

PROFESSIONAL FIDUCIARIES BUREAU

FINAL STATEMENT OF REASONS

Hearing Date: No Hearing was Requested

Subject Matter of Proposed Regulations: Professional Fiduciaries: Cultural Competency in Prelicensing and Continuing Education.

Sections Affected: California Code of Regulations Title 16, Sections 4440, 4442, and 4444.

Updated Information

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

This regular comment period for this rulemaking began on August 5, 2022 and ran to September 20, 2022. No hearing was scheduled or requested. Two written comments were received during the public comment period.

After reviewing the comments received, the Bureau determined the following clarification to the proposed text was needed:

1. Section 4442 (b)

(2) As part of the continuing education credit requirements for renewal in subdivision (a)(1), a licensee shall complete at least either two hours of instruction in ethics, ~~two hours of instruction in~~ or cultural competency every year, or alternatively a total of two hours of instruction in both ethics and cultural competency combined every year. ~~At least 2 hours of continuing education credits each year shall be in ethics for fiduciaries.~~

This change clarifies licensees can complete two hours of instruction in either ethics, two hours of instruction in cultural competency, or a combination of both ethics and cultural competency for a total of two hours toward their yearly 15-hour continuing education requirement. This change confirms that only two of the 15 hours must specifically be in ethics and/or cultural competency pursuant to Business and Professions Code Section 6538.

The Bureau notes the text of CCR section 4444(c) as included in the modified version of the proposed text was inadvertently different than the originally noticed text. The Bureau did not intend to modify section 4444(c). All portions of the text as modified that were intended to be changed were formatted with double strikeout and double underline where appropriate.

On October 17, 2022, the Bureau issued a 15-day notice of availability of modified text concerning the above changes, and the comment period closed on November 2, 2022. The Bureau received one comment during the 15-day comment period, addressed below.

Other Revisions

A non-substantive change has been made to section 4444(f)(6) as follows:

(6) Ethics for Fiduciaries-; and

This change is made to conform the terminal punctuation of each item by including the semicolon, and clarifying the existing effect that the list includes all items by adding 'and'.

Justification for Request for Effective Date on Filing

The Bureau requests for this rulemaking to become on January 1, 2023 so that it may occur as closely as possible with the effective date for AB 465 (Nazarian, Chapter 167, Statutes of 2021), the legislation this proposed regulation seeks to interpret, on January 1, 2023. Establishing an implementation date as near as possible to the date the statute is enacted, instead of the general regulation implementation date of April 1, 2023, will minimize potential confusion for licensees, applicants, and course providers in meeting the new requirements and facilitate the Bureau's implementation of the new requirements.

Local Mandate

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

Small Business Impact

The Bureau has determined this proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Applicants for licensure are required to complete 30 hours of pre-licensing coursework, and once licensed, are required to complete 15 hours of continuing education as part of the annual renewal process. Amendments to BPC 6538 and this related proposed regulation do not change the overall total number of hours required, presenting no financial burden to the licensee.

The Anticipated Benefits of this Regulatory Proposal Are

Beginning January 1, 2023, Assembly Bill (AB) 465 (Nazarian, Chapter 167, Statutes of 2021) requires applicants seeking licensure as a professional fiduciary to complete at least one hour of instruction in cultural competency as part of the 30 hours of pre-licensing coursework (Business and Professions Code section 6538 (a) (2)). AB 465 also requires licensees to complete "at least two hours of instruction in ethics, two hours of instruction in cultural competency, or two hours of instruction in both ethics and cultural competency," as

part of the 15 hours of continuing education required for licensure renewal (BPC section 6538 (b) (2)).

The proposed regulation would conform existing pre-licensure and continuing education regulations with the new requirements imposed by AB 465, with the intent of ensuring course providers and licensees have a clear understanding of the new requirements. This regulation would also ensure applicants and licensees have access to all education required by statute.

Consideration of Alternatives

No reasonable alternative to this regulatory proposal would be more effective in carrying out the purpose for which the action is proposed, 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 effective in implementing the statutory policy or other provision of law.

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 adopt the regulations. This alternative was rejected because it would fail to meet the legislative mandate established by AB 465.

Incorporation by Reference

There are no forms being incorporated by reference.

Fiscal Impact

The regulations do not result in a fiscal impact to the state. This proposal specifies continuing education coursework for licensees and does not increase the number of hours required. As a result, the Bureau does not anticipate an increase in workload or costs.

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

Objections or Recommendations/Responses

The Bureau received two comments during the regular comment period: one from Dr. Steven Lee and one from the Professional Fiduciaries Association of California (PFAC). The Bureau received one comment from PFAC during the modified text comment period.

