

PROPOSED AMENDMENTS TO
MODEL LANGUAGE IN THE
UNIFORM ACCOUNTANCY ACT
5TH EDITION

National Society of Accountants

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NSA and its affiliates represent 30,000 members who provide accounting, auditing, tax preparation, financial and estate planning, and management services to approximately 19 million individuals and business clients. Most members are sole practitioners or partners in small- to medium- size accounting firms and hold CPA, EA and other financial services credentials. NSA protects the public by requiring its members to adhere to a strict code of ethics. For more information, visit www.nsacct.org.

The National Society of Accountants proposes the following modifications to the language of Sections 14(g) and 14(h) of the Uniform Accountancy Act to:

1. Permit the recognition of earned credentials and titles from accredited organizations under state law; and
2. To clarify that the word “accountant” may be used by the unlicensed practitioner in public practice.

The suggested language is appended under Tab A.

Earned Credentials and Titles

Until the early part of the past century, many members of the legal, medical and accounting professions were able to identify their skills to the general public solely by proclaiming themselves to be knowledgeable in those fields. As regulation of the professions became widespread, those licensed by the executive or judicial branches of government could proclaim their status with the use of their principal designation, be it JD, MD or CPA.

The public assumption at that time was that their training and experience would have been all-encompassing, enabling them to provide any or all of the services required of them. However, the growing complexity of the demands put upon practitioners in all professions has forced an evolution in the educational requirements for both public and private practice as well as in the testing and regulation of those individuals and their firms to protect the public interest.

The public is well aware of this age of specialization and has revised its shopping habits accordingly. For example, we do not seek out a doctor who happens to be a surgeon; we find a specialist who, in addition to all his other surgical talents is independently Board certified in the procedure we require. If in need of financial planning assistance we may go to a CPA, but we may want to seek out one who also holds the PFS designation. Conversely, if we are looking for help in preparing a tax return for an individual or small business, we may want to look for someone who has expertise in this area and this may well be someone other than a CPA.

This age of specialization has resulted in an accounting profession that consists of both licensed and unlicensed practitioners, so if one is looking for a method of selecting an individual qualified to provide a particular service the question may naturally be “Does the individual have a professional license **or** other means of demonstrating his or her professional status?” The value of a professional license is indisputable, but the possession of professional credentials, either independently or as an adjunct to a license, is also invaluable as a means of communicating to the general public and all others that one is a competent, qualified person.

It has become clear that not all accounting and business/financial services students and graduates want to pursue the CPA license track, whether by personal preference or by a desire to specialize in other fields which utilize their education but do not require either the training/experience or continuing education specific to particular areas of accounting practice. They may wish to demonstrate their expertise in those fields by the public use of credentials attesting thereto. Many CPAs also have been seeking credentials (the PFS, CITP and other AICPA designations come to mind, as do other credentials in such areas as fraud prevention and detection, valuation, and forensic accounting in some of which the prior possession of a CPA certificate is not required). They certainly want to be able to advertise their expertise in their chosen practice area.

There has been a proliferation of credentials in recent years, some of them issued with the imprimatur of regional or national accrediting organizations, and others that could be termed “weekend” or purchased designations. In response, certain issuers of professional designations have sought independent verification of the testing process used, and the educational and experience requirements of, their credential-holders. We believe there should be an opportunity for accounting professionals to use independently verified and valid earned credentials but also believe that it would be a disservice to the public to allow the use of credentials that may be obtained without testing, do not have educational requirements, or other discernible standards.

The leading non-educational organization in this field is the National Commission for Certifying Agencies (NCCA). Its mission is to assure public protection through the accreditation of organizations that assess professional competence, using a peer review process and 21 standards for program measurement. Information about this organization is attached at Tab B. Financial services designations accredited by NCCA include the Certified Financial Planner (CFP®), Certified Valuation Analyst (CVA) and the Certified Senior Advisor (CSA); the Accredited Business Accountant (ABA) is in the final stage of accreditation, which is expected to conclude shortly.

Educational institutions providing education leading to or conferring professional designations go through a similar academic evaluation leading to regional accreditation by independent commissions. The American College may be the leading example of this type of entity, providing fully accredited programs leading to the Chartered Financial Consultant (ChFC), Chartered Life Underwriter (CLU®), and other designations. Information about its programs is attached at Tab C; it includes its recommended guidelines for evaluating professional designations.

The American National Standards Institute (ANSI) has been better known for product and personnel program accreditation, but it does review standards developers (such as NCCA). Accreditation by ANSI signifies that the procedures used by the standards body in connection with the development of American National Standards meet the Institute’s essential requirements. This organization is becoming more active in reviewing organizations outside its traditional scope, and we can expect other financial services organizations to seek accreditation through either NCCA or ANSI, or both.

