

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

**INACTIVE AND RETIRED LICENSE STATUS; FEES NON-REFUNDABLE
INITIAL STATEMENT OF REASONS**

Hearing date: Tuesday, December 28, 2021

Subject Matter of Proposed Regulations: License Status (Inactive, Retired), Fees

Sections Affected: This regulatory action amends sections 4560, 4562, and 4580 and adds Article 8.3 (commencing with section 4563), Article 8.5 (commencing with section 4571), and Article 9, section 4581, to 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.) The Bureau currently licenses and regulates 820 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. The Bureau has issued 1,237 licenses as of May 1, 2021.

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].”

To ensure a licensee’s continued fitness for licensure, a licensee seeking to maintain an active license must comply with various ongoing requirements. A licensee must annually renew an active license by, among other things, completing continuing education courses, submitting an annual statement, and paying a renewal fee. (BPC §§ 6538(b), 6541(b).) Information in an annual statement includes the aggregate dollar value of all assets currently under a licensee’s supervision as a professional fiduciary; whether the licensee has filed for bankruptcy or held a controlling financial interest in a business that filed for bankruptcy in the last 10 years; and, whether the licensee has been removed for cause or resigned in a specific case, along with the circumstances causing that removal or resignation.

A license expires if it is not renewed. (BPC § 6541(a).) Beginning 30 days after a license expires, its renewal requires payment of a late delinquency fee in addition to the renewal fee. (BPC §§ 142(c), 163.5; 16 CCR § 4562.) Currently, there is no established process for a licensee who stops practicing to avoid these ongoing requirements on the one hand, or expiration and eventual cancellation on the other.

Before January 1, 2015, a licensee who did not wish to maintain an active license only had the option of remaining in an expired or delinquent status indefinitely pending their return to active licensure. Assembly Bill 2024 (Bonilla, Chapter 336, Statutes of 2014) foreclosed that option by providing that a license that is not renewed within three years following its expiration is canceled and may not be renewed, restored, or reinstated. (AB 2024, § 2 [adding BPC § 6541.1].) Although AB 2024 eliminated the option to indefinitely maintain a license in delinquent status, AB 2024 also authorized the Bureau to “establish, by regulation, a system for the placement of a license into retired status ... for a professional fiduciary who is not actively engaged in the practice of a professional fiduciary or any activity that requires him or her to be licensed by the Bureau,” and provided that “[t]he holder of a retired license shall not be required to renew that license.” (AB 2024, § 4 [adding BPC § 6542].) (Although BPC section 464 already gave the Bureau authority to establish “a system for a retired category of licensure,” BPC section 6542 supersedes that authority by operation of BPC section 464(d).)

In addition, AB 2024 required the Bureau to set fees to designate license statuses of “inactive” and “retired” and to reinstate an inactive or retired license to active status. (AB 2024, § 6 [amending BPC § 6592].) AB 2024 did not give the Bureau new authority to establish an inactive status. However, the Bureau has existing authority to do so under

BPC section 462, which authorizes the Bureau and other agencies within the Department to “establish, by regulation, a system for an inactive category of licensure for persons who are not actively engaged in the practice of their profession or vocation.” BPC section 462 requires an inactive license to “be renewed during the same time period in which an active license is renewed.”

The proposed regulation would establish: (1) a process for licensees who have held a license in good standing for five years or longer to place their license in an “inactive” or “retired” status; (2) criteria for maintaining a license in an inactive or retired status; and, (3) a process for reinstatement of a license that has been placed in an inactive or retired status. The proposed regulation would also clarify the non-refundability of fees.

PROBLEM BEING ADDRESSED AND PURPOSE

Problem being addressed:

As noted above, 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.

Purpose:

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.
- 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.
- Provide an incentive for active licensees to remain in good standing.

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.

Exemption of Inactive/Retired Licenses from General Renewal Requirements (16 CCR § 4560(d)):

The proposed regulation would exempt licenses placed in an inactive or retired status from the requirements for renewal of licenses under 16 CCR section 4560. This provision is necessary because 16 CCR section 4567 of the proposed regulation would impose a separate set of requirements for renewal of an inactive license, and 16 CCR section 4572(d) would make a retired license exempt from renewal altogether, for the reasons stated in this Initial Statement of Reasons (ISR) under the heading “Renewal and Reporting Duties for Inactive Licenses but Not Retired Licenses,” below. This provision would clarify that the separate set of requirements for inactive licenses applies in place of, not in addition to, the existing requirements in 16 CCR section 4560, and that the authority in 16 CCR section 4560(a) to renew a license “for a period of twelve (12) months” is not necessary for, and is therefore inapplicable to, retired licenses.

Amendment to the Note to Section 4560:

The Note to section 4560 is being revised to reflect the Bureau’s authority under BPC section 462 to “establish, by regulation, a system for an inactive category of licensure for persons who are not actively engaged in the practice of their profession or vocation,” and the Bureau’s authority under BPC section 6542 to establish regulations for non-active categories of licensure. These same sections are referred to in the proposed changes to the reference section of this same Note.

Exemption of Inactive Licenses from Delinquency Fees (16 CCR §§ 4562, 4580(d)):

The proposed regulation would exempt licensees in an inactive status from delinquency fees for late payment of renewal fees. Although BPC section 142(c), added by Chapter 970 of the Statutes of 1998 (AB 2802, Committee on Consumer Protection, Governmental Efficiency and Economic Development) requires “a delinquency, penalty,

or late fee [to] be assessed if the renewal fee is not postmarked by the renewal expiration date,” this provision is superseded by the more recently enacted BPC section 121.5, added by Chapter 435 of the Statutes of 2001 (SB 349, Committee on Business and Professions), which provides that “the application of delinquency fees ... for the renewal of expired licenses or registrations shall not apply to licenses or registrations that have lawfully been designated as inactive or retired.”

The purpose of this exemption is to encourage eligible licensees to place their license in an inactive or retired status instead of allowing their license to remain in a delinquent status. An eligible licensee who places their license in an inactive or retired status will save the Bureau the costs of sending late notices. In addition, the eligible licensee will be more likely to return to active licensure because the currently available option, delinquency, eventually results in cancellation. Because an eligible licensee must have held their license for at least five consecutive years in good standing, their return to active licensure will increase access to professional fiduciary services.

Amendment to the Note to Section 4562:

The reference portion of the Note to section 4562 is being amended to reflect the implementation of regulations through BPC section 462, described elsewhere in this Initial Statement of Reasons, and section 121.5, as described above.

Definitions:

For the reasons discussed below, sections 4563 and 4571 list definitions for each article (Inactive and Retired), including:

- Annual Statement - The proposed regulations would define “annual statement” as “an annual statement that complies with the requirements of [16 CCR section 4542],” consistent with 16 CCR section 4540(a)-(b), which implements the statutory requirements for submission of an annual statement in BPC section 6561. (See discussion regarding 16 CCR §§ 4566(b) and 4574(b).)
- Inactive License (proposed section 4563(c)) – The proposed regulations would define “Inactive License” as meaning “a license placed in an inactive status pursuant to Section 4564” of the regulations. It is necessary to define the term ‘inactive status’ by referring to the corresponding “Placement of License in Inactive Status” to establish consistent usage across the Bureau’s regulations. For example, the term “inactive” or “inactive status” is used in proposed sections 4560(d), 4562(c), 4565, 4566, and many other portions of the proposed text. Maintaining a consistent cross-reference will eliminate potential confusion about what the Bureau considers “inactive license”.
- In Good Standing - The proposed regulations would define “in good standing” as meaning that a license “is not suspended, revoked, surrendered, expired, delinquent, otherwise restricted, or on probation due to any disciplinary action by the Bureau.” This proposed definition of “in good standing” is consistent with the prohibition in BPC section 6542(b) against placement of a license in a retired

status “if the license is ... suspended, placed on probation, revoked, or otherwise punitively restricted by the [B]ureau ...” It is defined in these articles for convenience of use. To the extent the license status descriptors in this proposed text (e.g. “delinquent”, “surrendered,” and “expired”) fall beyond the wording of BPC section 6542(b), they fall within the Bureau’s broader explicit regulatory authority under BPC section 6542(a) to “establish, by regulation, a system for the placement of a license into retired status” and within its authority under BPC section 462 to establish an inactive category of licensure. The Bureau is including the statuses of “expired,” and “delinquent” to prevent the possibility a licensee with an expired or delinquent license attempting to circumvent their expired or delinquent status and fees due, by placing their license on inactive status. A licensee placing their license on inactive status in this way may also attempt to restore their inactive license to an active status, attempting to avoid paying any existing delinquency or renewal fees. The Bureau is including the status of “surrendered” as a restricted status due to discipline, as a licensee would surrender a license in the circumstance of an order or agreement with the Bureau to cease practicing as a result of an accusation against the licensee filed by the Bureau

- Retired License (proposed section 4571(e)) – The proposed regulations would define “retired license” as meaning “a license placed in a retired status pursuant to Section 4572” of the regulations. It is necessary to define the term ‘retired status’ by referring to the corresponding “Placement of License in Retired Status” to establish consistent usage across the Bureau’s regulations. For example, the term “retired” or “retired status” is used in proposed sections 4572, 4573, 4574, 4575, and 4580 of the proposed text. Maintaining a consistent cross-reference will eliminate potential confusion about what the Bureau considers “retired license”.
- Delinquent (proposed sections 4563(b) and 4571(c): The proposed regulations would define “delinquent” as meaning “that a license is expired and subject to the late delinquency fee required in Section 4580.” The term “delinquent” appears in Article 8.3 in proposed section 4565 related to inactive license eligibility and in Article 8.5, section 4573 related to retired license eligibility. Further defining this term clarifies when a license is not only expired, but expired subject to the delinquency fee. “Delinquent” status is currently determined by the Bureau, and the term “delinquent” is used by the Bureau in its communications with licensees to inform licensees of the requirement to pay the fee. Maintaining a consistent definition will avoid confusion in the future where a licensee is seeking to become retired or inactive but has a license status of ‘delinquent’ instead of merely ‘expired.’

