

**BACKGROUND PAPER FOR THE
PROFESSIONAL FIDUCIARIES BUREAU**
**(Oversight Hearing, March 21, 2011, Senate Committee on
Business, Professions and Economic Development)**

**IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS
FOR THE PROFESSIONAL FIDUCIARIES BUREAU**

**BRIEF OVERVIEW OF THE
PROFESSIONAL FIDUCIARIES BUREAU**

The Professional Fiduciaries Bureau (PFB) in the Department of Consumer Affairs (DCA) is responsible for licensing and regulating 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). The PFB currently licenses 516 professional fiduciaries.

Professional fiduciaries provide critical services to seniors, disabled persons, and children. They manage matters for clients including, but not limited to, daily care, housing and medical needs, and also offer financial management services ranging from basic bill paying to estate and investment management. Requirements for licensure include completing thirty (30) hours of approved education courses, passing an examination and earning fifteen (15) hours of continuing education credit each year for renewal. Licensees must comply with reporting requirements and must abide by the Professional Fiduciaries Code of Ethics so that client matters are handled responsibly and without conflict.

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

- Educating consumers about their rights and quality of service.
- Promoting legal and ethical standards of professional conduct.
- Investigating the background of applicants.
- Administering licensing examinations.
- Licensing Professional Fiduciaries.
- Investigating complaints from consumers.
- Taking disciplinary action and issuing citations against licensees whenever appropriate.

The current mission statement, as stated in its Strategic Plan, developed in 2010 in conjunction with the DCA Strategic Planning and Development unit, is as follows:

To protect the consumer through licensing and monitoring, and to ensure competent and ethical standards of practice for professional fiduciaries.

The Bureau Chief is appointed by the Governor, subject to Senate confirmation, and serves under the direction and supervision of the Director of DCA and at the pleasure of the Governor. The duty of enforcing and administering the Act is vested in the Chief, and the Act mandates that protection of the public is the highest priority for the Bureau in exercising its licensing, regulatory, and disciplinary functions. The current Acting Chief, Gil DeLuna, was appointed by the Director in April 2010.

The Act establishes a Professional Fiduciaries Advisory Committee composed of seven members. It has a public majority with three licensees actively engaged as professional fiduciaries in this state. The four public members include: one member of a nonprofit organization advocating on behalf of the elderly, and one probate court investigator. The Senate Rules Committee and the Assembly Speaker each appoint a public member of the committee. The function of the Advisory Committee is to increase the level of communication between the Bureau, the public, and fiduciaries.

The following table lists all members of the Advisory Committee, including: background on each member, when appointed, term expiration date, and appointing authority.

Name	Appointment Date	Term Expiration Date	Appointing Authority
Sharon O'Neill Probate Court Investigator – Completed Ethics Orientation for State Officials on January 8, 2010 and was sworn into office as a Member of the Professional Fiduciaries Advisory Committee on November 10, 2008. Her term expired January 1, 2011.	November 10, 2008	January 1, 2011	Governor
Lisa Berg Professional Member – Has been in the practice of social work and fiduciary work for approximately 30 years. Ms Berg was licensed as a Professional Fiduciary in July 2008. Ms. Berg has also worked as a medical social worker; a psychiatric social worker; and has earned both Bachelor's and Master's Degrees in Social Work at Colorado State University and CSU San Diego, respectively.	November 14, 2008	January 1, 2011.	Governor
Daniel Stubbs Professional Member – Became licensed as a Professional Fiduciary in July 2008. Mr. Stubbs has also worked as a Labor Relations Consultant; an Executive Director and Representative for teachers' and nurses' unions; and is currently employed as an instructor at CSU Fullerton.	November 12, 2008	January 1, 2011	Governor