The language we have proposed recognizes the fact that there are credentials and professional designations conferred by well-qualified organizations that have passed their peer review process, and our belief that the holders of such credentials should be able to state their status freely to the public. We believe the profession has an obligation to protect the rights of accountants regardless of the career path they choose. We also believe in the principle enunciated in several Supreme Court decisions that the state must show substantial government interest if it seeks to regulate commercial free speech under the First Amendment. We do recognize that regulation may be needed on either a systemic or case-by-case basis if there is a real potential to confuse consumers or misrepresent the qualifications of the person using the designations or titles, and we applaud efforts of state boards to take meaningful steps to protect the public interest in such cases. However, such steps should not impinge on the use of earned credentials under the circumstances stated above.

The North American Securities Administrators Association (NASAA) has recently adopted a “Model Rule on the Use of Senior-Specific Certifications and Professional Designations”; a copy is attached at Tab D. While it was the use of such titles for the inappropriate marketing of financial services to seniors that provoked this action, the rule could serve as an example (particularly in 1(d) although it uses negative language instead of positive specifications) for state accountancy boards. Restated, it includes the requirement for:

1. Reasonable standards or procedures for assuring the competency of its designees or certificants;
2. Reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; and
3. Reasonable continuing education requirements in order to maintain the designation or certificate.

With the addition of an experience requirement, we could not have stated it better.

The existing language makes an effort to specify examples of potentially confusing use of both words and abbreviations and combinations thereof. We propose simplification of that language, in part because the quite successful campaign by the AICPA over the years to promote the CPA “brand” and the advantages of holding that certificate could lead one to conclude that, while use of designations and titles may be becoming more widespread, the mere potential to mislead the public should not be the motivation for assuming that certain words and any or all designations containing the letters “c”, “p”, or “a” are inherently misleading and therefore subject to detailed regulation. Thus, our proposed language is more generally phrased and does not put some current financial service designations immediately in violation of the law.

We might also note that cases of individuals who hold themselves out as CPAs when they are not are very rare, according to a former head of the AICPA ethics division, and there are provisions in other parts of the UAA to deal with those misrepresenting their licensed status.

Finally, our proposed language does not include the restriction on the Enrolled Agent and EA designations. We believe it is not appropriate for states to attempt to restrict the use of a designation conferred by the federal government and valid in all fifty states. Moreover, there would appear to be little chance of confusing EA with CPA among the public that uses accounting services.

Accountant

Section 14(h)(2) treats of the permissible use of the word “accountant” by an unlicensed person. In every case cited therein the prohibited title is a modified use of the word “accountant”, which indicates to us that the purpose was not to totally ban the use of “accountant” by a non-licensee but rather the perfectly proper protection of licensee titles. Since members of the profession were using the title long before the first CPA certificate was issued, and did so as a matter of common law right, absent constitutionally valid legislation to remove that right, we believe non-licensees continue to possess it. Therefore, we have made the changes in these sections consistent with that position and, hopefully, to eliminate any confusion that may occur amongst state regulatory agencies and legislatures regarding the use of that title.

Attachments:

- Tab A: Current and Proposed Language for Sections 14(g), h(1) and h(2), Including Commentary
- Tab B: Background Information on NCCA
- Tab C: Background Information on The American College
- Tab D: NASAA Model Rule

Extracted from UAA5
Section 14...

(g) No person or firm not holding a valid certificate, permit or registration issued under Sections 6, 7, or 8 of this Act shall assume or use the title certified accountant, chartered accountant, enrolled accountant, licensed accountant, registered accountant, accredited accountant, or any other title or designation likely to be confused with the titles certified public accountant or public accountant, or use any of the abbreviations CA, LA, RA, AA, or similar abbreviation likely to be confused with the abbreviations CPA or PA. The title Enrolled Agent or EA may only be used by individuals so designated by the Internal Revenue Service.

h)(1) Non-licensees may not use language in any statement relating to the financial affairs of a person or entity which is conventionally used by licensees in reports on financial statements. In this regard, the Board shall issue safe harbor language non-licensees may use in connection with such financial information.

(2) No person or firm not holding a valid certificate, permit or registration issued under Sections 6, 7, or 8 of this Act 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 certificate, permit, or registration 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.

New Language Proposed
Section 14...

(g) Non-licensees shall not use a professional title or designation containing the word accountant combined with modifiers such as certified, licensed, registered, or accredited, nor any acronyms derived from such a combination of terms, nor any title or abbreviation which may be confused with such terms in such a way as to indicate or imply that the user has special competence in or is licensed to perform attest functions under this Act. This restriction shall not apply to any certification, designation, degree, or other credential earned from a certifying organization which bases the credential on education, experience, and examination; requires credential holders to abide by a code of professional and ethical conduct; and provides a transparent disciplinary process assuring protection of the public interest.

