

**TITLE 16
PROFESSIONAL FIDUCIARIES BUREAU
DEPARTMENT OF CONSUMER AFFAIRS**

**NOTICE OF PROPOSED REGULATIONS CONCERNING
INACTIVE OR RETIRED LICENSE STATUS; FEES NON-REFUNDABLE**

NOTICE IS HEREBY GIVEN that the Professional Fiduciaries Bureau (Bureau) of the Department of Consumer Affairs is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing via a WebEx event as follows:

Virtual Hearing via WebEx
Date: Tuesday, December 28, 2021
Time: 10:00 a.m.

To access the WebEx event, attendees will need to click the following link and enter their first name, last name, email, and the event password listed below:

<https://dca-meetings.webex.com/dca-meetings/j.php?MTID=mceb9601cbe1ac1ec58432d921b1dca5c>

If joining using the link above
Event number: 2483 049 8249
Event password: PFB12282021

If joining by phone
+1-415-655-0001 US Toll
Access code: 248 304 98249
Passcode: 73212282
During hearing, use *3 to raise/lower hand

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Bureau at its office not later than **Monday, December 27, 2021**, or must be received by the Bureau at the hearing.

The Bureau, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Business and Professions Code (BPC) sections 462, 464, 6517, 6542, and 6592 and to interpret, implement, and make specific sections 462, 464, 6531, 6541, 6542, and 6592, the Bureau, is considering changes to Division 41 of Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST

A. Informative Digest

- Adopt Title 16 CCR sections 4563, 4564, 4565, 4566, 4567, 4568, 4569, 4570, 4571, 4572, 4573, 4574, 4575, 4576, and 4581; amend 16 CCR sections 4560, 4562, and 4580.

The Professional Fiduciaries Bureau (Bureau) was created by legislation enacted in 2007 (SB 1550, Figueroa, Chapter 491, Statutes of 2006) to license and regulate non-family member professional fiduciaries, including conservators, guardians, trustees, personal representatives of a decedent's estate, and agents under durable power of attorney as defined by the Professional Fiduciaries Act (BPC section 6500 et seq.). The Bureau is under the authority of the Department of Consumer Affairs. Professional fiduciaries provide critical services to seniors, persons with disabilities, and children. They manage matters for clients including daily care, housing and medical needs, and offer financial management services ranging from basic bill paying to estate and investment management.

Existing law, BPC sections 462, 464, and 6542 respectively, authorize the Bureau to adopt regulations establishing an inactive or retired license category for persons who are not engaged in the practice of a professional fiduciary. The proposed new regulation sections establish a system to apply for, renew, and restore inactive and retired licenses. It also will define that an inactive or retired license is not allowed to perform any licensed activity. The changes and additions to regulations through this proposed rulemaking are as follows:

CCR 4560 will be updated to differentiate between renewal of an active license and other renewal types.

CCR 4562 will be updated to indicate delinquency fees and accrued and unpaid renewal fees shall not apply to a license placed in an inactive or retired status pursuant to Section 4564 or 4572.

Article 8.3 related to inactive license status will be added to Division 41 of Title 16 of the CCR, beginning with section 4563, which will establish definitions for terms used in the Article. Section 4564 will describe the effect of an inactive license status, limitations on license usage by inactive status holders, and exemption from continuing education requirements by inactive status holders.

CCR 4565 will establish eligibility requirements for licensees seeking to place their license in inactive status. CCR 4566 will outline the application process and contents for those seeking inactive status. CCR 4567 will describe the renewal requirements of inactive license status holders and grounds for the Bureau's refusal to renew inactive licenses.

CCR 4568 will describe the process for reinstatement of inactive license status to active license status, ongoing continuing education requirements for reinstated licensees, and grounds for denial of reinstatement. CCR 4469 will describe the consequences for failure to renew or reinstate an inactive license. CCR 4570 will note the Bureau's authority to discipline inactive licensees.

Article 8.5 related to retired license status will be added to Division 41 of Title 16 of the CCR, beginning with section 4571, which will establish definitions for terms used in the Article. Section 4572 will describe the effect of a retired license status, limitations on license usage by retired status holders, exemption from annual reporting requirements by retired status holders, and ongoing change in address notification requirements by retired status holders.

CCR 4573 will establish eligibility requirements for licensees seeking to place their license in retired status. CCR 4574 will outline the application process and application requirements for those seeking retired status.

CCR 4575 will describe the process for reinstatement of retired license status to active license status, ongoing continuing education requirements for reinstated licensees, and grounds for denial of reinstatement. CCR 4576 will note the Bureau's authority to discipline retired licensees.

CCR 4580 will be amended to reflect the fees related to an inactive or retired license, and will also be amended to reflect that delinquency fees shall not apply to a license placed in an inactive or retired status pursuant to Section 4564 or 4572 of this Division.

