

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

INITIAL STATEMENT OF REASONS

Hearing date: Thursday, 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.

INTRODUCTION

The Professional Fiduciaries Bureau (Bureau) was created within the Department of Consumer Affairs (Department) by the Professional Fiduciaries Act (Chapter 6 [commencing with section 6500] of Division 3 of the Business and Professions Code) (Act), added by Chapter 491 of the Statutes of 2006 (SB 1550, Figueroa) as part of the Omnibus Conservatorship and Guardianship Reform Act of 2006 (Chapters 490-93, Statutes of 2006 [SB 1116, Scott; SB 1550, Figueroa; SB 1716, Bowen; AB 1363, Jones]), to protect the “increasing number of people in the state [who] are unable to provide properly for their personal needs, manage their financial resources, or resist fraud or undue influence as well as fiscal, emotional, and physical harm,” and are therefore vulnerable to neglect or physical, emotional, or financial abuse by professional fiduciaries. (Chapter 491, Statutes of 2006, § 2.) The Act defines the “professional fiduciaries” who are subject to its provisions to include guardians, conservators, trustees, personal representatives of a decedent’s estate, and agents under durable power of attorney, with certain exceptions. (Business and Professions Code sections 6501 and 6530 [BPC §§ 6501, 6530].) The Act makes the Bureau responsible for licensing and regulating professional fiduciaries and enforcing licensing requirements. (BPC §§ 6510, 6518.) As of January 31, 2023, the Bureau licenses and regulates approximately 847 professional fiduciaries actively engaged in the profession as guardians, conservators, trustees, personal representatives of a decedent’s estate, and agents under durable power of attorney. This number fluctuates each month as applicants become newly licensed and current licensees retire or otherwise stop practicing. The Bureau has issued 1,355 licenses total as of January 31, 2023.

The protection of the public is the Bureau’s highest priority in exercising its licensing, regulatory, and disciplinary functions. (BPC § 6516.) The Bureau protects persons who seek and receive professional fiduciary services by, among other things, ensuring that licenses are issued only to eligible and qualified applicants (BPC §§ 29.5, 144, 480, 494.5, 6518, 6533, 6533.5, 6536, 6538, 6540); ensuring that licensees receive continuing education (BPC §§ 166, 6518, 6538, 6540, 6541); requiring licensees to submit an annual statement and ongoing reports with information confirming their

continued fitness for licensure (BPC § 6561; California Code of Regulations, title 16, section 4544 [16 CCR § 4544]); investigating complaints against licensees (BPC §§ 108, 129, 464(c), 6580); disciplining licensees for violations of the Act (BPC §§ 108, 118, 125.9, 141, 490, 6580, 6583, 6584); maintaining a file on each license and making certain information on the license publicly available, such as disciplinary history and license status (BPC §§ 27, 6534, 6580); and informing the public of its functions (BPC § 129(e)). BPC section 6517 gives the Bureau authority to “adopt, amend, or repeal ... regulations necessary to enable the [B]ureau to carry into effect the provisions of law relating to [the Act].”

Applicants seeking licensure as a professional fiduciary must submit an application fee, meet certain educational and/or experience requirements, pass a licensing examination, submit fingerprints, submit an application, and take 30 hours of pre-licensure coursework, among other requirements (BPC 6533). After meeting all requirements and passing the examination, an applicant must submit an initial license fee. Once licensed, a licensee must comply with various ongoing requirements including completing 15 hours of continuing education courses each year, submitting an annual statement, and paying an annual renewal fee. (BPC §§ 6538(b), 6541(b).) Licenses expire on the last day of the licensee’s birth month and the duration of an initial license is between 12 and 24 months (16 CCR § 4428). A professional fiduciary license expires one year after issue date [BPC § 6541 (a)]

Similar to other professional licensing programs under the Department, the Bureau is funded by licensing and renewal fees and does not draw any monies from the state’s General Fund. The Bureau’s application, initial licensure and licensure renewal fees have not increased since the Bureau began issuing licenses in 2008, despite steady and significant rising costs of doing business including increased salaries and benefits, increased attorney general fees, increased pro rata, increased office rent, etc.

