

BACKGROUND PAPER FOR THE Professional Fiduciaries Bureau

**Joint Oversight Hearing, March 5, 2018
Assembly Committee on Business and Professions
and
Senate Committee on
Business, Professions and Economic Development**

IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS REGARDING THE PROFESSIONAL FIDUCIARIES BUREAU

Background and Description of the Bureau and Regulated Profession

The Professional Fiduciaries Bureau (Bureau) in the Department of Consumer Affairs (Department) is responsible for the licensure and regulation of non-family member professional fiduciaries, including conservators, guardians, trustees, and agents under durable power of attorney, as defined by the Professional Fiduciaries Act (Act). The Act was established in 2006 by SB 1550 (Figueroa, Chapter 491, Statutes of 2006).

Professional fiduciaries provide critical services to seniors, persons with disabilities, and children, including: daily care, housing and medical needs, and financial management services ranging from basic bill paying to estate and investment management. Professional fiduciaries are responsible for the property or well-being of their clients and coordinate overall care for their client's medical and/or financial needs. A professional fiduciary is not necessarily an expert in all areas and may hire other persons to handle duties for the trust or estate. However, as the ultimate decision-maker, the professional fiduciary has the responsibility to ensure appropriate and adequate services are provided for their client.

The Bureau began operations July 1, 2007, and is charged with carrying out the following functions:

- Ensuring protection of the public is the Bureau's highest priority;
- Promoting legal and ethical standards of professional conduct;
- Ensuring that applicants meet minimum requirements prior to licensure;
- Investigating all complaints; and,
- Taking disciplinary action and issuing citations against licensees when appropriate.

The Bureau's mission statement is:

*To protect consumers through licensing, education, and enforcement
by ensuring the competency and ethical standards of professional fiduciaries.*

The Bureau Chief is appointed by the Governor, subject to confirmation by the Senate, serves under the direction and supervision of the Director of the Department of Consumer Affairs, at the pleasure of the Governor. The duty of administering and enforcing the Act is vested in the Bureau Chief, and the Act mandates that protection of the public is the Bureau's highest priority in exercising its licensing, regulatory, and disciplinary functions.

The Bureau has issued 1,020 professional fiduciary licenses in total. There are three pathways to qualify for licensure: (a) possess a baccalaureate degree; (b) possess an associate degree and have gained three years of experience; or, (c) have gained five years of experience prior to July 1, 2012. Applicants must also complete 30 hours of approved education courses (e.g., conservatorship, guardianship, trust administration, and durable power of attorney) and pass an examination prior to licensure.

Licensees renew their licenses annually, are required to earn 15 hours of continuing education credit (including two hours on ethics for fiduciaries), and must submit an annual statement detailing their client casework each year. Licensees are also required to comply with reporting requirements and must abide by the Professional Fiduciaries Code of Ethics to ensure client matters are handled responsibly and without conflict.

Advisory Committee Membership

The Bureau's Advisory Committee (Advisory Committee), which is established in Business and Professions Code (BPC) §6511, is responsible for examining the functions and policies of the Bureau and for making recommendations relating to professional fiduciaries when requested by the Bureau Chief. The Advisory Committee consists of seven members, five of whom are appointed by the Governor, one by the Senate Rules Committee, and one by the Speaker of the Assembly. Three members must be California-licensed professional fiduciaries actively engaged as a professional fiduciary in California. Of the four public members, one must be a member of a nonprofit organization advocating on behalf of the elderly and one must be a probate court investigator. The Advisory Committee is required by law to meet at least once each quarter.

In addition to the Advisory Committee, two subcommittees were established in 2013 to address specific needs at the time of establishment. An Education Subcommittee and Ethics Subcommittee were established in 2013. The Education Subcommittee was established to review pre-licensing and continuing education requirements for determining if the requirements established in statute provide sufficient education to keep up with the professional fiduciary practice needs.

An Ethics Subcommittee was established to review the Professional Fiduciaries Code of Ethics for determining if clarification of any section was needed and ensuring the code was consistent with other laws and regulations. This subcommittee did not hold any public meetings. Both subcommittees served their purpose and have not met since 2014.

