

PROFESSIONAL FIDUCIARIES BUREAU
FINAL STATEMENT OF REASONS

Hearing Date: December 28, 2021

Subject Matter of Proposed Regulations: Inactive and Retired License Status; Fees
Non-Refundable

Sections Affected: Business and Professions Code Sections 4560, 4562, 4563, 4564, 4565, 4566, 4567, 4568, 4569, 4570, 4571, 4572, 4573, 4574, 4575, 4576, 4580, and 4581.

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 November 12, 2021 and ran to December 27, 2021. A hearing was held on December 28, 2021. One written comment was received during the comment period; no comments were received at the hearing.

After discussion with the Office of Administrative Law, further information was requested. The Bureau modified the proposed regulatory text as follows:

1. Article 8.3 Header

Article ~~8.3~~ 8.1. Inactive License Status; Renewal of Inactive License;
Reinstatement of Inactive License to Active Status

This change was made to correct a reference to Article 8.3 of the regulations. The revised citation is to Article 8.1. Currently, the Bureau's regulations contain an Article 8 but no sub-articles. For clarity of organization, it makes sense to number the first sub-article 8.1 rather than 8.3.

2. Section 4563(d)

(d) "In good standing," in reference to a license, means that a license is not subject to an order, action, or status as defined in Business and Professions Code section 6542(b), or expired, delinquent, or surrendered, ~~suspended, revoked, surrendered, expired, delinquent, otherwise restricted, or on probation due to any disciplinary action by the Bureau.~~

This change was made to clarify the bases upon which a license may be defined as 'in good standing.' The changes to the bases from not "suspended,

revoked, surrendered, expired, delinquent, otherwise restricted, or on probation due to any disciplinary action by the Bureau” to not “subject to an order, action, or status as defined in Business and Professions Code section 6542(b)” now links the working definition in the regulations to a comparable definition in the existing Business and Professions Code. This link avoids confusion for readers and practitioners, and for enforcement purposes.

3. Section 4564(a)

(a) Upon application to the Bureau pursuant to Section 4566, an eligible licensee, as described in Section 4565, may have their license placed in an inactive status. Placement in an inactive status shall occur on the first day of the next renewal period following the Bureau’s approval of the application.

Removing the phrase “following the Bureau’s approval of the application” removes ambiguity from the standard. As originally proposed, the language “following the Bureau’s approval of the application” raised the question of when such an approval occurred and how it that would be communicated. As modified, the placement on inactive status now occurs at a precisely defined time.

4. Section 4567(b)

(b) To renew an inactive license, a licensee shall satisfy the following requirements, which apply in lieu of the requirements set forth in Section 6541 of the Business and Professions Code:

As regulations cannot supersede statutory requirements, this portion of the proposed language was deleted.

5. Article 8.5 Header

Article ~~8.5~~ 8.2. Retired License Status; Reinstatement of Retired License to Active License Status

This change was made to correct a reference to Article 8.5 of the regulations. The revised citation is to Article 8.2. Currently, the Bureau’s regulations contain an Article 8 but no sub-articles. For clarity of organization, it makes sense to number the second sub-article 8.2 rather than 8.5.

6. Section 4571(a) through (d)

Subdivisions (a) through (d) were erroneously numbered (b) through (e). There was no subdivision (a) in the originally noticed text. This drafting error has been corrected; the subdivisions now are correctly numbered (a) through (d).

7. Section 4571(c)

(c) “In good standing,” in reference to a license, means that a license is not subject to an order, action, or status as defined in Business and Professions Code section 6542(b), or expired, delinquent, or surrendered. ~~suspended, revoked, expired, delinquent, otherwise punitively restricted, or on probation due to any disciplinary action by the Bureau.~~

This change was made to clarify the bases upon which a license may be defined as defined as ‘in good standing.’ The changes to the bases from not “suspended, revoked, surrendered, expired, delinquent, otherwise restricted, or on probation due to any disciplinary action by the Bureau” to not “subject to an order, action, or status as defined in Business and Professions Code section 6542(b)” now links the working definition in the regulations to a comparable definition in the existing Business and Professions Code. This link avoids confusion for readers and practitioners, and for enforcement purposes.

