

## PROFESSIONAL FIDUCIARIES BUREAU

### FINAL STATEMENT OF REASONS

**Hearing Date:** August 3, 2023

**Subject Matter of Proposed Regulations:** Fee Increase and Initial Licensure Period

**Sections Affected:** This regulatory action amends sections 4428, 4568, 4575, and 4580 of Division 41 of Title 16 of the California Code of Regulations.

#### **Updated Information**

The Initial Statement of Reasons is included in the file and is incorporated herein. The information contained therein is updated as follows:

No substantive changes were made to the initially proposed text.

Two technical, non-substantive changes were made to the initially proposed text:

- “A” immediately following Section 4428 (a) has been underlined.
- Business and Professions Code sections 142 and 462 were added to the reference citations under section 4580.

This regular comment period for this rulemaking began on June 15, 2023, and ran to August 2, 2023. Written comments, including those sent by mail, facsimile, and email were accepted during the comment period. A hearing was held on August 3, 2023. 57 written comments were received during the comment period; 11 comments were received at the hearing; and one comment were received before the comment period began, or after the comment period ended.

The Bureau notes a typographical error related to the Bureau’s impending insolvency in the Initial Statement of Reasons. The Initial Statement of Reasons misstates that the Bureau is scheduled to become insolvent in Fiscal Year (FY) 2023-24 on page 4, paragraph 4. However, should additional revenue through a fee increase not be obtained, the Bureau is scheduled to become insolvent in FY 2024-25.

To clarify the Bureau’s statements in the Initial Statement of Reasons Economic Impact Assessment, the Bureau hereby deletes paragraphs one through five under “ECONOMIC IMPACT ASSESSMENT” on page 15 and replaces it with the following:

“This regulatory proposal will have the following effects:

- This regulation may impact the creation or elimination of jobs for professional fiduciaries in California and the Bureau does not have an estimate on the impact at this time. However, the Bureau’s fees have not been increased since it began issuing licenses in 2008 and if fees are not raised to the amounts proposed in

this regulation, the Bureau faces insolvency and the inability to meet its consumer protection mandate or sufficiently implement AB 1194.

- This regulation may impact the creation of new business or elimination of existing businesses within the State of California and the Bureau does not have an estimate on the impact at this time. However, the Bureau’s fees have not been increased since it began issuing licenses in 2008 and if fees are not raised to the amounts proposed in this regulation, the Bureau faces insolvency and the inability to meet its consumer protection mandate or sufficiently implement AB 1194.
- This regulation may impact the expansion of businesses currently operating within the State of California and the Bureau does not have an estimate on the impact at this time. However, the Bureau’s fees have not been increased since it began issuing licenses in 2008 and if fees are not raised to the amounts proposed in this regulation, the Bureau faces insolvency and the inability to meet its consumer protection mandate or sufficiently implement AB 1194.
- This regulation is not anticipated to affect worker safety, the state’s environment, or housing because the regulations change license fees. Changes in licensing fees will not affect worker safety, the state’s environment, or housing.”

### **Local Mandate**

A mandate is not imposed on local agencies or school districts.

### **Small Business Impact**

The Bureau has determined that this proposed regulatory action to increase fees will have significant adverse economic impact directly affecting licensees and their businesses. However, without the fee increases, the Bureau faces insolvency leaving it unable to sufficiently implement the new requirements of AB 1194 or meet its consumer protection mandate.

### **The Anticipated Benefits of this Regulatory Proposal Are**

These proposed regulations will increase application, initial license, and renewal fees to narrow the structural imbalance between revenues and expenditures, provide the Bureau with adequate resources to implement AB 1194, and ensure reasonable reserves levels for the future. The Bureau’s structural imbalance will lead to insolvency by fiscal year (FY) 2023-24 if additional funding via a fee increase is not obtained prohibiting the Bureau from carrying out its consumer protection mandate.

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### **Consideration of Alternatives**

No reasonable alternative to this regulatory proposal would be either more effective in carrying out its intended purpose or be as effective or less burdensome to affected

private persons, or would be more cost-effective to affected private persons and equally effective in implementing a statutory policy or other provision of law. Failing to adopt the regulations would steadily decrease the Bureau's fund, ultimately resulting in insolvency and insufficient resources to allow the Bureau to comply with the amendments to statute imposed by AB 1194 and meeting its consumer protection mandate.

## **Objections or Recommendations/Responses**

### **I. 45 Day Comment Period**

Below are the summarized comments the Bureau received regarding the proposed text during the 45-day public comment period, followed by the Bureau's responses.

#### **1-15. Form Comments I**

The Bureau received fifteen comments containing the same wording from the following commenters:

- i. Pam Blattner, received July 28, 2023
- ii. Jessica Britt, received July 19, 2023
- iii. Bonnie Burdett, received July 20, 2023
- iv. Melissa Enlow, received August 1, 2023
- v. Jennifer Feehan, received July 28, 2023
- vi. Theresa Hawkins, received July 24, 2023
- vii. Theresa Hawkins, also received July 24, 2023
- viii. Laura Kamian McDermott, received July 27, 2023
- ix. Leah McCue, received July 25, 2023
- x. Pearson Miller, received August 2, 2023
- xi. Mark Olsen, received August 2, 2023
- xii. Monika Pelletier, received July 20, 2023
- xiii. Sheri Samotin, received July 27, 2023
- xiv. Wendy Smith, received July 19, 2023
- xv. Maggie Watson, received August 1, 2023

These comments have been grouped together for the purposes of responding in this final statement of reasons.

**Comment 1-15-a:** The commenter states as a licensed Professional Fiduciary they object to the excessive license renewal fee being proposed by the Professional Fiduciaries Bureau. The commenter states they believe this fee increase, which is an increase of 86%, will be a significant barrier to individuals interested in entering this profession and will discourage existing licensees from renewing their license resulting in an overall decline in the license population. Such a decline will increase the difference between the Bureau's proposed budget and licensing fees being collected.

**Response:** The Bureau has reviewed and considered the comment and declines

to make any amendments to the proposed text based thereon.

While the Bureau recognizes the financial hardship this fee increase presents to applicants, existing licensees, course providers, and other related businesses failing to raise fees to the proposed amounts would 1) steadily decrease the Bureau's fund, ultimately resulting in the Bureau's insolvency and inability to meet its consumer protection mandate; and 2) prevent the Bureau from complying with the requirements imposed by AB 1194.

The Bureau recognizes the possibility of a decline in the licensee population and the possibility of a decrease in new licensees entering the population in response to the increased fees proposed by this regulation which may then result in lower future revenue; however, the Bureau faces insolvency and the inability to sufficiently implement AB 1194 if fees are not raised to the amounts proposed in this regulation. The Bureau's only source of funding to sustain its operations is through licensing fees.

The Bureau notes that similar to other regulatory bodies who rely solely on licensing fees to sustain their operations, fee amounts are based on the size of the licensing population. The Bureau's current fees and proposed fee increase are commensurate with its small licensing population. Additional information regarding fee amount determinations can be found in the Initial Statement of Reasons which is included in this file and is incorporated herein.

**Comment 1-15-b:** The commenter states rather than the proposed increased license renewal fee of \$1,300 per year, they support a fee increase that corresponds with the increase in the cost-of-living since license fees were first established in 2008. Rather than the proposed \$1,300, this would be an increase from \$700 to \$990. The proposed license fee increase is significantly more than this adjustment. Though they recognize that for the Bureau to continue it must be financially sustained, as an alternative to a substantial license fee increase, they suggest that the Bureau, as well as the Legislature, focus on increasing the license pool and reducing Bureau expenses.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

Only raising fees to an amount commensurate with cost-of-living increases since 2008 would be insufficient in addressing the increased workload and enforcement costs placed on the Bureau through the passage of AB 1194.

While the Bureau is making every effort to examine and eliminate barriers to licensure where feasible, proposed statutory changes to increase the licensing population or to reduce the Bureau's expenses are outside of the scope of this pending regulatory proposal.

**Comment 1-15-c:** To increase the licensee pool, the commenter urges the Bureau as

well as the Legislature to eliminate the qualified licensing exemption currently afforded enrolled agents under Business and Professions Code Section 6530. The existing exemption provides that an Enrolled Agent is exempt from fiduciary licensure provided the Enrolled Agent, when acting as a fiduciary, does not act beyond the scope of their enrollment with the IRS. Enrolled Agents are registered through a federal program which authorizes them to prepare income tax returns and represent taxpayers before the IRS concerning collections, audits and appeals. Enrolled Agents are not subject to state oversight, licensure, enforcement or other protections which benefit California consumers. As the services required of a Professional Fiduciary acting in a representative capacity extend well beyond tax return preparation, the exemption currently afforded Enrolled Agents under Business and Professions Code Section 6530 should be eliminated. Alternatively, Section 6530 should be clarified to ensure that Enrolled Agents, acting as a professional fiduciary, and thus acting beyond the scope of their Enrolled Agent registration, are aware of their requirement to be licensed as a professional fiduciary.”

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

Proposed statutory changes to increase the licensing population, by eliminating or amending the qualified exemption to enrolled agents or other professions, such as CPAs, are outside of the scope of this pending regulatory proposal.

**Comment 1-15-d:** The commenter suggests the Bureau reexamine the assumptions that are being relied on to support the license fee increase. Except for requirements to post fee schedules on a licensee’s website, the commenter believes infractions referenced under AB 1194 are already being reported to the Bureau. The commenter does not agree that requirements under AB 1194 will result in a substantial increase in complaints.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

As it relates to the implementation of AB 1194, the Bureau notes the proposed fee amounts are based on increased workload and related enforcement cost projections. Further information regarding these determinations can be found in the Initial Statement of Reasons which is included in this file and is incorporated herein.

As noted on page 4 of the Initial Statement of Reasons, the Bureau sought additional spending authority via a budget change proposal (BCP) in the Governor’s Budget. The purpose of this BCP was to estimate the Bureau’s costs of implementing AB 1194, and to provide the Bureau with spending authority to implement the bill. This BCP was ultimately included in the Governor’s 2022/23 Budget Act.

While the BCP authorizes the Bureau to expend monies to implement AB 1194, the lack of sufficient reserve amounts in the Professional Fiduciaries Fund (Fund), and an insufficient revenue stream from licensing and renewal fees, creates an imbalanced fund condition. This structural imbalance will lead to the Bureau's insolvency by fiscal year 23/24, if additional funding via a fee increase is not obtained.

**Comment 1-15-e:** To address concerns that AB 1194 requirements will result in additional investigations, the commenter suggests section 6580 of the licensure act be amended to provide that where the Court refers a judicial determination finding a licensee to have breached a fiduciary duty or abused an adult, that judicial determination can be relied on as determinative of the issue. And, though the Bureau would be charged with moving forward with appropriate disciplinary action, no further investigation as to the issue would be required. Thus, the Bureau would be relieved of the time and expense of a duplicative investigation.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau appreciates all proposed solutions and continues to work with the Legislature to enact appropriate statutory revisions. Additionally, the Bureau is making every effort to examine and reduce its expenses.

However, proposed statutory changes to amend the Bureau's investigatory authority are outside of the scope of this pending regulatory proposal. Independent complaint investigations may lead to different findings than court determinations. To this end, the Bureau investigates complaints consistent with Business and Professions Code sections 6516 and 6580, to fulfil its duty of public protection.

Comment 8, the comment of Laura Kamian McDermott, contained the following additional arguments:

**Comment 8-a:** The commenter notes the license fee increase is excessive, will result in fewer individuals entering the profession, and will result in fewer licensed fiduciaries renewing their license.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above.

**Comment 8-b:** The commenter asks the Bureau to increase the fee in a manner that reflects the cost-of-living increase since 2008 (if based on post-2008 cost-of-living increases, the fee would be \$990).

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau

incorporates by reference its response to comment 1-15-b, above.

**Comment 8-c:** The commenter requests the Bureau coordinate the fee increase with legislative action to increase the licensing pool and reduce Bureau expenses by eliminating Bureau investigations that are duplicative of issues adjudicated by the court.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments and 1-15-e above, and comment 22-e, below.