Committee members receive a \$100-a-day per diem and expenses for each meeting. The Committee is required to meet at least once per quarter (four times per year), and all Committee meetings are public. The following is a listing of the current Committee members and their background:

Bureau/Committee Member Roster					
Member Name (Include Vacancies)	Date First Appointed	Date Re- appointed	Date Term Expires	Appointing Authority	Type (public or professional)
Hang Le To, Chair	01/13/2014	04/13/2015	1/1/2019	Assembly Speaker	Public
Aileen Federizo, Vice Chair	08/28/2012	01/06/2015	1/1/2019	Governor	Professional
Barbara de Vries	08/28/2012	01/07/2015	1/1/2019	Governor	Professional
Kathleen Thomson	07/12/2013	01/06/2015	1/1/2019	Governor	Probate Court Investigator
Jenny Chacon	01/07/2015	N/A	1/1/2019	Senate Rules Committee	Public
King Gee	09/29/2015	N/A	1/1/2019	Governor	Nonprofit organization advocating on behalf of the elderly
Dawn Akel	11/23/2015	N/A	1/1/2019	Governor	Professional

All Advisory Committee meetings were held as scheduled and with a quorum during the past four years.

Among all regulatory agencies within DCA, the Professional Fiduciaries Bureau is unique in that it has what might be termed a “reverse sunset.” When the sunset process for regulatory boards was originally established, if the statutory authority for a board was made inoperative and repealed by operation of law (sunsetting), the board would be abolished and the regulatory operations would be taken over as a bureau under DCA.

In contrast, BPC 6511 provides that if the Bureau sunsets, the Advisory Committee shall succeed to and be vested with all the duties, powers, purposes, responsibilities, and jurisdiction of the Bureau, i.e., the Bureau would effectively become a board. The law further provides that the Advisory Committee would be established as the Professional Fiduciaries Committee under DCA.

Staffing Levels

The Bureau is fully staffed and has not experienced challenges filling or retaining positions. The Bureau currently borrows a Staff Services Analyst position from the Department to assist with Bureau operations. This additional assistance is critical for allowing staff to meet licensing and enforcement performance goals and measures. The Bureau anticipates requesting another permanent position if the licensee population continues to grow. As it relates to succession planning, the Bureau has a policy and procedures manual and is in the process of creating desk manuals for each Bureau function (e.g. licensing, enforcement, etc.).

The Bureau trains its staff through the Department’s in-house training program provided by the SOLID Division to educate and train staff on a variety of workplace policies and procedures. This coursework is part of the Bureau’s prorata payment to the Department and does not impose any additional cost to

the Bureau. Bureau staff has attended the Office of Administrative Law (OAL) Rulemaking training and remaining staff will attend future trainings as schedules permit. The Bureau's Enforcement Analyst will complete the SOLID Enforcement Academy by mid-2018.

Fiscal and Fund Analysis

The Bureau's fund is not continuously appropriated. Per BPC § 6590, the Professional Fiduciaries Fund is only available for expenditure by the Bureau upon appropriation by the Legislature.

As a Special Fund Agency, the Bureau receives no General Fund support, relying solely on the fees charged for initial applications, licenses and license renewals. Professional fiduciary licenses are renewed annually and there have been no fee changes since the inception of the Bureau in 2007. The authority for each Bureau fee is as follows: Application – BPC § 6533(j); Initial License – BPC § 134 and 6592(b); Renewal – BPC § 6592(c); Delinquent – BPC § 163.5; Duplicate License – BPC §122; Dishonored Check – Government Code § 6157, California Civil Code § 1719: and, Cite and Fine – BPC § 6580 and CCR § 4600 and 4602.

Fee Schedule and Revenue							
Fee	Current Fee Amount	Statutory Limit	FY 2013/14 Revenue	FY 2014/15 Revenue	FY 2015/16 Revenue	FY 2016/17 Revenue	% of Total Revenue
Application	\$400.00	Actual Cost	\$40,800	\$45,200	\$42,800	\$39,600	7%
Initial License	\$600.00 + proration*	Actual Cost	\$64,316	\$68,573	\$72,785	\$58,047	11%
Renewal	\$700.00	Actual Cost	\$368,900	\$400,400	\$410,750	\$429,800	81%
Delinquent Renewal	\$150.00	\$150.00	\$2,850	\$3,000	\$2,100	\$1,950	0
Duplicate/Replacement License	\$25.00	\$25.00	\$25	\$0	\$75	\$150	0
Dishonored Check	\$25.00	N/A	\$25	\$75	\$0	\$25	0
Cite and Fine	Variable	None	\$1,500	\$2,500	\$0	\$1,750	0
Other	Variable	None	\$964	\$2,311	\$5,351	\$2,684	1%
TOTALS:			\$479,380	\$522,059	\$533,861	\$534,006	100%

* To ensure equity of payments, the Bureau prorates these fees per BPC 6592(b), CCR 4580(b), 4580(c), and 4428(a).