(h)(1) Non-licensees may not use language in any statement relating to the financial affairs of a person or entity which is conventionally used by licensees in reports on financial statements issued when performing attest functions under this Act. Non-licensees may not use any title in connection with any language including but not limited to report language in such a way as to indicate or imply that the user has special competence in or is licensed to perform attest functions under this Act. In this regard, the Board shall issue safe harbor language which non-licensees may use in connection with such financial information.

(2) The provisions of this subsection shall not be construed to prohibit any officer, partner, member, manager, or employee of any firm or organization which conducts a business other than supplying accounting services 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 with that organization nor prohibit any act of a public official or employee in the performance of that person's official duties as such.



The NOCA Guide to Understanding Credentialing Concepts

Primary Author

Cynthia C. Durley, M.Ed., MBA



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EXECUTIVE SUMMARY

Nearly every profession uses credentialing to establish criteria for fairness, quality, competence, and/or safety for professional services, products, or educational endeavors. In some cases, professions voluntarily develop quality standards of practice; a profession may also be regulated by the State or Federal government. Despite the widespread use of professional designations, credentialing terms are often misused and general concepts often misunderstood. The National Organization for Competency Assurance (NOCA), the national membership association for professional certification organizations, developed *The NOCA Guide to Understanding Credentialing Concepts* to assist its stakeholders, including legislators, educators, employers, credentialing agencies, professionals and the public, in understanding and correctly using credentialing terms and concepts.

This paper addresses the following:

- Purposes served by credentialing
- Definitions and descriptions of credentialing terms
- Processes used in conducting or choosing a psychometrically sound and legally defensible credentialing examination program
- Differences between didactic (end-of-course) examinations and professional credentialing examinations

General NOCA Information (www.noca.org)

Established in 1977, NOCA serves as a clearinghouse for information on the latest trends and issues of concern to practitioners and organizations focused on certification, licensure, and human resources development. NOCA's accrediting body, the National Commission for Certifying Agencies (NCCA), is the international leader in setting quality standards for credentialing organizations and grants accreditation to those organizations that meet these Standards.

NOCA's mission is to promote excellence in competency assessment for practitioners in all occupations and professions by:

- Providing expertise and guidance
- Developing and implementing standards for accreditation of certification programs through NCCA (NOCA's accrediting body)
- Providing educational and networking resources
- Serving as an advocate on certification issues

NOCA's vision is to:

- Establish NOCA as the authority in certification and NCCA as the authority in accreditation of certification programs.
- Educate the general consumer so they understand the value of voluntary certification and recognize the NCCA seal as representative of quality certification programs.
- Enhance quality member benefits and resources so all certification organizations will join NOCA and aspire to NCCA accreditation of their certification programs.
- Lead the global transformation to excellence in competency assessment.

WHAT PURPOSE DOES CREDENTIALING SERVE?

Credentialing programs serve many purposes including, but not limited to:

- Protecting the public
- Establishing standards for professional knowledge, skills, and practice
- Assuring consumers that professionals have met standards of practice
- Meeting the requirements of governmental regulators
- Helping members of an association or organization work with governmental agencies to regulate the profession
- Developing a customized credential to meet unique needs in the marketplace, because: such a credential does not currently exist; a credential exists, but the organization wishes to differentiate itself from its competition; or because new technologies or procedures have developed into a new scope of practice or body of knowledge
- Meeting the needs of employers, practitioners, and the public to identify individuals with certain knowledge and skills
- Furthering a company's overall business goals – that is, to ensure that consumers have access to skilled professionals knowledgeable about the company's products and services
- Advancing the profession
- Reflecting an individual's attainment of knowledge of a specifically defined course of study or of technical skills recognized by a manufacturer or service provider
- Providing the individual certificant with a sense of pride and professional accomplishment
- Demonstrating an individual's commitment to a profession (and to life-long learning, if the credential is a professional certification, requiring recertification by continuing education, examination, self-assessment, etc.)

DEFINITIONS AND DESCRIPTIONS OF TYPES OF CREDENTIALS

Credit for the sources of these definitions is shared among the resources listed in the bibliography.

Credentialing is the umbrella term that includes the concepts of accreditation, licensure, registration, and professional certification.

Credentialing can establish criteria for fairness, quality, competence, and/or safety for professional services provided by authorized individuals, for products, or for educational endeavors. Credentialing is the process by which an entity, authorized and qualified to do so, grants formal recognition to, or records the recognition status of individuals, organizations, institutions, programs, processes, services or products that meet predetermined and standardized criteria.

The **credentialing process** is essentially a method for maintaining *quality* standards of knowledge and performance, and in some cases, for stimulating *continued self-improvement*. Credentialing confers occupational *identity*.

Accreditation is the voluntary process by which a nongovernmental agency grants a time-limited recognition to an institution, organization, business, or other entity after verifying that it has met predetermined and standardized criteria.