Finally, section 4581 will be added, indicating that fees are nonrefundable except as described in Section 158 of the Business and Professions Code, regardless of whether an application is withdrawn or abandoned, an applicant is found ineligible, the applicant's qualifications are found insufficient, or the licensee stops practicing or becomes unable to practice.

B. Policy Statement Overview/Anticipated Benefits of Proposal

This proposed regulation would allow professional fiduciaries who are not actively engaged in the practice of a professional fiduciary or any activity that requires him or her to be licensed by the Bureau to place their license in an inactive or retired status. The Bureau believes licensees would prefer an inactive

or retired status rather than delinquent or cancelled status.

C. Consistency and Compatibility with Existing State Regulations

The Bureau has evaluated this regulatory proposal and it is not inconsistent or incompatible with existing state regulations.

D. Reporting Requirements

A licensee applying for inactive or retired status would be required to submit an update of the most recent annual statement as required in section 6561 of BPC showing their caseload is under the requirements for licensure.

If a licensee applies for restoration of his/her license, the licensee is required to submit an updated annual statement as required in section 6561 of BPC and proof of completion of continuing education as described in section 4442 of the Bureau's regulations.

The Bureau does not license businesses and the present regulation does not directly impose a reporting requirement on businesses.

INCORPORATION BY REFERENCE N/A

ECONOMIC IMPACT ASSESSMENT

The Bureau has determined that this proposed regulatory action will not affect the creation or elimination of jobs within California, the creation of new businesses within California, the elimination of existing businesses in California and the expansion of businesses currently doing business within the state because the proposed regulation only seeks to create a new license status and does not impose or eliminate restrictions on businesses. Because this proposal only adds new license statuses, there are no direct benefits to the health and welfare of California residents, worker safety and the state's environment.

Nondiscretionary Costs/Savings to Local Agencies: None

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies and Costs or Savings in Federal Funding to the State:

The Bureau anticipates that the proposed regulatory action will result in program expenditures of \$9,744 in 2021-22, with estimated annual workload and costs ranging from \$9,744 to \$75,192 per year. The Bureau has estimated initial and renewal license fee revenues ranging from \$12,600 to \$46,200 per year.

This proposal will result in no costs or savings in federal funding to the state.

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement: None

Business Impact:

The Bureau has made an initial determination that this proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposed regulation only adds two optional classes of licenses and does not add or remove obstacles that would create adverse or beneficial economic impact affecting businesses.

Cost Impact on Representative Private Person or Business:

This regulation will affect licensees who choose to apply for an inactive or retired license. The cost for an inactive or retired license would be significantly less than the cost to renew an active license. The current renewal fee for an active license is \$700. The proposed one-time application fee for placement of a license in inactive status is \$350, with an inactive license renewal fee of \$350. The proposed fee to place an active license into retired status is \$350. The proposed cost for reinstatement for an inactive or retired license to active status is \$700 for the first 12 months plus a prorated amount defined in the proposed regulation to adjust the duration of the initial license period after reinstatement.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Bureau has determined that this proposed regulatory action would have no significant statewide adverse economic impact directly affecting small businesses, including the ability of California businesses to compete with businesses in other states. This regulation only gives licensees a different but optional license status that would reflect their ceasing to perform work for which an active license is required. These two new license statuses do not impose restrictions/requirements or remove restrictions/requirements on small businesses.

Benefits of Regulation:

The benefit of this regulation is that licensees would have the option to designate their license as inactive or retired instead of delinquent or cancelled. A delinquent or cancelled license status conveys a negative connotation to the public. Licensees have expressed concerns that a delinquent or cancelled license status makes it appear they have either been disciplined by the Bureau or allowed their license to lapse when they simply want to cease practicing as a professional fiduciary. In addition, this regulation

will make clear that inactive or retired licensees cannot practice while on their respective license status.

CONSIDERATION OF ALTERNATIVES

The Bureau must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency that would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally in implementing the statutory policy or other provision of law. The Bureau invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

INITIAL STATEMENT OF REASONS AND INFORMATION

The Bureau has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulation and of the initial statement of reasons, and all other information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Professional Fiduciaries Bureau at 1625 North Market Blvd., Suite S-209, Sacramento, CA 95834.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulation is based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Angela Cuadra
Address: 1625 North Market Blvd., Suite S-209
Sacramento, CA 95834

Telephone No.: (916) 574-7498
Fax No.: (916) 574-8645
E-Mail Address: fiduciary@dca.ca.gov

The backup contact person is:

Name: Rebecca May
Address: 1625 North Market Blvd., Suite S-209
Sacramento, CA 95834

Telephone No.: (916) 574-7340
Fax No.: (916) 574-8645
E-Mail Address: fiduciary@dca.ca.gov

Website Access: Materials regarding this proposal can be found at www.fiduciary.ca.gov.