the board had set a budget that expressly included the reserves and allocated them in accordance with law, state budgeting policy, and sound budgeting practices. Thus, self sufficiency occurs when the expenses made during a fiscal year do not exceed those expenses budgeted within the same fiscal year. If such expenses exceed the revenue collected in a fiscal year, then the board would be expected to define which one-time expenses would be allocated from reserves. TCA 62-1-121 appears to require expenses to be budgeted in advance and does not appear to allow the reserve to serve as a slush fund for when the board exceeds its budget. The Department fully recognizes the Board's ability to budget from reserves for one-time expenditures in order to maintain a balanced budget. The Department has met with Board leadership and they concur with the Department's budgeting method.

Response of the State Board of Accountancy:

The Board concurs with the observation as stated. Since 1990, Tenn. Code Ann. 62-1-121 has provided for the Board to maintain the fund balance and utilize it for the purpose of defraying expenses incurred in the implementation and enforcement of the accountancy law. In the mid-1990s, the balance which remained in the fund of the Board of Accountancy on June 30, 1994, reverted to the general fund. Excluding this one-time financial transfer from the Board's fund to the general fund, the law has continued to provide for the Board to maintain and utilize the fund balance, as necessary. The law was also amended to provide specific authority for the Board to utilize the fund balance, in addition to the fees collected, to offset the annual expenditures of the Board.

Tenn. Code Ann. 62-1-121(b) states that "[d]isbursements … shall be made solely for the purpose of defraying expenses incurred in the implementation and enforcement of this chapter." The chapter contains no reference to the theory that the Board must budget in order to utilize the reserve fund. Furthermore, the chapter indicates that the expenses shall not "exceed the fees to be received by the board, including the excesses accumulated in the fund of the board." The Board is unaware of authoritative literature which would dictate that the reserves are restricted only for use for budgeted, one-time expenses.

Financial statements reflect balances and activity relating to various accounts. In the absence of an extraordinary item, an entity does not typically identify individual expenditures on the annual financial statements. Without the identification of line item expenditures in the annual financial statements, it is impossible to assign certain expenditures to revenue and others to the reserve account. Tenn. Code Ann. 4-3-1011 indicates that the "commissioner shall include the direct costs allocated to each board for the current fiscal year and the subsequent fiscal year"; however, the Board has never received the budgeted direct costs in advance. These costs are critical in the Board's evaluation, in advance, of whether the fund balance will need to be utilized.

In an attempt to comply with budgetary requirements, the Board has chosen to compare budget to actual and determine the areas in which the entity failed to meet budget. This process is performed by the Executive Director on a monthly basis and any significant deviations are communicated to the Board. If necessary, certain expenditures may be postponed to a subsequent period. The Board has consistently been within 3% of the total budgeted expenditures and is extremely conscientious of the fiscal responsibility to the State and the licensees that fall under the Board's regulation.

The Board strives to prepare a budget that is conservative and reflective of the practices that are needed to protect the public. Over the past several years extenuating circumstances, outside the Board's control, have led to the use of the resources from the reserve fund. These circumstances begin with legal fees of $29,628 in fiscal year 2005 and $5,234 in fiscal year 2006 to defend a case by the former executive director. In fiscal year 2006, the Board was double-charged $20,000 for a portion of the salary of the Board's attorney. This charge will be corrected in the fiscal year 2007 financial statements. However, if the Board had not incurred the legal fees for the lawsuit and the erroneous charge for the Board's attorney, they would not have utilized the reserve fund. Neither expense could have been anticipated by the Board and was, accordingly, not budgeted. Furthermore, the Department of Commerce and Insurance changed the method of billing for information systems support in fiscal year 2005. As a result, the expense for professional services was $64,270 more than budgeted and $72,600 more than actual for fiscal year 2004. The expense was previously absorbed as a cost back but only provided for an $8,200 decrease in the cost back from the Department. The Board understands that unexpected expenses occur and feels that the reserve account is to be utilized when the expenses exceed revenues without the need to identify the "tipping point" in advance.

The Board is extremely conscientious of their responsibility to the public and the profession. There is no evidence to support the implication that they have used funds for undesignated purposes and, as such, the Board feels that the reference to "slush fund" should be removed from the Commissioner's response.