Based on the Bureau’s level of expenditures and projected reserve funds, a deficit is not anticipated and there are no current plans to adjust or augment fees.

Fund Condition						
(Dollars in Thousands)	FY 2013/14	FY 2014/15	FY 2015/16	FY 2016/17	FY 2017/18	FY 2018/19
Beginning Balance	\$344	\$396	\$318	\$220	\$220	\$212
Revenues and Transfers	\$479	\$522	\$534	\$534	\$565	\$595
Total Revenue	\$823	\$918	\$852	\$754	\$785	\$807
Budget Authority	\$439	\$610	\$636	\$503	\$538	\$544
Expenditures	\$422	\$603	\$635	\$479	\$538	\$544
Loans to General Fund	\$0	\$0	\$0	\$0	\$0	\$0
Fund Balance	\$400	\$315	\$216	\$220	\$212	\$239
Months in Reserve	7.9	5.9	4.8	4.6	4.2	4.8

Bureau revenues are steadily increasing, primarily as a result of greater numbers of licensees renewing.

The Bureau’s current reserve level is at 4.6 months as of the end of Fiscal Year 2016/17. Pursuant to BPC § 128.5(a), the Bureau’s statutory fund limit may not exceed two years in reserve. The Bureau does not have a statutorily required minimum reserve level. The Bureau’s fund is structurally sound. The budget is monitored monthly by the Bureau Chief and Budget Office staff.

The Bureau’s fund is not continuously appropriated. Per BPC § 6590, the Professional Fiduciaries Fund is only available for expenditure by the Bureau upon appropriation by the Legislature.

Based on the Bureau’s level of expenditures and projected reserve funds, a deficit is not anticipated and there are no current plans to adjust or augment fees.

There is no mandated reserve fund level for the Bureau; however, the DCA Budget Office has historically recommended that smaller programs maintain a contingency fund with three to six months of reserve. Maintaining an adequate reserve of three to six months provides for a reasonable contingency fund so that the Bureau has the fiscal resources to absorb any unforeseen costs, such as costly enforcement actions or other unexpected client service costs.

The total revenues for the Bureau in FY 2014/15 were \$522,000, and the total expenditures were \$603,000. The Bureau had approximately 5.9 months in reserve at the end of FY 2014/15, which decreased to 4.6 months in FY 2016/17 and is anticipated to increase to 4.8 months in FY 2018/19.

Expenditures by Program Component

For the last four fiscal years, the Bureau has expended approximately 60% of its budget on enforcement, 1% on examinations, 30% on licensing, and 9% on administration.

The Bureau can recover costs in all disciplinary cases, including stipulations, but not cite and fine. Cite and fine, is the lowest level of enforcement and the Bureau considers that an “administrative action,” while “discipline” is more serious (probation, revocation, etc.) and in this case the Bureau works in conjunction with the Attorney General’s office to bring an accusation against a licensee.

Licensing

The Bureau has 734 active PF licensees. The Bureau averages 50 days to determine if a candidate can sit for the examination. However, after a candidate passes the examination, the Bureau averages only five days to issue a license. To improve licensing times, Bureau staff has been assessing workload and ensuring it is distributed evenly amongst staff at 30-day intervals, therefore ensuring that the eligibility for the licensing examination is processed in the most efficient manner possible.

The Bureau provides public protection by ensuring licenses are issued only to applicants who meet the minimum requirements of current statutes and regulations and who have not committed acts that would be grounds for denial. Each applicant is required to submit live scan fingerprints prior to the review of their application. If a criminal history report is returned by the California Department of Justice or the Federal Bureau of Investigation, those records are obtained and reviewed by the Bureau Chief for appropriate action. Pursuant to BPC § 6561(a)(6), applicants are required to list any other licenses or certifications they hold. Bureau staff contacts those licensing agencies to check for any disciplinary actions.

Current law (California Code of Regulations Section 4424) requires the Bureau to inform an applicant within 90 days whether an application is complete or incomplete. For an incomplete application, once the applicant has successfully cleared any deficiencies, and the application is complete and accepted for filing, the Bureau is required to inform the applicant in writing within 30 days that the applicant is approved or denied for licensure. The Bureau’s application processing times have remained steady since its last sunset review. Pending applications have increased slightly over the past four years, but have not negatively impacted licensing timeframes. The increase in applications may be a result of more individuals becoming aware of the profession from outreach by the Bureau and the association.