Professional certification is the voluntary process by which a non-governmental entity grants a time-limited recognition and use of a credential to an individual after verifying that he or she has met predetermined and standardized criteria. It is the vehicle that a profession or occupation uses to differentiate among its members, using standards, sometimes developed through a consensus-driven process, based on existing legal and psychometric requirements. The holder of a professional certification is called a **certificant**.

Licensure is the mandatory process by which a governmental agency grants time-limited permission to an individual to engage in a given occupation after verifying that he/she has met predetermined and standardized criteria, and offers title protection for those who meet the criteria.

Registration has at least three meanings: one is the governmental process by which a governmental agency grants a time-limited status on a registry, determined by specified knowledge-based requirements (e.g., experience, education, examinations), thereby authorizing those individual's to practice, similar to licensure. Its purpose is to maintain a continuous record of past and current occupational status of that individual, and to provide title protection.

A second meaning of **registration** is simply a listing of practitioners maintained by a governmental entity, without educational, experiential, or competency-based requirements; for example, maintaining a list of practitioners on a state 'registry.'

A third use of the term **registration** is a professional designation defined by a governmental entity in professional regulations or rules. However, the governmental regulatory body does not itself maintain a listing or registry of those who purport to meet registration requirements. Verification and authentication of such individuals are left to the employer of the individual claiming to be registered.

Therefore, when conducted according to legally defensible and psychometrically sound methods and standards, credentialing, in the form of accreditation, licensure, the first form of registration, or a professional certification, assures that a highly qualified, objective, recognized third party (the credentialing body) has examined this person, program, product or service and found it to meet defined, published, psychometrically sound, and legally defensible standards.

While the following may be considered by some to be types of credentialing processes, these certificate programs are not held to the objective standards required of the other types of credentialing programs.

A certificate program is a training program on a topic for which participants receive a certificate after attendance and/or completion of the coursework. Some programs also require successful demonstration of attainment of the course objectives. One who completes a professional certificate program is known as a **certificate holder**. A credential is usually NOT granted at the completion of a certificate program.

There are three types of certificate programs: **knowledge-based certificate**, **curriculum-based certificate**, and **certificate of attendance or participation**.

A **knowledge-based certificate** recognizes a relatively narrow scope of specialized knowledge used in performing duties or tasks required by a certain profession or occupation. This certificate is issued after the individual passes an assessment instrument.

A **curriculum-based certificate** is issued after an individual completes a course or series of courses and passes an assessment instrument. The content of the assessment is limited to the course content and therefore may not be completely representative of professional practice (and therefore it is not as defensible to use this or the knowledge-based type of certificate for regulatory purposes as compared to a professional certification).

A **certificate of attendance or participation** is issued after an individual attends or participates in a particular meeting or course. Usually, there is no knowledge assessed prior to issuing this type of certificate. A certificate of attendance or participation is **not a credential**, because the recipients are not required to demonstrate competence according to professional or trade standards.

(These aforementioned certificate programs should not be confused with high level, post-master's degree programs offered within some nursing specialties.)

PROCESSES USED IN CONDUCTING OR CHOOSING A PSYCHOMETRICALLY SOUND, LEGALLY DEFENSIBLE CREDENTIALING PROGRAM

While professional regulation may occur on the Federal level, it is most often conducted by State professional regulatory boards whose mission it is to protect the public by ensuring that professionals meet Federal or State-specific credentialing requirements such as completing specific educational and/or experiential requirements and passing an examination to demonstrate competence to practice the profession. Only those who meet the regulatory requirements and remain in compliance with the State professional practice act may legally practice the profession.

Some professional regulatory boards use national examinations prepared specifically for regulatory purposes. Others recognize examinations prepared by voluntary credentialing programs. In this case, the regulatory body must ensure that all required or recognized credentialing programs and their examinations are developed and conducted according to legally defensible and generally accepted psychometric principles and standards. These standards include the following:

- *Standards for Educational and Psychological Testing* (1999, American Psychological Association, American Educational Research Association, National Council on Measurement in Education)

- *Principles of Fairness: An Examining Guide for Credentialing Boards* (Revised 2002, Council on Licensure, Enforcement, and Regulation, National Organization for Competency Assurance).
- *Uniform Guidelines on Employee Selection Procedures* (1978, Equal Employment Opportunity Commission, Civil Service Commission, US Department of Labor, US Department of Justice)
- *NCCA Standards for the Accreditation of Certification Programs* (2003, National Organization for Competency Assurance's National Commission for Certifying Agencies)

Engaging the services of a **psychometrician** is necessary to interpret and implement these standards as part of a psychometrically sound and legally defensible credentialing program.

According to Larry Early in *Starting a Certification Program, 2nd Edition*, **psychometrics** is the science and technology of mental measurement, including psychology, behavioral science, education, statistics, and information technology.