While some duplication will occur by placing these definitions at the beginning of each article, it will be convenient for the readers of each specific article to refer to the specific terms used throughout each article.

Addition of the Note to Sections 4563 and 4571:

A Note describing the Authority and Reference of both section 4563 and 4571 is being added by this rulemaking. The Notes are the same, except where the note to section 4563 refers to BPC section 462 relating to inactive licensure status, and the note to section 4571 refers to BPC section 6542 related to retired licensure status. Otherwise, both Notes are designed to list the known bases of the Bureau's authority for this rulemaking generally, and to describe the BPC sections implemented separately.

General Requirements for Placement of License in an Inactive/Retired Status (16 CCR §§ 4564(a), 4572(a)):

The first sentence of 16 CCR sections 4564(a) and 4572(a) would provide a summary of the requirements for placement of a license in an inactive or retired status. The language in that sentence is necessary for the following reasons:

- “Upon application to the Bureau pursuant to Section [4566/4574], ...”: This provision would make licensees aware that they must apply in order to place their license in inactive or retired status. The rationale for this application requirement may be found in this ISR under the heading “Application for Placement in an Inactive or Retired Status,” below.
- “...an eligible licensee, as described in Section [4565/4573], ...”: This provision would make licensees aware that they must meet certain eligibility criteria to place their license in inactive or retired status. The rationale for this eligibility requirement may be found in this ISR under the heading “Eligibility for Placement in an Inactive or Retired Status,” below. (See also, BPC § 6541.1 [prohibiting reinstatement of canceled licenses]; GOV § 11522 [covering reinstatement of revoked or suspended licenses, but not surrendered, abandoned, or canceled licenses].)

Although, with regard to an inactive license, BPC section 462 technically authorizes the Bureau to establish an “inactive category of licensure” (subdivision (a); emphasis added) and refers to “[a]n inactive license issued pursuant to this section” (subdivision (b)(2); emphasis added), the proposed regulation will interpret “category” interchangeably with “status” and “issuance of an inactive license” interchangeably with “placement of a license in an inactive status,” and will define “inactive license” and “retired license” as meaning licenses that have been placed in an inactive or retired status, respectively, for the following reasons:

- If the Bureau issued a new “inactive license” to licensees instead of placing their existing license in an inactive status, there may be confusion as to whether requirements in the Business and Professions Code relating to issuance of a license, as opposed to placement of a license in a new status, apply. (See, e.g., BPC §§ 30, 31(b), 114.5, 115.4, 115.5, 494.5(a)(1) and (I); FAM § 17520(e).) The proposed regulation would use “placement of a license in an inactive status” instead of “issuance of an inactive license,” exempting the Bureau from compliance with the above-cited provisions of the Business and Professions Code relating to issuance of a license, because in the context of the above-cited

sections, “issuance of a license” is a grant of authority to engage in activities that require a license: those sections make denial of that authority a consequence of noncompliance. (See BPC §§ 23.7, 30(e)(2); FAM § 17520(a)(5).) Because placement of a license in an inactive status would prevent licensees from engaging in activities requiring a license, placement of a license in an inactive status would not constitute issuance of a license within the meaning of these sections.

- BPC section 462 specifies that an “inactive license” would be exempt from “continuing education requirements” and can be “restore[d] ... to an active status” (BPC § 462(b)(2), (4)). A law contemplating issuance of a new license would seemingly refer to prelicensing education requirements (see BPC § 6538(a)-(b)) and restoration to an active status.
- The more specific and later-enacted language of BPC section 6592 requires the Bureau to set the fee to “designate a license status of ‘inactive’” (emphasis added), not to issue a new “inactive license.” (See *Rader v. Thrasher* (1962) 57 Cal.2d 244, 252.)

Timing for Placement in an Inactive/Retired Status (16 CCR §§ 4564(a), 4572(a)):

Pursuant to the second sentence of each of 16 CCR sections 4564(a) and 4572(a) of the proposed regulation, a license would be placed in an inactive or retired status “on the first day of the next renewal period following the Bureau’s approval of the application.”

For licenses placed in an inactive status, which would be subject to annual renewal fees, this provision would simplify the Bureau’s determination of the fee to be charged for a licensee’s initial renewal period in an inactive status. Pursuant to BPC section 462(b)(2), an inactive license must be “renewed during the same time period in which an active license is renewed.” Thus, if a license were placed in an inactive status before the end of a renewal period, the initial renewal period in an inactive status would have to be shortened or lengthened to make the inactive license expire on the same annual date as it had before placement in that status. Prorating each applicant’s fee for this initial term of inactive licensure, as would be required by BPC section 134 or 152.6, would create an unnecessary burden on the Bureau and delay the Bureau’s approval process.

A fixed effective date would also ensure that licensees can better anticipate when their license is placed in an inactive or retired status. If placement in an inactive or retired status were effective on, for example, the date of the Bureau’s approval, a licensee who is unaware of the Bureau’s approval may keep practicing when their license’s new status prohibits them from doing so. Because licensees should be familiar with the first day of an annual renewal period—which should be the day after a licensee’s birthday month unless the date is extended (see 16 CCR § 4428; BPC § 152.5)—licensees will be better prepared for a change in status that occurs on that date. Further, since applicants for an inactive license will have been licensed for a minimum of five years at

the time of their application, and will be accustomed to their expiration falling on a particular date, keeping these dates consistent will help inactive licensees remember to submit a timely renewal.

It is unclear how a licensee would benefit from placement of a license in an inactive or retired status in the middle of a renewal period. Even if the Bureau offered that option, the Bureau would not rebate any portion of the license or renewal fee already paid for that period. License and renewal fees are set “at an amount necessary to recover the reasonable costs to the [B]ureau in carrying out [licensing and renewal] functions pursuant to [the Act].” (BPC § 6592(g); see 16 CCR § 4580(a), (b), and (c).) Because licensees have always been able to stop practicing in the middle of a renewal period, availability of a process to formally change their status at the time they stop practicing would not require the Bureau to revise its calculation of the renewal fee for that period.

Because the benefit of immediate placement in an inactive or retired status is unclear, any interest in doing so is outweighed by the interests of the Bureau and its licensees in a more efficient approval process (for inactive licenses) and predictability of the date of change of status (for both inactive and retired licenses).

Prohibition on Engaging in Activities Requiring an Active License (16 CCR §§ 4564(b), 4572(b)):

The proposed regulation would prohibit an inactive or retired licensee from engaging in any activity for which an active license is required. This is consistent with the following statutory requirements:

- Inactive licenses (§ 4564): Pursuant to BPC section 462(b)(1), “[t]he holder of an inactive license issued pursuant to this section shall not engage in any activity for which a license is required.”
- Retired licenses (§ 4572): Pursuant to BPC section 6542(a), a license may only be placed into retired status “for a professional fiduciary who is not actively engaged in the practice of a professional fiduciary or any activity that requires him or her to be licensed by the [B]ureau.” In addition, AB 2024 amended BPC section 6531, which previously prohibited a professional fiduciary from operating with an “expired, suspended, or revoked” license, to also prohibit a professional fiduciary from operating with a “retired” or “canceled” license. (AB 2024, § 1.)

16 CCR sections 4564(b) and 4572(b) of the proposed regulation are necessary because a licensee in an inactive or retired status would not be subject to the same fees, continuing education requirements, or (for retired licenses) renewal or reporting requirements as an active license. A licensee who does not take continuing education courses will be less likely to retain knowledge of the laws governing licensure or become familiar with current developments, and, as such, will be less likely to comply with the law when performing services that require a license. A licensee who does not report to the Bureau will receive less oversight, creating more opportunity for misconduct.

16 CCR sections 4564(b) and 4572(b) would clarify that the holder of an inactive or retired license may continue to perform professional fiduciary services under an exception to the Act's licensing requirements. (See, e.g., BPC §§ 6501(f)(4), 6530.) This clarification is necessary to ensure that an inactive or retired licensee is not prevented from performing services that an unlicensed individual can perform under the same exceptions. (See BPC § 148.)

For the same reason, although subdivision (a) of BPC section 462 specifies that the "inactive category of licensure" is for "persons who are not actively engaged in the practice of their profession or vocation" (emphasis added), the proposed regulation will interpret "the practice of their profession or vocation" as being limited to performance of "activit[ies] for which a license is required," as further specified in subdivision (b)(2) of that section.

Prohibition on Identifying as a "Licensed Professional Fiduciary" (16 CCR §§ 4564(c), 4572(c)):

The regulation would prohibit an inactive or retired licensee from identifying as a "licensed professional fiduciary" unless the licensee qualifies that title immediately before or after with the word "inactive" or "retired," respectively.