The Bureau typically issues an average of 72 new licenses and renews an average of 575 licenses each year.

Licensee Population					
		FY 2013/14	FY 2014/15	FY 2015/16	FY 2016/17
Professional Fiduciary (PF)	Active	785*	669	712	727
	Delinquent**		185	220	268
	Retired	N/A	N/A	N/A	N/A
	Out of State	N/A	N/A	N/A	N/A
	Out of Country	N/A	N/A	N/A	N/A

Note: 'Out of State' and 'Out of Country' are two mutually exclusive categories. A licensee should not be counted in both.

* Includes active and delinquent for FY 2013/14

**Delinquent includes all licenses which are not active and have not been canceled per the three years of inactivity. The Bureau is currently drafting regulations to allow for retired and inactive statuses.

Licensing Data by Type											
Application Type	Received	Approved	Closed	Issued	Pending Applications			Cycle Times			
					Total (Close of FY)	Outside Bureau control*	Within Bureau control*	Complete Apps	Incomplete Apps	combined, IF unable to separate out	
FY 2014/15	(Exam)	113	117	N/A	N/A	-	-	-	-	-	-
	(License)	72	72	N/A	72	-	-	-	-	-	-
	(Renewal)	572	572	N/A	572	-	-	-	-	-	-
FY 2015/16	(Exam)	107	88	N/A	N/A	2	1	1	50	91	N/A
	(License)	81	81	N/A	81	1	-	1	5	N/A	N/A
	(Renewal)	587	587	N/A	587	N/A	N/A	N/A	N/A	N/A	N/A
FY 2016/17	(Exam)	99	95	N/A	N/A	2	1	1	35	88	N/A
	(License)	63	63	N/A	63	5	4	1	6	N/A	N/A
	(Renewal)	614	614	N/A	614	N/A	N/A	N/A	N/A	N/A	N/A

* Optional. List if tracked by the Bureau.

Total Licensing Data			
	FY 2014/15	FY 2015/16	FY 2016/17
Initial Licensing Data:			
Initial License/Initial Exam Applications Received	185	188	162
Initial License/Initial Exam Applications Approved	189	169	158
Initial License/Initial Exam Applications Closed	N/A	N/A	N/A
License Issued	72	81	63
Initial License/Initial Exam Pending Application Data:			
Pending Applications (total at close of FY)	-	3	7
Pending Applications (outside of Bureau control)*	-	1	5
Pending Applications (within the Bureau control)*	-	2	2
Initial License/Initial Exam Cycle Time Data (WEIGHTED AVERAGE):			
Average Days to Application Approval (All - Complete/Incomplete)	-	32	28

Average Days to Application Approval (incomplete applications)*	-	91	88
Average Days to Application Approval (complete applications)*	-	26	22
License Renewal Data:			
License Renewed	572	587	614
Note: The values in this table are the aggregates of values contained in above tables.			
* Optional. List if tracked by the Bureau.			

The Bureau sends *No Longer Interested notifications* to DOJ on a regular and ongoing basis. This process is performed via facsimile, and there is no backlog.

Examination Data			
California Examination (include multiple language) if any:			
License Type		PF	
Exam Title		Professional Fiduciaries Examination	
FY 2013/14	# of 1 st Time Candidates	81	
	Pass %	68	
FY 2014/15	# of 1 st Time Candidates	87	
	Pass %	70	
FY 2015/16	# of 1 st Time Candidates	77	
	Pass %	69	
FY 2016/17	# of 1 st time Candidates	90	
	Pass %	61	
Date of Last OA		2013	
Name of OA Developer		Center for Guardianshi p Certification	
Target OA Date		2017	
National Examination (include multiple language) if any:			
License Type		PF	
Exam Title		Professional Fiduciaries Examination	
FY 2013/14	# of 1 st Time Candidates	81	
	Pass %	73	
FY 2014/15	# of 1 st Time Candidates	87	
	Pass %	55	
FY 2015/16	# of 1 st Time Candidates	77	
	Pass %	64	

FY	# of 1 st time Candidates	90		
2016/17	Pass %	44		
Date of Last OA		2013		
Name of OA Developer		Center for Guardianshi p Certification		
Target OA Date		2017		

Continuing Education (CE)

Licenseses are required to obtain 15 hours of continuing education each renewal period including two hours in ethics for fiduciaries. No changes have been made to the Bureau’s educational requirements since the Bureau’s last sunset review. The Bureau approves CE providers, and may request documentation of approved education courses for pre-licensing and CE credit, including records of attendance or independent study.