Cynthia Morrow Public Member – Currently serves as the Principal and Founder of Performance by Design. Ms. Morrow has earned a Bachelor of Arts Degree from Montclair University in 1983; an MSOD from the University of San Francisco in 1993; and an MBA from Columbia Business School in 2006	July 3, 2008	January 1, 2011	Senate Rules Committee
Clark Parker Public Member – Mr. Parker received accreditation from the United States Department of State in June, 2001. He has served as Honorary Consul General of the Central African Republic and currently resides in Southern California.	October 1, 2009	January 1, 2011	Assembly Speaker
Vacancy – Professional Member			Governor
Vacancy – Member of nonprofit organization advocating on behalf of the elderly.			Governor

Among all regulatory agencies within DCA, the Professional Fiduciaries Bureau is unique in that it has what might be termed a “reverse sunset.” While the sunset process for regulatory boards was originally set up to provide that when the statutory authority for the board is made inoperative and repealed by operation of law (sunsetting), the board would be abolished and the regulatory operations would be carried out as a bureau under DCA. In contrast, B&P Code section 6511 provides that if the Professional Fiduciaries Bureau sunsets and is abolished, as provided in law, the Advisory Committee shall succeed to and be vested with all the duties, powers, purposes, responsibilities, and jurisdiction of the Bureau. The law further provides that the Advisory Committee would further be established as the Professional Fiduciaries Committee in DCA with the authority and function of a Board of the Department.

For violations of the Act, the Bureau may impose administrative citations and fines, license suspension, probation, or revocation, and is required to provide on the Internet information regarding any sanctions imposed on licensees, including, citations, fines, suspensions, revocations, and formal accusations, and other related enforcement action. The Bureau continues to work to build an effective enforcement program which has been significantly restricted by the smaller than expected initial license base and the repayment of substantial startup loans.

As part of its legal mandate to educate consumers about their rights and quality of service, the Bureau, working with DCA Outreach Unit, attends outreach events, many of which target seniors, to disseminate information to consumers. The Bureau provides consumer brochures, such as “*Are You a Professional Fiduciary Who Needs Licensing*” and “*Do You or Does a Loved One Need a Professional Fiduciary.*” The Bureau also communicates through an electronic mail Interested Party mailing list, and issues notification of Bureau activities, which include meeting agendas, advisory notices and special bulletins.

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, which occur

annually. The examination fee is not paid to the Bureau, but is submitted directly to the company that administers the examination. Unlike many other boards, the Bureau's fees are not set in statute. Fees are determined during the Bureau's regulatory process at a level necessary to meet the program's operational costs. Fees have not been adjusted since the Bureau began operation in July 2007. Based on the Bureau's level of expenditures and projected reserve funds, there are no current plans to adjust or augment the current scheduled fees.

The total revenues anticipated by the Bureau for FY 2010/11 is \$398,000 and for FY 2011/12 is \$397,000. The total expenditures anticipated for the Bureau for FY 2010/11 is \$293,000, and for FY 2011/2012 is \$308,000. The Bureau anticipates it would have approximately 1.4 months in reserve for FY 2010/11, and 4.6 months in reserve for FY 2011/12. When it was established in 2007, startup revenues came from a special fund loan of \$1,055,000 from the Bureau of Automotive Repair's Vehicle Inspection and Retirement Fund (VIRF). That loan plus interest was repaid in FY 2008/09. A second loan of \$215,000 from the VIRF was obtained in FY 2008/09, and is anticipated to be repaid in FY 2010/11. Once the second loan is repaid, fund reserves are anticipated to increase to appropriate levels. This will also free up resources that will be directed towards enforcement.

Initially, the Bureau was budgeted to have a staff of 4 Personnel Years (PYs), but the staffing level was reduced to 1.7 PYs when revenues generated by licensing fees did not meet the originally anticipated amount.

(For more detailed information regarding the responsibilities, operation and functions of the Bureau, please refer to the Professional Fiduciaries Bureau's Sunset Review Report, provided in Members' binders.)