## 16-19. Form Comments II

The Bureau received four comments containing the same wording from the following commenters:

- xvi. Ronald and Patricia Dicken, received July 23, 2023
- xvii. Karen Steele, received July 24, 2023
- xviii. Garth Vorst, received July 24, 2023
- xix. Mary Vorst, received July 24, 2023

These comments have been grouped together for the purposes of responding in this final statement of reasons.

**Comment 16-19-a:** The commenters state that they are licensed professional fiduciaries and [part of] a business that includes five licensed fiduciaries with current licenses. They state that the current cost to their business to renew licenses is \$3,500 per year and the new recommended license renewal fee will cost their business \$6,500 per year. They object to the excessive license renewal fee being proposed by the Professional Fiduciaries Bureau.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above.

**Comment 16-19-b:** The commenters believe this fee increase, which is an increase of 86%, will be a significant barrier to individuals interested in entering this profession and will discourage existing licensees from renewing their license resulting in an overall decline in the license population. Such a decline will increase the difference between the Bureau's proposed budget and licensing fees being collected.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above.

**Comment 16-19-c:** The commenters suggest that rather than the proposed increased

license renewal fee of \$1,300 per year, they support a fee increase that corresponds with the increase in the cost-of-living since license fees were first established in 2008. Rather than the proposed \$1,300, this would be an increase from \$700 to \$990. They note the proposed license fee increase is significantly more than this adjustment.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-b, above.

**Comment 16-19-d:** Though the commenters recognize for the Bureau to continue it must be financially sustained, as an alternative to a substantial license fee increase, they suggest that the Bureau, as well as the Legislature, focus on increasing the license pool and reducing Bureau expenses.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. While the Bureau is making every effort to examine and eliminate barriers to licensure where feasible, proposed statutory changes to increase the licensing population or to reduce the Bureau's expenses are outside of the scope of this pending regulatory proposal.

**Comment 16-19-e:** To increase the licensee pool, the commenters urge the Bureau as well as the Legislature to eliminate the qualified licensing exemption currently afforded enrolled agents under Business and Professions Code Section 6530. The commenters note the existing exemption provides that an enrolled agent is exempt from fiduciary licensure provided the enrolled agent, when acting as a fiduciary, does not act beyond the scope of their enrollment with the IRS [Internal Revenue Service]. The commenters further state enrolled agents are registered through a federal program which authorizes them to prepare income tax returns and represent taxpayers before the IRS concerning collections, audits and appeals and that enrolled agents are not subject to state oversight, licensure, enforcement or other protections which benefit California consumers. As the services required of a professional fiduciary acting in a representative capacity extend well beyond tax return preparation, the commenters suggest the exemption currently afforded enrolled agents under Business and Professions Code Section 6530 should be eliminated.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-c, above.

**Comment 16-19-f:** The commenters suggest section 6530 be clarified to ensure that enrolled agents, acting as a professional fiduciary, and thus acting beyond the scope of their enrolled agent registration, are aware of their requirement to be licensed as a professional fiduciary.

**Response:** The Bureau has reviewed and considered the comment and declines



to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-c, above.

**Comment 16-19-g:** The commenters suggest the Bureau reexamine the assumptions that are being relied on to support the license fee increase. Except for requirements to post fee schedules on a licensee's website, they believe infractions referenced under AB 1194 are already being reported to the Bureau. Accordingly, they do not agree that requirements under AB 1194 will result in a substantial increase in complaints.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-d, above.

**Comment 16-19-h:** The commenters suggest, to address concerns that AB 1194 requirements will result in additional investigations, that section 6580 of the licensure act be amended to provide that where the Court refers a judicial determination finding a licensee to have breached a fiduciary duty or abused an adult, that judicial determination can be relied on as determinative of the issue. And, though the Bureau would be charged with moving forward with appropriate disciplinary action, no further investigation as to the issue would be required. Thus, the Bureau would be relieved of the time and expense of a duplicative investigation.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-e, above.

## **20. Annalisa Alvarado Email received July 19, 2023**

**Comment 20-a:** The commenter states she understands that projected fee increases are being discussed and asks the Bureau to please reconsider or enact a sliding scale approach.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

Setting fees on a sliding scale within a single license type and determining the parameters for which licensees would pay differing amounts would be difficult to implement and likely increase the Bureau's operational costs. The Bureau notes that a set fee structure for each license type is typical for regulatory bodies under the Department of Consumer Affairs.

**Comment 20-b:** The commenter further states that as a relatively new licensee, \$1,300 a year would be a tremendous burden to her burgeoning business and that it takes a while to build a professional fiduciary practice, especially when a fiduciary, such as herself does not have the advantage of purchasing a retiring fiduciary's practice.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above.

**Comment 20-c:** The commenter states many of her cases are court-supervised and may only be approved for fees until well after a year.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau acknowledges professional fiduciary work may entail inconsistent revenue for licenses, particularly for new licensees. However, the proposed fee increases in this regulation are required to sustain the Bureau's operations.

### 21. Joan Ambrosio Email received July 28, 2023

**Comment 21-a:** The commenter states many seniors and those with disability challenges suffered during the three years of covid and due to California's expensive cost of living. She further states fiduciaries try to maintain low or affordable fees especially when serving those who are homeless or on disability insurance. As a new fiduciary prospect and one who cares greatly about the industry and those served, she asks the Bureau to please cease in taking steps to increase license fees and applications and consider increasing penalty fees or other streams of revenue.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above.

The Bureau notes financial aspects of license discipline are designed to be preventative and remedial, to protect the public, and are not intended to generate revenue for the Bureau. Proposed statutory changes to create a funding source for the Bureau aside from licensing fees are outside of the scope of this pending regulatory proposal.

### 22. Joyce Anthony Email received July 28, 2023

**Comment 22-a:** The commenter states as a practicing professional fiduciary since 2005 and a licensed professional fiduciary since 2008, the commenter urges the Bureau not to proceed with the regulation that would increase her license renewal fees by 86% beginning January 2024, arguing the increase is excessive.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a.

**Comment 22-b:** The commenter states the license increase seems to be inconsistent with other licensing fees.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a.

**Comment 22-c:** By increasing the fees the amount proposed in this rulemaking, the commenter believes the Bureau will be creating a situation where there will be fewer licensees renewing their licenses and for new professional fiduciaries the Bureau will be creating a high barrier for entry into the profession at a time when more, not fewer professional fiduciaries are needed to support the growing elderly population.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above. The Bureau agrees with the commenter that professional fiduciaries provide important services to California's most vulnerable residents, and more are needed.

**Comment 22-d:** The commenter states that if the Bureau must increase fees, to base it on the cost-of-living increases since 2008, *i.e.*, \$990.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-b, above.

**Comment 22-e:** The commenter suggests the Bureau work with the Legislature to increase the licensing pool and reduce its expenses by eliminating duplicative investigations where the court has already adjudicated the matter.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. Proposed statutory changes to increase the licensing population or to amend the Bureau's investigatory authority are outside of the scope of this pending regulatory proposal.

### **23. Anna Ballesteros Email received July 28, 2023**

**Comment 23-a:** The commenter states she objects to the almost doubled proposed increase to the professional fiduciary license fees. She also states the costs of running a professional fiduciary practice is already extremely high, and to propose an increase that almost doubles the licensing fees is outrageous.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above, and 26-b, below.

**Comment 23-b:** The commenter states the increase will result in fewer individuals entering the profession and fewer licensed fiduciaries renewing their licenses.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above.

**Comment 23-c:** The commenter asks the Bureau to revise the fee increase regulation prior to adoption so that the fee increase reflects the cost-of-living increase since 2008 (if based on post 2008 cost-of-living increases, fee would be \$990);

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-b, above.

**Comment 23-d:** The commenter asks the Bureau to coordinate the fee increase with legislative action to increase the licensing pool and reduce Bureau expenses by eliminating Bureau investigations that are duplicative of issues adjudicated by the court.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-b, 1-15-e and 22-e, above.

#### **24. Laura Benintend Email received June 16, 2023**

**Comment 24-a:** The commenter states in response to the proposed fee changes for licensed fiduciaries, she is strongly opposed to such significant increases. While she appreciates the Bureau's presence to protect consumers, she doesn't think regulations need to be expanded. She further states that almost doubling many fees is an unreasonable increase and would see up to 20% as the top end of reasonable.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above. Further, raising fees by only 20% would be insufficient in addressing the increased workload and enforcement costs placed on the Bureau through the passage of AB 1194.

**Comment 24-b:** The commenter notes many states don't require fiduciaries to be licensed and while she's not in favor of that, she would rather see California at the middle of the pack in terms of regulations and fees rather than on the aggressive end.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau notes

that this regulation does not expand any regulatory requirements on licensees, instead it addresses the Bureau's decreasing fund and pending insolvency along with securing sufficient resources to implement additional statutory requirements placed on the Bureau by the passage of AB 1194.

**Comment 24-c:** The commenter states that fiduciaries are not largely high-income earners and In California, the expanding government programs and cost to the residents are driving people out to places that are more business and taxpayer friendly. She suggests the Bureau not be another driver of the exodus. She believes fiduciaries are needed here [in California] and the courts are also strong enforcers of compliance.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above. Existing statutes require the regulation of professional fiduciaries in California; revisions to those statutes are outside the scope of the proposed regulation. The basis of the fee increase in this rulemaking are further discussed in the Initial Statement of Reasons and include the Bureau's statutory obligations under AB 1194. The Bureau appreciates and agrees with the commenter's concern for the need for fiduciaries in California.

**Comment 24-d:** The commenter would be in favor of loosening compliance requirements for fiduciaries or those with good track records, or fee increases on enforcement matters rather than the general population.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 21-a regarding the purpose of license discipline. Proposed statutory changes to loosen requirements for licensees in good standing are outside of the scope of this pending regulatory proposal.

## 25. Amy Brown Email received July 20, 2023

**Comment 25-a:** The commenter states the Bureau's proposed increases for applications, licenses, renewals and reinstatements would dramatically impact new, current and return fiduciaries and that the proposed associated fiduciary licensing fee increases are excessive, nearly double in most cases. The commenter further states the fee increases would delay new potential fiduciaries to submit applications and acquire licenses due to financial limitations; [result in] new potential fiduciaries deciding not to enroll in trainings to become licensed fiduciaries due to these increased expenses to practice in the profession; cause fiduciaries that have expired licenses not to renew due to the increased fees; and cause fiduciaries that may have been considering returning to the profession decide not to due to the increased fees. Lastly, she urges the Bureau to please reconsider these fee increases as it would have a significant impact on the number of individuals entering, continuing in, or returning to the field.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above regarding the potential impact of this proposed rulemaking on the licensee population and enrollment in training.

## **26. Lori Cochrane Email received August 3, 2023**

**Comment 26-a:** The commenter states the proposed increase in fees to licensees is excessive and will most assuredly result in fewer individuals entering the profession. She believes professional fiduciaries are a necessity for society, as they provide a profound service to vulnerable populations. Additionally, the commenter states the fee increase will result in fewer licensees renewing their licenses. The commenter further states that professional fiduciary work is not an easy job and there are licensed fiduciaries who are on the fence about whether to keep going in this industry.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above. The Bureau agrees with the commenter that professional fiduciaries provide important services to California's most vulnerable residents, and more are needed

**Comment 26-b:** The commenter states professional fiduciaries face grossly inflated insurance costs, and the prospect of an increasing license fee may simply cause them to exit the profession.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above. The Bureau acknowledges the high costs of insurance and other business expenditures for professional fiduciaries. Notwithstanding various business-related expenses related to the profession, the proposed fee increases in this regulation are required to sustain the Bureau's operations.

**Comment 26-c:** The commenter states more licensed fiduciaries are needed and instead of narrowing down the field of available licensed fiduciaries, the Bureau should advocate to expand both the number of those serving and keep the fees for licensing down. She further states that creating programs to increase the level of education of licensed fiduciaries is much more important than chasing people out of the profession.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau notes the suggestion to create a program to increase the level of education in licensed

fiduciaries is outside of the scope of this pending regulatory proposal.

**Comment 26-d:** The commenter states that a fee increase reflecting cost-of-living makes sense and asks the Bureau to please revise the fee increase proposal to reflect this more reasonable increase.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-b, above.