PROBLEMS WITH THE 2006 RENEWAL PROCESS

Licensees of the State Board of Accountancy are required to renew their licenses biennially. Even-numbered licenses expire every even year, and odd-numbered licenses expire every odd year. Prior to 2006, board staff sent out notification letters to appropriate licensees each year. Licensees completed and returned the renewal form and the required payment.

In 2006, the department and a contracted vendor developed an on-line renewal system. In conjunction with the availability of the new on-line renewal system, the vendor developed postcards to send to licensees of several boards notifying them of the availability of on-line renewal. Accountancy board members and staff were concerned that the cards did not provide specific information about the on-line renewal process, nor did they include authoritative language about the upcoming need to renew. Department management stated that the vendor was providing the generic cards at no cost to the boards and that the cards would provide continuity between the boards. The Board of Accountancy did not send any other renewal notice.

Unfortunately, the card's appearance and language was similar to junk mail, and many recipients paid little attention when they received the cards in the mail. For example, in an e-mail to remind members to renew, the president of one chapter of the Tennessee Society of Certified Public Accountants said, "If you were like me, you promptly trashed the postcard."

Around February 1, 2007, the board sent out a letter to licensees whose license expired on December 31, but who did not renew, advising them that a late fee of $50 was assessed on February 1. Board staff said they were inundated with phone calls from disgruntled licensees who didn't believe the board adequately notified them of their need to renew. As a result, many licensees missed the deadline and were charged a late fee. The main complaint expressed by licensees was that the notification card resembled junk mail and was discarded.

As a result of the confusion caused by the notification postcards in 2006, board staff have decided to use a more professional, authoritative, individualized notification postcard to make licensees aware of the deadline to renew in 2007.

Response of the Department of Commerce and Insurance:

Six other professions launched online renewal programs in fall 2006. To promote the program, the vendor distributed a free postcard to each licensee who was eligible to renew in each program. This process was a part of the Division's original marketing plan that was discussed in a May meeting and reviewed at subsequent meetings with Directors. The postcards were also provided to each director for review and approval. The card was never intended to replace other communications to licensees and the Board of Accountancy was made aware of this.

The Director of the Board of Accountancy wanted the postcard to also serve as the renewal notice to licensees, requiring language changes and specifications that the vendor could not provide. The Board chose not to send additional correspondence to their licensees, even though all six of the other programs did. Even as the next renewal cycle approaches, Division management has encouraged the Board to send correspondence to each licensee about how the renewal process has changed and what to expect. Board management does not think this is necessary and feels that changing the look of the postcard will suffice.

All six other programs used the postcards as intended as the vendor's marketing tool and processed renewals via paper and online during this time period without the problems encountered by the Board of Accountancy. Similar cards were also used successfully by the vendor in other states. While Division management is supportive of processes to maximize utilization of the online renewal system, such strategies must be balanced by ensuring the licensees are notified of how to comply.

Response of the State Board of Accountancy:

The Board concurs with the observation as stated. On several occasions, the Executive Director and members of the Board staff expressed their concern that the postcards looked like marketing material and would be thrown away. Since the postcards were not seen by the Executive Director and staff until a few weeks before they were to be mailed, the window of opportunity to prepare and send renewal notices had passed.

The Board was eager to participate in the online renewal process and spent time investigating the most effective methods. The Executive Director met with Accountancy Board directors throughout the country to discuss their experiences with online renewals. Consistently, boards that sent postcards had a higher adoption rate of online renewals than boards which sent traditional renewal notices. The Executive Director conveyed this information to the Board and they supported the use of postcards as renewal notices in an attempt to increase the number of licensees that renew online. In addition to mailing postcards, the Board included information pertaining to renewals in the annual newsletter, the Tennessee Society of CPAs (TSCPA) Journal, and on the Board website. In all respects, the Board complied with the laws and rules pertaining to the license renewal process.

Protection of the public is the mission of the Board and ensuring that licensees are properly renewed is critical in achieving this mission. The Board has developed a plan for 2007 which includes sending letters to all licensees informing them that postcards will be the method of notification in the future. As the Board has always done, they will continue to notify licensees via the annual newsletter and website. This situation appears to have been satisfactorily resolved.