8. Section 4572(a)

(a) Upon application to the Bureau pursuant to Section 4574, an eligible licensee, as described in Section 4573, may have their license placed in a retired status. Placement in a retired status shall occur on the first day of the next renewal period ~~following the Bureau’s approval of the application.~~

Removing the phrase “following the Bureau’s approval of the application” removes ambiguity from the standard. As originally proposed, the language “following the Bureau’s approval of the application” raised the question of when such an approval occurred and how it that would be communicated. As modified, the placement on inactive status now occurs at a precisely defined time.

9. Section 4572(d)

~~(d) Notwithstanding Pursuant to Sections 6542(c)1 and 6541.1 of the Business and Professions Code, a retired license shall not expire or require renewal.~~

This change to the language now correctly points to Business and Professions Code section 6542(c), which states a retired licensee holder shall not be required to renew that license. The prior reference was incorrect.

10. Section 4572(e)

~~(e) (1) Except as provided in Section 4575, the holder of a retired license shall not be subject to the annual reporting duties of Section 4540, including filing of~~

~~an annual statement. This paragraph applies to the holder of a retired license in lieu of Section 6561 of the Business and Professions Code.~~

After consultation with the Office of Administrative Law, the Bureau has elected to remove its proposed exemption from annual statement submission for retired licensees. The Bureau will continue considering possible options for retired license reporting.

11. Section 4572(e)

~~(2) Each holder of a retired license shall within thirty (30) days notify the Bureau in writing of any changes in the retired licensee's street or mailing addresses, giving both the old and new addresses and any changes. Section 136 of the Business and Professions Code, requiring notification of a change in address, applies to the holder of a retired license in lieu of the ongoing reporting duties of Section 4544 of this Division.~~

Firstly, subdivision (2) of proposed subdivision (e) is being deleted, as former subdivision (1) is being repealed.

The language added here through the modified text clarifies the standard of 30 days to notify the Bureau of a changes in street or mailing address. Stating the standard in this way is clearer than including a cross reference to Business and Professions Code section 136, as was included in the originally noticed proposed text.

On July 11, 2022, the Bureau issued a 15-day notice of availability of modified text containing the above changes, and the comment period closed on July 28, 2022. The Bureau received no comments during this period.

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.

Licensed professional fiduciaries would only be affected if they choose to apply for an inactive or retired license type. This regulation would be less financially burdensome to a licensee that no longer wants to practice and does not need to maintain an active license.

The Anticipated Benefits of this Regulatory Proposal Are

The Bureau does not currently have a process to place a license in an inactive or retired status. If a licensee does not wish to maintain an active license, the licensee's only option is to allow the license to expire and become delinquent. (16 CCR § 4562.) A license that remains delinquent for three years is canceled and cannot be reinstated. (BPC § 6541.1.) Former licensees who have had their license canceled and would like to resume practice as a professional fiduciary would have to begin the application process over again, including payment of application fees and retaking the examination, among other first-time application requirements.

The terms "delinquent" and "canceled" are inadequate to distinguish inactive and former licensees who have substantial experience and a clean disciplinary record from those who do not. Both terms convey a negative connotation to the public, depriving the public, including future employers, of an easy way to ascertain that an inactive licensee has a proven record of performing licensed services, and, as such, a familiarity and history of compliance with the Act that makes them less likely to mistakenly or fraudulently claim authority to perform services requiring active licensure.

Further, without the promise of future eligibility for placement in an inactive or retired status, practicing licensees have less incentive to maintain a clean disciplinary history. These circumstances, which create an environment more conducive to misconduct, are inconsistent with the Bureau's mandate to protect the public.

In addition, because extended delinquency results in cancellation, delinquency is an imperfect option for a licensee who may seek to return to active licensure after a period of hiatus or retirement. Cancellation may discourage a licensee from doing so, resulting in premature loss of their services to future clients, creating a less competitive market for professional fiduciary services. Further, without the promise of future eligibility for a status that enables licensees to return to active licensure after a hiatus or retirement, a practicing licensee has less incentive to maintain a clean disciplinary history. These circumstances, which also create an environment more conducive to misconduct, are also inconsistent with the Bureau's mandate to protect the public.

