

DEPARTMENT OF CONSUMER AFFAIRS
TITLE 16. PROFESSIONAL AND VOCATIONAL REGULATIONS
DIVISION 3.

PROFESSIONAL FIDUCIARIES BUREAU

NOTICE OF PROPOSED REGULATORY ACTION CONCERNING:
Fee Increase and Initial Licensure Period

NOTICE IS HEREBY GIVEN that the Professional Fiduciaries Bureau (Bureau) is proposing to take the action described in the Informative Digest below, after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at:

Department of Consumer Affairs
1625 North Market Blvd
1st Floor Hearing Room, Suite # S-102
Sacramento, CA 95834
Thursday, August 3, 2023
10 a.m.

WRITTEN COMMENT PERIOD

Written comments relevant to the action proposed, 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 no later than Wednesday, August 2, 2023, by 5 p.m.**, or must be received by the Bureau at the hearing.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by section(s) 6517 and 6538 of the Business and Professions Code (BPC), and to implement, interpret, or make specific BPC section(s) 6592, the Bureau is considering amending section(s) 4428, 4568, 4575, and 4580 of title 16 of the California Code of Regulations (CCR).

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

This regulatory proposal will amend Title 16 CCR sections 4428, 4568, 4575, and 4580.

The amendments to regulations through this proposed rulemaking are as follows:

CCR 4428(a) will clarify that an initial professional fiduciary license expires 12 months after issuance; will remove provisions aligning an initial license expiration date with the licensee's birth month; and, will remove the provision that no license shall be issued for less than 12 months or more than 24 months.

CCR 4428(b) will delete a cross-reference to CCR 4580 related to proration of initial licensing fees.

CCR 4568(c)(1) will clarify that the initial license period for an inactive license reinstated to active is 12 months.

CCR 4575 (c)(1) will clarify that the initial license period for a retired license reinstated to active is 12 months.

CCR 4580(a) will increase the fee for an initial application to take the licensing examination from \$400 to \$600 commencing January 1, 2024.

CCR 4580(b) will increase the fee for an initial license from \$600 to \$1,300, . CCR 4580(b) is also being amended to clarify that the increased fee amount will apply to applicants who pass the examination described in section 4500 on or after January 1, 2024. CCR 4580(b) will also remove a reference to the proration of initial licensing fees.

CCR 4580(c) will increase the fee for a renewal license application from \$700 to \$1,300. Section 4580(c) is also being amended to clarify the increased renewal fee will be effective for licenses expiring on March 31, 2024.

CCR 4580(f)(3) will increase the fee for the reinstatement of an inactive license to active from \$700 to \$1,300 commencing January 1, 2024. CCR 4580(f)(3) will also remove a reference to the proration of initial licensing fees.

CCR 4580(g)(2) will increase the fee for the reinstatement of a retired license to active from \$700 to \$1,300 commencing January 1, 2024. CCR 4580(g)(2) will also remove a reference to the proration of initial licensing fees.

Anticipated Benefits of Proposal

This regulatory proposal will allow the Bureau to remain solvent while implementing new statutory requirements and continuing to carry out its consumer protection mandate. This regulatory proposal will also clarify that the duration of an initial license shall not exceed 12 months better align it to existing statute. This alignment will also reduce up-front costs for licensees, improving access to licensure, and will simplify the licensing system by keeping the same length of time for initial licenses and renewal licenses.

This regulatory proposal does not affect the health and welfare of California residents, worker safety, or the state's environment.

Evaluation of Consistency and Compatibility with Existing State Regulations

During the process of developing this regulatory proposal, the Bureau has conducted a search of any similar regulations on these topics and has concluded that these regulations are neither duplicative, inconsistent, nor incompatible with existing state regulations.

DISCLOSURES REGARDING THIS PROPOSED ACTION

The Bureau has made the following initial determinations:

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: The Bureau indicates because the fees are already being assessed and the proposed regulations only increase the fee amount levels, no additional workload costs are anticipated.

The Bureau estimates the proposed regulations will increase revenues by approximately \$509,900 per year. The proposed fee levels are projected to result in total annual revenues of approximately \$1,104,600 per year and up to \$11,046,000 over a ten-year period.

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.

These regulations will not result any costs or savings in federal funding to the state.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

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

BUSINESS IMPACT ESTIMATES

The Bureau has made the initial determination that the proposed regulatory action to increase fees may have significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states; specifically, professional fiduciaries. The Bureau has made the initial determination that the proposed regulatory action to set an initial license period to one year and omit references to a prorated license fee would not have significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states; specifically, professional fiduciaries.