### **27. Lynne de Chambrier Email received July 19, 2023**

**Comment 27-a:** The commenter states she is writing to express her concerns over the proposed fee increases for professional fiduciaries. She runs a small practice whose income will not outweigh the expenses in the near future if the costs to insurance, and licensing are expanding at unsustainable rates. As it is, the commenter notes the industry is extremely risky and honestly, unsustainable for small potatoes such as herself. The commenter states she will have a very hard time touting the joys and good work professional fiduciaries do for the most vulnerable people, if the magnitude of costs continue on this trajectory.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-a and 26-b, above.

**Comment 27-b:** The commenter states professional fiduciaries are an endangered species, whose numbers will only continue to decrease as they age and the next generation of licensees simply go elsewhere in their careers. The commenter states the license fee increase is excessive and will result in fewer individuals entering the profession. She further states the license fee increase will result in fewer licensed fiduciaries renewing their licenses.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above.

**Comment 27-c:** The commenter asks the Bureau to revise the fee increase regulation prior to adoption so that the fee increase reflects the cost-of-living increase since 2008 (if based on post 2008 cost-of-living increases, fee would be \$990).

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-b, above.

**Comment 27-d:** The commenter asks the Bureau to please coordinate the fee increase with legislative action to increase the licensing pool and reduce Bureau expenses by

eliminating Bureau investigations that are duplicative of issues adjudicated by the court.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-e and 22-e, above.

## **28. Barbara DeVries Email received July 28, 2023**

**Comment 28-a:** The commenter states that people starting out can't afford the Bureau's proposed fee increases. The commenter also states if the Bureau wants more licensees, it shouldn't make it hard for them.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above.

**Comment 28-b:** The commenter states that \$1,300 renewal fee and [Errors and Omissions] insurance makes it \$4,000 and up off the bottom line before other expenses and profits.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 26-b, above.

**Comment 28-c:** The commenter states when they wanted a Bureau set up, they wanted checks and balances on fiduciaries not for this license to be a burden.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above.

## **29. Robin Dier Email received July 27, 2023**

**Comment 29-a:** The commenter states as a licensed professional fiduciary, she objects to the excessive license renewal fee being proposed by the Professional Fiduciaries Bureau. She believes this fee increase, which is an increase of 86%, will be a significant barrier to individuals interested in entering the profession and will discourage existing licensees from renewing their licenses resulting in an overall decline in the license population. Such a decline will increase the difference between the Bureau's proposed budget and licensing fees being collected.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above.

**Comment 29-b:** Rather than the proposed increased license renewal fee of \$1,300 per



year, she supports a fee increase that corresponds with the increase in the cost-of-living since license fees were first established in 2008. Rather than the proposed \$1,300, this would be an increase from \$700 to \$990. The commenter states the proposed license fee increase is significantly more than this adjustment.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-b, above.

**Comment 29-c:** The commenter suggests the Bureau re-examine the assumptions that are being relied on to support the license fee increase. Except for requirements to post fee schedules on a licensee's website, the commenter believes infractions referenced under AB 1194 are already being reported to the Bureau. Accordingly, she does not agree that requirements under AB 1194 will result in a substantial increase in complaints.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-d, above.

**Comment 29-d:** The commenter recommends, to address concerns that AB 1194 requirements will result in additional investigations, that section 6580 of the licensure act be amended to provide that where the Court refers a judicial determination finding a licensee to have breached a fiduciary duty or abused an adult, that judicial determination can be relied on as determinative of the issue. And, though the Bureau would be charged with moving forward with appropriate disciplinary action, no further investigation as to the issue would be required. Thus, the Bureau would be relieved of the time and expense of a duplicative investigation.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-e, above.

### **30. Brittany Dobson Email received August 2, 2023**

**Comment 30-a:** The commenter stated she would like to echo the feedback of her peers regarding the licensing fee increases on the following topics. As a newer fiduciary, she is incredibly aware of the high financial barriers to entry when considering becoming a fiduciary, not to mention the high potential liability of the work professional fiduciaries do and the lack of benchmarked succession planning.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above.

**Comment 30-b:** The commenter states being a professional fiduciary is a long-ramp up

business requiring funds for education, licensing, business development and all sorts of activity needed before signing clients and even when clients identify her to serve as [power of attorney for healthcare, power of attorney for finances or trustee] it may be years before she steps into action and begins earning wages. The commenter states in all honesty, she doesn't believe she would have been able to enter this field had she not had a spouse that could carry the majority of their living expenses for a number of years. As she looks to grow her team, these barriers are extremely off-putting to wonderful, well-suited individuals who may otherwise consider this line of work.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-a, 20-c, and 26-b, above. The Bureau acknowledges the high costs of insurance and other business expenditures for professional fiduciaries, and that professional fiduciary work may entail inconsistent revenue for licenses, particularly for new licensees. However, the proposed fee increases in this regulation are required to sustain the Bureau's operations.

**Comment 30-c:** The commenter maintains: the license fee increase is excessive; the license fee increase will result in fewer individuals entering the profession; and the license fee increase will result in fewer licensed fiduciaries renewing their license.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above.

**Comment 30-d:** The commenter requests the Bureau please revise the fee increase regulation prior to adoption so that the fee increase reflects the cost-of-living increase since 2008 (if based on post 2008 cost-of-living increases, fee would be \$990).

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-b, above.

**Comment 30-e:** Lastly the commenter asks the Bureau to coordinate the fee increase with legislative action to increase the licensing pool and reduce Bureau expenses by eliminating Bureau investigations that are duplicative of issues adjudicated by the court.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-e and 22-e, above.

### 31. Robert Earnest Email received July 26, 2023

**Comment 31-a:** The commenter states that as both a professional fiduciary (with professional and non-professional employees) and as a consumer of professional

fiduciary services, he cannot support the proposed increase of over 85% to licensing fees for a few reasons, although he does support a reasonable increase to licensing fees. His profession is a nascent one that requires the support of both the PFB and the Legislature to meet the rapidly growing demands for CLPFs attributable to the “Silver Tsunami” (*i.e.*, the confluence of the aging of our population, the accompanying increase in dementia and the largest transfer of wealth to date).

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above.

**Comment 31-b:** The commenter states he learned firsthand a few years ago while transitioning from a 30-year member of the State Bar to a professional fiduciary that the barriers to entry to this profession are high. As a sole practitioner, a new fiduciary will incur substantial expenses such as training, test preparation, licensing, required continuing education, errors and omissions insurance and overhead before earning any significant revenue.

The commenter states this need for substantial personal working capital is exacerbated by the fact that fees earned for court supervised matters are not payable until an accounting is submitted and approved by the court, resulting in delays that frequently exceed 18 months for a new fiduciary. Moreover, a CLPF cannot ameliorate these barriers by joining a firm like a new lawyer, CPA or doctor to learn the profession while making a living. CLPFs are still prohibited from forming professional corporations to help hire, recruit and train new members of the profession and ensure timely and cost-effective transitions of fiduciary services for consumers.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-a, 20-c, 26-b, and 30-b, above.

**Comment 31-c:** The commenter states this proposed fee increase if implemented will have the effect of creating another significant barrier to individuals interested in entering this profession and will discourage existing licensees from renewing their license. He states it can be expected that the unintended consequence of an overall decline in the licensee population, thereby creating a greater deficit between the PFB’s proposed budget and the licensing fees to be collected.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above.

**Comment 31-d:** The commenter states rather than the proposed license renewal fee of \$1,300 per year, he supports a reasonable fee increase that corresponds with the increase in the cost-of-living since license fees were first established in 2008. Rather

than the proposed \$1,300, this would be an increase from \$700 to \$990.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-b, above.

**Comment 31-e:** Recognizing the growing demand for fiduciary services by consumers, the commenter states he welcomes the Legislature to provide financial support to the PFB as their nascent profession grows and addresses its significant barriers to entry. However, he understands that it is a given that the PFB must be financially sustainable now. Thus, as alternatives to substantial license fee increases, he recommends that the PFB, as well as the Legislature, focus on increasing the license pool and reducing PFB expenses.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. Regarding efforts to increase the licensing pool, the Bureau incorporates by reference its response to comment 22-e, above. Proposed statutory changes to create a funding source for the Bureau aside from licensing fees are outside of the scope of this pending regulatory proposal.

**Comment 31-f:** The commenter urges the Bureau and the Legislature to eliminate the ambiguity created by the qualified licensing exemption currently afforded enrolled agents and CPAs under Business and Professions Code Section 6530. The commenter states, this statute is clear that attorneys are the only profession exempt from the licensing requirements for Professional Fiduciaries. The limited exemption for both Enrolled Agents and CPAs merely clarifies that when an Enrolled Agent is acting within the scope of their enrollment before the Internal Revenue Service and a CPA is acting within the scope of their CPA license, they are not subject to the licensing requirements of a Professional Fiduciary. This statement is unnecessary and creates confusion for Enrolled Agents and CPAs who may believe they can offer the same services as a Professional Fiduciary without regulation by the PFB. (Alternatively, Section 6530 could be amended to clarify that when an Enrolled Agent or CPA acts beyond the scope of their registration or license, they are subject to the requirement to be licensed as a professional fiduciary.).

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-c, above.

**Comment 31-g:** The commenter recommends that the Bureau re-examine the assumptions that are being relied on to support the license fee increase. Except for the relatively new requirement to post fee schedules on a licensee's website, he believes infractions referenced under AB 1194 are already being reported to the Bureau. Accordingly, he does not agree that requirements under AB 1194 will result in a substantial increase in complaints.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-d, above.

**Comment 31-h:** The commenter suggests that section 6580 of the licensure act be amended to provide that where the Court refers a judicial determination finding a licensee to have breached a fiduciary duty or abused an adult, that judicial determination can be relied on as determinative of the issue. And, though the Bureau would be charged with moving forward with appropriate disciplinary action, no further investigation as to the issue would be required. In other words, the Bureau would be relieved of the time and expense of a duplicative investigation.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-e, above.

**Comment 31-i:** The commenter states he would be happy to participate on a task force to review and propose operational improvements if it would be beneficial to the PFB.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau thanks the commenter for offering to assist in creating operational improvements via a taskforce. While the creation of a taskforce would require a statutory change and is outside of the scope of this pending regulatory proposal, the Bureau notes it is assisted by a seven-member Advisory Committee, three of which are licensees. The Advisory Committee has two vacant licensee positions at this time.

### **32. Andrea Hadik-Barkoczy Email received July 29, 2023**

**Comment 32-a:** The commenter states she is a soon to be licensed professional Fiduciary. She objects to the excessive license renewal fee being proposed by the Professional Fiduciaries Bureau, noting the fee increase is 86%.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above.

**Comment 32-b:** The commenter states the pool of licensed fiduciaries has shrunk this past year due to retirement and burnout, and this extremely large fee increase will discourage new professionals from entering the field and dishearten existing fiduciaries from renewing their licenses. She also states licensed fiduciaries provide vital service to [California's] aging populous and that the elderly with no family or with cognitive issues are increasing in our communities. She also states there are more folks with special needs trusts outliving their family members in addition to mentally ill and those who cannot cope with the modern society who need to be cared for and looked after lest

they end up on the streets.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above. The Bureau agrees with the commenter that professional fiduciaries provide important services to California's most vulnerable residents, and more are needed.

**Comment 32-c:** The commenter requests the Bureau please revise the fee increase regulation prior to adoption so that the fee increase reflects the cost-of-living increase since 2008, which would be a fee of \$700 to \$990 only, for all licenses: initial, renewal, and reinstatements.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-b, above.

**Comment 32-d:** The commenter further states, the application fee should remain at \$400. She states that if someone like herself doesn't pass the test, the application fee must be paid again.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

While unrelated to this regulatory proposal, the Bureau notes that applicants are allowed up to five attempts to pass the examination within a one-year period before their application expires, at which time individuals who want to pursue licensure would need to reapply. Further, examination related fees are paid directly to the examination provider and the Bureau does not collect any examination related fees.

As noted in the Initial Statement of Reasons, the proposed fee levels in this rulemaking correspond with the actual workload and costs to process and approve applications. As such, additional applications, even with fees, would not reduce the Bureau's overall costs.

**Comment 32-e:** The commenter states it is a huge burden on a new fiduciary just starting their business after paying for their education, live-scan fee, cutting back on earnings to study and attending classes, and other costs such as driving to the testing site and perhaps having to pay for a hotel.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-a, 26-b, and 30-b, above.