Although BPC section 6532 authorizes a licensee to identify as a "licensed professional fiduciary," a licensee in an inactive or retired status who identifies as a licensed professional fiduciary without specifying that they are inactive or retired may mislead the public into believing they are currently authorized to perform services that require a license. Requiring licensees to qualify their professional title with the words "inactive" or "retired" is necessary to ensure that the public knows that they are not authorized to perform services that require a license, particularly if the public is aware of that naming convention as it applies in other professions. (See, e.g., BPC 2570.17(b), 2988.5(b), 3151(d), 4200.5(b), 5058.2, 5058.3, 5600.4(b), 6762.5(b), 7851(b), 8747.5(b).)

No Continuing Education Requirement (16 CCR §§ 4564(d)(1)):

16 CCR sections 4564(d)(1) of the proposed regulation would exempt the holder of an inactive license from continuing education requirements. This exemption is authorized by BPC section 462(b)(2): "The holder of an inactive license need not comply with any continuing education requirement for renewal of an active license."

In general, continuing education requirements protect the public by ensuring that licensees have up-to-date compliance training and knowledge of current best practices in the profession. (See 16 CCR § 4444(b).) Although a licensee in an inactive or retired status may benefit from continuing education—the licensee may still, like an unlicensed individual, perform professional fiduciary services under one of the exceptions to the Act's licensing requirements—there is less need to require continuing education in those cases. A person practicing under an exemption is limited to serving relatives or a very small number of clientele (see BPC § 6501(f)(1)-(2)) or to a narrowly defined

subject matter and scope of practice (see BPC § 6501(f)(4), 6530). Because of this, a person practicing under an exemption likely has personal motivation (in the case of relatives), more time (in the case of numerical limitations on clientele), or less material to review (in the case of subject matter limitations) to acquire the continuing education necessary to be an effective practitioner. In addition, a licensee practicing under an exemption may be subject to similar regulation in overlapping areas of law, making continuing education requirements under the Act redundant or superfluous. (See BPC §§ 6501(f)(4)(F), 6530(b)-(d).)

For the reasons stated above, the benefit of a continuing education requirement for licensees in an inactive or retired status are outweighed by the following considerations:

- The requirement would be an unfair burden on licensees in an inactive or retired status, because unlicensed individuals who perform services under the same exceptions would not be subject to the same continuing education requirement.
- Continuing education requirements would increase the cost of maintaining a license in an inactive or retired status (see BPC § 6538(c)) and the Bureau would have to increase the applicable change-in-status and renewal fees to cover its additional costs of enforcing those requirements. Both factors would discourage placement in an inactive or retired status, and qualified licensees would be more likely to allow their licenses to become delinquent and canceled, undermining the purpose of the proposed regulation.

Filing of Annual Statement (16 CCR §§ 4564(d)(2), 4572(e)): See discussion of Renewal and Reporting Duties for Inactive Licenses but Not Retired Licenses (16 CCR § 4567, below.

Addition of the Note to Sections 4564 and 4572:

A Note describing the Authority and Reference of both section 4564 and 4572 is being added by this rulemaking. The Notes are the same, except where the note to section 4564 refers to BPC section 462 relating to inactive licensure status, and the note to section 4572 refers to BPC section 6542 related to retired licensure status. Otherwise, both Notes are designed to list the known bases of the Bureau's authority for this rulemaking generally, and to describe the BPC sections implemented separately.

Eligibility for Placement in an Inactive/Retired Status (16 CCR §§ 4565, 4573):

The proposed regulation would establish conditions for placement of a license in an inactive or retired status, as follows, for the following reasons:

- Status of license:
 - Until one year after effective date, inactive, expired, and delinquent licenses eligible for change in status (16 CCR §§ 4565(a)(1), 4573(a)(1)): For one year after the effective date of the proposed regulation, the proposed regulation would authorize an active, expired, or delinquent license to be placed in an inactive or retired status. The proposed subdivisions also contain provisions that allow for an 'inactive' license

status to be changed to a 'retired' license status (via proposed section 4573(a)(1)) and vice versa (via 4565(a)(1)). This one-year grace period is necessary because otherwise licensees who are currently in an expired or delinquent status due to unavailability of an inactive or retired status will face the additional, unnecessary hurdle of reactivating their license in order to qualify for its placement in an inactive or retired status. The one-year grace period will enable those licensees to change their status to inactive or retired without having to pay renewal and delinquency fees to restore a license they will not use to active status and enable the Bureau to avoid wasting resources on unnecessary intermediate changes to a license's status.

- One year after effective date, expired or delinquent licenses ineligible for change in status (16 CCR §§ 4565(a)(2), 4573(a)(2)): On and after the date that is one year after the effective date of the proposed regulation, the proposed regulation would continue to authorize an active license to be placed in an inactive or retired status, but would no longer authorize an expired or delinquent license to be placed in an inactive or retired status. Like the provisions of (a)(1), these proposed subdivisions also contain provisions that allow for an 'inactive' license status to be changed to a 'retired' license status (via proposed section 4573(a)(1)) and vice versa (via 4565(a)(1)). The proposed regulation would sunset the authority to place expired or delinquent licenses in an inactive or retired status in order to encourage eligible licensees in the future to place their license in an inactive or retired status as soon as they stop practicing, which will save the Bureau billing costs and the costs of updating its databases to reflect intermediate expired and delinquent statuses. (See BPC §§ 27, 6542.)
- Minimum five consecutive years in good standing (16 CCR §§ 4565(b), 4573(b)): The proposed regulation would require, as a condition of eligibility for placement in a new status, that the license be a minimum of five consecutive years in good standing. As discussed above (in Definitions), Sections 4563(d) and 4571(d) of this proposal would define "in good standing" as meaning that a license "is not suspended, revoked, otherwise restricted, or on probation due to any disciplinary action by the Bureau." The proposed regulation would apply this and the other disqualifying factors in BPC section 6542(b) discussed under the following headings (regarding outstanding citations issued by the Bureau and unresolved disciplinary actions initiated by the Bureau against the licensee) not only to placement of a license in a retired status, but also to placement in an inactive status, for the same reasons outlined under this heading and the headings below. Instead of the phrasing "punitively restricted," that is used in BPC section 6542(b), the proposed regulation would describe restricted licenses as being "restricted due to disciplinary action by the Bureau" for consistency with established constitutional law. Disciplinary proceedings of the Bureau and other licensing bodies "are not intended to punish the licensee, but rather to protect the public." (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763,

785.) The proposed regulation would expand upon the condition in BPC section 6542(b) that a license must be in good standing in order to be placed in a retired status by conditioning a change in status to “inactive” or “retired” on a license’s having been maintained in good standing for at least five consecutive years preceding that change in status for the following reasons:

- A licensee in an inactive or retired status will be able to indefinitely claim the distinction of inactive or retired licensure without any further continuing education or experience in active practice. If a new, inexperienced licensee could place their license in an inactive or retired status relatively soon after their initial licensure, their possession of an inactive or retired license may induce the public, including future employers, to believe the licensee has education or experience that the licensee never had the opportunity to acquire.
- The proposed regulation will make it easier for licensees with an inactive or retired license to return to active licensure after a hiatus or retirement. A licensee who has maintained a clean disciplinary history for five years has demonstrated the ability and inclination to keep up with changes in the law and resist opportunities for misconduct. A licensee without that history would be more likely to return to active practice with an out-of-date understanding of the law—especially considering their exemption from continuing education during their hiatus—and would have a history of misconduct that evidences a likelihood that they will engage in misconduct in the future.
- The five-year minimum will encourage current licensees to remain in good standing for a sustained period of time in order to be eligible for placement of their license in an inactive or retired status and reduce the temptation to engage in misconduct for short-term gain.
- No outstanding citation issued by the Bureau against the licensee (16 CCR § 4565(c), 4573(c)): This provision is consistent with BPC section 6542(b), which prohibits placement of a license in a retired status if the license “is subject to an outstanding order of the [B]ureau” The proposed regulation would make compliance with all “citations,” not all “orders,” a condition of good standing because a person who has violated the Act may be subject to “citations containing orders of abatement *and/or administrative fines*.” (16 CCR § 4600(a); emphasis added.) Because a licensee who becomes inactive or retires will enjoy less oversight and will no longer rely on the Bureau to maintain their practice, and will therefore have less incentive to comply with these citations, it is important that licensees resolve their outstanding citations before placement of their licenses in that status. However, under the proposed regulation, the Bureau would retain the ability to proceed with citations against inactive or retired licensees, ensuring an appropriate level of oversight and accounting for situations where licensees may attempt to circumvent the Bureau’s enforcement efforts by seeking a license status change.

- No unresolved disciplinary action initiated by the Bureau against the licensee (16 CCR §§ 4565(c), 4573(c)): This provision of the proposed regulation implements the prohibition in BPC section 6542(b) against placement of a license in a retired status if the license is “subject to disciplinary action under [the Professional Fiduciaries Act].” The proposed regulation would condition placement of a license in an inactive or retired status on absence of those disqualifying factors for the same reasons a licensee, preceding placement in that status, must maintain their license in good standing for at least five years. (See the discussion in this ISR under the heading “Eligibility for Placement in an Inactive/Retired Status— Minimum five consecutive years in good standing,” above.) The proposed regulation would reject an overly expansive interpretation of the phrase “subject to disciplinary action” that includes any licensee against whom the Bureau has received a complaint, or any licensee who is otherwise under investigation by the Bureau, because an expansive interpretation could delay a licensee from obtaining a change in status even if the complaint or investigation is unlikely to result in discipline. Instead, this provision of the proposed regulation would interpret the phrase as meaning that the Bureau has initiated a disciplinary action against a licensee, because initiation of a disciplinary action generally represents the Bureau’s determination that an allegation against a licensee is likely to have merit. The interpretation of the statutory language taken by the proposed regulation will enable the Bureau to prioritize oversight of currently practicing licensees over resolution of complaints against nonpracticing licensees that are unlikely to result in discipline.