Without increasing fees, the Bureau will not be able to sufficiently implement the new requirements of Chapter 417, Statutes of 2021 (AB 1194) or meet its consumer protection mandate. This initial determination is based on the following:

- The fee for an initial application would increase by 50 percent. This amount may be prohibitive for new applicants who may decide to pursue another profession with a lower barrier to entry.
- The fee for an initial license application would increase by 117 percent. This amount may be prohibitive for new applicants who may decide to pursue another profession with a lower barrier to entry.
- The fees for a renewal license application, reinstatement from inactive to active, and reinstatement from retired to active would increase by 86 percent. This amount may be prohibitive for licensees who carry a small case load or who do not meet the threshold number of clients requiring licensure. These licensees may choose not to renew due to the increase, which may negatively impact the Bureau's revenue.

The following types of businesses would be affected:

- Professional fiduciaries

The following reporting, recordkeeping or other compliance requirements are projected to result from the proposed action:

- None

The Bureau considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit such proposals. Submissions may include the following considerations:

- (A) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (B) Consolidation or simplification of compliance and reporting requirements for businesses.
- (C) The use of performance standards rather than prescriptive standards.
- (D) Exemption or partial exemption from the regulatory requirements for businesses.

The rulemaking file includes the facts, evidence, documents, testimony, and/or other evidence which supports this determination.

Cost Impact on Representative Private Person or Business

The cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the Bureau follow. The regulations will increase Bureau application and license fees as follows:

- Application: \$400 to \$600
- Initial License: \$600 to \$1,300
- Renewal License: \$700 to \$1,300
- Reinstatement from Inactive to Active: \$700 to \$1,300
- Reinstatement from Retired to Active: \$700 to \$1,300

RESULTS OF ECONOMIC IMPACT ASSESSMENT / ANALYSIS:

Impact on Jobs / Businesses

The Bureau has made the initial determination that the proposed regulatory action will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Benefits of Regulation

The Bureau has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents, worker safety and state's environment:

This regulatory proposal would benefit the welfare of California residents because it would preserve the Bureau's fiscal solvency allowing it to continue protecting consumers through the licensing and regulation of professional fiduciaries.

This regulatory proposal does not affect worker safety because it is unrelated to worker safety.

This regulatory proposal does not affect the state's environment because it is unrelated to the environment.

Business Reporting Requirements

The regulatory action does not require businesses to file a report with the Bureau.

Effect on Small Business

The Bureau has made the initial determination that the proposed regulatory action to raise fees may negatively impact small businesses as the proposal would increase the application fee by \$200; the initial license fee by \$700; the renewal license fee by \$600; the reinstatement of an inactive license to active by \$600; and, the reinstatement of a retired license to active by \$600. The Bureau has made the initial determination that the proposed regulatory action to set an initial license period to one year and omit references to a prorated license fee would not have any impact on small business.

Without increasing fees, the Bureau will not be able to sufficiently implement the new requirements of AB 1194 or meet its consumer protection mandate.

Significant Effect on Housing Costs: None

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Bureau must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention 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 proposal described in this Notice; or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may submit comments to the Bureau in writing relevant to the above determinations at 1625 North Market Blvd., Suite S-209, Sacramento, California 95834.

AVAILABILITY OF STATEMENT OF REASONS AND RULEMAKING FILE

The Bureau has compiled a record for this regulatory action, which includes the Initial Statement of Reasons (ISOR), proposed regulatory text, and all the information on which this proposal is based. This material is contained in the rulemaking file and is available for public inspection upon request to the contact persons named in this notice.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, any document incorporated by reference, the ISOR, and all of the information upon which the proposal is based, may be obtained upon request from the Bureau at 1625 North Market Blvd., Suite S-209, Sacramento, California 95834.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments, 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, with the modifications clearly indicated, will be available for review and written comment for 15 days prior to its adoption from the person designated in this Notice as the 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.

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

All the information upon which the proposed regulations are 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 PERSONS

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

Name: Angela Cuadra
Address: Professional Fiduciaries Bureau
1625 North Market Blvd., Suite S-209
Sacramento, CA 95834
Telephone No.: 916-574-7498
Fax No.: 916-574-8645
E-Mail Address: angela.cuadra@dca.ca.gov

The backup contact person is:

Name: Rebecca May
Address: Professional Fiduciaries Bureau
1625 North Market Blvd., Suite S-209
Sacramento, CA 95834
Telephone No.: 916-574-7340
Fax No.: 916-574-8645
E-Mail Address: rebecca.may@dca.ca.gov

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Actions, the ISOR, and the text of the regulations with modifications noted, as well as the Final Statement of Reasons when completed, and modified text, if any, can be accessed through the Bureau's website at https://fiduciary.ca.gov/laws_regs/index.shtml.