Licenseses self-certify, under penalty of perjury, that continuing education hours have been completed at the time of renewal. The Bureau conducts continuing education audits periodically to determine compliance. Per CCR § 4452 (c), licenseses are required to provide proof of continuing education course completion within 10 days of request by the Bureau.

The Bureau conducts CE audits by selecting a random sample of approximately five percent of its active licenseses for the audit. A letter is mailed to each licensee requesting proof of CE completion. Bureau staff reviews the responses for compliance and sends a letter of follow-up stating whether the licensee complied or if corrective action is needed.

Enforcement

The Bureau aims to assign complaints to an investigator within five days and close investigations within 365 days. The Bureau meets these performance targets by assigning complaints within four days, and closing investigations within 179 days on average over the last three fiscal years. For specific year breakdown per investigation type, please refer to the Table below.

The Bureau’s enforcement efforts have generally stayed within recommended timelines since its inception. Enforcement slowed during Fiscal Year 2014/15 due to an increase in the number of complaints received. Once the backlog was identified, staff were redirected to aid the Bureau’s enforcement team to significantly lower the backlog of complaints over the course of four months. To prevent future backlogs, the Bureau has modified its complaint intake process by implementing a requirement for staff to notify the complainant of the Bureau’s receipt of the complaint within 10 days, and to further contact the complainant within 30 days of receipt of the complaint. The Bureau has also established biweekly (every two weeks) complaint review meetings between enforcement staff and the Bureau Chief.

Enforcement Statistics			
	FY 2014/15	FY 2015/16	FY 2016/17
COMPLAINT			
Intake			
Received	148	137	120
Closed	6	2	1
Referred to INV	143	134	119
Average Time to Close	6	3	3
Pending (close of FY)	0	1	1
Source of Complaint			
Public	126	113	104
Licensee/Professional Groups	10	8	1
Governmental Agencies	4	4	4
Other	8	12	11
Conviction / Arrest			
CONV Received	0	0	0
CONV Closed	0	0	0
Average Time to Close	0	0	0
CONV Pending (close of FY)	0	0	0
LICENSE DENIAL			
License Applications Denied	0	0	0
SOIs Filed	0	0	0
SOIs Withdrawn	0	0	0
SOIs Dismissed	0	0	0
SOIs Declined	0	0	0
Average Days SOI	0	0	0
ACCUSATION			
Accusations Filed	2	2	2
Accusations Withdrawn	0	0	0
Accusations Dismissed	0	0	0
Accusations Declined	0	0	0
Average Days Accusations	0	0	0
Pending (close of FY)	2	1	2
DISCIPLINE			
Disciplinary Actions			
Proposed/Default Decisions	0	0	0
Stipulations	1	1	0
Average Days to Complete	438	296	0
AG Cases Initiated	6	2	4
AG Cases Pending (close of FY)	5	2	4
Disciplinary Outcomes			
Revocation	2	2	1
Voluntary Surrender	0	0	1
Suspension	0	0	0
Probation with Suspension ¹	0	0	0

Probation ²	0	0	1
Probationary License Issued	3	1	3
Other	0	0	0
PROBATION			
New Probationers	3	1	3
Probations Successfully Completed	3	1	3
Probationers (close of FY)	0	0	0
Petitions to Revoke Probation	0	0	0
Probations Revoked	0	0	0
Probations Modified	0	0	0
Probations Extended	0	0	0
Probationers Subject to Drug Testing	0	0	0
Drug Tests Ordered	0	0	0
Positive Drug Tests	0	0	0
Petition for Reinstatement Granted	0	0	0
DIVERSION			
New Participants	0	0	0
Successful Completions	0	0	0
Participants (close of FY)	0	0	0
Terminations	0	0	0
Terminations for Public Threat	0	0	0
Drug Tests Ordered	0	0	0
Positive Drug Tests	0	0	0

