

TITLE 16. DIVISION 1. CALIFORNIA BOARD OF ACCOUNTANCY
NOTICE OF PROPOSED REGULATORY ACTION CONCERNING:
Sale, Transfer, or Discontinuance of Licensee's Practice

NOTICE IS HEREBY GIVEN that the California Board of Accountancy (CBA) is proposing to take the action described in the Informative Digest. A previous hearing on this proposed regulatory action was held on September 16, 2021. A second hearing is being noticed through this document to comply with the provisions of Business and Professions Code Section 5018. Due to the subsequent hearing, CBA has extended the comment period for this rulemaking as described below.

As such, any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at:

California Board of Accountancy
2450 Venture Oak Way, Suite 420
Sacramento, CA 95833
10:00 a.m.
Thursday, January 6, 2022

Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the CBA at its office no later than **5:00 p.m. on Thursday, January 6, 2022** or must be received by the CBA at the hearing. This is an extension of comment period originally noticed.

The CBA, upon its own motion or at the request of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by Sections 5010, 5018 and 5063.3 of the Business and Professions Code (BPC), and to implement, interpret or make specific sections 5018 and 5063.3 of said Code and Civil Code section 1798.81, the CBA is considering adding section 54.3 and 54.4 to Division 1 of Title 16 of the California Code of Regulations¹ (CCR) as follows:

¹ All California Code of Regulations references are to title 16, unless otherwise indicated.

INFORMATIVE DIGEST

A. Informative Digest

BPC section 5018 authorizes the CBA to adopt regulations to prescribe or amend rules of professional conduct appropriate to the establishment and maintenance of a high standard of integrity and dignity in the profession.

Existing law, BPC section 5063.3, prohibits licensees from disclosing a client or prospective client's confidential information, except under certain specified circumstances. Existing CBA regulation, section 54, defines confidential information and indicates that it includes all information obtained by a licensee in their professional capacity regarding a client or prospective client, except information obtained from a prospective client who does not subsequently become a client, as long as certain conditions are met. Existing CBA regulation, CCR section 54.1, states that licensees are generally prohibited from disclosing a client or potential client's confidential information, except in specified circumstances. BPC sections 5063.3 and CCR section 54.1 generally permit disclosures of confidential client information in connection with the sale or merger of a business.

Existing law, BPC section 5018, requires licensees to adhere to the rules and standards of professional conduct adopted by the CBA, which are set forth in Title 16, Division 1, Article 9, of the CCR. Existing regulation, CCR section 58, requires licensees to comply with all applicable professional standards, which includes the Code of Professional Conduct developed by the American Institute of Certified Public Accountants² (AICPA) ["Licensees engaged in the practice of public accountancy shall comply with all applicable professional standards"]. The Code of Professional Conduct is a set of principles, rules and interpretations that guides Certified Public Accountants (CPAs) in the performance of their professional responsibilities.

Existing law, BPC section 5097, governs a licensee's maintenance of audit documentation.

Existing law, Civil Code section 1798.81 governs the appropriate destruction of customer records.

In October 2016, the AICPA Professional Ethics Executive Committee's (PEEC) adopted new and revised interpretations (Interpretations) of the AICPA Code of Professional Conduct. As indicated above, pursuant to CCR section 58, the CBA requires its licensees to comply with all applicable professional standards, including the Code of Professional Conduct developed by the AICPA.

² The AICPA is the world's largest member association representing the accounting profession with a history of serving the public interest since 1887. It sets ethical standards for the accounting profession and U.S. auditing standards for private companies, nonprofit organizations, and federal, state and local governments.

The CBA's proposal would add two new sections to Article 9 of Division 1 of Title 16 to address new Interpretation 1.400.205 (Transfer of Files and Return of Client Records in Sale, Transfer, Discontinuance or Acquisition of a Practice) and revised Interpretation 1.700.050 (Disclosing Client Information in Connection With a Review or Acquisition of Member's Practice). CCR section 54.3 would address the sale or transfer of all or part of a licensee's practice to a successor licensee and CCR section 54.4 would address notification to clients when a licensee's practice is discontinued without a sale or transfer of the practice to a successor licensee. Both sections would establish requirements to ensure licensees are handling client records appropriately.

Specifically, this proposal would do the following:

Section 54.3

This proposed section specifies various steps a licensee would be required to take regarding notifying clients when selling or transferring all or part of the licensee's practice, the circumstances under which the licensee would be permitted to transfer client files to the successor licensee, the documents the licensee would be required to retain and how long to retain them.

Section 54.4

This proposed section would establish requirements that licensees must follow when discontinuing their practice without a sale or transfer of the practice to a successor licensee, including providing written notice to the client, returning records to the client, what to do if the licensee is unable to return the client's records, and proper manner of disposing client records.

B. Policy Statement Overview/Anticipated Benefits of Proposal

This regulatory proposal would establish requirements for licensees to follow when selling, transferring, or discontinuing their practice and provides guidance regarding the proper disposal of client records. The CBA anticipates that the proposed regulations would benefit licensees by providing them with clear direction for notifying clients and appropriately handling client records when selling, transferring or discontinuing their accountancy practice. The CBA also anticipates that this proposal would benefit consumers by ensuring that clients are notified when a licensee sells, transfers, or discontinues their practice and provides an opportunity for the client to obtain their records. It would also ensure the confidentiality of client records by establishing requirements for licensees to follow when transferring them to a successor licensee or properly disposing of them.

