

## STATEMENT OF POSITION

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### Retention of Documents – Attest Engagements

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(November 2004)

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**Objective.** Recent and proposed initiatives in professional standards at the national level have invoked inquiries about document retention requirements applicable to engagements in Louisiana. A number of such inquiries have already been received. Therefore, the State Board of CPAs of Louisiana (the “Board”) sets forth this statement of position to provide guidance to CPAs and CPA Firms who provide attest services for Louisiana-based clients.

**Summary.** It is the position of the State Board of CPAs of Louisiana (Board) that engagement documentation that is generated during or relevant to the performance of an attest engagement shall be retained by the licensee for that period of time set forth in the *professional standards* applicable to the particular engagement. Absent a retention requirement in the applicable professional standards greater than three (3) years, Louisiana law requires a minimum three year retention period for such documentation. La. Rev. Stat. §37:89.

*Professional standards* are those that are set forth by recognized standard setting bodies, such as the Auditing Standards Board (ASB), the Securities and Exchange Commission (SEC), the Public Company Accounting Oversight Board (PCAOB), the Comptroller General of the United States, and the Government Accountability Office (GAO - “Yellow Book”).

The ASB (Statements on Auditing Standards (SAS) – No. 96) provides that the auditor retain audit documentation sufficient to meet the needs of the practice and to satisfy applicable legal or regulatory requirements. The GAO’s generally accepted government auditing standards or “Yellow Book” standards typically incorporate SAS requirements unless they are specifically excluded.

The SEC and PCAOB now require a seven (7) year retention period for audits and reviews of financial statements of certain public companies.

The Louisiana Accountancy Act (LAA) requires that licensees performing attest services do so in accordance with statements on standards relating to those services adopted by the Board. La. Rev. Stat. §37:83(B). Thus, notwithstanding La. Rev. Stat. §37:89, which provides that documents may be disposed of three years after the completion of an engagement, attest engagements must be performed and documents maintained in accordance with the applicable *professional standards*.

The Statement of Position presented below provides more detailed guidance.

**STATE BOARD OF CPAS OF LOUISIANA**  
**Statement of Position—Retention of Documents, Attest Engagements**

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**Explanation.** When auditors agree to perform an audit they provide in the engagement letter with the client that they will perform the engagement under the applicable auditing standards. Under professional standards, the auditor's report must refer to the auditing standards applicable to the nature of the engagement. Thus, the auditor *attests* to the fact that the auditor has and will comply with all such standards, which would include standards that address document retention.

In the last two years auditing standards that require engagement documentation to be maintained for longer periods than was previously required have been proposed and exposed for consideration. At the federal level for SEC practice, as a result of the Sarbanes-Oxley Act, a seven (7) year retention has already been established by the SEC and PCAOB. We are not certain whether or not either the Auditing Standards Board or the GAO might adopt specific retention requirements in the future. Other state licensing boards of accountancy have, however, adopted retention requirements greater than three years.

Depending on the audited entity or the contractual terms of the engagement, audit document retention requirements may differ as indicated below. Louisiana licensees should refer to the appropriate standard setting body for specific and current information. Auditors should determine which professional standards apply to any particular engagement, and whether other additional standards, regulations, or laws may apply to a given engagement. The following summary reflects only typical and general categories:

Audits of “closely held” companies or entities (unincorporated entities, many non-profit organizations, and corporations whose securities are not publicly traded) are typically performed in accordance with GAAS (*i.e.*, generally accepted auditing standards as promulgated in the Statements on Auditing Standards or “SAS”).

Audits of governmental entities and certain entities receiving governmental funding fall under GAGAS (*i.e.*, generally accepted government auditing standards or commonly known as the GAO “Yellow Book”). In addition, with respect to Louisiana agencies and political subdivisions, the engagements must satisfy the requirements of the Legislative Auditor.

Audits of public companies and certain security issuers registered with the Securities and Exchange Commission (SEC) are performed in accordance with the SEC and PCAOB standards.

The issues of document retention and applicable professional standards are addressed by the LAA and the Board's Rules. These provisions are cited, as appropriate, in the context of this statement. This statement does not address what constitutes engagement “documentation.” Licensees should refer to the applicable professional standards to determine what items are included.

**Statement of Position.** The Louisiana Accountancy Act (LAA) requires licensees performing attest services to provide such services pursuant to standards adopted by the Board La. Rev. Stat. §37:83(B). The LAA also provides grounds for the Board to consider action against an individual's CPA Certificate or a Firm's CPA Firm Permit for violation of *professional standards*. La. Rev. Stat. §37:79.A(5).

**STATE BOARD OF CPAS OF LOUISIANA**  
**Statement of Position—Retention of Documents, Attest Engagements**

---

*Professional standards* are those set forth by recognized standard setting bodies. An auditor's report must indicate the auditing standards being applied. The Board's Rules require that a licensee comply with "applicable professional standards" unless such compliance would be prohibited by the LAA or the Board's Rules. [LAC 46 XIX §1703(C)]

Although a retention period greater than three years for documentation or attest engagement documentation is not prohibited by the LAA or the Board's Rules, La. Rev. Stat. §37:89 provides that a licensee "may dispose" of documents after three years following the completion of an engagement without incurring liability for "damages in tort, contract, or quasi contract."