### 33. Monica Hagen Email received July 19, 2023

**Comment 33-a:** The commenter states she finds the increase in fees excessive.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above.

**Comment 33-b:** The commenter states there is a lack of licensed fiduciaries, and part of the reason is financial. Professional fiduciaries often get paid years after services are rendered, and if fiduciaries do not have multiple income streams or a financially supportive significant other/family, the job can create financial hardships. One of the biggest problems is finding new clients, as well as paying for annual [errors and omissions] insurance and annual continuing education fees (at least \$450 per year). Higher licensing fees will further discourage new fiduciaries and may force ones like her, with a small number of clients, to find another career. She asks the Bureau to please consider a more reasonable increase that will not block new and current fiduciaries from helping our seniors, special needs individuals, and other Californians who deserve good care and financial stability from licensed, caring fiduciaries.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-a, 20-c, 26-b, and 30-b, above. The Bureau agrees professional fiduciaries provide important services to California's most vulnerable residents and more are needed.

### 34. Philip Holsworth Email received July 19, 2023

**Comment 34-a:** The commenter states that while he is aware the Bureau's costs are increasing, raising fees as is proposed will end up with a decrease in the Bureau's income rather than an increase as it will discourage new folks from coming on board and encourage the old timers to quit abruptly rather than gently retiring. He states the long-term solution is to increase the number of fiduciaries, not make it harder to join or stay. He further states it takes three to five years to get a new fiduciary's income up to the point where they can pay their bills. Before that, they must rely upon their savings, spouse, or another job for their income because it's not coming from their fiduciary work, at least not yet.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-a, 20-c, 26-b, and 30-b, above.

**Comment 34-b:** He suggests the Bureau start out charging just as it has been, then, increase fees by perhaps \$100 each year until the Bureau reaches the income it needs. This will give the fiduciaries a chance to build up their practice so they can afford to pay the Bureau's increasing licensing fees.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-a, above. Increasing the fees by \$100 each year or a more gradual amount would not address the current deficit facing the Bureau.

**Comment 34-c:** The commenter argues because professional fiduciaries provide such an important service to estate attorneys, the county child and adult protective services, and to the courts, a \$10 annual contribution from all the licensed attorneys might cover the department's shortfall.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. Requiring licensed attorneys to contribute to the Fund would require a statutory change and is outside of the scope of this pending regulatory proposal.

**Comment 34-d:** The commenter encourages the Bureau to look for ways to increase the number of fiduciaries in California. He further states the aging population is going to need more and more professional fiduciaries.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. While the Bureau is making every effort to examine and eliminate barriers to licensure where feasible, proposed statutory changes to increase the licensing population are outside of the scope of this pending regulatory proposal.

The Bureau agrees professional fiduciaries provide important services to California's most vulnerable residents and more are needed.

### **35. Philip Holsworth Email received July 21, 2023**

**Comment 35-a:** The commenter states if the fees were as they are proposed, it may have been impossible for him to pay them.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-a, above.



### 36. Janet Kahn Email received July 31, 2023

**Comment 36-a:** The commenter states that the Bureau's basis for this increased amount is its assumptions about the number of complaints it expects to receive due to the implementation of AB 1194 and resulting investigations it must perform. The commenter states that since no such complaints have yet been received, the number of complaints the PFB alleges it will receive is highly speculative. Thus, the proposed fee increases are not based on any factual data. She states a better approach would be to have no increase, or just a very slight increase, until the PFB can produce actual data upon which to justify a fee increase.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-a and 1-15-d, above. Not increasing fees, or having a very slight increase in fees, would not address the current deficit facing the Bureau.

**Comment 36-b:** The commenter states that the rate of increase of the annual renewal fee cannot be justified. The annual renewal fee in 2008 was \$700 and has remained at that level every year since. This new proposed fee of \$1,300 is an increase of approximately 85%. In contrast, using the Federal Reserve Bank's Inflation Calculator, the Consumer Price Index shows that \$700 in 2008 is worth \$989.30 in 2023.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-b, above.

**Comment 36-c:** The commenter states a more nuanced solution would be to increase the annual renewal fees to \$800 or perhaps \$900, for 2024; a review of the data of actual workload increase faced by the PFB could then be used to justify a greater increase in future years.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above. Increasing the fees by a smaller amount until the Bureau collects workload data related to AB 1194 would not address the current deficit facing the Bureau, as costs not directly related to AB 1194 are also contributing to the deficit.

**Comment 36-d:** The commenter suggests the annual renewal fee could be increased based on the Consumer Price Index.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-b, above.

**Comment 36-e:** The commenter maintains that currently, many California licensed professional fiduciaries are struggling to keep their practices afloat financially, considering that oftentimes their fee requests in court-supervised cases are often reduced for reasons that are unrelated to how they perform their duties; that often they must wait an entire year or longer before having their fee petitions heard and approved, thus they have to “carry” a case for a year or longer; that some of their cases end up being pro bono when the protected person’s funds are depleted; that they continue to face ever-increasing costs for malpractice insurance premiums, if they are even able to obtain such coverage on an ongoing basis. She further states that despite media portrayals, very few of them are becoming wealthy despite putting in long hours in an often-hostile work environment.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 20-c, 26-b, and 30-b, above.

### **37. Brooke Kernick Email received July 19, 2023**

**Comment 37-a:** The commenter urges the Professional Fiduciary Bureau to refrain from increasing the current Professional Fiduciary licensing fees from \$700 to \$1,300 for renewals. She states this represents an astronomical increase which is not supported by cost-of-living adjustments and will certainly factor into her decision about whether she will continue to be a licensed fiduciary.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-a and 1-15-b, above.

**Comment 37-b:** The commenter states she is an attorney licensed with the State Bar of California, and the Professional Fiduciary Bureau fees already far exceed her State Bar dues by several hundred dollars. She asks why it would cost almost three times more to be licensed as a fiduciary than an attorney in the State of California. She states that it is very hard to understand this discrepancy.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-a, above.

### 38. Charlene Laurvick-Bunch Email received July 28, 2023

**Comment 38-a:** The commenter states she objects to the proposed fee increase. She states the license fee increase is excessive and will result in fewer individuals entering the profession and fewer licensed fiduciaries renewing their license.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-a, above.

**Comment 38-b:** The commenter asks the Bureau to please revise the fee increase regulation prior to adoption so that the fee increase reflects the cost-of-living increase since 2008 (if based on post 2008 cost-of-living increases, fee would be \$990).

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-b, above.

**Comment 38-c:** The commenter states while she recognizes that for the Bureau to continue it must be financially sustained, and as an alternative to a substantial license fee increase, the Legislature should amend the Bureau's sunset extension measure AB 1262 to increase the licensee pool.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. While the Bureau is making every effort to examine and eliminate barriers to licensure where feasible, proposed statutory changes to increase the licensing population are outside of the scope of this pending regulatory proposal.

**Comment 38-d:** The commenter states the limited exemption currently afforded enrolled agents in Business and Professions Code Section 6530 should be eliminated or alternatively clarified to ensure enrolled agents acting as a professional fiduciary, and thus acting beyond the scope of their registration as an enrolled agent, are aware of their requirement to be licensed as a professional fiduciary. The existing exemption provides that an enrolled agent is exempt from fiduciary licensure provided the enrolled agent, acting as a fiduciary, does not take actions beyond the scope of their enrollment with the IRS. Enrolled agents are registered through a federal program which authorizes them to prepare income tax returns and represent taxpayers before the IRS concerning collections, audits and appeals and are not subject to state oversight, licensure, enforcement or other protections which benefit California consumers. As the services required of a professional fiduciary acting as a fiduciary extend well beyond tax return preparation, the qualified exemption currently afforded enrolled agents under Business and Professions Code Section 6530 should be eliminated.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-c, above.

**Comment 38-e:** The commenter asks the Bureau to coordinate the fee increase with legislative action to increase the licensing pool and reduce Bureau expenses by eliminating Bureau investigations that are duplicative of issues adjudicated by the court.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-e and 22-e, above.

### **39. Charlene Laurvick-Bunch Email received July 38, 2023 (second email)**

This email is identical to comment 38, above, but was sent to a different recipient at the Bureau. For the Bureau's response, please see the responses to comment 38, above.

### **40. Charlene Laurvick-Bunch Email received July 31, 2023**

**Comment 40-a:** The commenter states she supports continuation of the Professional Fiduciaries Bureau however action needs to be taken to eliminate the need for the Bureau to implement such an excessive license fee increase.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-a, above.

**Comment 40-b:** As an alternative to such an excessive fee increase, the commenter suggests the Legislature should amend the Bureau's sunset extension measure AB 1262 to increase the licensee pool, specifically by eliminating or at a minimum clarifying the limited exemption currently afforded enrolled agents in Business and Professions Code Section 6530 to ensure those acting as a professional fiduciary, and thus beyond the scope of their registration as an enrolled agent, are aware of their need to be licensed as a professional fiduciary.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-c. Further, while the Bureau is making every effort to examine and eliminate barriers to licensure where feasible, proposed statutory changes to increase the licensing population are outside of the scope of this pending regulatory proposal.

**Comment 40-c:** The commenter suggests reducing Bureau workload requirements thus reducing Bureau expenses by specifically amending the fiduciary licensure act to provide that where a court, in compliance with requirements under AB 1194, refers a determination made by the Court to the Bureau for disciplinary action, such court determination can be determinative of the issue, thus other than taking additional steps required for disciplinary action, no further investigation as to the issue is required, thereby reducing Bureau investigation costs.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-e, above.

**Comment 40-d:** The commenter also recommends amending the fiduciary licensure act to set the maximum application and license fees to be implemented by the Bureau in statute, so that the Legislature will have a role in approving any future increases.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. Proposed statutory changes to establish a maximum fee amount in statute are outside of the scope of this pending regulatory proposal.

#### **41. Barb Lyon Email received July 27, 2023**

**Comment 41-a:** The commenter states if the Bureau knew how under-represented fiduciaries are in California and the huge deficit of need, the Bureau would support keeping fees reasonable. The commenter lives in Marin County where there is a dire need for fiduciaries to represent the elder orphans in its community. She works as a daily money manager, trying to help seniors pay their bills and taxes. She also states there aren't enough of her or licensed fiduciaries to protect the unprotected. She requests the Bureau please support this profession by voting to keep the fees reasonable. The commenter further states that no one goes into this work looking to get rich, and that this is a job of the heart and of integrity. Lastly, she asks the Bureau to help those who want to help make it possible with reasonable professional fees.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above. The Bureau agrees with the commenter that professional fiduciaries provide important services to California's most vulnerable residents, and more are needed.

#### **42. Jan Matthews Email received June 15, 2023**

**Comment 42-a:** The commenter states she just received the proposed increase and feels very strongly this is not the right move for the Bureau. This fee increase will only deter people from joining this profession. She states more fiduciaries are needed and we do not want to scare people away. She further states if the Bureau increased the move toward gaining more licensed fiduciaries the money that is needed could be increased by the number of applicants. She hopes this fee proposal is reconsidered. Lastly, she states this is doubling fees for existing and exhausted fiduciaries and more effort is needed to recruit more licensees.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above. The Bureau is making every effort to examine and eliminate barriers to licensure where feasible, and agrees professional fiduciaries provide important services to California's most vulnerable residents and more are needed.

#### **43. Jan Matthews Email received July 19, 2023**

**Comment 43-a:** The commenter states this fee increase is completely unfair and the fees are increasing more than 85%. As a licensed fiduciary, her expenses and liabilities are so high already with carrying insurance and expenses. She states again that this is absolutely unfair and that licensed fiduciaries, like herself already have such a hard job but to have an 85% increase in fees makes it harder. She further states professional fiduciaries have set fees by the courts and are not able to increase their income and asks how the Bureau expects fiduciaries to make up the difference.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-a, 20-c, 26-b, and 30-b, above.

**Comment 43-a:** The commenter states this increase is going to drive more fiduciaries away from the profession than keep them. She asks the Bureau to please think twice about endorsing this increase. She further states that the State of California should be working to draw more interest into this profession and making this alone will drive more people away. She asks the Bureau to please help to increase the number of licensed fiduciaries and not drive away the hard-working fiduciaries that are supporting seniors and special needs clients. Lastly, she states that this is an important role, and it would be a disservice to the people that need fiduciaries the most.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-a and 1-15-b, above. The Bureau agrees professional fiduciaries provide important services to California's most vulnerable residents and more are needed.