Enforcement Statistics (continued)			
	FY 2014/15	FY 2015/16	FY 2016/17
INVESTIGATION			
All Investigations			
First Assigned	143	134	119
Closed	104	114	168
Average days to close	124	154	258
Pending (close of FY)	70	90	41
Desk Investigations			
Closed	8	13	4
Average days to close	164	60	154
Pending (close of FY)	2	2	0
Non-Sworn Investigation			
Closed	96	101	164
Average days to close	120	166	260
Pending (close of FY)	68	88	41
Sworn Investigation			
Closed	0	0	0
Average days to close	0	0	0
Pending (close of FY)	0	0	0
COMPLIANCE ACTION			
ISO & TRO Issued	0	0	0
PC 23 Orders Requested	0	0	0
Other Suspension Orders	0	0	0
Public Letter of Reprimand	1	0	0
Cease & Desist/Warning	0	0	0
Referred for Diversion	0	0	0
Compel Examination	0	0	0
CITATION AND FINE			
Citations Issued	7	7	4
Average Days to Complete	42	1	403
Amount of Fines Assessed	\$1,000	\$500	\$4,000
Reduced, Withdrawn, Dismissed	5	6	0
Amount Collected	\$1,000	\$500	\$2,000
CRIMINAL ACTION			
Referred for Criminal Prosecution	0	0	0

Enforcement Aging						
	FY 2013/14	FY 2014/15	FY 2015/16	FY 2016/17	Cases Closed	Average %
Attorney General Cases (Average %)						
Closed Within:						
0 - 1 Year			1			100%
1 - 2 Years						
2 - 3 Years						
3 - 4 Years						
Over 4 Years						
Total Attorney General Cases Closed	0	0	1	0	0	100%
Investigations (Average %)						
Closed Within:						
90 Days	60	49	61	70	310	55%
91 - 180 Days	24	31	12	20	87	16%
181 - 1 Year	11	19	25	29	84	15%
1 - 2 Years	4	4	16	37	61	11%
2 - 3 Years	0	1	0	10	11	2%
Over 3 Years	0	0	0	2	2	1%
Total Investigation Cases Closed	99	104	114	168	555	100%

PRIOR SUNSET REVIEWS: CHANGES AND IMPROVEMENTS

The Bureau was last reviewed by the Senate Business, Professions and Economic Development Committee and the Assembly Business and Professions Committee in 2014. At that time, the Committee identified five issues. Below, the Bureau will provide an update for each issue. For those which were not addressed and which may still be of concern, they are more fully discussed under “Current Sunset Review Issues.”

In December 2017, the Bureau submitted its required sunset report to the Committees in which it described actions it has taken since its prior review.

Recommendation 1: Long term fund condition.

There is no mandated reserve fund level for the Bureau; however, the Department’s Budget Office has historically recommended that smaller programs maintain a contingency fund slightly above the standard three to six months of reserve. Maintaining an adequate reserve of at least six months provides for a reasonable contingency fund so that the Bureau has the fiscal resources to absorb any unforeseen costs, such as costly enforcement actions or other unexpected client service costs. The Bureau anticipates it has approximately 9.4 months in reserve for FY 2012/13, increasing to 12.9 months in FY 2013/14, and 18.5 months in FY 2014/15. While this is within statutory limits, it is three times the recommended reserve.

Bureau Response: The Bureau received budget authority in Fiscal Year 2014/15 for an additional analyst to assist with enforcement. As a result, the Bureau will not be accumulating a 24-month reserve. The Bureau is not considering lowering or raising fees at this time. Please refer to Table 5 for additional budget change proposal information.

Recommendation 2: Should the Bureau establish targets for attracting new licensees?

The Bureau currently has 638 active licensees, a substantially smaller figure than the 1,300 that were anticipated at its inception. The Bureau is aware that it needs to attract more licensees, and in response, it redesigned its website for potential applicants, provided a newsletter providing updates, and created various brochures. In addition, Advisory committee members have agreed to speak on behalf of the Bureau at events within their geographical area, using an outreach presentation developed by the Bureau.

The Bureau has worked with the University of California at Berkeley's Extension Program to assist in developing a curriculum for a Fiduciary Certificate Program to attract students to the industry. This program begins in spring of 2014. The Bureau has also communicated with the California State University at Fullerton and the University of California at Riverside regarding their fiduciary student populations.

The Bureau's 2014-2016 Strategic Plan places Licensure as Goal 1, and prioritizes partnering with other government agencies, professional associations, and advocacy organizations to educate about PF licensing requirements.

Bureau Response: Since the Bureau's last sunset review in 2014, the number of active licensees has increased from 638 to 734, an overall increase of approximately 15 percent. To attract new licensees, the Bureau continues to participate in outreach activities, partnering with other Department programs such as the Contractors State License Board. The Bureau also plans to address this issue in its upcoming strategic plan.

Recommendation 3: What is the status of BReZE implementation by the Bureau?