Comments Received During the Initial 45-Day Public Comment Period

Comment 1: Dr. Steven Lee

Dr. Lee submitted a comment dated August 5, 2022 expressing general support for the regulation and concurring with the reason for enacting the regulation. Dr. Lee commented further on the substance AB 465 and the manner in which he became aware of it. Dr. Lee stated he was unaware of the bill and, had he been made aware of

it, would have commented on the bill at the time.

Had Dr. Lee been able to comment on the bill, per his comment to this regulation he would have argued:

- 1) That the bill was unclear as to whether the bill required annual compliance or compliance once every three years.
- 2) That the requirements of one hour of instruction are insufficient to achieve the goal of educating fiduciaries and training them to have sensitivity to traditionally marginalized populations.
- 3) That AB 465 countermands the state's dedication to ethical instruction by allowing cultural competency to take the place of part or all of the two-hour continuing education requirement involving ethics. Dr. Lee argued in support of this point that while the two subject matters may overlap, they are not coextensive and not interchangeable.
- 4) That AB 465 did little to address implied standards of education and care that go along with the definition of 'fiduciary.' To this end, Dr. Lee argued that the very nature of fiduciary services requires sensitivity to and an education in serving different cultural backgrounds, as well as in serving clients with disabilities, lifestyles, and hobbies. Dr. Lee argued that the existing educational requirements in the Business and Professions Code related to fiduciaries are created without rationale, meaning AB 465 was enacted without consideration for how it would actually and sufficiently improve the ability of fiduciaries to maintain sensitivity to their clients.

Finally, Dr. Lee argued that the requirements of maintaining a fiduciary license are time consuming and expensive notwithstanding this legislation and regulation, and that greater discretion should be given to practitioners.

Reply: The Bureau thanks the commenter for his support of this rulemaking. The Bureau notes the remainder of this comment relates to the underlying legislation, and not to the implementation of that legislation through this regulatory proposal. Because this comment does not request any action be taken by the Bureau related to the substance of this rulemaking, no action is being taken.

Comment 2: Professional Fiduciaries Association of California

PFAC submitted a comment to the Bureau on September 20, 2022 requesting specific amendments to proposed section 4442 "to avoid confusion and ensure the intended language is clear that a licensee is required to complete a minimum of 2 hours in instruction in either ethics, cultural competency or a combination of both each year as a condition of license renewal or restoration."

PFAC argued the following proposed language was ambiguous:

(2) As part of the continuing education credit requirements for renewal in subdivision (a)(1), a licensee shall complete at least two hours of instruction in ethics, two hours of instruction in cultural competency, or two hours of instruction in both ethics and cultural competency every year.

PFAC argued this language “creates confusion in the licensee population regarding the requirements of the regulation. Some licensees are questioning whether they are required to obtain 2 hours of instruction in ethics, or 2 hours of instruction in cultural competency, or 4 hours in a combination of ethics and cultural competency” (emphasis original).

To this end PFAC referred to the text of BPC section 6538(b)(2), which reads in part:

“Beginning January 1, 2023, as part of the approved continuing education courses required by paragraph (1), a licensee shall complete at least two hours of instruction in ethics, two hours of instruction in cultural competency, or two hours of instruction in both ethics and cultural competency every year.”

PFAC offered as support for their reading of the statute information from the Legislative Digest of the chaptered version of the bill, and from the August 20, 2022 Senate Floor Analysis of the bill. Finally, PFAC offered a specific set of revisions to the regulatory text they believed would resolve the ambiguity.

Reply: The Bureau thanks PFAC for its comments related to the original proposed text. The Bureau acknowledged that further clarification to the proposed text was needed to confirm that the requirement for instruction in ethics and/or cultural competency is only two hours total, not four. Accordingly, the Bureau revised the proposed text to clarify that licensees who opt to complete a combination of instruction in both ethics and cultural competency totaling two hours would meet the new continuing education requirements.

Comments Received During the Subsequent 15-Day Public Comment Period

Comment 3: Professional Fiduciaries Association of California

PFAC submitted a comment on November 2, 2022, acknowledging that the modifications had improved the text, however requested the language in Section 4442 (b) (2) be further clarified that a licensee is required to complete at least two hours of instruction in either ethics, cultural competency, or both every year as a condition of licensure renewal or restoration.

PFAC proposed the following revisions:

(2) As part of the continuing education credit requirements for renewal in

subdivision (a)(1), a licensee shall complete at least ~~either~~ two hours of instruction in either ethics or cultural competency every year, or alternatively a total of two hours of instruction in a combination of both ethics and cultural competency ~~combined~~ every year.

Reply: The Bureau thanks PFAC for their comment related to the modified text. The Bureau believes the modified text effectively addresses PFAC's clarity concerns as drafted and finds that PFAC's suggested amendments would not substantively alter how the language of 4442 is interpreted by licensees or implemented by the Bureau. Accordingly, no action is being taken to address this comment.