#### **44. Eric Mayfield Email received July 27, 2023**

**Comment 44-a:** The commenter provides the following as objections to the proposed annual fee increase: the license fee increase is excessive; the license fee increase will result in fewer individuals entering the profession; and the license fee increase will result in fewer licensed fiduciaries renewing their license.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above.

**Comment 44-b:** The commenter asks the Bureau to please revise the fee increase regulation prior to adoption so that the fee increase reflects the cost-of-living increase since 2008 (if based on post 2008 cost-of-living increases, fee would be \$990).

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-b, above.

**Comment 44-c:** The commenter asks the Bureau to please coordinate the fee increase with legislative action to increase the licensing pool and reduce Bureau expenses by eliminating Bureau investigations that are duplicative of issues adjudicated by the court.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-e and 22-e, above.

**Comment 44-d:** The commenter states that at first blush, it may be assumed that the increase will provide more funding for the Bureau. However, it is his understanding that the initial fees fiduciaries pay were the highest compared to other licenses, and that fees would be reduced or stay the same.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above.

**Comment 44-e:** The commenter asks for the Bureau to consider a gradual increase or the PFAC recommended [cost-of-living] for an amount of \$990 for amounts currently at \$700 and the related percentage for amounts of a lesser amount.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-b, 20-a, and 34-b, above.

#### **45. Lori Beth Merrill Email received July 19, 2023**

**Comment 45-a:** The commenter states she is nervous wondering how to survive continuing in her business. The Bureau may be shocked to know she only makes minimum wage as it is \$17.06 to be exact for her area. She was notified that there is a doubling of fees that are scheduled. Those costs added to the required continuing education costs (more continuing education than is required of attorneys) is more than two month's wages.

The commenter states she understands that the Bureau's reasoning for these fee increases is to address the discrepancy between its annual expenses and the license fees being collected. However, she firmly believes that such drastic fee hikes will be crushing to private licensed fiduciaries, potentially resulting in negative consequences for both individuals seeking to enter this profession and those already licensed. The magnitude of these proposed fee increases may deter individuals from pursuing careers as fiduciaries, leading to a decrease in the already small licensed population. This would only exacerbate the Bureau's fiscal issues rather than alleviate them. As a concerned citizen, she urges the Bureau to take immediate action to prevent these fee increases from being implemented.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-a and 26-b, above.

**Comment 45-b:** The commenter proposes the Bureau revise the fee increase regulation before adoption so that the fees reflect the cost-of-living increase since 2008. Based on post 2008 cost-of-living adjustments, the fee would be \$990, which would be a more reasonable approach.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-b, above.



**Comment 45-c:** The commenter also encourages the Legislature to coordinate with the Bureau and find alternative measures to increase the licensing pool and reduce Bureau expenses.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. While the Bureau is making every effort to examine and eliminate barriers to licensure where feasible, proposed statutory changes to increase the licensing population or to reduce the Bureau's expenses are outside of the scope of this pending regulatory proposal.

**Comment 45-d:** The commenter suggests the Bureau eliminate Bureau investigations that duplicate issues already adjudicated by the court, thereby reducing unnecessary expenses.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-e, an above.

**Comment 45-e:** The commenter supports the continuation of the Professional Fiduciaries Bureau but believes that the Legislature should amend the Bureau's sunset extension measure AB 1262 by increasing the licensee pool. This can be achieved by eliminating or clarifying the limited exemption currently afforded to enrolled agents in Business and Professions Code Section 6530.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-c, above.

**Comment 45-e:** The commenter suggests workload requirements for the Bureau can be reduced by amending the fiduciary licensure act so that court determinations referred to the Bureau for disciplinary action are deemed conclusive, thus reducing investigation costs

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-e, above.

#### **46. Matthew Neal Email received July 20, 2023**

**Comment 46-a:** The commenter states he is writing regarding the proposed fee increases for the professional fiduciary licensing. As a potential licensee, he must say that level of increase one year to the next is shocking and he believes will discourage people from applying to the profession. Especially when compared to CPA license fees for example in the state.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above.

**Comment 46-b:** The commenter asks the Bureau to please consider a more drawn-out increase in fees for the profession.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 20-a and 34-b, above.

#### **47. Matthew Neal Email received July 26, 2023**

This comment is the same as comment 46 but was sent to a different recipient; for responses to this comment, please see the Bureau's responses to comment 46, above.

#### **48. Faith Nitschke Email received June 19, 2023**

**Comment 48-a:** The commenter is a retired teacher and an active professional fiduciary who works occasionally. Last year, she earned less than \$15,000 as a fiduciary, and this year, it will be even less as she tapers off in this profession. She states she already pays over \$1,000 for insurance, and \$1,300 represents a significant impact on her expenses to profit ratio.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-a and 26-b above.

**Comment 48-b:** The commenter asks if there some way that the proposal could be adjusted to accommodate fiduciaries who work part-time. While the \$600 increase does not sound significant to most full-time fiduciaries, it represents a dramatic increase for people like her.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-a.

Adjusting fees based on part-time work within a single license type and determining the parameters for which licensees would pay differing amounts would be difficult to implement and likely increase the Bureau's operational costs. The Bureau notes that a set fee structure for each license type is typical for regulatory bodies under the Department of Consumer Affairs.

#### **49. Nancy Norris Email received July 14, 2023**

**Comment 49-a:** The commenter asks what the fee increase amount is and what it will be used for. She states that as it is PFAC doesn't do anything to help professional fiduciaries to enhance their businesses. She further states that compared to the real estate board PFAC is sad. She also asks how an increase will funnel down and help fiduciaries and states it most likely won't.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-a. It is presumed the commenter meant to comment regarding the Professional Fiduciaries Bureau and not the Professional Fiduciaries Association of California [PFAC], a wholly separate entity. Further information regarding what the fee increase amounts and what they will be used for can be found in the Initial Statement of Reasons which is included in this file and is incorporated herein.

The Bureau further notes that pursuant to Business and Professions Code section 6516, "Protection of the public shall be the highest priority for the Bureau in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."

#### **50. Gabriella Odell Email received July 20, 2023**

**Comment 50-a:** The commenter states she is writing to offer comments on the proposal to raise initial and renewal licensing fees for professional fiduciaries to \$1,300. This represents almost a doubling of fees for licensed fiduciaries and is almost double what she pays the State Bar every year to renew her attorney license. She believes this will constitute such an increased expense for this profession that it will ultimately impact the consumer and deter younger, qualified people from entering the profession.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above.

**Comment 50-b:** The commenter further states the number of new fiduciaries entering and able to succeed in the profession is already quite low because of the relatively modest hourly rates charged to clients, and the excessive time it takes to get fee approval in court supervised cases. Her rates, for example, have been \$125 to \$170 per hour. The courts have become increasingly dysfunctional and overburdened such that it often takes six to eight months to get a fee approval from the courts. She states that in cases of conservatorships, this means an almost three-year wait to get paid. The commenter notes given the already high costs, modest income and long period of time to build a sustainable business, such a large fee increase will further deter skilled and qualified younger fiduciaries from entering the profession as their opportunities in other professions will be more attractive.

The commenter states that fiduciaries typically pay around \$5,000 per year in liability insurance because of the small insurance pool and [there are a] limited number of insurers willing to insure what they consider a high-risk group. She states fiduciaries also find it almost mandatory to be a member of PFAC [Professional Fiduciaries Association of California], another \$450 in fees.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-a, 20-c, 26-b and 30-b, above.

**Comment 50-c:** The commenter states that in today's world in which many individuals do not have capable and caring family members willing or able to look after their affairs when they become incapacitated, it is vitally important to attract and maintain a pool of highly qualified and ethical fiduciaries. Given the burdens that already exist to entering the profession, especially for younger individuals who have no independent source of income, this fee increase will only diminish the pool further.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above. The Bureau agrees professional fiduciaries provide important services to California's most vulnerable residents and more are needed.

**Comment 50-d:** The commenter further states that fiduciaries perform a valuable service such that the state Legislature should be persuaded to provide some additional funding to the Bureau.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 31-e, above. Proposed statutory changes to create a funding source for the Bureau aside from licensing fees are outside of the scope of this pending regulatory proposal.

**Comment 50-e:** The commenter states it is duplicative to have the Bureau investigate misconduct cases that have already been adjudicated by the courts.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-e, above.

**Comment 50-f:** The commenter notes a more modest fee increase, particularly for new fiduciaries, and a modification of investigative burdens should be considered, as well as increased pressure on the State to support this vital service.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-a, 1-15-e, 22-e, and 31-e above. Adjusting fees for newly licensed professional fiduciaries and determining the parameters for which licensees would pay differing amounts would be difficult to implement and likely increase the Bureau's operational costs. The Bureau notes that a set fee structure for each license type is typical for regulatory bodies under the Department of Consumer Affairs.

### **51. Monika Pelletier Email received July 28, 2023**

**Comment 51-a:** The commenter states as a licensed professional fiduciary, she objects to the excessive license renewal fee being proposed by the Professional Fiduciaries Bureau. She believes this fee increase, which is an increase of 86%, will be a significant barrier to individuals interested in entering this profession and will discourage existing licensees from license renewal resulting in an overall decline in the license population. Such a decline will increase the deficit between the Bureau's proposed budget and licensing fees being collected.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above.

**Comment 51-b:** Rather than the proposed increased license renewal fee of \$1,300 per year, the commenter supports a fee increase that corresponds with the increase in the cost-of-living since license fees were first established in 2008. Rather than the proposed \$1,300, this would be an increase from \$700 to \$990. The proposed license fee increase is significantly more than this adjustment.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-b, above.

**Comment 51-c:** As an alternative to a substantial license fee increase, the commenter states the Legislature should amend the Bureau's sunset extension measure AB 1262 to increase the licensee pool. Specifically, the limited exemption currently afforded enrolled agents in Business and Professions Code Section 6530 should be eliminated or alternatively clarified to ensure enrolled agents acting as a professional fiduciary, and thus acting beyond the scope of their registration as an enrolled agent, are aware of their requirement to be licensed as a professional fiduciary. She further states the existing exemption provides that an enrolled agent is exempt from fiduciary licensure provided the enrolled agent, acting as a fiduciary, does not take actions beyond the scope of their enrollment with the IRS. Enrolled agents are registered through a federal program which authorizes them to prepare income tax returns and represent taxpayers before the IRS concerning collections, audits and appeals and are not subject to state oversight, licensure, enforcement or other protections which benefit California consumers. As the services required of a Professional Fiduciary acting as a fiduciary extend well beyond tax return preparation, the qualified exemption currently afforded enrolled agents under Business and Professions Code Section 6530 should be eliminated.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-c and 22-e, above.

Regarding the commenter's suggestion the Bureau work with the Legislature to increase the licensing pool, while the Bureau is making every effort to examine and eliminate barriers to licensure where feasible, proposed statutory changes to increase the licensing population are outside of the scope of this pending regulatory proposal.

**Comment 51-d:** The commenter also urges the Legislature to reduce Bureau workload requirements thus reducing Bureau expenses. Specifically, she suggests that section 6580 of the licensure act be amended to provide that where the Court refers a judicial determination finding a licensee to have breached a fiduciary duty or abused an adult, the Bureau can rely on that judicial determination as determinative of the issue. And, though the Bureau would be charged with moving forward with appropriate disciplinary action, no further investigation by the Bureau as to the issue would be required thus relieving the Bureau of the time and expense of a duplicative investigation.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-e and 16-19-d, above.

**Comment 51-e:** The commenter states the fiduciary licensure act should also be amended to set the maximum application and license fees to be implemented by the Bureau in statute, so that the Legislature will have a role in approving any future increases.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 40-d, above.

## **52. Arlene Peterson Email received July 21, 2023**

**Comment 52-a:** The commenter states she has been a PPF, licensed in 2012, now with a sole practice since 2019. She states that this is a profession where it takes a couple of years to establish a viable business and a new PPF cannot afford to enter into this industry while building a practice, and thus are forced to work under another seasoned PPF. She further states that the fee increase suggested is excessive, will result in fewer individuals entering the profession, and will result in fewer licensed fiduciaries renewing their licenses.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-a, 20-c, and 30-b, above.