Recent legislation (AB 1194 [Chapter 417, Statutes of 2021]) made significant changes to the Act. AB 1194 requires licensees, beginning January 1, 2023, to post a fee schedule to their internet website, if they have an internet website; or to provide a fee schedule to prospective clients prior to contracting for their services; or to provide a fee schedule upon request. AB 1194 also requires the Bureau to impose sanctions for certain violations of the Act upon a finding that the licensee breached a fiduciary or legal duty to a client that caused physical or financial harm or mental suffering or abused an elder or a dependent adult as defined by the Welfare and Institutions Code (WIC). AB 1194 further requires the revocation of a license upon finding that a licensee knowingly, intentionally, or willfully engaged in acts constituting abuse under WIC or caused serious harm through gross negligence or gross incompetence. Further, AB 1194 requires the court to report to the Bureau if it has imposed a penalty on a professional fiduciary, removed a professional fiduciary as a conservator or guardian for cause, or determined that a professional fiduciary has abused a conservatee.

PROBLEM BEING ADDRESSED AND PURPOSE

Problems Being Addressed:

Fee Increase

AB 1194 amended BPC sections 6580 and 6563, significantly increasing the Bureau's anticipated enforcement workload and associated enforcement costs. These new requirements will significantly increase the number of complaints received by the Bureau and their ensuing investigations, which necessitates additional staffing and enforcement resources to support the expected increases in Attorney General (AG) and Subject Matter Expert (SME) costs.

The Bureau assumes the following increases:

- Significantly increased number of complaints received from the public resulting in more investigations,
- Increased number of investigations as a result of reports from probate courts,
- Increased overall ongoing workload related to investigations and enforcement or disciplinary action, and,
- Increased AG and SME costs and other costs associated with administrative proceedings.

The Bureau currently employs only one Associate Governmental Program Analyst (AGPA) to investigate enforcement complaints and the current complaint volume is approximately 130 complaints per year. As a result of AB 1194, the Bureau estimates an additional 81 complaints per year and ensuing investigations and enforcement actions with various degrees of complexity.

Pursuant to AB 1194, BPC section 6563 (b) requires licensees to provide a fee schedule to prospective clients before contracting for their services or upon request, while BPC section 6563 (a) requires licensees who have an internet website to post a schedule of their fees on their internet website. The Bureau anticipates receiving three complaints per month, or 36 complaints per year, alleging failure to provide a fee schedule as required by 6563 (b). The Bureau anticipates opening 30 complaints for licensees who have not updated their websites to include a fee schedule, pursuant to 6563 (a).

BPC section 6580 requires the Bureau to impose sanctions on a licensee for breach of fiduciary duty that caused harm to a client or if the licensee abuses an elder or dependent adult. Further, this section requires the Bureau to revoke the license of an individual who knowingly, intentionally, or willfully breached a fiduciary duty to an elder or dependent adult that constitutes abuse of the client or caused serious physical or financial harm or mental suffering to a client through gross negligence or incompetence. AB 1194 requires the courts to notify the Bureau if the court imposes a penalty on a

licensee, removes a professional fiduciary conservator for cause, or if it determines that a licensee has abused a conservatee.

The Bureau anticipates opening an additional 15 complaints per year as a result of BPC section 6580, either received through reports from the court or by other persons or entities. This assumption is based on receiving approximately one or two cases per month, on average. It is estimated that approximately 11 of the 15 complaints (75 percent) will require a referral to the AG for disciplinary action.

Implementing the new requirements under AB 1194 cannot be absorbed under the Bureau's current resources. The Bureau was granted new spending authority via a budget change proposal (BCP) in the Budget Act of 2022 (Chapter 43, Statutes of 2022) to implement AB 1194.

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 whereby annual expenditures exceed revenues. This structural imbalance will lead to the Bureau's insolvency by fiscal year (FY) 2023-24 if additional funding via a fee increase is not obtained.

Further, it creates insufficient resources to enable the Bureau to carry out its consumer protection mandate. 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 reserve is decreasing and with the increased costs due to the amended statute, the Bureau is currently scheduled to become insolvent as early as FY 2024-2025 unless a fee increase is implemented through this proposed regulation.