In contrast to the *permissive* authority of La. Rev. Stat. §37:89, a licensee's adherence to the applicable professional standards is *compulsory* under both the LAA and the Board's Rules. As between the licensee and the Board, such a mandatory requirement is grounded neither in "tort, contract nor quasi contract; rather, it is a professional requirement imposed on all individuals and firms licensed by the Board who practice in this state. Failure to adhere to such standards subjects a licensee not to "liability for damages" but to administrative disciplinary action by the Board.

Considering the effect of all applicable laws and rules, the Board is of the view that licensees are required to comply with the retention period required by the professional standards applicable to the engagement if such is greater than three years, regardless of the permissive authority to dispose of documents provided by La. Rev. Stat. §37:89. Absent a retention requirement greater than three years pursuant to applicable professional standards, Louisiana law requires a minimum three year retention period, with provision for longer periods if an engagement becomes subject to a review panel, judicial proceeding, or ethical investigation. [La. Rev. Stat. §37:89]

The Board will consider disposal of attest engagement documentation prior to the end of the applicable period of retention required by professional standards to be a violation of La. Rev. Stat. §37:83(B) and Board Rule LAC 46 XIX §1703(C), providing grounds for administrative action pursuant La. Rev. Stat. §37:79(A).

The Board's office may be contacted for further information.

**Excerpted Citations**

Board Rule LAC 46 XIX §1703(C)

A licensee shall not act or imply that he is acting as a CPA by permitting association of his name or firm's name, issuing a report, or expressing an opinion, in connection with financial statements, elements thereof, or the written assertions and representations of a client, or by the performance of professional services, unless he has complied with applicable professional standards. This rule does not apply in any instance in which such compliance would otherwise be prohibited by the act [*the LAA*] or by rule of the board. [LAC 46 XIX §1703(C)]

Board Rule LAC 46 XIX §1703(A)

*Professional Standards*--include but are not limited to those standards defined by Statements on Auditing Standards (SAS); Statements on Standards for Accounting and Review Services

**STATE BOARD OF CPAS OF LOUISIANA**  
**Statement of Position—Retention of Documents, Attest Engagements**

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(SSARS); Statements on Standards for Consulting Services (SSCS); Statements on Standards for Attestation Engagements (SSAE); and Standards for Performing and Reporting on Peer Reviews or Quality Reviews issued by the American Institute of Certified Public Accountants; and Governmental Auditing Standards issued by the Comptroller General of the United States. [LAC 46 XIX §1703(A)]

Definitions – La. Rev. Stat. §37:73

(1)(a) "Attest" means providing the following services, subject to the exceptions provided for in R.S. 37:83: (i) Any audit or other engagement to be performed in accordance with the Statements on Auditing Standards. (ii) Any review to be performed in accordance with the Statements on Standards for Accounting and Review Services. (iii) Any examination to be performed in accordance with the Statements on Standards for Attestation Engagements. (iv) Issuance of any report, including compilation reports, prescribed by the Statements on Auditing Standards, Statements on Standards for Accounting and Review Services, or Statements on Standards for Attestation Engagements on any services to which those statements on standards apply, indicating that the service was performed in accordance with standards established by the American Institute of Certified Public Accountants. (b) Such statements on standards shall be adopted by reference by the board in accordance with the Administrative Procedure Act and shall be those developed for general application by recognized national accountancy organizations such as the American Institute of Certified Public Accountants.

Unlawful acts - La. Rev. Stat. §37:83(B)

Licensees performing attest services must provide those services pursuant to statements on standards relating to those services adopted by the board.

Enforcement against holders of certificates and permits - La. Rev. Stat. §37:79(A)

After notice and a hearing as provided for in R.S. 37:81, the board may revoke any certificate or permit, or suspend for a period of not more than five years, or refuse to issue or renew any certificate or permit, reprimand, censure, or limit the scope of practice of any licensee, impose an administrative fine not to exceed one thousand dollars per violation, or place any licensee on probation, all with or without terms, conditions, and limitations, for any one or more of the following reasons ... (5) ... violation of professional standards or rules of professional conduct adopted by the board.

Right of licensees to discard documents three years after completion of engagement - La. Rev. Stat. §37:89

A. No licensee who has retained documents generated during, or relevant to, the performance of an engagement for at least three years after completion of that engagement shall have any obligation to a client or any other party to continue to retain such documents. After the expiration of three years from the completion of any engagement, such licensee performing that engagement may dispose of all documents generated during the course of, or relevant to, that engagement by any means, including physical destruction, without thereby incurring liability for damages in tort, contract, or quasi contract to any person. B. The term "document" is used in this Section as it is encompassed in Code of Civil Procedure Article 1461. C. If a licensee receives written notice of the commencement of a review panel pursuant to Part II of this Chapter or any judicial proceeding or ethical investigation arising out of or relating to his or its performance of any engagement, then

**STATE BOARD OF CPAS OF LOUISIANA**  
**Statement of Position—Retention of Documents, Attest Engagements**

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the effect of Subsections A and B of this Section shall be suspended until the termination of the review panel, judicial proceeding, or ethical investigation. A judicial proceeding shall be terminated by final judgment. An investigation or administrative proceeding arising therefrom shall be terminated by written notice by the administrative, regulatory, or professional society of termination of the investigation or proceeding. A review panel shall be terminated as provided in Part II of this Chapter. D. Nothing in this Section shall impair the right of any person to demand production of any document which has not been disposed of in accordance with the provisions of Subsection A of this Section.