**Comment 52-b:** The commenter asks the Bureau to revise the fee increase regulation prior to adoption so that the fee increase reflects the cost-of-living increase since 2008 (if based on post 2008 cost-of-living increases, fee would be \$990)

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-b, above.

**Comment 52-c:** The commenter asks the Bureau to coordinate the fee increase with legislative action to increase the licensing pool and reduce Bureau expenses by eliminating Bureau investigations that are duplicative of issues adjudicated by the court.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-e and 22-e, above.

### 53. Robin Shea Email received July 19, 2023

**Comment 53-a:** The commenter states she is responding to the proposed increase of fees, is opposed to such an excessive increase and offers the following thoughts and some suggestions for avoiding this step. She states practicing CLPF's are aging and retiring and there is a desperate need to recruit and train many new fiduciaries to serve the increasing number of consumers and the decreasing number of CLPF's. This fee increase will only result in fewer new fiduciaries and fewer licensed fiduciaries renewing their licenses. Neither of these is good for the consumer, who the Bureau is charged with protecting. More licensed fiduciaries are needed which in turn will provide more license fees.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above. The Bureau agrees with the commenter that professional fiduciaries provide important services to California's most vulnerable residents, and more are needed

**Comment 53-b:** The commenter notes new licensees sometimes must wait a period before their income regulates through increased workload. Raising fees from \$700 to \$1,300 could be challenging for them to pay. That is an 86% increase! She wants to encourage, not discourage, people to consider this field as a career.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-a, 20-c, and 30-b, above.

**Comment 53-c:** The commenter states a smaller increase would be acceptable, \$800 per year, but the current proposed increase is going to have a serious negative impact.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above. Increasing the fees to \$800 would not address the current deficit facing the Bureau.

**Comment 53-d:** The commenter further states in addition to license fees, there are other startup costs as well. She states many professional fiduciaries are sole practitioners and when named in estate documents it can be years before they are working for those clients. During that time, no income is being earned. Clients that named the commenter 12 to 13 years ago are just now dying. She maintains it may not seem like much but burdening a new fiduciary with an increase this large is bound to hurt a much-needed increase in new CLPF's.



**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-a, 20-c, 26-b, and 30-b, above.

**Comment 53-e:** The commenter goes on to say that the PFB has been supported by license fees since its inception. Under the CONSIDERATION OF ALTERNATIVES, she asks what are the alternatives that have been considered. She asks if there was there a general call out to licensees for suggestions of other ideas instead of doubling fees. If so, she apologizes, as she doesn't recall. She asks if not, why not. She states that the committee that serves the Bureau is a very small representation of the whole group of licensees. She further asks that if no request for alternatives has been made, can she suggest it should happen, sooner rather than later.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The alternatives considered by the Bureau are outlined in the Initial Statement of Reasons for this rulemaking. The Bureau's pending insolvency and the costs for implementing AB 1194 were also discussed at quarterly meetings of the Bureau's advisory committee, which were open to the public, prior to the filing of this rulemaking.

**Comment 53-f:** The commenter proposes the Bureau create a subcommittee of CLPF's to review consumer complaints. This will eliminate the need for paid staff to spend their time and instead delegate it to a volunteer group. The group could review, summarize, and make recommendations to the staff. She states she has no idea how many complaints come into the Bureau but based on her own experience, she must believe for every valid complaint there are three complaints by people (beneficiaries) who are just plain unhappy and need to vent. Recently the commenter was in court and the judge admonished the beneficiaries for continuing to delay the administration by challenging everything that she did. He said they may not like her decisions, but that doesn't mean she has done anything illegal. If even just those types of complaints are reviewed by the volunteer committee, she urges the Bureau to think of the time savings that would create. It could be thought of as a "jury of your peers." The Bureau could have final say but think of the amount of time saved if all the Bureau read was a summary of the complaint.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. Notwithstanding the commenter's suggestion, Business and Professions Code section 6580 requires the Bureau itself to investigate complaints.

**Comment 53-g:** The commenter further states that some professional fiduciaries [are] preparing for retirement and will be working less and less until their cases are all either transferred or finished. They must maintain Error and Omissions insurance and now would have to pay double their current renewal. That is hardly fair when they are reducing their case load and income. She asks if a suggestion was made to provide tiers of renewal fees. She states that might be another area to consider instead of doubling the fee for the whole group of CLPF's.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 20-a and 26-b, above.

**Comment 53-h:** The commenter's final suggestion would be to disband the current structure of the Professional Fiduciaries Bureau and move licensing under the Professional Fiduciary Association of California. All the work could be done by staff who would work for PFAC and eliminate the duplication of components of each organization. Currently, both organizations require 15 continuing education units per year; both charge a fee; and both monitor the assets that are under management of the CLPF's. A single fee structure could be created that would incorporate licensing, educational opportunities, referral service and more and there would be no need to pay two executive salaries. She states there would be no need to house two separate operations or to pay extra staff at the Bureau when staff could be hired to manage the licensing component. She further states it's a very nice idea to have a separate bureau, but it isn't essential any longer. In the early days of licensing, the bugs needed to be worked out. Now, 14 years later, the process should be much more streamlined and efficient with better technology available than in 2009.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. Regarding business costs, the Bureau incorporates by reference its response to comment 26-b, above. The Bureau notes the Professional Fiduciary Association of California is not a part of the state government, and instead is a trade association that advocates on behalf of professional fiduciaries.

Pursuant to Business and Professions Code section 6516, "Protection of the public shall be the highest priority for the Bureau in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."

Any effort to disband the Bureau would require a statutory change and is beyond the scope of this rulemaking. Finally, the Bureau notes the proposed fees in this rulemaking reflect the Bureau's actual operational costs, as described in the Initial Statement of Reasons.

#### 54. Lyle Stotelmyre Email received July 20, 2023

**Comment 54-a:** The commenter states he and his wife will cancel their licenses if the fees are raised as proposed in this rulemaking.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above.

**Comment 54-b:** The commenter states the fees for licensed fiduciaries are already high compared to other state licenses.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above.

**Comment 54-c:** The commenter suggests if the Bureau cannot manage its licensed population, it should combine the licensing population with a larger one.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. Proposed statutory changes to combine the Bureau with another regulatory entity are outside of the scope of this pending regulatory proposal.

#### 55. Juliet Vercelli Email received July 27, 2023

**Comment 55-a:** The commenter states as a professional fiduciary candidate, she objects to the excessive license renewal fee proposed by the significant barrier to individuals interested in entering this profession. She states it will discourage existing licensees and potential applicants, resulting in a decline in the overall license population. This fee increase, which is an increase of 86%, will be a significant barrier to individuals interested in entering this profession and will discourage existing licensees from renewing their licenses resulting in an overall decline in the license population. The reduction will increase the difference between the Bureau's proposed budget and licensing fees.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above.

**Comment 55-b:** Instead of the proposed increased license renewal fee of \$1,300 per year, the commenter supports a fee increase corresponding to the rising cost of living since 2008. Also, instead of the suggested \$1,300, the amount should be increased from \$700 to \$990 accordingly to the cost of living. The proposed license fee increase is significantly more than this adjustment.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-b, above.

**Comment 55-c:** Though the commenter recognizes that for the Bureau to continue, it must be financially sustained, as an alternative to a substantial license fee increase, she suggests that the Bureau and the Legislature focus on increasing the license pool and reducing Bureau expenses. To increase the licensee pool, she urges the Bureau and the Legislature to eliminate the qualified licensing exemption currently afforded enrolled agents under Business and Professions Code Section 6530. The current exemption provides that an enrolled agent is exempt from fiduciary licensure provided the enrolled agent does not act beyond the scope of their enrollment with the IRS when acting as a fiduciary. Also, she states enrolled agents are registered through a federal program that authorizes them to prepare income tax returns and represent taxpayers before the IRS concerning collections, audits, and appeals and are not subject to state oversight, licensure, enforcement, or other protections which benefit California consumers. The services required of a professional fiduciary acting in a representative capacity extend well beyond tax return preparation. She asks the Bureau to please include the elimination of enrolled agents under Business and Professions Code Section 6530. Alternatively, she suggests Section 6530 should clarify that enrolled agents, acting as professional fiduciaries and thus acting beyond the scope of their enrolled agent registration, should know their requirements to be licensed as professional fiduciaries.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-b and 1-15-c, above.

While the Bureau is making every effort to examine and eliminate barriers to licensure where feasible, proposed statutory changes to increase the licensing population or to reduce the Bureau's expenses are outside of the scope of this pending regulatory proposal.

**Comment 55-d:** The commenter asks the Bureau to re-examine the assumptions being relied on to support the license fee increase. Except for requirements to post fee schedules on a licensee's website, she believes infractions referenced under AB 1194 are already reported to the Bureau. Accordingly, she's not convinced that requirements under AB 1194 will substantially increase complaints.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-d, above.

**Comment 55-e:** Additionally, to address concerns that AB 1194 requirements will result in additional investigations, the commenter suggests that section 6580 of the licensure act amendment provide that where the Court refers a judicial determination finding a licensee to have breached a fiduciary duty or abused an adult, that judicial decision can be relied on as determinative of the issue. And, though the Bureau is responsible for moving forward with appropriate disciplinary action, no further investigation as to the problem would be required. Thus, the Bureau would be relieved of the time and expense of a duplicative inquiry.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-e, above.

### **56. Maggie Watson Email received July 19, 2023**

**Comment 56-a:** The commenter states she is a California licensed fiduciary. She loves this business and knows that she is helping many folks who, otherwise, would be stuck when finding someone with a fiduciary's ethical standard. This work is critical to the well-being and health of clients. She recently heard that the Fiduciary Bureau is proposing fee increases and wants to comment on it. She believes the fee increase will be a barrier to new fiduciaries joining this profession. She states 6,000 baby boomers are retiring each day and the service professional fiduciaries provide is critical to those who have no one to do this work or want to preserve the family relationships and name a fiduciary to act in legal matters. By increasing the fees, fewer people will step forward to do this challenging and rewarding work.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above. The Bureau agrees with the commenter that professional fiduciaries provide important services to California's most vulnerable residents, and more are needed.

**Comment 56-b:** The commenter states the profession pays some of the highest fees in the State of California, while the State Bar collects \$510 per year from attorneys. Attorneys clearly make more income than fiduciaries and yet their fees are much less. She understands there are other fees that attorneys are required to pay, and that is the same with professional fiduciaries. Professional fiduciaries have class costs to keep up their continuing education units, as well as membership with PFAC and other associations that they partner with. Further, building contractors pay \$450 as a sole practitioner which is what most of the fiduciaries are.

The commenter states in her opinion, the fees proposed are excessive and will result in less people will join this profession. Existing fiduciaries will consider not renewing and moving to another profession. She suggests that the Bureau start collecting fees from enrolled agents who act as fiduciaries as well as other professionals who do this

important work.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-a and 26-b, above.

The Bureau acknowledges the costs of continuing education requirements and other business expenditures, including professional association memberships, for professional fiduciaries. Notwithstanding these expenses, the proposed fee increases in this regulation are required to sustain the Bureau's operations.

Requiring enrolled agents or other professionals not already licensed by the Bureau as professional fiduciaries to contribute to the Fund would require a statutory change and is outside of the scope of this pending regulatory proposal.

**Comment 56-c:** The commenter states she also wants to address the investigative arm of the Bureau's work. If a court deems a fiduciary to have breached their fiduciary duty, she does not think the Bureau also has to investigate that fiduciary resulting in costs to the Bureau. She suggests the judicial determination address the issue and the Bureau move forward with disciplinary action without investigation. This would save the Bureau time and expense of a duplicate investigation.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-e, above.