BOARD MEMBERS HAVE NOT SIGNED CONFLICT-OF-INTEREST STATEMENTS ANNUALLY

The members of the State Board of Accountancy have not annually updated their conflict-of-interest statements. In August 2004, the Department of Commerce and Insurance implemented a conflict-of-interest policy, requiring that members of all regulatory boards sign a statement. The 11 current State Board of Accountancy members each have a signed conflict-of-interest statement on file with the department, dated between July and October 2006. However, the policy does not require board members to annually review and sign new conflict-of-interest statements. The annual review and signing of a conflict-of-interest statement reminds members to be aware of prohibited activities (i.e., activities that would be considered a conflict of interest) and what actions to take if a conflict or a potential conflict arises. The department may wish to change its policy to have board members update conflict-of-interest statements annually.

Response of the Department of Commerce and Insurance:

Board members have not done so in the past because they were not required to do so. While employees are required to submit an annual conflict of interest statement and update it accordingly, board members are required to sign a statement prior to their tenure on the board and at the beginning of each subsequent term. Since board members come from the industries they regulate, the policy was developed to outline what constitutes a conflict and how to handle a conflict; board members do not provide written disclosure of conflicts like staff members. The policy is signed prior to participation and is reviewed in the board member orientation. The Board Chairs are also encouraged to review the policy at the first meeting of each year.

The Board of Accountancy has chosen to also sign the conflict of interest policies annually and will do so moving forward.

Response of the State Board of Accountancy:

The Board concurs with the observation and would support the Department in the development of a policy which requires all regulatory boards to annually review and update their forms.

TERMINATION OF FORMER EXECUTIVE DIRECTOR

In August 2003, the (former) executive director of the State Board of Accountancy was terminated by the Department of Commerce and Insurance, without the consent of the board. As a result, the board, through a member of the General Assembly, requested an opinion by the State Attorney General on "whether the State Board of Accountancy has the sole authority to hire and terminate its Executive Director and all members of the board's staff in positions that require professional qualifications." On April 8, 2004, the State Attorney General released opinion number 04-060. This opinion states that, based on the 62-1-105(c), the State Board of Accountancy has the sole authority to hire and terminate its executive director and all members of the board staff in positions that require professional qualifications. Following the release of this opinion, the terminated executive director filed a lawsuit against the Department of Commerce and Insurance, including the Commissioner's office and its former Commissioner, and the State Board of Accountancy. The lawsuit is currently ongoing and the department is assessing the board for the cost of the independent counsel. This charge was $29,628 in fiscal year 2005 and $5,234 in fiscal year 2006.

Response of the Department of Commerce and Insurance:

(The Department did not respond to this Observation and Comment item.)

Response of the State Board of Accountancy:

The Board supports a timely conclusion to this matter.

FINDINGS AND RECOMMENDATIONS

1. Without statutory authority, the State Board of Accountancy is being required by the Department of Commerce and Insurance to submit board expenditures to the department for approval

Finding

Section 56-1-302, *Tennessee Code Annotated*, gives the Department of Commerce and Insurance the power, duty, and responsibility to act as the Chief Administrative Officer for the Regulatory Boards and to promulgate rules and regulations for all administrative functions and activities of the boards, notwithstanding any contrary provisions of law. The department relies on this authority to approve or deny the expenditures of the boards comprising the Division of Regulatory Boards, including the Board of Accountancy.

However, there are additional statutes specific to the State Board of Accountancy. Section 62-1-105(c), *Tennessee Code Annotated*, for example, directs the board to determine its expenditures in advance, including "participation in the activities of the National Association of State Boards of Accountancy (NASBA)." Statute further explains that expenditures of the board are "not to exceed the fees received by the board, including the accrual of fees previously received." Any expenditure of the board "shall be subject to approval by the Commissioner of Finance and Administration." Additionally, Section 62-1-105(f) states, "the board, executive director, and staff shall, at the discretion of the board, travel and attend national and regional meetings of the National Association of State Boards of Accountancy (NASBA) and other appropriate professional meetings at the expense of the board."