Initial Licensure Period

While determining the new fee amounts and drafting this proposed regulation, the Bureau noted existing regulations related to the duration of an initial license and associated proration of initial licensing fees could better align with current statute. Current regulations provide that license expiration is tied to the licensee's birth month, and accordingly an initial license is issued for a duration of 12 to 24 months and a prorated initial licensing fee is collected from the applicant.

The initial regulatory intent for tying license expiration date to the licensee's birth month was to better distribute workload throughout the year for Bureau staff when the Bureau was created in 2007 which is no longer the case.

When the Bureau was set to begin issuing licenses in July 2008, an initial group would

have been set to renew their licenses at roughly the same time had they all expired one year from issuance. For that reason, the birth month-based method of determining the initial length of licensure was appropriate to spread the license renewal workload throughout the year. Over time, licensing applications became more evenly distributed throughout the year, making a 12-month initial license period more feasible.

Through this proposed rulemaking, the Bureau is seeking to move to a 12-month period for all initial licenses. This change will have several positive impacts. First, this change, in concert with the proposed revisions in this regulation to remove fee proration, will reduce the total license fees due at the time of initial licensure. As opposed to the existing system, which requires an up-front payment of both the first 12 months' worth of license fees and a prorated amount, the proposed language would require payment for only 12 months.

This will improve access to licensure by reducing the length of the initial licensure period a licensee must pay for prior to being issued a license. This will also improve renewal compliance by making the initial licensure period the same length as the renewal period. Licensees will have an easier time understanding when their initial license period ends, which may lead to improved retention or a reduction in delinquencies.

Consequently, the Bureau seeks to clarify through this regulation that the duration of an initial license shall not exceed 12 months, better aligning it to existing statute.

Purpose:

The Bureau proposes to amend California Code of Regulations (CCR) section 4580 to increase the fee for an initial application, initial license, and license renewal for the Bureau to implement the new requirements under AB 1194, ensure the Bureau remains solvent, and ensures the Bureau is able to carry out its consumer protection mandate. The Bureau also proposes to amend CCR sections 4428, 4568, 4575, and 4580 to align current regulations more closely to existing statute related to the duration of an initial license.

NECESSITY OF EACH ADOPTION, AMENDMENT, OR REPEAL

Each provision of the proposed regulation is necessary to carry out the above-described purpose and address the above-described problem for the reasons below. Except as otherwise expressly provided, references to a section are references to that section of the proposed regulation.

I. Calculation of Appropriate Fee Amounts

The fee increases in this regulatory proposal are distributed among five fee types: application, initial license, license renewal, and reinstatement to active licensure by inactive or retired licensees. These increases are intended to maintain the Bureau's solvency, as revenues have not kept pace with increasing costs of doing business, and to adequately implement the new requirements established by AB 1194. While all five

fee types must be increased, the Bureau does not anticipate any AB 1194 related costs to be associated with applicants, as reflected in the Fiscal Impact Assessment section of this Initial Statement of Reasons. Accordingly, the overall increase for initial licensure, license renewal, and reinstatement to active licensure by inactive or retired licensees is higher than the overall increase for applications. Rationale for each increase is provided below.

To determine the appropriate level fees for application, initial licensure, license renewal fees, and reinstatement to active licensure by inactive or retired licensees, the Bureau conducted a workload analysis (attachment [1]) and evaluated its fund condition (attachment 2). These documents were compiled and prepared with the assistance of the Department of Consumer Affairs.

The Bureau's analysis is a traditional driver-based cost model used to calculate the appropriate fee amounts to eliminate the current structural imbalance and help to ensure fund solvency. It is based on the principle of determining all direct and indirect cost inputs at an operational level and application volumes. The proposed fee amounts will allow the Bureau to fully recover projected costs and ensure ongoing operations.

The workload analysis (attachment 1) identifies the workload tasks associated with the processing of applications (page 1), the processing of initial licenses (page 2), and the processing of license renewals (page 3). These calculations are also further described in the Economic Impact Assessment portion of this Initial Statement of Reasons.