A professional **psychometrician** is needed to:

- Design and analyze results of a job analysis or role delineation to define knowledge and/or skill associated with performance domains and tasks associated with the identified profession.
- Establish examination specifications based on a job analysis or role delineation.
- Select appropriate examination item format to meet measurement goals.
- Facilitate examination development based on examination specifications and item writing principles.
- Facilitate passing standard ('cut score') studies, such that the cut score is consistent with the purpose of the credential and the established standard of competence for the profession.
- Advise on examination administration policies and procedures that are appropriate, standardized, and secure.
- Analyze examination results using appropriate statistical methods.
- Establish scoring and reporting procedures, and ensure the security and confidentiality of such scores and reports.
- Ensure that the reported scores are sufficiently reliable for the intended purpose(s) of the examination.
- Ensure that different forms of an examination assess equivalent content and that candidates are not disadvantaged for taking a form of an examination that varies in difficulty from another form.
- Conduct ongoing research in the areas of reliability and validity.

DIFFERENCES BETWEEN END OF COURSE TESTS AND PROFESSIONAL CREDENTIALING EXAMINATIONS

According to the Education Policy and Leadership Center, high stakes testing is the use of test scores to make decisions that have important consequences for individuals, such as tests some states require before individuals can graduate from high school; college and graduate school admissions tests; and credentialing (licensure, registration and certification) examinations.

Therefore, any examinations used to meet state licensure or registration requirements are considered “high stakes” because passing such examinations allows individuals to perform professional duties as proscribed by State or Federal regulatory bodies. End-of-course examinations should not be allowed to substitute for professional credentialing examinations in these high stakes testing situations, because these examinations are not designed for, and are therefore not valid for, these purposes. Educational courses and examinations offered as part of a course or degree program are not designed to stand alone; few if any such tests are developed and scored according to psychometrically sound principles and standards, and therefore, are not likely to be legally defensible in making employment and promotion decisions.

Unfortunately, sometimes confusion exists regarding the concepts of end-of-course (didactic) examinations or educational knowledge-based certificate programs as compared to professional certification or other professional credentialing examinations. In addition to the differentiating characteristics described earlier in this paper, there are five major criteria that distinguish a **professional credentialing (certification, licensure or registration) examination** from an **end-of-course examination**:

1. A professional role delineation or job analysis is conducted and periodically validated.
2. A demonstration of how the examination is linked to a defined body of knowledge, based on the professional role delineation or job analysis, is provided.
3. A demonstration of reliability and validity of the examination, based on psychometrically accepted statistical methods, is provided.
4. A minimum passing score is developed using psychometrically accepted statistical methods.

A demonstration that alternate forms of the examination are parallel in construction and content coverage, and equated for difficulty using psychometrically sound techniques, is provided.

In addition, when a professional credentialing examination is part of a **professional certification**, credential maintenance or recertification is (or should be) required. The credential maintenance process or recertification requirements involve the enhancement and/or the evaluation of continued competence, with an emphasis on lifelong professional learning and development.

A knowledge-based or curriculum-based certificate program, on the other hand, often has a short ‘shelf life.’ To earn the certificate, individuals are exposed to and learn information and/or skills, and then take a test of some type. A professional disadvantage to a certificate program is that the knowledge gleaned to earn the certificate may be too generic to be useful in one’s career, or may be too narrow in its focus, or may quickly become outdated. These types of certificate programs may become insufficient in and of themselves for demonstrating continuing competence, or for moving people forward in their careers. In addition, certificates obtained at the conclusion of such courses may not be developed and are not bound by generally accepted psychometric principles, as noted above.

While curriculum-based end-of-course examinations are usually based on curriculum guidelines and learning objectives, valid, accredited **professional credentialing examinations**, including licensure,

registration, and certification examinations should be based on a **professional role delineation or job analysis**. According to the National Commission for Certifying Agencies' *Standards for the Accreditation of Certification Programs*, a **job analysis** or **role delineation** study is defined as:

Any of several methods used singly or in combination to identify the performance domains and associated tasks, knowledge, and/or skills relating to the purpose of the credential and providing the basis for validation.

A **role** is likewise defined as:

A more specific or narrower set of knowledge and skills than may be encompassed by the term 'profession' or 'occupation,' and may also be the focus of certification for a particular product or service.

The results of the job analysis or role delineation are used to develop the blueprint or outline for the credentialing examination.

The reason that credentialing examinations are based on a job analysis and the application of knowledge in the work setting and not based solely or primarily on theoretical knowledge is grounded in concepts surrounding the legal defensibility of these examinations to regulate entry into a profession or promotion within a profession. A legally defensible credentialing examination tests the application of knowledge required to perform a specific task, not necessarily the underlying theory that serves as the foundation for this application of knowledge. This does not mean that the theory is not important, just that it is not often tested. There have been legal cases that have set precedent to support this decision to test the application of knowledge rather than theory. Individuals have argued that if they can perform the task, they should be able to become employed, whether or not they have the theoretical foundation.