As with the above restriction related to outstanding citations, the Bureau would retain the ability to proceed with disciplinary actions against inactive or retired licensees, ensuring an appropriate level of oversight and accounting for situations where licensees may attempt to circumvent the Bureau’s enforcement efforts by seeking a license status change.

- No outstanding order for recovery of the Bureau’s costs issued against the licensee pursuant to BPC section 125.3: This provision is necessary because a license may be subject to an outstanding order for recovery of “the reasonable costs of the investigation and enforcement of [a] case” issued by an administrative law judge pursuant to BPC section 125.3. The proposed regulation will make payment of those costs a condition of placement in a new status to encourage timely reimbursement, and is necessary to ensure that the prohibition in BPC section 6542(b) against placement of a license in a retired status if the license “is subject to an outstanding order of the [B]ureau” extends to court orders under BPC section 125.3, which are not technically issued by the Bureau, but on the Bureau’s behalf.
- Licensee must have no open cases that require active licensure (16 CCR §§ 4565(e), 4573(e)): The proposed regulation would require the Bureau to deny placement in a retired status if the licensee has open cases that require active

licensure. This provision is necessary to ensure that professional fiduciaries who have gained familiarity with their clients' affairs conclude their involvement in those affairs before they are unable to practice due to change in status. This provision will protect consumers by preventing interruptions in service and enabling consumers to select a new professional fiduciary, if necessary, based on quality and experience instead of urgent need.

Addition of the Note to Sections 4565 and 4573:

A Note describing the Authority and Reference of both section 4565 and 4573 is being added by this rulemaking. The Notes are the same, except where the note to section 4564 refers to BPC section 462 relating to inactive licensure status. Notably, both sections 4565 and 4573 contain authority citations to section 6542, as both contain provisions related to the implementation of regulations for retired status licenses. Otherwise, both Notes are designed to list the known bases of the Bureau's authority for this rulemaking generally, and to describe the BPC sections implemented separately.

Application Process for Placement in an Inactive/Retired Status (16 CCR §§ 4566, 4574):

To place a license in an inactive or retired status, a licensee would need to submit an application containing specified information, an updated annual statement, and a fee for placement of a license in the requested status, for the following reasons:

Application (16 CCR §§ 4566(a), 4574(a)): The proposed regulation would require an application to contain the following information for the following reasons:

- Full name: This information will enable the Bureau to identify the applicant in line with the name used on the existing license. The information will also enable the Bureau to fulfill recordkeeping and reporting requirements under BPC sections 30(d)(1) and (m)(1) and RTC 19528(a)(1).
- Address, phone number, and, email address of the licensee: This information will enable the Bureau to contact the licensee if the application is incomplete; to distinguish the licensee from other applicants with the same name; and to have backup means of contacting the licensee if other information provided is outdated, illegible, or wrong. The information will also enable the Bureau to fulfill recordkeeping, reporting, notice, and service of process requirements under BPC sections 27, 30(d)(2), 129(c), 163.5, 494.5(e)(2), 6534(a)(3), and 6561(a)(1); GOV sections 11440.20 and 11505(c); and RTC section 19528(a)(2).
- License number and expiration date: This information will enable the Bureau to determine whether the license meets the conditions necessary for placement of the license in an inactive or retired status pursuant to 16 CCR sections 4565 and 4573 of the proposed regulation. The information will also enable the Bureau to fulfill recordkeeping and reporting requirements pursuant to BPC sections 30(d)(6) and (m)(6) and RTC section 19528(a)(6).
- Signed and dated affidavit of intent not to practice while the license is in an inactive or retired status: This requirement will serve as additional notice to a

licensee that, while in an inactive or retired status, the licensee may not engage in any professional fiduciary activity for which a license is required unless exempt under the Act, as provided in 16 CCR sections 4564(b) and 4572(b) of the proposed regulation pursuant to 462(b)(1), 6531, and 6542(a). (The rationale for this prohibition is in this ISR under the heading “Prohibition on Engaging in Licensed Activities,” above.) The requirement will also prevent licensees in an inactive or retired status from claiming ignorance of the law if they unlawfully engage in professional fiduciary activities that require a license while in that status.

- Signed and dated affidavit that the license is in good standing and the licensee is not aware of any pending administrative or judicial proceeding against the licensee that may result in the loss of good standing: This information will enable the Bureau to determine whether the license meets the conditions necessary for placement of the license in an inactive or retired status pursuant to 16 CCR sections 4565(a) and 4573(a) of the proposed regulation. The proposed regulation would require this information to be provided by the licensee because the licensee is more likely to have access to information about administrative or judicial proceedings affecting the licensee to which the Bureau is not a party.

Updated annual statement (16 CCR §§ 4566(b), 4574(b)): The proposed regulation would define “annual statement” as “an annual statement that complies with the requirements of [16 CCR section 4542],” consistent with 16 CCR section 4540(a)-(b), which implements the statutory requirements for submission of an annual statement in BPC section 6561. Although existing law only requires submission of an annual statement as a condition of placement of a license into a retired status (BPC § 6542(a)), not an inactive status (see BPC § 462), the proposed regulation would require a licensee to submit an updated annual statement for placement of a license in either status, for the following reasons:

- The annual statement will contain updated information that enables the Bureau to:
 - Contact the licensee. (See BPC § 6561(a)(1); 16 CCR § 4542(a)(1)-(2).)
 - Determine that the licensee has no open cases that require active licensure. (See BPC § 6561(a)(3); 16 CCR § 4542(a)(4)-(5).)
 - Determine the existence of any administrative or judicial proceedings against the licensee that may disqualify the license from placement in an inactive or retired status under 16 CCR section 4565 or 4573 of the proposed regulation. (See BPC § 6561(a)(2), (4)-(6), (10); 16 CCR § 4542(a)(3), (11)-(15).)
 - Investigate or sanction the licensee pursuant to its continuing authority under BPC sections 464(c) and 6580(a) to investigate or sanction a licensee holding an inactive or retired license. (See BPC § 6561(a)(1), (3), (6)-(9); 16 CCR § 4542(a)(1)-(10).)
 - Fulfill its recordkeeping, reporting, notice, and service of process requirements pursuant to BPC sections 27, 30(d)(2), (d)(6), and (m)(6),

129(c), 163.5, 494.5(e)(2), 6534(a)(3), and 6561(a)(1); GOV sections 11440.20 and 11505(c); and RTC section 19528(a).

- An updated annual statement is the best format for a licensee to provide this information because a licensee will be familiar with that format from their initial and annual reporting duties (BPC § 6561(a); 16 CCR §§ 4522(b), 4540) and less likely to mistakenly omit required information. For the same reason, the proposed regulation will require an annual statement to be “filed with the Bureau in the same manner as the licensee would file an annual statement for license renewal.”

Payment of fee for placement in an inactive or retired status (16 CCR §§ 4566(c), 4574(c)): Existing law requires the Bureau to set the fee to designate a license status of “inactive” (BPC § 6592(e)) and the fee to designate a license status of “retired” (BPC § 6592(d)). The proposed regulation would require a licensee to submit that fee with the application to avoid wasting resources processing applications that are later abandoned for nonpayment. (See BPC § 142; 16 CCR § 4426.)

Addition of the Note to Sections 4566 and 4574:

A Note describing the Authority and Reference of both section 4566 and 4574 is being added by this rulemaking. The Notes are the same, except where the note to section 4564 refers to BPC section 462 relating to inactive licensure status, and the note to section 4572 refers to BPC section 6542 related to retired licensure status. Further, both sections 4566 and 4574 contain an authority citation to BPC section 6592, which provides authority for the Bureau to set fees for both inactive and retired licensure via regulation. Otherwise, both Notes are designed to list the known bases of the Bureau’s authority for this rulemaking generally, and to describe the BPC sections implemented separately. Further, both sections contain reference citations to Revenue and Taxation Code section 19528, which describes the requirement for boards to provide certain licensee information to the Franchise Tax Board.

Renewal and Reporting Duties (16 CCR §§ 4567, 4572(d)):

16 CCR section 4567 of the proposed regulation would make an inactive license subject to annual renewal pursuant to BPC section 462(b)(2), which requires that an inactive license “be renewed during the same time period in which an active license is renewed.” Under the proposed regulation, an inactive license will also be subject to the annual reporting duties of 16 CCR section 4540, including filing of an annual statement, and the ongoing reporting duties of 16 CCR section 4544.

By contrast, 16 CCR section 4572(d) of the proposed regulation would exempt a retired license from renewal pursuant to BPC section 6542(c), providing that “[t]he holder of a retired license shall not be required to renew that license.” Unlike an inactive license, the proposed regulation would not make a retired license subject to the annual or ongoing reporting duties of 16 CCR section 4540 or 4544. Instead, per proposed section 4572(e)(2) a licensee holding a retired license would only be subject to the

reporting duties of BPC section 136, which requires licensees to report a change in address within 30 days after the change. Because retired licensees no longer actively work with clients or cases, there are no active parties that would be served by knowing the retired licensee's current address, and therefore the default time length of 30 days as described by BPC section 136 is appropriate to protect any remaining consumer interest in maintaining the licensee's current address.