Statute that applies specifically to the State Board of Accountancy directs board members and staff to create their budget using fees to be received plus any amount in the reserve account. Travel expenditures for the board, particularly for meetings of NASBA and other appropriate professional meetings, are to be allowed at the discretion of the board rather than the department. These statutes are unique to the State Board of Accountancy within the Division of Regulatory Boards. No other board in that division has these specific inclusions in its statutes.

In spite of the statutes, the Department of Commerce and Insurance has been restricting the expenditures of the State Board of Accountancy. According to statute, the State Board of Accountancy (subject to approval of the Commissioner of Finance and Administration) has the authority to budget and expend funds for travel to appropriate professional meetings, including NASBA, at the discretion and expense of the board. The statute gives the board, and not the department, the ability to determine whether travel and other expenses are appropriate for its members and/or staff. However, department management rejected or altered expenditure requests, illustrated by the following three examples.

- **January 19, 2007 –** The Executive Director of the Board of Accountancy requested travel for herself to the NASBA meeting with the Securities and Exchange Commission (SEC) Office of the Chief Accountant on January 31, 2007. The meeting was to determine if state boards are being appropriately responsive to the SEC referrals of enforcement cases. The Executive Director is the Chairperson of the Executive Directors Committee of NASBA. The Commissioner of the Department of Commerce and Insurance denied this travel because of the time of the year for the board (licensee renewal period), the amount of travel during the month, the expense of the travel, and the fact that other professional representatives could handle the substance of the meeting (i.e., other members of NASBA, none of which were Tennessee representatives).

- **September 11, 2006 –** The Executive Director submitted a travel request for herself and the executive committee of the Board of Accountancy (Chairman, Vice-Chairman, and Secretary) to attend the 2006 NASBA Annual meeting in Atlanta, Georgia, from October 29 through November 1. Two of the three members of the executive committee had not attended a NASBA annual meeting since the term of the current Executive Director began January 1, 2004. The request was initially denied because the Assistant Commissioner was not comfortable sending four individuals on this trip, but only felt comfortable sending the Executive Director and one board member. The Assistant Commissioner later partially conceded to the wishes of the board to allow the Executive Director and two members of the executive committee to attend this meeting but requested that the two members be persons who would be on the board for at least the next year.

- **September 12, 2006 –** The Executive Director made a request to purchase the board's investigator a new mobile briefcase after the older briefcase (used for numerous years) broke. The request was denied because the division does not supply briefcases to any other staff members.

Section 4-3-1304, *Tennessee Code Annotated*, authorizes the Division of Regulatory Boards "to administer all the administrative functions and duties of the regulatory boards, except those discretionary regulatory duties and powers vested by law in the board members." The Attorney General's opinion 04-060, referenced in the Observations and Comments section of this report, goes on to say, "Section 62-1-105 is a very specific statute concerning only the State Board of Accountancy, whereas Sections 56-1-302 and 4-3-1304 address the entire Division of Regulatory Boards. When there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of priority of enactment." Furthermore, the opinion states, "Clearly, Section 62-1-105 is a specific statute, as it relates only to the Board of Accountancy, and it should, therefore, not be nullified by either, Sections 56-1-302 or 4-3-1304 two general statutes." Later the opinion states that, "62-1-105 implicitly repeals Sections 56-1-302 and 4-3-1304 as they relate to the Board of Accountancy."

The improper scrutiny and rejection of expenditures by the department, without statutory authority, can impede the board in effectively carrying out its duties and responsibilities.

Recommendation

The State Board of Accountancy and the Department of Commerce and Insurance, Division of Regulatory Boards, should implement policies and procedures related to the expenditures of the board in accordance with Title 62, *Tennessee Code Annotated*. The department should comply with state law.

Management's Comments

Response of the Department of Commerce and Insurance:

We do not concur. In order to provide the administrative support required, the Department of Commerce and Insurance must be aware of expenditures and revenues. Requests are reviewed and given the same scrutiny across the Division. While the Attorney General's Opinion that is summarized in the observations and comments dealt with the hiring and firing of the Executive Director, it did not specifically deal with the administrative functions of the program. The Division's role as outlined in TCA 56-1-302 is to manage the licensing of professionals for the benefit of licensees and consumers. The purpose of the Department's oversight is to ensure the proper administrative functions of the program, including assuring that all expenditures are appropriate, in conformance with best practices and the rules, regulations, and policies of the State and in the best interest of the State.