Certainly one can argue that the theoretical foundation helps a professional or other certificant to understand the duties performed on the job. While this may very well be true, a credentialing examination cannot discriminate against those who do not know the theory, as long as the examination candidates can demonstrate that they have the knowledge required to perform the tasks reflected in the job analysis or role delineation.

Therefore, in summary, if state or federal regulatory bodies allow end-of-course examinations to substitute for professional credentialing examinations, they may be vulnerable to legal challenges. Questions of particular importance in the determination of whether or not a high stakes examination may be successfully defended against a legal challenge include but are not limited to these:

- How was it objectively determined that the examination measures content representative of the profession or the duties to be allowed to be performed by the professional?
- How was the passing point determined so that candidates are not penalized for taking a more difficult form of the examination?
- How can one determine if various forms of the examination are equivalent or equated in both content coverage and difficulty?

CONCLUSION

Organizations sponsoring professional credentialing programs and State and Federal regulatory bodies share a common mission: Public protection. Optimally, if a professional regulatory body recognizes or requires examinations developed and administered by an independent credentialing organization, the organization's professional certification programs would be accredited by the National Commission for Certifying Agencies (NCCA), the accrediting body of the National Organization for Competency Assurance (NOCA). All professional certification programs accredited by NCCA have demonstrated that they meet generally accepted psychometric principles and standards, leading to legal defensibility and public protection.

Please note that whether or not an *educational institution* sponsoring a course with an end-of-course examination is accredited is immaterial in this discussion, because accreditation of an educational institution *does not* address whether or not its end-of-course examinations are developed based on generally accepted psychometric standards, and are therefore valid for use as 'high stakes' examinations. In addition, accreditation of an educational institution does not, in and of itself, assess whether or not the four standards mentioned previously in this paper as crucial to the development of psychometrically sound and legally defensible examination programs have been applied to the development of end-of-course examinations.

There is a nationwide trend whereby state regulatory agencies are getting out of the testing business, and instead recognizing professional certifications as meeting state regulatory requirements. **Public protection is the core business and primary responsibility of both State and Federal regulatory agencies.** As such, the examinations required of professionals regulated by these agencies must be legally defensible and meet generally accepted psychometric standards. The reader should note, however, that there are few if any legal restrictions governing certification bodies. Virtually any organization can claim to be one.

Therefore, when choosing or recommending a professional credentialing program, stakeholders should investigate key components, and determine whether or not the credentialing program is accredited, and if so, by which accrediting body. If the credentialing program is accredited by NCCA, this means that the credentialing organization has independently demonstrated that the examinations within its NCCA-accredited certification programs are developed, administered, scored and reported according to generally accepted psychometric standards and its governance and administration also meet NCCA Standards. Insisting on NCCA accreditation of a certification program is a safeguard for regulatory bodies looking to use professional certification programs or examinations when implementing professional regulatory requirements.

For more information about NOCA membership and NCCA accreditation, and the topics discussed in this paper, contact:

NOCA
2025 M Street, N.W., Suite 800
Washington, DC 20036
Phone 202.367.1165
Fax 202.367.2165
Email info@noqa.org
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BIBLIOGRAPHY

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Delivered Electronically to rule-comments@sec.gov

April 1, 2008

Re: Release No. 34-57308; File No. S7-03-08

“Notice of Solicitation of Public Views Regarding Practices Being Developed To Deal With the Increasing Number of Senior Investors”

The American College is a non-profit educational institution with the highest level of accreditation specializing in educating financial advisors. We are the exclusive grantor of the prestigious CLU[®] designation and the leading provider of education leading to the CFP[®]. For 81 years we have been working to build academic integrity, rigor and depth into professional education for the benefit of both advisors and the consumers they serve.

Over the past several years, we have been campaigning aggressively against “weekend” designations and other credentials that do not serve consumers well – especially seniors. We believe great confusion is created for consumers when advisors use letters after their names that they can purchase after a few days of study or a seminar in a hotel. Using these “credentials” as if they were professional designations is shameful and misleading.

Professional designations are those obtained through organizations with regional accreditation, the highest level of academic accreditation available. In some cases acceptable designations have other types of accreditation, but there are numerous issues with some of those approaches that focus on process over content and could, under the right circumstances, accredit a “weekend” designation.

Professional designations involve programs that can take many months or years to achieve, have strong continuing education and ethics requirements and have closed book, proctored exams. It is important that a single national standard emerge for separating acceptable designations from those which are problematic, and The American College has prepared a Designation Toolkit for that purpose (copy attached).

We hope the SEC will examine this issue carefully in the context of compiling best practices for use in serving seniors well. If we can be of any assistance in this important work, please don't hesitate to contact us.