The Bureau's workload analysis concluded the total cost of processing an application to be \$601. The proposed fee for application in this rulemaking is \$600, reflecting those costs. Similarly, the workload analysis concluded a total cost of \$1,311 for initial licensing, leading the Bureau to propose a \$1,300 fee for initial license, and a total cost of \$1,320 for renewal licensing, leading to the proposal of a \$1,300 fee for renewal. The costs for reinstating an inactive or retired license to active mirrors the costs for renewals.

The workload analysis for the initial license renewal, and reinstatement from inactive or retired to active fees includes both a breakdown of the tasks for initial licensure and renewal processing, but also includes an item for "Enforcement-Related Cost Allocation." The Enforcement-Related Cost Allocation represents the Bureau's costs not directly associated with initial license or renewal processing. The sum of the sub-total costs and the Enforcement-Related Cost Allocation represents the total fees necessary to offset the Bureau's task-related costs and its current structural imbalance. The Enforcement-Related Cost Allocation calculation is described in the Fiscal Impact section of this Initial Statement of Reasons.

The Fund Condition Statement (attachment 2) shows two scenarios: 1) FY 23/24 Governor's Budget (GB) – Status Quo, and 2) FY 23/24 GB Baseline with revenue and expenditure updates and fee increases effective January 1, 2024.

This proposal is intended to eliminate the structural imbalance by aligning the Bureau's revenues with projected expenditures. The impacts of the proposed fee increases in this rulemaking are also described in further detail in the Economic Impact Assessment and Fiscal Impact Assessment sections of this Initial Statement of Reasons.

This proposal and projected revenues and expenditures do not take into account future unforeseen expenses outside of the Bureau's control including: future legislative mandates or extraordinary enforcement costs. However, consumer protection is the highest priority for the Bureau in exercising its licensing, regulatory and disciplinary functions. This regulatory proposal is necessary to ensure the Bureau maintains sufficient financial resources to continue these functions essential to consumer protection.

II. Clarify Initial Licensure Duration

These amendments would provide that a license issued by the Bureau expires 12 months after it has been issued. These amendments would also remove provisions specifying that the duration of an initial license is between 12 and 24 months and that initial license fees are prorated to align licensure expiration dates with the licensee's birth month. Currently, when an applicant has passed the examination and is eligible for a license, the Bureau informs the potential licensee they have met the qualifications to be licensed as a professional fiduciary and provides a prorated calculation of the initial licensing fee, pursuant to both section 4428(a) and 4580(b). Per CCR section 4428(a), the initial license expiration occurs on the last day of the month in which the licensee's second birthday occurs after license issuance.

Pursuant to BPC 6541, "A license shall expire one year after it was issued on the last day of the month in which it was issued." While tying initial licensure expiration to the licensee's birth month and prorating fees accordingly was intended to better distribute workload throughout the year when the Bureau was established in 2007, it is no longer necessary for the reasons set forth in the Problems Being Addressed section of this Initial Statement of Reasons.

Establishing a one-year duration for the initial license period would not only align regulation closer to BPC 6541, it would also simplify the calculation of the initial fee for both the Bureau and the applicant promoting compliance. Further, this amendment would add clarity and consistency to the initial licensure process by permitting an applicant to pay the annual fee without an additional prorated cost.

III. Amend 16 CCR Section 4428: Duration of Initial License Period; First License Renewal Date; Proration of Initial License Fee; Continued Education Requirements for Initial License Period.

a. Title

Proposed Change: Rename the regulation “Duration of Initial License Period.”

Rationale: This is a clarifying change that would accurately reflect the regulation as amended. Portions of the existing language relating to the first license renewal date and the proration of the license fee have been removed through this proposed regulation. The existing section does not appear to relate directly to continuing education; that portion of the title is removed to allow the regulation to more accurately reflect its contents.

b. Subdivision (a)

Proposed Change: Remove “To adjust the duration of the initial license period setting the renewal date for each licensee, a...”, add “A” before “professional fiduciary’s...” and insert “twelve (12) months after the license was issued.”