By establishing new inactive and retired statuses for licenses, the proposed regulation would provide an easy way for the public to confirm that an inactive or retired licensee has a proven record of performing licensed services. The proposed regulation would also make it easier for licensees with a proven record to return from hiatus or retirement while establishing safeguards that ensure their continued eligibility to do so. Finally, the proposed regulation would provide an incentive for active licensees to remain in good standing.

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 adopt the regulations. This alternative was rejected because it would fail to offer professional fiduciary licensees the option of temporarily or completely leaving their field without a negative status on their license.

Objections or Recommendations/Responses

Comment 1: Lucille Lyon

The Bureau received one comment during the regular comment period. Ms. Lyon expressed support for the rulemaking, noted that she had previously requested a retired status on her license, inquired as to whether she would be able to participate in the retired status provisions under this proposed rulemaking, and listed her recent activities.

Reply: The Bureau thanks the commenter for her support of this rulemaking. To the extent this comment relates to the status of the commenter’s license status, the Bureau has contacted the licensee with further information. 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.

Incorporation by Reference

There are no forms being incorporated by reference.

Fiscal Impact

The Bureau anticipates 12 inactive license and 12 retired license applications will be processed per year. Inactive licensees will be required to renew annually. The Bureau estimates workload and costs ranging from \$9,744 to \$75,192 per year and up to \$162,888 over a ten-year period as follows:

Inactive and Retired License Workload Cost Estimates													
Initial Licensure	Costs	Years Ongoing											
		1	2	3	4	5	6	7	8	9	10	Total	
Number of Applicants Per Year		24	24	24	24	24	24	24	24	24	24	24	240
Licensing Workload* - 2 hours	\$198	\$4,752	\$4,752	\$4,752	\$4,752	\$4,752	\$4,752	\$4,752	\$4,752	\$4,752	\$4,752	\$4,752	\$47,520
Enforcement Workload* - 2 hours	\$198	\$4,752	\$4,752	\$4,752	\$4,752	\$4,752	\$4,752	\$4,752	\$4,752	\$4,752	\$4,752	\$4,752	\$47,520
Certificate	\$5	\$120	\$120	\$120	\$120	\$120	\$120	\$120	\$120	\$120	\$120	\$120	\$1,200
Materials and Postage	\$5	\$120	\$120	\$120	\$120	\$120	\$120	\$120	\$120	\$120	\$120	\$120	\$1,200
Total Initial License Costs:	\$406	\$9,744	\$9,744	\$9,744	\$9,744	\$9,744	\$9,744	\$9,744	\$9,744	\$9,744	\$9,744	\$9,744	\$97,440
Renewal Licensure													
Number of Applicants Per Year		0	12	24	36	48	60	72	84	96	108	120	
Licensing Workload* - 0.5 hours	\$49	\$0	\$588	\$1,176	\$1,764	\$2,352	\$2,940	\$3,528	\$4,116	\$4,704	\$5,292	\$5,876	\$5,292
Enforcement Workload - 60 hrs ave/case x 0.6 licensees/12 apps	\$297	\$0	\$3,564	\$7,128	\$10,692	\$14,256	\$17,820	\$21,384	\$24,948	\$28,512	\$32,076	\$35,640	\$32,076
Attorney General - Ave \$5,000/case x 0.6 licensees/12 apps	\$250	\$0	\$3,000	\$6,000	\$9,000	\$12,000	\$15,000	\$18,000	\$21,000	\$24,000	\$27,000	\$30,000	\$27,000
Certificate	\$5	\$0	\$60	\$120	\$180	\$240	\$300	\$360	\$420	\$480	\$540	\$600	\$540
Materials and Postage	\$5	\$0	\$60	\$120	\$180	\$240	\$300	\$360	\$420	\$480	\$540	\$600	\$540
Total Renewal License Costs:	\$606	\$0	\$7,272	\$14,544	\$21,816	\$29,088	\$36,360	\$43,632	\$50,904	\$58,176	\$65,448	\$72,720	\$65,448
Total Costs:		\$9,744	\$17,016	\$24,288	\$31,560	\$38,832	\$46,104	\$53,376	\$60,648	\$67,920	\$75,192	\$82,464	\$162,888

*Includes Bureau Staff (\$77/hour) plus Pro Rata Costs (\$22/hour) - Total \$99/hour