During January 2007, the Board's renewal season, the staff was inundated with calls about the renewal process, and given the change to electronic applications, there was much work to be done to properly handle the license applications. Nevertheless, the Director requested travel for almost the entire month of January. All travel was approved, except for one trip that was denied by the Commissioner, which would have not been of benefit to Tennessee licensees and consumers. The trip was a last minute request for the Executive Director to represent NASBA as an organization and not the Tennessee Board, licensees, or consumers. During a time when the Division was receiving hundreds of phone calls and processing hundreds of applications, the Director was attending conferences and leaving the staff unmanaged. In a meeting this spring with the Board Chair, it was clear he was unaware of the Director's substantial time away from the office and shared our concern.

Two additional travel requests not outlined in the audit findings were also denied or altered. The requests involved separate entities paying for the Director's travel: one request for an entity that the Board has a contractual relationship with and another entity that employs a lobbyist. Fulfilling either request would violate the Department's conflict of interest policy and / or state law. The requests were denied in order for the Board to comply with state law and the Department's conflict of interest policy. The second request was approved after it was resubmitted with the Board covering the trip's expenses. Department management has also questioned requests that included a full day of golf and arrival over 24 hours prior to the first meeting with the State covering the additional expenses.

The briefcase was denied because no such items are provided with state money to any Division personnel. Laptop cases are provided in order to protect state property, but personal briefcases are not funded using state money. The Division saw this as a personal purchase the employee can make rather than using state funds. Future requests will be reviewed in accordance with the budget provided by the Board.

The Deputy Commissioner, Assistant Commissioner, and Board Chair met in March 2007 to discuss some of these issues. The Board and the Department have agreed as to how future requests will be handled so that the law is fully enforced and appropriate oversight is provided for the Board's staff, which includes Department review to ensure compliance with state laws, rules, and policies.

Division of State Audit Rebuttal:

We believe the department is presuming authority by relying on statute that has been superseded. As stated in the Observations and Comments section, the Attorney General's Opinion states that *Tennessee Code Annotated* Section "62-1-105 implicitly repeals Sections 56-1-302 and 4-3-1304 as they relate to the Board of Accountancy." The specific statute overrules the general statutes as they pertain to the board. As explained in the statute, the State Board of Accountancy must submit a budget to the Department of Commerce and Insurance, but approval of both the budget and board expenditures comes from the Department of Finance and Administration, not the Department of Commerce and Insurance.

Response of the State Board of Accountancy:

The Board concurs with this finding based on the following facts. Online renewals were successfully implemented in late 2006. Every year, staff focuses on processing renewals and responding to questions during the months of January and February. The Administrative Manager and Firm Coordinator are charged with oversight of the staff and are capable of carrying out the responsibilities which have been assigned to them. Their combined experience of more than 15 years with the Board qualifies them to answer essentially any question that arises. During the two weeks that the Executive Director was out of the office, she was available by phone and e-mail. There was never any evidence or communication which indicated that problems had occurred in her absence.

In addition, the Executive Director was in communication with the Board chair before, during, and after the trip to Arizona so there is confusion regarding the origin of the comment that "he was unaware of the Director's substantial time away from the office and shared our concern." During the Arizona trip, the Executive Director and Chair attended concurrent meetings and spent time discussing the denial of the meeting with the Securities and Exchange Commission (SEC).

Finally, the meeting with the SEC on January 31 was critical in developing a relationship with that agency. In the past, the Board had been sent referrals from the SEC and the SEC had issued a statement indicating that, globally, Boards had ignored the referrals. Since the

Executive Director was appointed by NASBA to serve as the liaison to Accountancy Boards throughout the country, she was asked to attend to present the views of the Boards of Accountancy and to work with the SEC on a more effective strategy. The Board determined that the Executive Director's appointment as chair of the Executive Director's committee was beneficial in developing knowledge and assisting in the evaluation of practices and processes which would strengthen regulation of the profession and protection of the public. A meeting or phone call to discuss the Commissioner's concern pertaining to travel could have allowed the Executive Director to evaluate the meetings based on priorities and possibly change the travel schedule to provide for a satisfactory resolution for the Board and the Commissioner.