Very best regards,

Keith Hickerson
VP, Marketing & Student Success
The American College
610.526.1436

Background:

Professional designations in the financial services area are appropriately receiving increased scrutiny from regulators and from company compliance teams. A growing number of for-profit, “weekend” designation programs has led to a dangerous level of confusion in the marketplace about what constitutes appropriate standards of professional education.

The guidelines below are designed to help companies conduct due diligence and make determinations about which designations they will support, reimburse and allow for business card use. As a non-profit educational institution with the highest level of accreditation available, The American College offers these points of consideration based on our 80-years of educational expertise in financial services.

Instructions:

Use the attached checklist to evaluate each designation under consideration.

In reaching your conclusion about any particular designation, make a balanced judgment by weighing all of the various aspects of a designation’s quality and potential use.

You can access additional copies of this toolkit online at:
theamericancollege.edu/designationtoolkit.

Should you need assistance, contact The American College’s Vice President of Academic Affairs and Dean at: 610.526.1398.

***The American College does not provide legal advice or counsel.
Please consult an attorney for matters involving legal and compliance issues.***

1. What is the full title, purpose and proposed use of the credential?

Name of the designation: _____

Acronym: _____

Is the intent to reimburse for this program? Yes No

Will this designation be used by advisors on business cards, letterhead and promotional material? Yes No

Does the title of this credential imply knowledge or specialization beyond what is contained within its educational content? Yes No

What to look for: If you are planning to reimburse for the program or are intending to permit use on business cards, letterhead and promotional material, you should complete the remaining parts of this evaluation. Generally, designations and academic degrees are the only credentials considered for public use. Certificate programs – while often very valuable – are less likely to pass the other tests needed to qualify for use with the public (although certain ones may). Make sure the title of the designation accurately represents the program to an extent that would seem reasonable to the average consumer.

2. What is the source of the credential?

Is the organization offering the designation primarily an educational institution? Yes No

Is the organization a not-for-profit entity? Yes No

Does the educational institution have regional accreditation, the highest level of accreditation available? Yes No

[If “yes,” skip next question]

If the answer to the above question is “no,” has the credential itself been accredited by either The American National Standards Institute or the National Commission for Certifying Agencies? Yes No

Does the organization have a long tradition of educational excellence? Yes No

What to look for: Many people are understandably confused about the various types of accreditation for organizations and designations that are currently in the marketplace. The highest standard – represented by such colleges and universities as Princeton, Stanford and The American College – is regional accreditation. As an alternative, if the organization is not accredited, the specific designation may be. In that case, look for accreditation by either ANSI or NCCA. These organizations currently have only limited presence in financial services (being more prominent in health care fields). Make certain that the organization providing the education for a designation is primarily an educational institution, not a marketing organization. Some for-profit firms offer high-quality education, but look for a primary motivation of growing professionalism and serving consumers and the industry. Finally, look for an educational institution that has some history and experience in providing education leading to designations in the field of financial services education.

3. Does the content have depth and rigor and are examinations appropriate?

- Is the course work required for the designation the equivalent of at least nine semester credit hours of study? Yes No
- Is the focus of the program knowledge-based, instead of marketing driven? Yes No
- Does the course content support any implications of expertise that the designation's title suggests? Yes No
- On average, does it take at least six months of work (with a minimum of ten hours per week) to earn the credential? Yes No
- Are examinations proctored and "closed book"? Yes No
- Are pass rates on exams for the program as a whole generally 80% or below? Yes No

What to look for: Expect professional designation programs to represent at least nine credit hours of study; many will include even more extensive course work. All professional designations in financial services should be focused on growing expertise, not sales skills. Some designations may offer some marketing content, but the great majority of educational material should be knowledge based. The designation's title should not be misleading in any way, and on average it should take at least six months to earn the credential. Most professional designations will take longer. All examinations, whether given at the end of a course or at the end of a designation program, should be closed book and proctored, and pass rates generally should not exceed 80% for the program overall (an indication of examination rigor).

4. Are there prerequisites for earning and using the credential, and can use be prohibited in the event of non-compliance?

- Is there a significant experience and/or educational requirement that must be met prior to earning the designation? Yes No
- Does the designation have an ethics requirement or professional pledge associated with it? Yes No
- Are there continuing education requirements for maintaining the designation? Yes No
- Can the designation be removed in the event of non-compliance or unethical conduct? Yes No

What to look for: Designations should have some experience requirement or similar prerequisite, and some also require high school or college degrees as well. Look for either a code of ethics or a pledge of professional conduct and/or significant ethics content as a requirement in the coursework. Meaningful continuing education as a requirement to maintain a quality designation is the standard. The organization offering the designation must also have the facilities in place to remove the credential or suspend its use in the event of unethical behavior or failure to meet continuing education requirements.