The BreZE Project will provide Department boards, bureaus, and committees with a new enterprise-wide electronic enforcement and licensing system. BreZE will replace the existing outdated legacy systems and "work arounds" with an integrated solution based on updated technology. BreZE will provide all Department organizations with a solution for all applicant tracking, licensing, renewal, enforcement, monitoring, cashiering, and data management capabilities. In addition to meeting these core Department business requirements, BreZE will improve the Department's service to the public and connect all license types for an individual licensee. BreZE will be web-enabled, allowing licensees to complete applications, renewals, and process payments through the Internet. The public will also be able to file complaints, access complaint status, and check licensee information.

Bureau Response: The Bureau has not implemented BreZE. The Bureau is currently examining its options for updating its IT system, whether it is BreZE, another IT system, or remaining on its current IT system. The Bureau seeks to have an IT system that will make the application and renewal process simpler for licensees, allow individuals to pay fees online, be user-friendly for staff and adaptable to the Bureau's operations, and most importantly, fit within the Bureau's existing resources. To this end, the Bureau, with the help of Department staff, has prepared a detailed process map to identify the

processes staff undertake in performing the Bureau's licensing and enforcement functions, and to ensure that any future IT improvements will meet the unique needs of the Bureau.

Recommendation 4: If the licensee population does not rise in the next few years, is the Bureau sustainable as an independent regulatory agency?

The original estimated licensee population of 1,300 has not been met since the Bureau's inception in 2007. The current licensee population, 638, is one of the smallest in the Department. Because of this, the renewal fee, \$700, is among the highest. Stakeholders note that the high cost of licensing may be a deterrent to prospective PFs.

The Bureau receives approximately 100 complaints per year and assigns the majority of them to a desk investigation, which takes nearly six months to close.

The Bureau's administration relies on a part-time Chief and one full time Staff Services Analyst, hampering additional recruitment and enforcement efforts. Although the Bureau's fund has ample reserves, its Budget Change Proposal requests for additional staff have been rejected by the Business, Consumer Services, and Housing Agency (Agency) for the past two years. Previous discussions to merge the Bureau with the California Board of Accountancy to optimize resources were rejected by BPED in 2009.

Bureau Response: Yes, the Bureau is sustainable as an independent regulatory agency. The Bureau is a small licensing agency; however, it maintains good licensing and enforcement timeframes and operates within its limited budget allocations.

Recommendation 5: Should the licensing and regulation of PFs be continued and be regulated by the existing Bureau membership?

The health, safety and welfare of consumers are protected by the presence of a strong licensing and regulatory Bureau with oversight over PFs. The Bureau should be continued with a 4-year extension of its sunset date so that the Legislature may once again review whether the issues and recommendations in this Background Paper have been addressed.

Bureau Response: Yes. Professional fiduciaries make personal and financial decisions on behalf of the most vulnerable - the elderly, persons with disabilities, and minors. The Bureau serves to ensure professional fiduciaries meet certain standards and provides recourse to the public when they are exploited by unprofessional conduct. The continued licensure and regulation of the professional fiduciary industry is essential to continued consumer protection.

CURRENT SUNSET REVIEW ISSUES

The following are unresolved issues pertaining to the Professional Fiduciaries Bureau, or those which were not previously addressed by the Committees, and other areas of concern for the Committees to consider along with background information concerning the particular issue. There are also recommendations the Committee staff have made regarding particular issues or problem areas which need to be addressed. The Board and other interested parties, including the professions, have been provided with this *Background Paper* and can respond to the issues presented and the recommendations of staff.

BUDGET ISSUE

ISSUE #1: Long term fund condition.

Background: There is no mandated reserve fund level for the Bureau; however, the DCA Budget Office has historically recommended that smaller programs maintain a contingency fund slightly above the standard three to six months of reserve. Maintaining an adequate reserve of three to six months provides for a reasonable contingency fund so that the Bureau has the fiscal resources to absorb any unforeseen costs, such as costly enforcement actions or other unexpected client service costs.

The total revenues for the Bureau in FY 2014/15 were \$522,000, and the total expenditures were \$603,000. The Bureau had approximately 5.9 months in reserve at the end of FY 2014/15, which decreased to 4.6 months in FY 2016/17 and is anticipated to increase to 4.8 months in FY 2018/19.

Staff Recommendation: *The Bureau should reconsider taking a look at licensing fees to ensure a proper reserve.*

LICENSING ISSUE

ISSUE #2: Unlicensed Representatives and Enrolled Agents

Background: The issue which has been raised by key Stakeholders is the Bureau does not require the licensure of an individual who acts as personal representatives of a decedent's estate. The protection of consumers would be enhanced by requiring licensure of those persons with oversight and enforcement by the Bureau.