Rationale: The deletion of the provision directing the Bureau to adjust the duration of the initial license period is necessary to conform regulations to statute. Pursuant to BPC 6541, “A license shall expire one year after it was issued on the last day of the month in which it was issued.” These amendments conform the regulation to comply with the statute. These amendments provide a simplified licensure process for clarity and consistency. The addition of “A” before “professional fiduciary’s...” is needed for grammatical correctness and is non-substantive.

Proposed Change: Remove “No license shall be issued for less than twelve (12) or more than 24 months.”

Rationale: This deletion is necessary to conform regulations to statute. Pursuant to BPC 6541, “A license shall expire one year after it was issued on the last day of the month in which it was issued.” This amendment ensures the regulation is consistent with statute because it removes language from regulations allowing for an issuance period greater than 12 months.

c. Subdivision (b)

Proposed Change: Remove “The initial license fee shall be prorated as required in Section 4580.”

Rationale: This deletion is necessary to conform regulations to statute. Pursuant to BPC 6541, “A license shall expire one year after it was issued on the last day of the month in which it was issued.” As a license cannot be issued less than or more than one year, a prorated fee is not necessary. The proration language present in Section 4580 is also being deleted through this proposed rulemaking as described below in this Initial Statement of Reasons.

IV. Amend 16 CCR Section 4568: Reinstatement of Inactive License to Active Status; Duration of Initial License Period Post-Reinstatement; Reinstatement Fee; Continuing Education Requirements for Initial Period.

a. **Title**

Proposed Change: Rename the regulation “Reinstatement of Inactive License to Active Status.”

Rationale: This is a clarifying change that would accurately reflect the regulation as amended, to include the deletions and additions in this regulatory proposal.

b. **Subdivision (c)**

Proposed Change: Add “twelve (12) months” and delete “adjusted.”

Rationale: This is a clarifying change that would comply with BPC Section 6541 and accurately reflect the proposed amendments to Section 4428. This change is being made for the same reasons described in the rationale for the changes to Section 4428 in this Initial Statement of Reasons.

V. Amend 16 CCR Section 4575: Reinstatement of Retired License to Active Status; Duration of Initial License Period Post-Reinstatement; Reinstatement Fee; Continuing Education Requirements for Initial Period.

a. **Title**

Proposed Change: Rename the regulation “Reinstatement of Retired License to Active Status.”

Rationale: This is a clarifying change that would accurately reflect the regulation as amended, to include the deletions and additions in this regulatory proposal.

b. **Subdivision (c)**

Proposed Change: Add “twelve (12) months” and delete “adjusted.”

Rationale: This is a clarifying change that would comply with BPC 6541 and accurately reflect the proposed amendments to Section 4428. This change is being made for the same reasons described in the rationale for the changes to Section 4428 in this Initial Statement of Reasons.

VI. Amend 16 CCR Section 4580: Fees

a. Subdivision (a)

Proposed Change: Add the language “Commencing January 1, 2024, the application fee for a professional fiduciary license shall be six hundred dollars (\$600).”

Rationale: This addition of “commencing January 1, 2024” is necessary to establish the date application fees will increase. It will provide lead time for applicants to prepare for the fee increase. The Bureau has chosen the date of January 1, 2024, as the effective date of the application fee increase to address the structural imbalance mentioned above in this Initial Statement of Reasons, and to give the general public an easy-to-remember date for the change. This date is the same as the initial licensing fee increase described below. The Bureau also anticipates the January 1, 2024, date to coincide with the expected approval date of this proposed rulemaking.

Increasing the Bureau’s application fee is necessary to allow the Bureau to remain solvent. The process by which the Bureau calculated the necessary amount of this proposed fee is described above in section I, “Calculation of Fee Amounts” in this Initial Statement of Reasons. The Bureau has not increased its fees since it began issuing licenses in 2008, despite the annual cost increases including, but not limited to: personal services, operating expenses and equipment, and a significant increase in attorney general fees. Without raising the application fee, along with initial and renewal fees, the Bureau is currently projected to become insolvent in FY 24/25.

b. Subdivision (b)

Proposed Change: Add “For applicants who pass the licensing examination described in section 4500 prior to January 1, 2024, the” and strike “The”.

Rationale: This change is necessary to establish a date that initial licensing fees will increase. By establishing a date, it will provide advanced notice to applicants who have not yet passed the license examination of the pending fee increase.