The proposed regulation would make an inactive license subject to annual renewal requirements and annual and ongoing reporting requirements because the term "inactive" implies a licensee who has temporarily stepped away from the profession but possesses fitness to return to active licensure. The term "inactive" would signal to employers that the licensee remains in good standing with the Bureau and is not likely to be disqualified from returning to active status if an employer's future needs require it. In order to avoid misleading the public as to the ability of a licensee to return to active licensure, it is necessary for the Bureau to determine the continued fitness of licensees in an inactive status in the same manner as the Bureau determines the continued fitness of licensees in an active status: through annual and ongoing reporting requirements.

Meanwhile, an employer is less likely to believe that a licensee holding a retired license is necessarily ready to return to active licensure. The term "retired" connotes permanent separation from a profession, and therefore less likelihood that the retiree has stayed up to date on the laws and best practices applicable in the profession. Possession of a retired license is less likely to cause confusion as to whether the Bureau has kept track of the license holder's activities to ensure that they have not committed a crime, professional misconduct, or act that would disqualify them from active licensure in the future. Therefore, the proposed regulation would exempt a licensee holding a retired license from the annual and ongoing reporting duties of 16 CCR sections 4540 and 4544.

A retired licensee would be required to report a change in address for the reasons specified in this ISR under the heading "Application for Placement in an Inactive or Retired Status," below, including for purposes of service of process pursuant to GOV 11505(c), which authorizes service by registered mail "if a *statute or agency rule* requires the respondent to file the respondent's address with the agency and to notify the agency of any change, and if a registered letter containing the accusation ... is mailed, addressed to the respondent at the latest address on file with the agency." (Emphasis added. BPC section 6580(a) gives the Bureau authority to impose sanctions, which may include sanctions that require service of process, on a licensee in an inactive or retired status.)

Renewal of an Inactive License (16 CCR § 4567):

The proposed regulation would require annual renewal of an inactive license, and would require licensees holding an inactive license to submit an annual statement, for the reasons stated in this ISR under the heading "Renewal and Reporting Duties for

Inactive Licenses but Not Retired Licenses,” above, regarding the necessity of making an inactive license subject to annual renewal requirements and annual and ongoing reporting requirements.

Expiration of Inactive License (16 CCR § 4567(a)): Proposed section 4564 establishes the date upon which a previously active license becomes inactive. Proposed section 4567(a) establishes a one-year expiration period predicated on the date established through section 4564. The one-year length of time is the same renewal cycle as an active license, as required by BPC section 462(b)(2). Further, inactive licensees are still required to file an annual statement per proposed section 4567(b)(2), as discussed below. Maintaining a consistent schedule of expiration dates makes it easier for both licensees and the Bureau to track due dates for mandatory submissions and renewals.

Annual statement (16 CCR § 4567(b)(1)): The proposed regulation would require an applicant to file an annual statement as follows, for the following reasons:

- In the same manner as an active license: The proposed regulation would require the annual statement to be filed “in the same manner as the licensee would file an annual statement for an active license” because this is the manner in which a licensee is likely to be accustomed to filing an annual statement.
- By the same deadline as an active license: 16 CCR section 4567(b)(1) of the proposed regulation would require an annual statement for an inactive license to be filed no later than 60 days prior to the license expiration, the same deadline provided to an active license, because this will give the Bureau the amount of time necessary to process the annual statement before the license expires, and provide inactive licensees a deadline for submission of the annual statement that will be familiar and easy to remember. Maintaining the same submission deadline also simplifies compliance for licensees by keeping a consistent timeline and ensures consistency of workload for the Bureau by not changing the expected submission date of the materials.

Payment of fee for renewal of inactive license (16 CCR § 4567(b)(2)): BPC section 462 authorizes establishment of a renewal fee for an inactive license that is equal to or less than the renewal fee for an active license. BPC section 6592(c) requires the Bureau to set “[t]he renewal fee for a professional fiduciary license.” The proposed regulation would establish a renewal fee for an inactive license and require payment of the renewal fee as a condition of renewal. The proposed regulation would require a licensee to submit that fee as a condition of renewal to avoid wasting resources processing applications that are later abandoned for nonpayment. (See BPC § 142; 16 CCR § 4426.)

Disqualifying conduct (16 CCR § 4567(c)): The proposed regulation would clarify that the conduct specified in BPC section 6541(b) that disqualifies a license from renewal will also disqualify an inactive license from renewal. This clarification is necessary for

the reasons specified in this ISR under the heading “Renewal and Reporting Duties for Inactive Licenses but Not Retired Licenses,” above.

Addition of the Note to Sections 4567:

A Note describing the Authority and Reference of section 4567 is being added through this rulemaking. The bases of authority in BPC sections 462, 6517, and 6592 are discussed above in this Initial Statement of Reasons. The reference citations listed in this Note describe the BPC sections implemented through proposed section 4567.

Requirements for Reinstatement of Inactive/Retired License to Active Status (16 CCR §§ 4568, 4575):

BPC section 462(b)(4) lists several criteria that a licensee in an inactive status must meet in order to restore their license to an active status. BPC section 6542(e) requires the Bureau to “establish minimum qualifications for the restoration of a license from retired status to active status,” and specifies several qualifications the Bureau must require.

The proposed regulation would establish the following minimum criteria for restoration of a license from an inactive or retired status to an active status:

An inactive license must be unexpired (16 CCR § 4568(a)): Under the proposed regulation, a licensee would not be permitted to reinstate an inactive license that had expired. This provision is necessary because a licensee who has permitted their inactive license to become delinquent has demonstrated a lack of interest in returning to active practice and is therefore more likely to have failed to keep up with licensure requirements and current best practices in the profession. This provision is also necessary to encourage payment of renewal fees in the absence of a delinquency fee that might otherwise make up the costs of sending late notices to, and maintaining active files on, delinquent licensees. (See the rationale provided in this ISR under the heading “Delinquency and Cancellation of an Inactive License,” above.)

Time limit on reinstatement of inactive or retired license (16 CCR §§ 4568(a), 4575(a)): Under the proposed regulation, a licensee holding an inactive license would be able to reinstate their license for up to 10 years after the date on which their license was placed in an inactive status, and a licensee holding a retired license would be able to reinstate their license for up to five years after the date on which their license was placed in a retired status. It is necessary to place a time limit on reinstatement—10 years or five years, respectively, for an inactive or retired license—because a licensee holding an inactive or retired license will be exempt from continuing education requirements, and if an inactive or retired licensee goes on hiatus from professional practice for more than 10 or five years, respectively, they will be less prepared to reenter professional practice with all necessary knowledge of current regulatory requirements and best practices.

The proposed regulation would enable a licensee to hold a license in an inactive status before reinstatement for a longer stretch of time than a licensee holding a license in a retired status—10 years instead of five years—because a licensee holding an inactive license will be required to comply with the annual reporting duties of 16 CCR section 4540, including filing of an annual statement, and the ongoing reporting duties of 16 CCR section 4544, while a licensee holding a retired license will be subject to neither requirement. Therefore, an inactive licensee will be subject to greater Bureau oversight than a retired licensee and will have to be familiar with any changes in existing law regarding, at a minimum, the content of annual and ongoing reporting requirements. In addition, a licensee who chooses an “inactive” status will have likely chosen that status over a “retired” status in order to reassure potential employers that they are in good standing with the Bureau and ready to return to active status if the employer’s future needs require it. A licensee who anticipates returning to active status, annually renews their inactive license, and complies with all annual and ongoing reporting requirements, is more likely to stay informed about current regulatory requirements and best practices than a licensee who does not anticipate returning to active status and is not subject to annual and ongoing reporting requirements.

The proposed regulation would enable a licensee to hold a license in a retired status for a shorter period of time—five years—before reinstatement is foreclosed as an option. A licensee will be more likely to choose a “retired” status if they do not anticipate returning to professional practice. In addition, a retired licensee will be subject to less Bureau oversight, as the licensee will not be subject to the annual and ongoing reporting requirements applicable to an inactive status. Therefore, a retired licensee is less likely to remain informed about changing regulatory requirements and best practices in the profession. The proposed regulation would enable a retired licensee to reinstate their license within a five-year period because laws and regulations of the Bureau are generally evaluated and modified on a four-year cycle to stay current with evolving trends in the practice and the makeup of the professional fiduciary community. At the end of five years, the annual continuing education requirements discussed under the heading immediately below should be sufficient to update a retired licensee on changes made during any four-year cycle that has occurred during their hiatus because the licensee will already have demonstrated, as a condition of their “retired” designation, an ability to retain knowledge and comply with changing laws and regulations during the five-year period preceding their change in status. (See the discussion in this ISR under the heading “Eligibility for Placement in an Inactive/Retired Status—Minimum five consecutive years in good standing,” above.)