Without specific dates and times, the Board is unsure of the situations to which the Commissioner is referring. If the Executive Director requested travel to include a golf match, it was an oversight, and the Board appreciates the Commissioner's responsibility to disallow the activity. Regarding the "24 hour rule," the Board is unable to locate the appropriate reference in the travel regulations. The Board has consistently complied with the Department's policy which states that travel is allowed the day before or after a meeting, if deemed necessary. The Board has interpreted that to mean that they have the responsibility to determine the necessity.

The Board has been informed on several occasions that if the travel is within the budget, approved by the Board and within the travel policy, that the trip can be planned. However, requests for travel are still being amended even when budgeted and approved by the Board. In accordance with the travel policy, travel is not purchased until approval is granted. In recent months this has resulted in excessive travel costs due to the increase in airfare between the time the travel is requested and approval is granted.

Other issues arise when the Board and staff members are invited to make presentations at various CPA functions and events. The Board supports the interaction opportunities provided and the opportunity to inform licensees about the Accountancy laws and rules. In October 2006, the Board adopted a four-hour ethics CPE requirement for all active Tennessee CPAs with a minimum of one hour from a Board approved presentation on the Tennessee Accountancy Law and Rules. Recently, a member of the Board and two members of the staff were requested to deliver a presentation on Ethics and the Tennessee Accountancy Law and Rules. The presentation was scheduled to take place the day before the quarterly Board meeting. Over 600 Tennessee licensed CPAs registered for the webcast. The only expense incurred was an additional night of lodging by the Board member who delivered the morning presentation. In previous years, the expense for such presentations was reimbursed to the Board Member by the TSCPA. However under current policy, since the TSCPA employs a lobbyist, Board members can no longer accept reimbursements from the TSCPA. As a result, a claim for reimbursement was submitted for approval to Commerce and Insurance. The claim was returned with an explanation that the expenditure should have been specifically listed in the travel plan that was approved by the Executive Committee, even though the expenditure was within the budgetary limits. Since the Board only meets quarterly, it is difficult to amend the travel plan and receive Board approval for invitations to speak to groups of licensees about the Accountancy law and rules. As a result of the limitations, the Board member chose to withdraw the request when the approval of such request seemed to be an issue with the Department. It appears that the intent of the Department is for Board members to personally incur certain expenses.

Board members serve with the expectation of being compensated at the rate of $50 per meeting day and to be reimbursed for the meals, lodging, and travel. They do not receive compensation for travel days, Board related phone calls, postage, and other sundry expenses. Therefore they volunteer considerable hours of their time and personally pay various amounts from their personal funds. It appears they are also expected to pay additional costs at their own expense, even when the Board has supported the purpose for which the expense was incurred.

In addition to the denial of travel requests, the Department has also denied other expenditure requests. In 2005, the Board voted to print law and rule books and distribute them to all CPAs. There had been substantive changes in the rules since the last printing in 2001. The expenditure was included in the approved budget and was subsequently denied by the Department. Another request which was denied involves the purchase of an audit bag for the Board investigator. He is responsible for reviewing original workpapers and other financial documents which must be properly secured and returned to the CPA upon resolution of the complaint. The Board is concerned about the custody of this information and does not want the investigator visiting various locations with workpapers under his arm. To do so could result in misplaced documents or files. The use of audit bags, unusually large briefcases designed for carrying binders and workpapers, is common in the practice of public accounting and applies in this situation.

In closing, the Board continues to be unclear regarding the authority of the Department regarding certain expenditures. It appears that, according to the Accountancy law, the printing of law books for licensees and the purchase of the audit bag for the investigator were within the Board's authority. The Board is also limited by the requirement that all travel must be listed on the travel plan and approved by the Board. Again, specific authority pertaining to travel does not require a travel plan. The law requires that the Board must budget expenditures in advance. Since the Board has approved the budget annually, there was no reason for the requests to be denied. Since they have supported the education of CPAs and the promotion of the required ethics CPE course, it appears that reimbursement for the board member's travel is reasonable. Regarding other expenditures, the Board has provided proper approval so the denial by the Department seems to be in conflict with statutory authority unless the request was technically inadequate.