Prior to being issued a license, an applicant must take and pass a licensing examination as described in 16 CCR section 4500. In practice, an applicant takes the examination and is notified immediately of their passage or failure and the score is reported to the Bureau electronically. The Bureau then generates a letter informing the potential licensee they have met the qualifications to be licensed as a professional fiduciary and provides the fee amount for initial licensure.

By aligning the implementation date of the new initial licensing fee amount with the date the applicant passes the licensing examination, the general public will understand when in the initial licensure process the increase in fee will affect them. This will also ensure that any irregularity in reporting the examination results does not result in the imposition

of a higher fee, as the fee is defined by the date of passage, and not by the date of reporting to the Bureau, or by the date the Bureau notifies the applicant. The date January 1, 2024 has been chosen to address the structural imbalance mentioned above in this Initial Statement of Reasons, and to give the general public an easy-to-remember date for the change. This date is the same as the application fee increase described above. The Bureau also anticipates the January 1, 2024, date to coincide with the expected approval date of this proposed rulemaking.

Proposed change: Remove the language, “plus a prorated amount of the renewal fee required in subdivision (c) to adjust the duration of the initial license period to set the renewal date for each licensee as provided in Section 4428.”

Rationale: This is a clarifying change that more closely align the Bureau’s regulations with BPC Section 6541 and accurately reflect the proposed amendments to Section 4428. Pursuant to BPC Section 6541, “A license shall expire one year after it was issued on the last day of the month in which it was issued.” The proposed amendments to Section 4428 omit a prorated renewal fee, rendering this provision of Section 4580 unnecessary and inaccurate. This change to Section 4580 would not only align regulation closer to BPC 6541, it would also simplify the calculation of the initial fee for both the Bureau and the applicant promoting compliance. Further, this amendment would add clarity and consistency to the initial licensure process by permitting an applicant to pay the annual fee without an additional prorated cost. As noted in the Problems Being Addressed section of this Initial Statement of Reasons, removing the proration requirement reduces the total time of the initial licensure period, improving access to licensure by reducing the amount of time for which a fee is due on initial licensure.

In practice, individuals who pass the examination and apply for licensure prior to January 1, 2024, will pay the lower initial fee amount (\$700) and pay a pro-rated amount for an initial license. Individuals who pass the examination and apply for licensure after January 1, 2024, will pay the increased initial license fee (\$1,300) for a 12-month initial license. The Bureau anticipates a small group of individuals may pass the examination prior to January 1, 2024, but not submit an application until after January 1, 2024, resulting in the payment of the lower amount (\$700) for a 12-month initial license. While the proration provisions would no longer apply to this small group, it presents no discernable loss or disadvantage and instead would greatly simplify the calculation of their initial fees while still allowing them to pay the lower amount (\$700).

Proposed Change: Add the language “For applicants who pass the examination described in section 4500 on or after January 1, 2024, the initial license fee shall be one thousand three hundred (\$1300).”

Rationale: Increasing the Bureau’s initial license fee is necessary to allow the Bureau to remain solvent and to ensure adequate implementation of AB 1194. The process by which the Bureau calculated the necessary amount of this proposed fee is described

above in section I, “Calculation of Fee Amounts” in this Initial Statement of Reasons. The Bureau has not increased its fees since it began issuing licenses in 2008, despite the ever-rising cost of business including, but not limited to: salaries, benefits, rent, and attorney general fees. AB 1194 added substantial workload and enforcement cost pressures to the Bureau financial situation and without raising fees, the Bureau faces insolvency in FY 24/25.

c. Subdivision (c)

Proposed Change: Add “For licenses which expire before March 31, 2024, the” and strike “The”.

Rationale: This language clarifies that the new fee amounts apply to licenses that expire on March 31, 2024, and beyond. Presuming this regulatory proposal is effective on January 1, 2024, licensees with a March 31 expiration date will receive advanced notice allowing sufficient time to prepare for the fee increase. Unlike the start date for application and initial license fee increases that are based on a specific calendar day, January 1, 2024, the fee increase for renewals correlates to a specific expiration date, March 31, 2024. Professional fiduciary licenses expire at the end of the licensee’s birth month pursuant to CCR 4428. Tying the start date to a license expiration date and not a calendar date, ensures parity among licensees in shouldering the fee increase, avoiding a scenario in which two licensees with the same expiration date pay different amounts simply because one decided to pay early. Additional rationale for the selection of this start date for increased renewal fees is provided below.