The licensee must complete continuing education courses (16 CCR §§ 4568(b)(1), 4575(b)(1)): The proposed regulation would establish the following continuing education requirements for a licensee in an inactive or retired status seeking to reinstate their license to active status:

- In the one-year period immediately before requesting reinstatement, complete 15 hours of approved continuing education courses:

- Inactive status (16 CCR § 4568(b)(1)(A)): BPC section 462(b)(4) requires a licensee holding an inactive license, “[i]f the [licensing body] requires completion of continuing education for renewal of an active license, [to] complete continuing education equivalent to that required for renewal of an active license, unless a different requirement is specified by the [licensing body].” The proposed regulation would adopt the same continuing education requirement that is applicable to renewal of an active license. (See BPC § 6538(b).) This 15-hour requirement would be consistent with the continuing education requirement for reinstatement of a retired license, below, and is necessary to ensure that returning licensees have up-to-date compliance training and knowledge of current best practices in the profession. Although a returning licensee would have been exempt from continuing education requirements during their hiatus, they are unlikely to have more need for continuing education than, for example, a second-year licensee, who is also subject to the 15-hour requirement, due to their experience holding a license in good standing for at least five consecutive years prior to their hiatus. The proposed regulation would require all continuing education courses to be completed in the one-year period immediately before requesting reinstatement so that the continuing education does not become out of date during the licensee’s hiatus and is at the forefront of the licensee’s mind upon their return.
- Retired status (16 CCR § 4575(b)(1)): BPC section 6538(b) requires a licensee holding a retired license to “complete 15 hours of approved continuing education courses each year.” The proposed regulation interprets the language requiring completion of 15 hours of approved continuing education courses “each year” as a requirement that licensees holding a retired license complete the same amount of continuing education courses necessary for annual renewal of an active license. This interpretation would be consistent with the similar requirement in BPC section 464, the general provision of the Business and Professions Code authorizing a licensing body to establish a retired status in the absence of independent authority to do so. (See BPC § 464(b)(5)(D).) The 15-hour requirement would be consistent with the continuing education requirement for reinstatement of an inactive license, above, and is necessary to ensure that returning licensees have up-to-date compliance training and knowledge of current best practices in the profession. Although a returning licensee would have been exempt from continuing education requirements during their retirement period, they are unlikely to have more need for continuing education than, for example, a second-year licensee, who is also subject to the 15-hour requirement, due to their experience holding a license in good standing for at least five consecutive years before that period. The proposed regulation would require all continuing education courses to be completed in the one-year period immediately before requesting reinstatement so that the continuing

education does not become out of date during the licensee's retirement period and is fresh on the licensee's mind upon their return to active licensure.

- Calculation of amount of courses taken (16 CCR §§ 4568(b)(1), 4575(b)(1)): The proposed regulation would clarify that continuing education courses will count toward fulfillment of the 15-hour requirement for reinstatement of an inactive or retired license in the same manner as they count toward fulfillment of the 15-hour requirement for annual renewal of an active license. This clarification is necessary because existing regulations regarding continuing education requirements for renewal of an active license represent the Bureau's determination of the continuing education necessary to ensure that persons who seek and receive professional fiduciary services "will be protected by a fair system with high standards of care." (SB 1550, § 2(b).) Among those regulations is the existing requirement that continuing education include at least two hours of continuing education credits each year in ethics for professional fiduciaries. (16 CCR § 4442(b)(2).) The proposed regulation would expressly repeat this ethics requirement to emphasize the particular importance of ethical behavior in preventing harm to the "vulnerable clients that professional fiduciaries are supposed to serve." (SB 1550, § 2(d).) Keeping these requirements consistent among license types will help inactive and retired licensees seeking to return to practice remember the terms of their continuing education obligations.
- Submission of affidavit of completion under penalty of perjury; recordkeeping and disclosure requirements (16 CCR §§ 4568(b)(2); 4575(b)(2)): The proposed regulation would require a licensee to submit a statement, signed under penalty of perjury, that the licensee has completed the required amount of continuing education courses. This provision would be consistent with 16 CCR § 4452, which requires active licensees to sign a similar statement under penalty of perjury on an annual renewal application form. Perjury is punishable by two to four years of imprisonment. (PEN § 126.) Certification under penalty of perjury helps to ensure that the documentation contains truthful, factual representations made in good faith. (See e.g., *In re Marriage of Reese & Guy* (1999) 73 Cal. App.4th 1214, 1223 [judicial explanation for the use of certifications].) This provision is necessary due to the difficulty of confirming with a degree of certainty, in a timely manner, how many qualifying hours of continuing education a licensee has taken (16 CCR § 4442), whether the courses were given by an approved education provider (16 CCR § 4446), and whether the courses were relevant to the licensee's practice (16 CCR § 4444(b)), which creates significant potential for abuse without a strong deterrent.
- Recordkeeping and disclosure requirements (16 CCR §§ 4568(b)(2); 4575(b)(2)): For the reasons stated immediately above, the proposed regulation would also adopt the requirements in 16 CCR § 4452(b) and (c) for a licensee to maintain documentation of coursework for three years, and provide any related information later requested by the Bureau within 10 business days of the request.

The proposed regulation would adopt the specific retention period and time limit in 16 CCR § 4452(b) and (c) would apply for the following reasons:

- Three-year retention period: The retention period for recordkeeping would be three years, and no shorter, because a shorter period would not enable the Bureau to establish a pattern of misconduct: licenses are renewed annually, so the Bureau will generally only receive two or three application forms containing a statement of compliance from any one licensee within a three-year period.
- 10-business-day time limit: The 10-business-day time limit for providing information would enable licensees to find time within a busy schedule to provide information—which may be in offsite storage—without interfering with their responsibilities to clients. The provision would not authorize any additional time for providing information due to the risk that a licensee who had committed perjury would use that time to engage in further misconduct to avoid being caught.

The licensee must file an updated annual statement (16 CCR § 4568(b)(3), 4575(b)(3)): Although existing law only requires submission of an annual statement as a condition of reinstatement of a retired license (BPC § 6542(a)), not an inactive license (see BPC § 462), the proposed regulation would require a licensee to submit an updated annual statement in both cases, for the reasons listed above regarding filing annual statements, including enabling the Bureau to contact the licensee, determine if any investigation is necessary, and fulfill statutory requirements in the least burdensome way possible, that is, by filing a familiar report.

The licensee must submit a reinstatement fee (16 CCR §§ 4568(b)(4), 4575(b)(4)): BPC section 462(a)(4)(A) requires payment of “the renewal fee” as a condition of reinstatement from an inactive status and BPC section 6592(e) gives the Bureau authority to “set the fee to reinstate a license to ‘active’ from a status of ‘retired’ or ‘inactive.’ ” The proposed regulation would require a licensee to submit a reinstatement fee as a condition of reinstatement of an inactive or retired license because a licensee seeking to reinstate a license would be less motivated to pay the fee, and therefore less likely to pay it, if nonpayment did not carry with it the negative consequence of nonreinstatement. (See BPC § 142; 16 CCR § 4426.)

Initial License Period after Reinstatement (16 CCR §§ 4568(c), 4575(c)):

Duration of initial license period after reinstatement (16 CCR §§ 4568(c)(1), 4575(c)(1)): The proposed regulation would require the initial license period after reinstatement from an inactive or retired status to be adjusted so that the license expires at “midnight on the last day of the month in which the second birthday of the licensee occurs” after reinstatement, as provided in 16 CCR section 4428, to set the licensee’s annual renewal date at the end of the licensee’s birthday month. This provision is necessary to “distribute the renewal work of [the Bureau] throughout each year and permit the most efficient, and economical use of personnel and equipment,” consistent with BPC section

152.6, because if license periods were not set based on a random criterion like a licensee's birthday, there would be a risk of many licensees choosing to reinstate their licenses at the same time of year due to unforeseeable economic, environmental, cultural, or other factors, and causing the Bureau to be annually overburdened with renewal work at that time of year in future years. In addition, by making a reinstated license's renewal date the same as it was before placement in an inactive or retired status (assuming that the date had not been previously extended pursuant to BPC section 152.5), and connecting that date to the licensee's birthday month, the proposed regulation will make the renewal date easier for a reinstated licensee to remember, helping to ensure that the services provided by licensees to their clients remain uninterrupted and reinstated licenses are renewed on time.

Continuing education requirements (16 CCR §§ 4568(c)(2), 4575(c)(2)): Although the initial license period after reinstatement from an inactive or retired status would generally be longer than the following annual renewal periods due to the adjustment discussed above, the proposed regulation would require the same amount of continuing education for the initial license period as is required for an annual renewal period. (See 16 CCR § 4442.) This requirement would be consistent with the amount of continuing education required during the initial license period after issuance of a license, which is also generally adjusted to be longer than the following annual renewal periods. (See 16 CCR § 4560(c).) The proposed regulation would not require additional continuing education corresponding with the additional length of a licensee's initial license period after reinstatement because of the variability of that additional length from licensee to licensee and the time-consuming nature of determining and communicating to each reinstated licensee how much additional continuing education the licensee must take in that initial period. In addition, such a requirement would be largely superfluous, given the likelihood that a reinstated licensee, who will have held a license in good standing for at least five consecutive years before their hiatus or retirement, will already be inclined to identify areas of knowledge in which they may be deficient and pursue continuing education as necessary to make up that deficiency, regardless of whether their continuing education exceeds the minimum requirement for reinstatement.

The license must not be disqualified from reinstatement (16 CCR §§ 4568(d), 4575(d)): This subsection would clarify that reinstatement of an inactive or retired license remains subject to denial pursuant to BPC section 125.3 (prohibiting reinstatement if a licensee owes the Bureau investigative and enforcement costs from a disciplinary proceeding), BPC section 494.5 (prohibiting reinstatement if a licensee is on a list of the 500 largest tax delinquencies, as specified), or as otherwise provided by law. This provision is necessary to put licensees on notice that completion of the required procedures for reinstatement set forth in 16 CCR section 4566(b) or 4575(b) of the proposed regulation will not guarantee reinstatement, but that reinstatement may still be denied pursuant to BPC section 125.3(g) or 494.5(a), or as otherwise provided by law. The provision will encourage licensees to identify and resolve possible issues that would prevent reinstatement before making a request, saving the Bureau the resources involved in identifying and communicating those issues and expediting the reinstatement process.