Consistency and Compatibility with Existing State Regulations

During the process of developing these regulations and amendments, the CBA has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

INCORPORATION BY REFERENCE

None

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The CBA does not anticipate additional workload or costs resulting from the proposed regulations.

The CBA would ensure compliance with the proposed regulation through enforcement and investigation measures, which would typically be conducted in response to a consumer complaint related to the client's inability to receive their records or files. However, the CBA notes over the past two years it received 4,751 total complaints (2,134 in 2018-19 and 2617 in 2019-20) of which zero percent were related to violations of the proposed regulations. As a result, no additional workload or costs are anticipated.

Nondiscretionary Costs/Savings to Local Agencies:

None

Local Mandate:

None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement:

None

Economic Impact:

The regulations will require licensees to notify clients of the sale or transfer of the practice via first class mail, which would result in costs of \$0.55 (domestic) and \$1.20 (international) per notification. The CBA cannot provide an estimate of the total future costs related to notifying clients because the number of notifications would depend on unknown variables including: 1) the number of future sale or transfers of practices, and 2) the number and location of clients impacted.

Licensees would also be required to either transfer client files to the successor licensee or to the client, as specified, or retain the files, as specified. Because any client file transfer and/or retention costs would also depend on these same unknown variables, the CBA cannot provide an estimate of these transfer or retention costs.

However, the CBA notes most client files are typically retained by the licensee in digital format and any transfer or retention of these files would occur digitally, which would not likely result in additional costs.

The CBA further notes a typical licensee opting to sell or transfer their practice would likely be averse to significant file transfer or retention costs. As a result, these individuals would probably choose to digitize any files as part of their normal course of business and complete the digitizing of files prior to the sale or transfer to eliminate these potential costs.

Business Impact:

The CBA has made an initial determination that the 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.

The following studies/relevant data were relied upon in making the above determination:

Pursuant to CBA Regulations section 58, all licensees engaged in the practice of public accountancy shall comply with all applicable professional standards, which includes the AICPA Code of Professional Conduct. The AICPA Code of Professional Conduct contains standards regarding the sale, transfer and discontinuance of a practice and changes to these standards is the basis for this rulemaking action. The CBA's proposed regulations provide added detail regarding how licensees can meet the existing standards relating to sale, transfer, or discontinuance of a practice. As licensees would already be subject to any costs associated with meeting the standards, pursuant to CBA Regulations section 58, the proposed regulations specific to the sale, transfer and discontinuance (54.3 and 54.4) will not create an additional significant economic impact for licensees

Cost Impact on Representative Private Person or Business:

The cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action and that are known to the CBA are mailing costs to notify or provide records to a client. The cost impact in providing records to a client would be dependent on the volume of records the licensee has for that client. For example, a licensee with fewer and/or smaller clients with fewer records to maintain would incur less cost than a licensee with many and/or larger clients with a larger volume of records to maintain. Additionally, depending on whether the records are stored in a hardcopy or electronic format, storage of said records may incur costs, and such costs would vary based on the volume of records being maintained.

Effect on Housing Costs:

None

EFFECT ON SMALL BUSINESS

The CBA has determined that the proposed regulations would affect small businesses. Specifically, any licensee who is a small business and decides to sell, transfer, or discontinue their practice will need to notify their clients via a written notification and based on the response (or non-response) to that notification, must follow specific requirements for transfer, return or storage of the records. Ultimately, in cases where

the licensee must retain a client's records, they will also be required to dispose of the records, following a specific timeframe, in a manner that will ensure confidentiality.

RESULTS OF ECONOMIC IMPACT ASSESSMENT/ANALYSIS

Impact on Jobs/Businesses:

The CBA has determined that this regulatory proposal will not have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Benefits of Regulation:

The CBA has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents, worker safety, and state's environment:

This proposal would benefit the welfare of California residents because it would require licensees to follow specified procedures intended to protect consumers and their client files or records when a licensee sells, transfers, or discontinues a public accountancy practice.

This regulatory proposal does not affect worker safety because it has nothing to do with worker safety.

This regulatory proposal does not affect the state's environment because it has nothing to do with the environment.

CONSIDERATION OF ALTERNATIVES

The CBA must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The CBA has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained

at the hearing or prior to the hearing upon request from the CBA at 2450 Venture Oaks Way, Suite 300, Sacramento, California, 95833.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Dominic Franzella
Address: 2450 Venture Oaks Way, Suite 300
Sacramento, CA 95833
Telephone No.: (916) 561-4310
Fax No.: (916) 263-3678
E-Mail Address: Regulations@cba.ca.gov

The backup contact person is:

Name: Peter Renevitz
Address: 2450 Venture Oaks Way, Suite 300
Sacramento, CA 95833
Telephone No.: (916) 561-1742
Fax No.: (916) 263-3678
E-Mail Address: Regulations@cba.ca.gov

Website Access:

Materials regarding this proposal can be found at
<https://www.dca.ca.gov/cba/about-cba/pending-regs.shtml>