The Bureau also provides an exemption from licensure to an enrolled agent acting within the scope of practice of an enrolled agent pursuant to Part 10 of Title 31 of the Code of Federal Regulations.

In addition, enrolled agents are not currently trained or certified to provide fiduciary services. They are certified to represent taxpayers before the Internal Revenue Service. The limited exemption is susceptible to misinterpretation that it extends to the fiduciary services provided by enrolled agents as long as they perform some form of services covered by the federal code of regulations.

Staff Recommendation: *Business and Professions Code Section 6501 should be reviewed by the Bureau to determine if consideration should be given to require licensure of a personal representative of a decedent's estate as defined in Section 58 of the Probate Code, for two or more individuals at the same time who are not related to the professional fiduciary or to each other. This should be accompanied by a reasonable timeframe for these personal representatives to come into compliance.*

In regards to enrolled agents, consideration should be given, by the Bureau, to amend Business and Professions Code Section 6530 to clarify that the exemption from the Act applies to a person enrolled as an agent to practice before the Internal Revenue Service who is only acting within the scope of practice pursuant to Part 10 of Title 31 of the Code of Federal Regulations.

TECHNOLOGY ISSUE

ISSUE #3: What is the status of BReZE implementation by the Bureau?

Background: The BreEZe Project will provide DCA boards, bureaus, and committees with a new enterprise-wide electronic enforcement and licensing system. BreEZe will replace the existing outdated legacy systems and “work arounds” with an integrated solution based on updated technology.

BreEZe will provide all DCA organizations with a solution for all applicant tracking, licensing, renewal, enforcement, monitoring, cashiering, and data management capabilities. In addition to meeting these core DCA business requirements, BreEZe will improve DCA’s service to the public and connect all license types for an individual licensee. BreEZe will be web-enabled, allowing licensees to complete applications, renewals, and process payments through the Internet. The public will also be able to file complaints, access complaint status, and check licensee information.

BreEZe represents an important opportunity to improve the Bureau’s operations to include electronic payments and expedite processing. Staff from numerous DCA boards and bureaus have actively participated with the BreEZe Project. Due to increased costs in the BreEZe Project, SB 543 (Steinberg, Chapter 448, Statutes of 2011) was amended to authorize the Department of Finance (DOF) to augment the budgets of boards, bureaus and other entities that comprise DCA for expenditure of non-General Fund moneys to pay BreEZe project costs.

Staff Recommendation: *The Bureau should update the Committees about the current status of its implementation of BreEZe. What have been the challenges to implementing this new system? Do you expect to encounter any service or enforcement delays as a result of a roll-out? Does such a project impose any unexpected costs on the Bureau?*

ADMINISTRATIVE ISSUE

ISSUE #4: Registered Business Entities

Background: The Bureau requires the licensure of individuals providing fiduciary services but does not allow for the licensure of entities. Licensed professional fiduciaries desire to provide their clients with cost-effective succession planning of the named licensed professional fiduciary. The consumer would not have the additional cost and inconvenience of returning to an attorney to amend estate planning documents to name replacement successor trustees or successor agents under durable powers of attorney for finance upon the death or incapacity of the first-named.

The licensed business entity could be designated in the legal documents to provide another licensed professional fiduciary from the firm as needed. Currently most licensed professional fiduciaries are sole-practitioners.

Staff Recommendation: *As an initial step, the Bureau obtain information on the forms of the business entities of current licensees, as well as the types of business entity they would desire if it were to be allowed. The Bureau should conduct an informal survey of licenses to obtain information on the forms of the business entities of current licensees, as well as the types of business entity they would desire if it were to be allowed.*

CONTINUED REGULATION OF THE PROFESSION BY THE BUREAU

ISSUE #5: Should the licensing and regulation of PFs be continued and be regulated by the existing Bureau membership?

Background: The health, safety and welfare of consumers are protected by the presence of a strong licensing and regulatory Bureau with oversight over Professional Fiduciaries.

The Bureau should be continued with a 4-year extension of its sunset date so that the Legislature may once again review whether the issues and recommendations in this Background Paper have been addressed.

Staff Recommendation: *Recommend that the licensing and regulation of Professional Fiduciaries continue to be regulated by the Bureau in order to protect the interests of the public, and be reviewed again in four years.*

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