2. The State Board of Accountancy needs to expedite complaint processing

Finding

The Division of Regulatory Boards established, in August 2005, a framework for handling complaints. The division also established, in its strategic plan, a 180-day target time for complaints to be resolved. Within two days of receipt of a complaint, the complaint coordinator is to send a copy of the complaint to the respondent via certified mail. After the complaint coordinator receives a reply from the respondent, the coordinator is to forward that reply to the legal counsel for the board. The legal counsel determines whether an investigation is needed to clarify the complaint before the complaint is presented to the board.

The standard time set by the division for the board completing an investigation, found in the division's complaint handling standard operating procedures, is 30 days from receipt of the complaint from the legal counsel. We reviewed 40 complaint files, selected from the fiscal year 2006 complaint logs for the State Board of Accountancy, and found that the board is following the procedures required by the division, but the board is not consistently meeting the target times set in the standard operating procedures and the September 2005 strategic plan.

Of the 40 complaints in the review, 7 of 40 (17.5%) exceeded the target time set by the division for sending a copy of the complaint to the respondent. In addition, 24 of the 40 were forwarded to the investigator for review. The average number of days to complete an investigation was 262. The amount of time needed to complete an investigation far exceeds the target time set by the division.

Twenty complaints in the review had been closed and a resolution reached. Six of the 20 (30%) were resolved within the 180-day standard set by the division. The average processing time for the closed complaints in the review was 398 days, far beyond the target time set by the division. Without timely processing of complaints, the State Board of Accountancy cannot effectively protect consumers against misconduct by a Certified Public Accountant or Public Accountant.

Recommendation

The State Board of Accountancy should take steps to meet the 180-day complaint-processing standard. The board may wish to consider procedures and time frames for phases of the complaint process including receipt, correspondence with complainant and respondent, investigation, and resolution.

Management's Comments

Response of the Department of Commerce and Insurance:

We concur. When a new executive director and investigator were hired in 2004, they inherited a complaint backlog at an all time high with 160 open cases. With so many cases backlogged and turnover with the Board's legal counsel, the board has made progress.

The Division has a standard operating procedure for handling complaints. Audits are performed of the programs every 6 months to ensure compliance. At the last program specific audit, the main area of non-compliance was the Director referring cases to legal in a timely manner, often taking several months to refer a complaint, which may be a result of time spent traveling outside of the office.

At June 30, 2007, the Board of Accountancy had 61 open cases with 17 of those in investigation. One of their primary objectives for fiscal year 2008 is to continue to focus on improvement within complaint processing.

Response of the State Board of Accountancy:

The Board concurs with the finding and management's response.

RECOMMENDATIONS

ADMINISTRATIVE

The State Board of Accountancy and the Department of Commerce and Insurance should address the following areas to improve the efficiency and effectiveness of their operations.

1. The State Board of Accountancy and the Department of Commerce and Insurance, Division of Regulatory Boards, should implement policies and procedures related to the expenditures of the board in accordance with Title 62, *Tennessee Code Annotated*.
2. The State Board of Accountancy should take steps to meet the 180-day complaint-processing standard. The board may wish to consider procedures and time frames for phases of the complaint process including receipt, correspondence with complainant and respondent, investigation, and resolution.
3. The State Board of Accountancy and the Department of Commerce and Insurance should ensure that all board members update conflict-of-interest statements annually.

APPENDIX

Title VI Information

State Board of Accountancy
Gender and Ethnicity of Board Members
March 2007

	Gender		Ethnicity				
	Female	**Male**	**Asian**	**Black**	**Hispanic**	**White**	**Total**
Number	3	8	0	2	0	9	11
Percent	27%	73%	0%	18%	0%	82%	

State Board of Accountancy Staff
Gender and Ethnicity by Position
March 2007

	Gender		Ethnicity				
Title	**Female**	**Male**	**Asian**	**Black**	**Hispanic**	**White**	**Vacant**
Executive Director	1					1	
Investigator		1				1	
Administrative Manager		1				1	
Administrative Asst. 3	1					1	
Administrative Asst. 2	1					1	
Administrative Asst. 1	1					1	
Administrative Asst. 1							1
Total	4	2	0	0	0	6	1
Percent	67%	33%	0%	0%	0%	100%	