Proposed Change: Increase renewal fees from \$700 to \$1,300 by adding “For licenses which expire on March 31, 2024, and after, the renewal fee for a license, except for an inactive license, shall be one thousand three hundred dollars (\$1,300).”

Rationale: This change is necessary to establish a date that renewal licensing fees will increase. Setting the renewal fee increase date for March 31, 2024, considers a likely January 1, 2024, implementation date for this regulatory proposal and how this implementation date coincides with the mailing of renewal payment coupons to licensees. Licensees are mailed a renewal payment coupon approximately 60 days prior to the expiration of their license which occurs on the last day of their birth month. The coupon states the fee amount and serves as a form for the licensee to self-certify they have completed their continuing education requirements as a prerequisite for license renewal. Licensees sign and return the coupon to the Bureau with payment.

Further, the March 31, 2024, date is the closest possible expiration date to the proposed effective date of this regulatory proposal (January 1, 2024) that allows sufficient time for the Bureau to execute internal changes necessary to request and accept the new fee amounts from licensees. For licenses that expire on March 31, the payment coupon is mailed approximately February 1. The month of January is sufficient to ensure the

Bureau has updated the payment coupon and its IT systems can accept payments at the new amounts.

The language added in the new sentence reading “the renewal fee for a license, except for an inactive license” is identical to the existing language of subdivision (c). This is added to clarify that the fee in effect for licenses expiring before, on, and after March 31, 2024 does not apply to inactive license renewals, consistent with the existing regulation. Fees for inactive licenses are described at 16 CCR section 4580(f).

Increasing the Bureau’s license renewal fee is necessary to allow the Bureau to remain solvent and to ensure adequate implementation of AB 1194. The process by which the Bureau calculated the necessary amount of this proposed fee is described above in section I, “Calculation of Fee Amounts” in this Initial Statement of Reasons. The Bureau has not increased its fees since it began issuing licenses in 2008, despite the ever-rising cost of business including, but not limited to: salaries, benefits, rent, and attorney general fees. AB 1194 added substantial workload and enforcement cost pressures to the Bureau financial situation and without raising fees, the Bureau faces insolvency in FY 24/25.

d. Subdivision (f)(3)

Proposed change: Remove “for the first twelve (12) months plus a prorated amount of the renewal fee required in subdivision (c) to adjust the duration of the initial license period to set the renewal date for each licensee as provided in Section 4428.”

Rationale: This is a clarifying change that would comply with BPC 6541 and accurately reflect the proposed amendments to Section 4428. Pursuant to BPC 6541, “A license shall expire one year after it was issued on the last day of the month in which it was issued.” The proposed amendments to Section 4428 omit a prorated renewal fee, rendering this provision of Section 4580 unnecessary and inaccurate. Further, the rationale for these changes mirrors the rationale for the changes made to Section 4580(b) discussed above in this Initial Statement of Reasons.

Proposed Change: Adding “Commencing January 1, 2024, the fee for reinstatement of an inactive license to active status shall be one thousand three hundred dollars (\$1,300).”

Rationale: This addition of “commencing January 1, 2024” is necessary to establish the date the fee for reinstatement of an inactive license to active will increase. It will provide lead time in preparing for a fee increase for inactive licensees wishing to return to active licensure. This date is the same as the initial licensing fee and initial application fee increases described above. The Bureau also anticipates the January 1, 2024, date to coincide with the expected approval date of this proposed rulemaking.

While the revenue generated specifically from inactive licenses returning to active negligibly impacts the Bureau's solvency issues, mirroring the increased fee amount to renewal fees ensures parity among licensees as all licensees would pay the same amount to hold an active license. It would prevent one group of licensees from potentially subsidizing the regulation of another group of licensees.

e. Subdivision (g)(2)

Proposed change: Remove "for the first twelve (12) months plus a prorated amount of the renewal fee required in subdivision (c) to adjust the duration of the initial license period to set the renewal date for each licensee as provided in Section 4575."