#### **57. Jerry Desmond, Professional Fiduciaries Association of California Email received June 6, 2023**

**Comment 57-a:** The Professional Fiduciary Association of California urges the agency to refrain from proceeding with the regulations to increase license fees by 85% and to instead take actions to reduce the amount of the increase. The Association finds the proposed fee increase would be astronomical: the application fee [would increase] from the current \$400 to \$600; the initial license fee [would increase] from the current \$700 to \$1,300; and the renewal licensee fee [would increase] from the current \$700 to \$1,300. The impact of the increase would be immediate on January 1, 2024, and would not be phased in. The magnitude of the increase will be a significant barrier to individuals who would otherwise enter the profession, as well as many who are just developing their businesses. The license population will be reduced.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a. If, by noting the increase will not be 'phased in,' the commenter is suggesting a gradual increase in fee amounts, the Bureau notes a more gradual implementation timeline would

not address the current deficit facing the Bureau.

**Comment 57-b:** The Association recommends several actions that can be taken to reduce the amount of the fee increase, as set forth in PFAC's March 24 position letter on AB 1262 [Note: the position letter was attached to this comment]. PFAC does not agree that the requirements of AB 1194 will result in a substantial increase in complaints and objects to a fee increase based on the perceived potential, but unknown, increase in complaints. The Association suggests that the Legislature re-examine the assumptions that are being made to support the increase.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. While this comment was directed at actions to be taken by the Legislature, the Bureau incorporates by reference its response to comment 1-15-d, above, as the underlying facts remain the same.

**Comment 57-c:** The Association suggests that the licensure act be amended to provide that a court order or other determination of an issue is binding on the Bureau. This direction will eliminate the PFB's need to commence a parallel or duplicative investigation.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-e, above.

**Comment 57-d:** The Association urges the Legislature to revise the licensure act to clarify that, in those instances where the relief sought by the consumer extends beyond license discipline, the PFB is required to make consumers aware of the most appropriate means available to the consumer to secure relief. This will eliminate unproductive investigations.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau is making every effort to create efficiencies in its investigative processes where feasible. If the commenter is proposing statutory revisions regarding the investigative process, such revisions are outside of the scope of this pending regulatory proposal. The Bureau further notes it's the Bureau's standard practice to advise complainants of other avenues to seek relief as appropriate when acknowledging the receipt of a complaint and again notifying a complainant that their complaint has been closed.

**Comment 57-e:** The Association supports the Bureau’s assessment that allowing Professional Fiduciaries to organize as an entity would benefit the consumer, PFAC urges the Legislature to revise the Moscone-Knox Professional Corporation Act [Corporations Code section 13400 *et seq.*] to allow professional fiduciaries to organize as Professional Corporations.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. Statutory changes to authorize professional fiduciaries to organize as professional corporations is outside of the scope of this pending regulatory proposal.

**Comment 57-f:** The Association urges the Legislature to reject a new law stating that a licensee that aids an unlicensed individual to perform work that requires a license would subject the licensee, to discipline by the Bureau. PFAC believes this to be unnecessary and may ultimately lead to increased costs for unproductive investigations.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. This comment is related to a provision in the Bureau’s pending sunset legislation (AB 1262, Berman, 2023) and is outside of the scope of this pending regulatory proposal.

**Comment 57-g:** Some of the actions necessitate amendments to the law. The sunset extension measure AB 1262 provides an opportunity for such revisions.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. This comment is related to the Bureau’s pending sunset legislation (AB 1262, Berman, 2023) and is outside of the scope of this pending regulatory proposal.

Attached to the above comment is a March 24, 2023, letter from the Association addressed to the chairs of the Senate and Assembly Business and Professions Committees in response to their March 16, 2023, oversight hearing regarding the Bureau. The letter makes recommendations to the Legislature for statutory changes outside of the scope of this pending regulatory proposal.

### **58. Analisa Alvarado, received July 27, 2023**

**Comment 58-a:** The commenter states professional fiduciaries represent an important field in society, helping to provide service to the elderly, disabled, and minors. The commenter notes the professional fiduciary licensing population is small due to the rigorous licensing requirements. The commenter states that while she understands that there are projected fee increases being discussed to help offset the costs of maintaining the Bureau, she asks the Legislature to ask the Bureau to reconsider the fee increase or enact a sliding scale approach.



**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-a and 20-a above. The Bureau agrees with the commenter that professional fiduciaries provide important services to California's most vulnerable residents, and more are needed.

**Comment 58-b:** The commenter states having funds set aside from the annual State budget to offset costs for the California Fiduciary Bureau operating expenses would be the best option.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 31-e, above.

**Comment 58-c:** The commenter states the current Professional Fiduciary license renewal fee is \$700 per year. The proposed new renewal fee would be \$1,300 per year. Just to demonstrate the difference, an attorney renewing their California State Bar License only pays \$515 per year (and attorneys are paid at a much higher rate than Professional Fiduciaries). As a relatively new licensee, \$1,300/year would be a tremendous burden to her burgeoning business. This fee increase would also negatively influence other prospective professional fiduciaries from entering their overloaded field. The end result will be more seniors, disabled folks, and minors who may go without assistance or representation.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a above.

**Comment 58-d:** The commenter states It takes a while to build a professional fiduciary practice, especially when a fiduciary, such as herself does not have the advantage of purchasing a retiring fiduciary's practice. The commenter further states many cases are court supervised and may only be approved for fees until well after a year.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 20-c, 26-b, and 30-b above.

## II. August 3, 2023, Hearing

Below are the summarized comments the Bureau received regarding the proposed text during the public hearing held on August 3, 2023, followed by the Bureau's responses.

### 59. Jerry Desmond, Professional Fiduciaries Association of California, via In-Person Testimony

**Comment 59-a:** The commenter stated he was speaking on behalf of the Professional Fiduciaries Association of California (Association) and its members many of whom aren't able to join today probably, because they're working and engaging with the folks that they serve. He stated he appreciated the chance and the opportunity to provide comments.

He states the Association was cosponsor of the licensure act, and certainly recognize that the fees have not been increased since 2008. He states that the Association believes that a reasonable fee increase is appropriate and is important to continue the vital services of the Bureau. The Association's concern is the amount of the fee and impact it would have. He goes on to say the fee increase for renewal would increase from \$700 to \$1,300 a year, which is quite high in terms of the impact on small businesses. Many of the members of PFAC are small sole proprietors and the impact on them being able to continue would be detrimental.

The commenter states the fee impact would be detrimental to new applicants and would present a barrier to entry and an obstacle to those trying to get into the profession. Further, the Association finds the impact will be detrimental to the mutual goal of the Bureau and its mission statement and in the legislative direction that's been given to increase the license population.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-a and 1-15-b, above. The Bureau will continue to work with the Legislature and stakeholders to fulfil the Bureau's mission statement through AB 1262 (Berman, 2023).

**Comment 59-b:** The commenter states they understand that when the licensure act was first enacted into law, the reason that the authority to establish fees in a reasonable amount was established in the statute and Business and Professions Code 6592 was that it wasn't known what the license population would be and everyone now knows that the population isn't the 1,300 that was anticipated, but about 842. The Association believes that now would be an appropriate time to therefore align the fee authority and the procedure for establishing fees to place that into the Business and Professions Code, rather than have it established by regulation. This would conform with the majority of the license populations in the Department of Consumer Affairs.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 40-d, above.

**Comment 59-c:** The commenter states there's an opportunity to right-size the license population to ensure that those that are actually providing services are licensed as required and subject to the licensure act. Therefore, they believe there is an opportunity to look at both the qualified and the complete exemptions to the Act [Professional Fiduciaries Act] for certified public accountants, and for enrolled agents to ensure that they are conforming with just what is allowed and not overlapping with the Fiduciary Act.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-c, above.

**Comment 59-d:** The commenter states there's an opportunity to ensure that there are efficiencies, and the efficiencies could be accomplished by ensuring that if there's a court order or finding or determination of abuse of a violation of statute, or of a breach of fiduciary duty that court finding a determination would be [unintelligible] useful in the enforcement of inappropriate activities.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-e, above. The Bureau is making every effort to create efficiencies in its investigative processes where feasible. If the commenter is proposing statutory revisions regarding the investigative process, such revisions are outside of the scope of this pending regulatory proposal.

## 60. Pearson Miller via WebEx Testimony

**Comment 60-a:** The commenter is a licensed professional fiduciary in El Cerrito and has been licensed approximately 12 years. He also is the president of the East Bay chapter of PFAC and although he states he is not speaking on behalf of PFAC he seconds everything that Jerry Desmond had to say [see comment 59, above].

He states he is a sole proprietor, who works on his own and feels the increase in fees will have not the intended effect of raising income for the Bureau, because he thinks it will discourage people from entering the profession and discourage people from renewing their licenses. He goes on to say that he has mentored new fiduciaries for six or seven years and talking to them about getting their licenses and what the profession is about. He states that one of their biggest concerns is how to make a living and start a living as a professional fiduciary.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-a, 20-c, and 30-b, above.

**Comment 60-b:** The commenter states the [licensing] fees are high, liability insurance is very, very high, and the attitude of many courts in California is to cut any fee petition that a fiduciary might present, and when all of that is taken into account, it's very difficult to find individuals who want to take on this career.

He further states this career, all can agree is desperately needed to protect and serve many vulnerable populations in California. The career relieves some of the pressure on the public guardian offices, which helps the taxpayer because there's less money that needs to be spent by public guardians.

The commenter states that the final barrier is a great deal of personal liability by every fiduciary in California and if it's going to be difficult to make a living as a professional fiduciary and raising fees further discourages people it's not going to accomplish the Bureau's mission and the fee increase will actually be detrimental for that mission. Lastly, he states that he objects to the increase in fees.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-a, 20-c, 26-b, and 30-b above. The Bureau agrees with the commenter that professional fiduciaries provide important services to California's most vulnerable residents, and more are needed. If professional fiduciary services alleviate the need for public guardian services, the Bureau agrees this would increase the need for more professional fiduciaries.

## **61. Mark Olson via WebEx Testimony**

**Comment 61-a:** The commenter states he is a licensed fiduciary and a member of PFAC, and while he is not speaking for the organization, he has been a past president. He thinks that the cost attributed to AB 1194 of \$705 is probably going to be something that shouldn't be there mainly because that's mostly what the courts do, and this will be like a double jeopardy type thing for fiduciaries. [Professional fiduciaries] will be reprimanded by the courts and then also possibly, have the same investigation [by the Bureau] based on the court's stuff.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-d and 1-15-e, above.

**Comment 61-b:** The commenter further says that while it states in [the Bureau's] different proposal there that the Bureau doesn't create or eliminate business he differs to that because when a regulation is made that does affect whether, or not the creation or elimination of businesses occurs. Further he states that when you do that if you raise the bar, so high for the getting in and renewing fees then it is a detriment to creating new fiduciaries and the pool that [professional fiduciaries] will be in. It would encourage elimination of the single proprietor such as himself and the Bureau is going to decrease the pool and have to raise rates again.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above.

**Comment 61-c:** The commenter asks the Bureau to think more about AB 1194, its impact, and if the Bureau can shift it to the courts because that's where it really should be.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-d, above. If the commenter is suggesting a proposed statutory changes to amend the Bureau's investigatory authority, the Bureau incorporates by reference its response to comment 1-15-e, above.

## **62. Heather Fisher via In-Person Testimony**

**Comment 62-a:** The commenter said thank you for allowing her the opportunity to [unintelligible] and briefly wanted to say that she agrees with the comments made from her [unintelligible]. She wanted to reiterate that she took another look at the exemptions for enrolled agents thinks this is an excellent opportunity to address the concerns with thinning out the pool of applicants. She definitely understands the need to continue to support [the Bureau] and would encourage the Bureau not to miss out on the opportunity to ensure that the appropriate licensures are being used for the appropriate work that is being done.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-c, above.

### 63. Lori Cochran via WebEx Testimony

**Comment 63-a:** The commenter states she agrees with everything the other fiduciaries have said today, but additionally wanted to let the Bureau know that she views this sort of as just a scale where she looks at their professional trade as a necessity for society. [Professional fiduciaries] serve vulnerable populations and more are needed. She states there are two issues - one is if fees are increased in any kind of a way, that will definitely pare down the number of professionals serving.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above. The Bureau agrees with the commenter that professional fiduciaries provide important services to California's most vulnerable residents, and more are needed.

**Comment 63-b:** The commenter further states [professional fiduciaries] already are facing, as was already stated, an insurance increase that's out of this world making it very difficult to practice as it is. [Professional fiduciaries] may be able to get around those issues, but to have its own licensing Bureau going against their success is very difficult to swallow.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 26-b, above.