5. How have regulators and the marketplace viewed this credential?

- Has public use of this designation been specifically prohibited by state or federal regulators in any jurisdiction? Yes No
- Does this credential receive support from other companies in the industry? Yes No
- Has this particular credential been the specific subject of negative news coverage or adverse publicity that could negatively impact consumer perceptions? Yes No

What to look for: State insurance and securities regulators across the country take differing views of how professional designations should be used, especially with protected classes such as seniors. A designation you support should generally not have been specifically prohibited by any state jurisdiction. Be careful in this stage of your due diligence, as some regulators provide guidelines for evaluations rather than offering specific lists of approved designations, and of the states offering lists, some are not all inclusive. It is imperative that companies do their own due diligence, such as completing this guideline form. The guidelines in this document are, in fact, closely aligned with those used by many states. Remember that how a designation is actually used is as important as the quality of the designation itself. In supporting a designation, you should also be broadly aware of both media coverage and the actions of other companies.

6. What is the credential's benefit to consumers and their advisors?

- Will attainment of the knowledge offered by the designation benefit advisors in their interactions with clients? Yes No
- Will an advisor be in a better position to serve the needs of clients after completing the designation? Yes No
- Do you have a policy in place about how the designation may be used with consumers? Yes No

What to look for: In the final analysis, think about the consumer. Will consumers be better served by advisors who have earned this credential? If you need assistance with putting a policy in place for use of a designation with consumers, refer to The American College's "Designation Use Policy" included in the Designation Toolkit. The toolkit is available online at theamericancollege.edu/designationtoolkit.

Conclusion:

- Recommended for public use by advisors
- Recommended for reimbursement
- Held pending further information
- Not allowed for reimbursement or public use

Reviewer:

Date:

The following policy provides guidance to advisors as to how they may use approved professional designations conferred by The American College with the public. The goal at all times is clarity with consumers, and absolutely no misrepresentation in the use of any designation will be tolerated. Failure to adhere to this policy may result in the reporting of an ethical violation to The American College for subsequent disciplinary action.

- 1. No designation may be used that has not been officially approved for use by The College following completion of all courses in the selected program. The designee must also have met all mandated experience and ethics requirements prior to the use of any designation.**
- 2. Designations approved by an advisor's company for public use may be used on business cards and stationery in the acronym form only and only following the designee's name and any terminal academic degree. Font size must be either equal to or smaller than the font size of the designee's name. No logo or other mark associated with The American College or the designation may be used.**
- 3. Designations may not be referenced in promotional material or advertising – whether in a print or online format – as an inducement to attend a workshop or seminar or to purchase a product or service. Designations may be used in promotional material following the designee's name only, as outlined in point two above.**
- 4. No reference may be made to a designation or other educational program that in any way serves to mislead consumers or misrepresent the nature of the designation or educational program completed.**
- 5. All appropriate continuing education requirements of The American College must be met in a timely manner to continue public use of a professional designation. Should such requirements not be met during any given continuing education period, all public use of the designation must immediately cease until such situation has been rectified and explicit permission has been received by the designee from The College allowing resumption of use.**

***The American College does not provide legal advice or counsel.
Please consult an attorney for matters involving legal and compliance issues.***

**NASAA MODEL RULE ON THE USE OF SENIOR-SPECIFIC
CERTIFICATIONS AND PROFESSIONAL DESIGNATIONS**

Adopted March 20, 2008

Model Rule

1. The use of a senior specific certification or designation by any person in connection with the offer, sale, or purchase of securities, or the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees, in such a way as to mislead any person shall be a dishonest and unethical practice in the securities, commodities, investment, franchise, banking, finance, or insurance business within the meaning of **[INSERT APPROPRIATE STATE SECURITIES ACT PROVISION]**. The prohibited use of such certifications or professional designation includes, but is not limited to, the following:
 - (a) use of a certification or professional designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;
 - (b) use of a nonexistent or self-conferred certification or professional designation;
 - (c) use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; and
 - (d) use of a certification or professional designation that was obtained from a designating or certifying organization that:
 - (i) is primarily engaged in the business of instruction in sales and/or marketing;
 - (ii) does not have reasonable standards or procedures for assuring the competency of its designees or certificants;
 - (iii) does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or
 - (iv) does not have reasonable continuing education requirements for its

designees or certificants in order to maintain the designation or certificate.

2. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of paragraph 1(d) above when the organization has been accredited by:

- (i) The American National Standards Institute; or

- (ii) The National Commission for Certifying Agencies; or

- (iii) an organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.

3. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

- (a) use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "registered," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

- (b) the manner in which those words are combined.

4. For purposes of this rule, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

- (a) indicates seniority or standing within the organization; or

- (b) specifies an individual's area of specialization within the organization

For purposes of this subsection, financial services regulatory agency includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

5. Nothing in this rule shall limit the Administrator's authority to enforce existing provisions of law.