Rationale: This is a clarifying change that would comply with BPC 6541 and accurately reflect the proposed amendments to Section 4575. Pursuant to BPC 6541, "A license shall expire one year after it was issued on the last day of the month in which it was issued." The proposed amendments to Section 4575 omit a prorated renewal fee, rendering this provision of Section 4580 unnecessary and inaccurate. Further, the rationale for these changes mirrors the rationale for the changes made to Section 4580(b) discussed above in this Initial Statement of Reasons.

Proposed change: Adding "Commencing January 1, 2024, the fee for reinstatement of a retired license to active status shall be one thousand three hundred dollars (\$1,300)."

Rationale: This addition of "commencing January 1, 2024" is necessary to establish the date the fee for reinstatement of a retired license to active will increase. It will provide lead time in preparing for a fee increase for retired licensees wishing to return to active licensure. This date is the same as the initial licensing fee and initial application fee increases described above. The Bureau also anticipates the January 1, 2024, date to coincide with the expected approval date of this proposed rulemaking.

While the revenue generated specifically from retired licenses returning to active negligibly impacts the Bureau's solvency issues, mirroring the increased fee amount to renewal fees ensures parity among licensees as all licensees would pay the same amount to hold an active license. It would prevent one group of licensees from potentially subsidizing the regulation of another group of licensees.

BUSINESS IMPACT

The Bureau has made an initial determination that this proposed regulatory action to increase fees would have significant statewide adverse economic impact directly affecting licensees and their businesses including the ability of California businesses to compete with businesses in other states; specifically, professional fiduciaries.

However, without the fee increases, the Bureau will not be able to sufficiently implement the new requirements of 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 fee for a renewal license application 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 Bureau has made an initial determination that this proposed regulatory action to set an initial license period to one year and omit references to a prorated license fee would not have a significant statewide adverse economic impact directly affecting licensees and their businesses including the ability of California businesses to compete with businesses in other states; specifically, professional fiduciaries.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

This regulation does not mandate the use of specific technologies or equipment.

ECONOMIC IMPACT ASSESSMENT

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because it is not related to the creation or elimination of employment.
- It will not create new business or eliminate existing businesses within the State of California because it is not related to the creation or elimination of businesses.
- It will not affect the expansion of businesses currently doing business within the State of California because it is not related to the expansion of businesses.
- This regulatory proposal does not affect worker safety, the state's environment, or housing.

The regulations will increase Bureau application and license fees as follows:

Professional Fiduciaries Bureau			
Type	Current Fee	Proposed Fee	Increase Amount
Application	\$400	\$600	\$200
Initial License	\$600	\$1,300	\$700
Renewal License	\$700	\$1,300	\$600

The regulations are estimated to result in annual increased costs of approximately \$509,900 to licensees as follows:

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

*Based on 3-year historical data.

FISCAL IMPACT ASSESSMENT

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 as follows:

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

*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
Total Revenues:			\$1,104,600	\$1,104,600	\$1,104,600	\$1,104,600	\$1,104,600	\$1,104,600	\$1,104,600	\$1,104,600	\$1,104,600	\$1,104,600	\$1,104,600	\$11,046,000

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.

The estimated enforcement-related allocation of \$705 per applications includes investigation, Attorney General, and anticipated costs resulting from Chapter 417, Statutes of 2021 (AB 1194) as follows:

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

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 any costs or savings in federal funding to the state.

UNDERLYING TECHNICAL, THEORETICAL, AND EMPIRICAL DATA

1. Professional Fiduciaries Bureau – Workload Cost Analysis, Spring 2023.

2. Professional Fiduciary Fund Condition Statements – 2023-24 Governor’s Budget (status quo) and Proposed Fees (effective January, 2024)

CONSIDERATION OF ALTERNATIVES

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

In addition to the discussion above, set forth below is the alternative which was considered and the reason the alternative was rejected:

- Alternative #1: Not increase fees. This alternative was rejected because it 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.