**Comment 63-c:** The commenter goes on to state that on the other side of that, she sees the problem of the value of education. She states if [the Bureau] just opened the door and allowed a ton of people to be a licensed as professional fiduciaries, [it] runs the risk of them not really being qualified and we definitely do not want that. Lastly, she states that somehow offsetting the costs of operating the Bureau ought to be tackled first rather than having it fall on the shoulders of the necessary professionals.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. Modifying the eligibility of applicants for licensure would require a statutory change and is outside of the scope of this pending regulatory proposal.

While the Bureau is making every effort to examine and reduce its expenses, as discussed in the Bureau's response to comment 1-15-a in this Final Statement of Reasons, the Bureau faces insolvency and the inability to sufficiently implement AB 1194 if fees are not raised to the amounts proposed in this regulation.

## 64. Emmah Russell via WebEx Testimony

**Comment 64-a:** The commenter states she too is a licensed member and wanted to be heard as a newly licensed member. She's only been licensed for about a year and is also new to the area of Sacramento and found it very difficult to develop a practice and has been paying \$2,000, and now it's going to \$4,000, a year for insurance when she doesn't have any clients as a fiduciary. She states this is an extraordinary hump to get over. And now, with the license fees proposed to increase, she doesn't see working in this profession very long, maybe another year or so. She's been very active in a couple of the PFAC chapters in the Sacramento and Placer County areas.

She states she was inspired to be a fiduciary because she had worked as a geriatric care manager for about eight years. She was inspired by someone she considered to be exemplary in the area of ethics and when COVID time came her husband said, why don't you take that course? She states she then spent time studying and learning the profession, the ins and outs, and passed the exam. Now she still earns a living as a care manager, but not as a fiduciary yet, because the hurdles are pretty high, and this increase is not helping.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-a, 20-c, 26-b, and 30-b, above.

**Comment 64-b:** The commenter states she has worked privately with an enrolled agent for her own finances, who was also exemplary for over a dozen years, and [the enrolled agent] would be careful to tell her that she was not a fiduciary and [the commenter] might want to think about this when they were doing her taxes. The commenter thinks that [the enrolled agent's] office is probably well aware of not paying fees that exist in the realm of fiduciary work, and it's an edge. She suggests instead of increasing fees for licensed fiduciaries, as her previous colleagues have spoken today, require CPAs and enrolled agents pay a fiduciary fee as well.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-c, above. Regarding requiring CPAs and enrolled agents to pay a licensing fee, the Bureau incorporates by reference its response to comment 56-b.

## 65. James Counts via WebEx Testimony

**Comment 65-a:** The commenter stated that during a sunset review of the Bureau several years ago, he made a proposal in a hearing at the Legislature to have a requirement for every trust in the fiduciary, but not the entity, to file with the 541 form [California Fiduciary Income Tax Return – Form 541], or the 1040 [U.S. Individual Income Tax Return – Form 1040] if it's an individual, or not to furnish information on who the fiduciary is and to charge a \$10 fee per report filed. The fee would be paid by the entity and not the fiduciary, and then [require] the form to be re-filed every three years to establish the status of the fiduciary and also, if a fiduciary changed or the trust or estate closed, or it opened up at that point, in time, the form had to be filed out. At that time, he checked with FTB [Franchise Tax Board] and he forgets the exact number, but it's like over 300,000 541s are filed with FTB per year.

He states that in effect if you are charging a \$10 fee every time a report was filed, collected through 541 returns and paid by FTB to the Bureau, it would increase funding to the Bureau. Initially the Bureau would get, based on over 300,000 returns, \$3 million in the initial [year] that it was set up and then again every three years for re-filings. While initially, most of them would be in the third year but over time new ones would start and some drop off, it would start even out every year, potentially getting 100,000 or more notices and if [FTB] were charging a \$10 fee, the Bureau would be getting a \$1 million dollars or so a year. The commenter states the Bureau cannot do this already on its own, but if [the Bureau] can get the Legislature to process and authorize this fee structure, it would be another means of funding the Bureau without having a major increase in the licensing fees.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-a, and 31-e, above.

Further, proposed statutory changes to create a funding source for the Bureau aside from licensing fees are outside of the scope of this pending regulatory proposal, and would be difficult to implement and likely increase the Bureau's operational costs. Bureau.



## 66. James Counts via WebEx Testimony

Mr. Counts testified a second time at the August 3, 2023, hearing; his comments are responded to separately in this Final Statement of Reasons.

**Comment 66-a:** The commenter states another aspect of this [issue] is the difficulty for professional fiduciaries' net profits as their expenses are high, from fees and insurance. He states if there's something that could be done by the professionals to convince the Legislature to authorize the courts to authorize higher fees to fiduciaries, not necessarily a major increase, but raising what fiduciaries may be able to charge the entity, the trust and estates. If they could get higher revenue to themselves, it would offset the difficulty of having to pay higher license fees.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-a and 30-b, above.

Proposed statutory changes to authorize courts to approve higher fees for professional fiduciaries are outside of the scope of this pending regulatory proposal.

## 67. Molly Maroney via Written Comment Submitted via WebEx

**Comment 67-a:** The commenter states she unfortunately missed most of the comments. She thinks the problem is that the current increase came as a shock - an 86% increase of \$600. She suggests the increase be split, increase the fee by \$300 and add a modest increase annually.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-a and 34-b, above. Increasing the fees by \$300 and then adding a modest increase annually would not address the current deficit facing the Bureau.

## 68. Marilyn Kriebel via WebEx Testimony

**Comment 68-a:** The commenter states she is a professional fiduciary here in California, and like many other fiduciaries that have spoken up, is quite concerned about the magnitude of the increase of professional fiduciaries license fee. She states they are concerned that this will be a barrier for not only for new fiduciaries in joining this field, but for existing fiduciaries to continue in this field, thereby only exacerbating the issue of this disparity between fees being collected and expenses on the Bureau's side.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above.

**Comment 68-b:** The commenter encourages the Bureau and legislators to look at alternatives that would include perhaps a more modest fee increase.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-a, above. The Bureau notes the fee increases in this proposal are designed to address current revenue deficits and pursuing a more modest fee increase would not address the current deficit facing the Bureau.

**Comment 68-c:** The commenter asks the Bureau to look at ways to increase the licensee pool by eliminating certain exemptions or at least making them clear that the exemption is a very qualified and very narrow exemption.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-c, above.

**Comment 68-d:** The commenter states the Bureau's responsibilities can be limited in some manner that would not curtail their responsibilities to investigate but would provide them with other tools by which they could spend less time on perhaps investigations.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comment 1-15-e, above. The Bureau is making every effort to create efficiencies in its investigative processes where feasible. If the commenter is proposing statutory revisions regarding the investigative process, such revisions are outside of the scope of this pending regulatory proposal.

## 69. Nancy Howland via WebEx Testimony

**Comment 69-a:** The commenter states she is a professional fiduciary. She states she joined the meeting a little late but is wondering if it has been considered to charge others that are acting in the same profession as professional fiduciaries. She further states, for example, enrolled agents and CPAs could also contribute to the Bureau with a licensing fee.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau incorporates by reference its response to comments 1-15-c and 56-b, above.

**Comment 69-b:** The commenter asks if it has been considered to rule out some of the insignificant complaints that the Bureau are given the duty to investigate.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau reviews every complaint consistent with Business and Professions Code sections 6516 and 6580, to fulfil its duty of public protection. The Bureau is making every effort to create efficiencies in its investigative processes where feasible. If the commenter is proposing statutory revisions regarding the investigative process, such revisions are outside of the scope of this pending regulatory proposal.

**Comment 69-c:** She asks if there is the possibility of a filing fee that somebody can pay to file a complaint in order to alleviate some of the less discerning complaints.

**Response:** The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon. The Bureau reviews every complaint consistent with Business and Professions Code sections 6516 and 6580, to fulfil its duty of public protection. The Bureau is making every effort to create efficiencies in its investigative processes where feasible. If the commenter is proposing statutory revisions regarding the investigative process, such revisions are outside of the scope of this pending regulatory proposal. Further, requiring a filing fee for complaints may dissuade the public from reporting legitimate complaints.

**Incorporation by Reference**

There are no forms being incorporated by reference.

**Fiscal Impact**

The Bureau estimates the proposed regulations will increase revenues by approximately \$509,900 per year as follows:

<b>Professional Fiduciaries Bureau</b>			
<b>Type</b>	<b>Annual Population*</b>	<b>Increase Amount</b>	<b>Cost of Increase</b>
Application	99	\$200	\$19,800
Initial License	77	\$700	\$53,900
Renewal License	727	\$600	\$436,200
<b>Total:</b>			<b>\$509,900</b>

\*Based on 3-year historical data.

The proposed fee levels are projected to result in total annual revenues of \$1,104,600 per year and up to \$11,046,000 over a ten-year period as follows:

Professional Fiduciaries Bureau - Revenues														
Type	Applications Per Year	Fee Amount	Years Ongoing										Total	
			1	2	3	4	5	6	7	8	9	10		
Application	99	\$600	\$59,400	\$59,400	\$59,400	\$59,400	\$59,400	\$59,400	\$59,400	\$59,400	\$59,400	\$59,400	\$59,400	\$594,000
Initial Licensure	77	\$1,300	\$100,100	\$100,100	\$100,100	\$100,100	\$100,100	\$100,100	\$100,100	\$100,100	\$100,100	\$100,100	\$100,100	\$1,001,000
Renewal Licensure	727	\$1,300	\$945,100	\$945,100	\$945,100	\$945,100	\$945,100	\$945,100	\$945,100	\$945,100	\$945,100	\$945,100	\$945,100	\$9,451,000
<b>Total Revenues:</b>			<b>\$1,104,600</b>	<b>\$1,104,600</b>	<b>\$1,104,600</b>	<b>\$1,104,600</b>	<b>\$1,104,600</b>	<b>\$1,104,600</b>	<b>\$1,104,600</b>	<b>\$1,104,600</b>	<b>\$1,104,600</b>	<b>\$1,104,600</b>	<b>\$1,104,600</b>	<b>\$11,046,000</b>

The Bureau notes, the proposed fee levels are marginally lower than actual workload and costs to process and approve applications, initial license and renewal license applications as follows:

Professional Fiduciaries Bureau					
Type	Workload Costs	Enforcement Allocation*	Total Costs Per	Proposed Fee	Difference
Application	\$601	\$0	\$601	\$600	(\$1)
Initial License	\$606	\$705	\$1,311	\$1,300	(\$11)
Renewal License	\$615	\$705	\$1,320	\$1,300	(\$20)

\*Includes: Enforcement & AB 1196 Cost Allocations

While the proposed fee levels are less than actual costs, the Bureau is opting to set the fee levels as a policy decision to better align fees with actual costs and to make the initial and renewal amounts equal. Any additional costs will be absorbed within existing resources.

The Bureau notes, this proposal will increase initial and renewal license fees to include anticipated programmatic and enforcement-related costs resulting from Chapter 417, Statutes of 2021 (AB 1194), which are estimated at \$705 per application as follows:

Professional Fiduciaries Bureau	
Investigation & Attorney General	\$180,000
AB 1194 BCP - Enforcement	\$387,000
<b>Total:</b>	<b>\$567,000</b>
Licensee Population	804
<b>Enforcement-Related Costs Allocation</b>	<b>\$705</b>

The proposed fee amounts are required to ensure the Bureau has sufficient resources for costs related to processing applications, issuing initial and renewal licenses, and implementing the provisions of AB 1194.

The Bureau notes, because the inactive and retired license status designation recently became effective in January 2023, the Bureau does not currently have sufficient data to provide an estimate of individuals that may opt to reinstate and does not have fiscal workload or revenue estimates related to license reinstatement at this time.

The Bureau estimates one-time information technology (IT) costs of \$4,000 to update

cashiering and accounting software. Any IT costs will be absorbed within existing resources.

The regulations do not result in any costs or savings in federal funding to the state.

**No Reports Required**

There are no reports required by this regulatory proposal.

**Nonduplication Statement - 1 CCR § 12**

These proposed regulations do not republish a state or federal statute or regulation and satisfy the “clarity” standard of Government Code subsection 11349.1(a)(3).