Addition of the Note to Sections 4568 and 4575:

A Note describing the Authority and Reference of both section 4568 and 4575 is being added by this rulemaking. The Notes are the same, except where the note to section 4568 refers to BPC section 462 relating to inactive licensure status, and the note to section 4575 refers to BPC section 6542 related to retired licensure status. Further, both sections 4568 and 4575 contain an reference citation to BPC 494.5, which allows for the adoption of regulations related to tax delinquency and denial or suspension of licenses. Otherwise, both Notes are designed to list the known bases of the Bureau’s authority for this rulemaking generally, and to describe the BPC sections implemented separately.

Delinquency and Cancellation of an Inactive License (16 CCR § 4569):

Under the proposed regulation, an inactive license would become delinquent and then cancelled on the same schedule as an active license. (See BPC § 6541.1.) This provision is necessary to encourage timely renewal and save the Bureau the additional costs of sending late notices to, and maintaining active files on, licensees holding inactive licenses that become delinquent for an unreasonable amount of time. Because BPC section 121.5 prohibits the Bureau from assessing a delinquency fee or “accrued and unpaid renewal fees” on inactive licenses, the Bureau, in the absence of this provision, would have to recover those additional costs by increasing renewal fees, resulting in an unfair burden on licensees who do pay renewal fees and further discouraging fee payment. (See BPC § 6592(g) (requiring the Bureau to set the renewal fee for a professional fiduciary license at “an amount necessary to recover the reasonable costs to the [B]ureau in carrying out those functions pursuant to [the Act]”); *California Farm Bureau Federation v. State Water Resources Control Board* (2011) 51 Cal.4th 421, 438 [“A regulatory fee does not become a tax simply because the fee may be disproportionate to the service rendered to individual payors.”].)

Addition of the Note to Section 4569:

A Note describing the Authority and Reference of section 4569 is being added through this rulemaking. The bases of authority in BPC sections 462, 6517, and 6592 are discussed above in this Initial Statement of Reasons. The reference citations listed in this Note describe the BPC sections implemented through proposed section 4567.

Enforcement Provisions (16 CCR §§ 4570, 4576):

The proposed regulation would provide that failure to maintain compliance with Article 8.3 (establishing an inactive license status) or Article 8.5 (establishing a retired license status), respectively, is unprofessional conduct and grounds for disciplinary action including, but not limited to, revocation of the inactive or retired license, respectively. These provisions would restate the Bureau’s statutory authority to suspend or revoke a license, or take another disciplinary action, for “[v]iolation of [the Act] or ... any of the statutes, rules, or regulations pertaining to duties or functions of a professional fiduciary” (BPC § 6584(h)), and its statutory authority to investigate a professional fiduciary, including a professional fiduciary holding “a license that is retired, inactive, canceled, or suspended,” to “review [their] alleged violation of statute, regulation, or the Professional

Fiduciaries Code of Ethics ... [and to] impose sanctions upon a finding of a violation,” which may include suspension, probation, or revocation. (BPC § 6580.) The proposed regulation would restate this statutory authority to ensure that licensees holding an inactive or retired license are aware of their continuing responsibility to comply with regulations pertaining to their licensure and the possible consequences of failing to comply. These provisions would serve the Bureau’s purpose of protecting the public because an informed licensee is less likely to violate the law.

Addition of the Note to Sections 4570 and 4576:

A Note describing the Authority and Reference of both section 4568 and 4575 is being added by this rulemaking. The Notes are the same, except where the note to section 4568 refers to BPC section 462 relating to inactive licensure status, and the note to section 4575 refers to BPC section 6542 related to retired licensure status. The authority citations for both sections 4570 and 4576 contain a citation to BPC section 125.9, which establishes authority for the Bureau to develop a system of regulations for the issuance of citations. Otherwise, both Notes are designed to list the known bases of the Bureau’s authority for this rulemaking generally, and to describe the BPC sections implemented separately.

Fees (16 CCR § 4580):

The proposed regulation would amend 16 CCR section 4580 to establish fees for placement of licenses in an inactive or retired status, renewal of inactive licenses, and reinstatement of inactive or retired licenses to an active status pursuant to BPC sections 6592(c), (d), (e), and (f) and BPC section 462(b)(3). The Bureau is required to set those fees “at an amount necessary to recover the reasonable costs to the [B]ureau in carrying out those functions pursuant to [the Act].” (BPC § 6592(g).)

Inactive licensees will be required to renew annually. Initial licensing workload and costs (staffing, materials and postage) are anticipated as follows:

| Initial Licensing Workload and Costs | |
|--------------------------------------|--------------|
| Licensing Workload* - 2 hours | \$198 |
| Enforcement Workload* - 2 hours | \$198 |
| Certificate | \$5 |
| Materials and Postage | \$5 |
| Total: | \$406 |

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

Renewal Licensure: Renewal licensing workload and costs (staffing, materials and postage) also includes enforcement-related workload to ensure compliance with the Professional Fiduciaries Act. The Bureau estimates five percent of inactive licensees (12 x 5% = 0.6) may be subject to investigative workload and formal discipline. Enforcement costs are typically allocated to renewal license fees because enforcement actions are generally taken against the licensee population. Renewal licensing workload

and costs (staffing, Attorney General, materials and postage) are anticipated as follows:

| Renewal Licensing Workload and Costs | |
|---|--------------|
| Licensing Workload* - 0.5 hours | \$49 |
| Enforcement Workload* - 60 hours average per case x 0.6 licensees/12 applications | \$297 |
| Attorney General - Average \$5,000 per case x 0.6 licensees/12 applications | \$250 |
| Certificate | \$5 |
| Materials and Postage | \$5 |
| Total: | \$606 |

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

Placement in an inactive or retired status; renewal of active license (16 CCR § 4580(c), (f)(1)-(2), (g)(1)): The proposed regulation would set a \$350 fee for placement of a license in an inactive or retired status and a \$350 fee for annual renewal of an inactive license. These fees would be less than the corresponding application fee and initial license fee for issuance of a new license (\$400 and \$600) and renewal fee for an active license (\$700). (16 CCR § 4580(a), (b), and (c).) The fees would be less because a licensee in an inactive or retired status will need less oversight and enforcement activity: Not only will a licensee in either status have an established history of complying with the law (see the discussion in this ISR under the heading “Eligibility for Placement in an Inactive/Retired Status—Minimum five consecutive years in good standing,” above), but will generally have fewer opportunities to violate the law and more time to ensure they are in compliance (see the discussion in this ISR under the heading “No Continuing Education Requirement,” above). In addition, the Bureau will not incur costs of ensuring compliance with continuing education requirements, as licensees in an inactive status will be exempt from those requirements and licensees in a retired status will be exempt from renewal requirements altogether. The Bureau is also opting to charge a lower fee than actual workload costs as a courtesy to retiring and inactive licensees and because these individuals would have otherwise likely allowed their active license status to become delinquent in lieu of paying renewal fees. The lower fee amounts are proposed to be offered to provide these individuals with a lower cost option to generate some revenues instead of receiving none.

Reinstatement (16 CCR § 4580(f)(3), (g)(2)): Although BPC section 163.5 requires a reinstatement fee to be “150 percent of the renewal fee for such license in effect on the date of the reinstatement of the license, but not more than twenty-five dollars (\$25) in excess of the renewal fee,” the proposed regulation would set the reinstatement fee at \$700 instead of \$725, because BPC section 6592(f) specifically gives the Bureau authority to establish the reinstatement fee for an inactive or retired license in the “amount necessary to recover the reasonable costs to the [B]ureau in carrying out those functions pursuant to this chapter.” (BPC § 6592(f)-(g).) The Bureau would set the reinstatement fee at \$700, the same as the renewal fee for an active license, because reinstatement of an inactive or retired license to active status would, in terms of the costs to the Bureau, be more akin to renewal of an active license than reinstatement of a license that has been suspended, revoked, on probation, or subject to other

disciplinary restriction: Like the renewal of a license in good standing, and unlike reinstatement of a license that is subject to disciplinary restriction, the Bureau will not incur additional costs of evaluating rehabilitation evidence and determining the likelihood of an applicant's recidivism.

The proposed regulation would require the reinstatement fee to be prorated for the initial period of licensure. For the reasons discussed in this ISR under the heading "Initial License Period after Reinstatement—Duration of initial license period after reinstatement," above, the initial license period after reinstatement would generally be longer than the subsequent annual renewal periods after reinstatement. The reinstatement fee for this initial period would be prorated, as required by BPC section 134 and 152.6, to ensure that the Bureau's costs of reinstating inactive or retired licenses to an active status are allocated fairly among licensees. Prorating the fee is necessary because if a flat reinstatement fee were charged for all initial license periods after reinstatement, there would be an incentive for licensees to time their date of reinstatement to ensure a longer initial period. This provision would recognize the public interest in enabling qualified licensees to return to active licensure without delaying their return based on potential savings in licensing fees.

Exemption from delinquency fees (16 CCR §§ 4562, 4580(d)): The proposed regulation would exempt inactive and retired licensees from delinquency fees under 16 CCR section 4580(d) for the reasons discussed in this ISR under the heading "Exemption of Inactive Licenses from Delinquency Fees," above.

Modification of the Note to Section 4580:

The existing Note for section 4580 is being modified to contain an authority citation for sections 462 and 6542 as elsewhere described in this Initial Statement of Reasons; a comma is also added to correctly format the list of authority sections cited. The reference citations are similarly updated to correctly reflect the sections of the BPC implemented through the additions in this proposed rulemaking.

No Refund for Issuance, Renewal, Change in Status, Reinstatement, or Delinquency Fees (§ 4581):

The proposed regulation would clarify that all fees in 16 CCR section 4580 are nonrefundable regardless of whether, after payment of a fee, "[t]he application is withdrawn or abandoned" (subdivision (b)(1)), "the applicant is found ineligible, or the applicant's qualifications insufficient, for the license issuance, renewal, change in status, or reinstatement for which the fee is paid" (subdivision (b)(2)), or "[t]he licensee stops practicing or becomes unable to practice in this state" (subdivision (b)(3)). The proposed regulation would include an exception for fees that are "collected illegally or by mistake, inadvertence, or error," pursuant to BPC section 158. This provision is necessary to clarify that the Bureau will retain the fees it assesses to "recover the reasonable costs to the [B]ureau in carrying out those functions pursuant to [the Act]."

This provision would not individually tailor each fee to the direct benefit received by, or the direct costs incurred by the Bureau for, each individual applicant or licensee by refunding “unused” portions of a fee paid by the applicant or licensee, because the costs the Bureau incurs in carrying out its licensing programs provide all applicants and licensees with the uniform benefit of an efficient, effective, orderly, and fair regulatory program. (See *California Assn. of Professional Scientists v. Department of Fish and Game* (2000) 79 Cal.App.4th 935, 945.) For example, each applicant benefits from the Bureau’s assessment of application fees, regardless of whether an application is approved, because application fees cover the cost of ensuring the fairness of the application process. Each licensee benefits the Bureau’s assessment of licensing fees, regardless of any later restrictions on, or abandonment of, a license, because licensing fees cover the cost of oversight and enforcement activities necessary to ensure that licensure as a professional fiduciary, or formerly licensed status, confers the distinction of being or having been held to uniformly rigorous standards. (See also *California Farm Bureau Federation v. State Water Resources Control Board* (2011) 51 Cal.4th 421, 438 [“A regulatory fee does not become a tax simply because the fee may be disproportionate to the service rendered to individual payors.”].)

Further, an applicant or licensee who withdraws or abandons an application or stops practicing may still create ongoing costs for the Bureau: If an application is withdrawn or abandoned, the Bureau still has authority to engage in denial proceedings pursuant to BPC section 118, and if a licensee stops practicing, the Bureau still has authority to investigate and discipline the licensee pursuant to BPC sections 118(b), 464(c), and 6580(a). Therefore, if the Bureau refunded any costs that it had not directly incurred for an applicant or licensee as of the date on which the applicant or licensee withdrew or abandoned an application or stopped practicing, later activity by the Bureau pursuant to the above-described provisions would not be covered.

Finally, the unpredictability of a refund scheme would undermine the efficient operation of the Bureau. If refunds were permitted, the Bureau would need to reserve part of its budget for the estimated cost of refunds, resulting in savings of available funding, if the estimate were too high, or unexpected and disruptive cuts to funding for other budget items, if the estimate were too low. A predictable budget process will ensure the orderly implementation of the Bureau’s mandate to protect the public.

Addition of the Note to Section 4581:

A Note describing the Authority and Reference of section 4581 is being added by this rulemaking. The authority citations are described elsewhere in this Initial Statement of Reasons; the reference citations describe the portions of the BPC implemented by this rulemaking. The reference citations also refer to section 13142 and 13143 of the Government Code, which describe when a government agency may or may not refund fees paid to it.

BUSINESS IMPACT

The Bureau has made an initial determination that 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.

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 a voluntary application made by the licensee regarding their current licensing status and 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 a voluntary application made by the licensee regarding their current licensing status and 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 a voluntary application made by the licensee regarding their current licensing status and is not related to the expansion of businesses.
- This regulatory proposal does not affect worker safety, the state's environment, or housing.

Currently, active licensees are required to pay an annual renewal fee of \$700. Those active licensees currently wanting to be considered inactive or retired, typically allow their license renewal to lapse into delinquent status, in lieu of paying the \$700 annual renewal fee.

The proposed regulations will allow active licensees to apply for and maintain inactive or retired license status. Those individuals in delinquent status will be required to restore their license to active status as part of the application process. The Bureau anticipates these delinquent licensees would have otherwise remained in delinquent status and not paid additional fees to the Bureau. As a result, any costs are considered new.

The application fee for an inactive or retired license is \$350, the annual renewal fee for an inactive license is \$350, and the restoration fee for licensees in delinquent status is \$700. There is no renewal fee for retired status as retired licensees will not be required to renew their retired license.

Inactive Status: The Bureau indicates approximately 131 individuals are currently on delinquent status and estimates 12 of these individuals will initially opt for the inactive license status. These individuals will be required to pay a \$700 one-time license restoration fee plus an initial inactive license fee of \$350, and \$350 per year thereafter to renew licensure.

Annually thereafter, the Bureau anticipates any new inactive status applicants will likely come from its active licensee population. The Bureau estimates 12 individuals will opt for the inactive status each year ongoing and be required to pay a \$350 initial inactive licensure fee and \$350 per year to renew thereafter.

The following chart displays projected inactive license type fee revenues ranging from \$8,400 to \$42,000 per year and up to \$239,400 over a ten-year period as follows:

| Inactive License Status (initial and renewal registration) | | | | | | | | | | | | | | |
|--|---------------------|--------------------|-----------------|----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|------------------|-----------|
| Registration and License Type | Applicants Per Year | Fee Costs Per Year | Years Ongoing | | | | | | | | | | | |
| | | | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | Total | |
| License Restoration | 12 | \$700 | \$8,400 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$8,400 |
| Inactive License Status (initial registration) | 12 | \$350 | \$4,200 | \$4,200 | \$4,200 | \$4,200 | \$4,200 | \$4,200 | \$4,200 | \$4,200 | \$4,200 | \$4,200 | \$4,200 | \$42,000 |
| Inactive License Status (annual renewal) | Various | \$350 | \$ - | \$4,200 | \$8,400 | \$12,600 | \$16,800 | \$21,000 | \$25,200 | \$29,400 | \$33,600 | \$37,800 | \$42,000 | \$189,000 |
| Total Costs: | | | \$12,600 | \$8,400 | \$12,600 | \$16,800 | \$21,000 | \$25,200 | \$29,400 | \$33,600 | \$37,800 | \$42,000 | \$239,400 | |

Retired Status: The Bureau estimates 12 currently delinquent status licensees will initially opt for the retired status and be required to pay a \$700 one-time license restoration fee plus a \$350 one-time retired license fee.

Annually thereafter, the Bureau anticipates any new retired status applicants will likely come from its active licensee population. The Bureau estimates 12 individuals will opt for the retired status each year ongoing and be required to pay \$350 one-time to the Bureau.

The following chart displays projected retired license fee revenues ranging from \$4,200 to \$12,600 per year and up to \$50,400 over a ten-year period as follows:

| Retired License Status (one-time registration) | | | | | | | | | | | | | | |
|--|---------------------|--------------------|-----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|-----------------|
| Registration and License Type | Applicants Per Year | Fee Costs Per Year | Years Ongoing | | | | | | | | | | | |
| | | | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | Total | |
| License Restoration | 12 | \$700 | \$8,400 | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$8,400 |
| Retired License Status (one-time registration) | 12 | \$350 | \$4,200 | \$4,200 | \$4,200 | \$4,200 | \$4,200 | \$4,200 | \$4,200 | \$4,200 | \$4,200 | \$4,200 | \$4,200 | \$42,000 |
| Total Costs: | | | \$12,600 | \$4,200 | \$50,400 |

The total economic impact for inactive and retired licensees is estimated as follows:

| Inactive and Retired License - Total Economic Impact | | | | | | | | | | | |
|---|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|------------------|
| License Type | Years Ongoing | | | | | | | | | | Total |
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | |
| Total Inactive License Costs | \$12,600 | \$ 8,400 | \$ 12,600 | \$ 16,800 | \$ 21,000 | \$ 25,200 | \$ 29,400 | \$ 33,600 | \$ 37,800 | \$ 42,000 | \$239,400 |
| Total Retired License Costs | \$12,600 | \$4,200 | \$4,200 | \$4,200 | \$4,200 | \$4,200 | \$4,200 | \$4,200 | \$4,200 | \$4,200 | \$50,400 |
| Total Costs: | \$25,200 | \$12,600 | \$16,800 | \$21,000 | \$25,200 | \$29,400 | \$33,600 | \$37,800 | \$42,000 | \$46,200 | \$289,800 |

FISCAL IMPACT ASSESSMENT

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 | | | | | | | | | | Total |
| | | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | |
| Number of Applicants Per Year | | 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 | \$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 | \$47,520 |
| Certificate | \$5 | \$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 | \$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 | \$97,440 |
| Renewal Licensure | | 0 | 12 | 24 | 36 | 48 | 60 | 72 | 84 | 96 | 108 | 120 |
| 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 | \$5,292 |
| 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 | \$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 | \$27,000 |
| Certificate | \$5 | \$0 | \$60 | \$120 | \$180 | \$240 | \$300 | \$360 | \$420 | \$480 | \$540 | \$540 |
| Materials and Postage | \$5 | \$0 | \$60 | \$120 | \$180 | \$240 | \$300 | \$360 | \$420 | \$480 | \$540 | \$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 | \$65,448 |
| Total Costs: | | \$9,744 | \$17,016 | \$24,288 | \$31,560 | \$38,832 | \$46,104 | \$53,376 | \$60,648 | \$67,920 | \$75,192 | \$162,888 |

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

UNDERLYING TECHNICAL, THEORETICAL, AND EMPIRICAL DATA

N/A

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.