INITIAL OVERSIGHT REVIEW

This is the initial review of the Professional Fiduciaries Bureau by this Committee. According to the Bureau, the most significant accomplishments and internal changes in the three years since the inception of the Bureau are the following:

- **Adoption of Regulations.** The Bureau filed emergency regulations dealing with the Code of Ethics and pre-licensure and continuing education requirements on November 2, 2007. Additionally, it issued emergency regulations on November 26, 2007 which allowed the Bureau to begin a licensing program. This second set of emergency regulations covered application requirements, grounds for license denial and annual reporting requirements. Both of these regulations packages were subsequently adopted as final regulations upon the filing of certificates of compliance.
- **Dissolution of the "Quad Bureaus."** The Bureau separated from the "Quad Bureaus" in October 2009. The "Quad Bureau" consisted of Telephone Medical Advice Service Bureau (TMAS), Hearing Aid Dispenser Bureau (HADB), Bureau of Naturopathic Medicine, and the Professional Fiduciaries Bureau. These bureaus

were joined for the purposes of administrative and operational efficiencies. When AB X4 20 (Chapter 18, Statutes of 2009) was passed, the Bureau of Naturopathic Medicine became a committee under the Osteopathic Medical Board. Additionally, AB 1535 (Jones, Chapter 309, Statutes of 2009) merged the Hearing Aid Dispensers Bureau with the Speech-Pathology and Audiology Board. This legislation effectively dissolved the “Quad Bureaus” and the Professional Fiduciaries Bureau and TMAS became stand alone entities.

- **Bureau Management.** Since its inception, the Bureau has been overseen by one appointed Bureau Chief and three subsequent Acting Chiefs. The current Acting Chief, Gil DeLuna, was appointed in April 2010.

CURRENT SUNSET REVIEW ISSUES

The following are issues pertaining to the PFB, and other areas of concern for the Committee 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 PFB 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.

BUREAU ADMINISTRATION ISSUES

ISSUE # 1: Consolidation with another regulatory board such as the California Board of Accountancy.

Background: In the May Revision of the 2009/10 Budget, Governor Arnold Schwarzenegger in a proposal, titled, “*Reorganization, Consolidations and Capitalizing on State Assets — Continuing the Work of the California Performance Review,*” suggested the consolidations or elimination of specific boards and bureaus. This proposal (which had little if any relationship to the recommendations of CPR) included consolidating the Professional Fiduciaries Bureau under the California Board of Accountancy. This consolidation was apparently because the Bureau struggled for viability, having a paucity of licensees and minimal revenues. Indeed the Bureau was in its infancy, having been established in by legislation in 2006, the first licenses were issued on July 1, 2008, required for all court appointed Professional Fiduciaries, and the licensing requirements were not fully mandated until January 1, 2009. At that time the Bureau was only in the first licensing cycle of its existence and there was little programmatic history of note.

The Senate Rules Committee instructed various policy Committees to hold hearings on the Governor’s consolidation proposals and report their findings to the Budget Conference Committee. In June 2009, the Senate Business, Professions and Economic Development Committee held hearings on the Governor’s proposal, including the proposal to consolidate the Bureau under the CBA. At that hearing the Committee approved the following motion on a 6-2 vote: “*Do not consolidate the Professional Fiduciaries Bureau with the Board of*

Accountancy. Professional fiduciaries should continue to be licensed and regulated by a bureau under the Department of Consumer Affairs.”

Under the current sunset review process, the idea of consolidation with the CBA has again been raised. In its third license renewal cycle, the Bureau’s current licensing population has increased to 516, and is expected to grow as the number of older Californians increases.

In addition, the Bureau has passed two critical junctures in its early existence: (1) the Bureau has repaid a special fund startup loan of \$1,055,000 in FY 2008/09; (2) a second loan of \$215,000 will be repaid in FY 2010/11. According to the Bureau, once the second loan is repaid, fund reserves are anticipated to increase to appropriate levels, thereby freeing up resources for greater levels of enforcement.

In addition, on February 24, 2010 the Board of Accountancy unanimously voted to oppose the idea of consolidating the PFB into the Board of Accountancy. The Board objected to the consolidation based upon three primary concerns: (1) Potential of confusion to consumers; (2) The disparity between the functions; licensed professional fiduciaries are mandated to operate in the best interests of the client, while licensed CPAs are mandated to be independent of the client. (3) Potential for merging the two special funds, which, according to the CBA, could be perceived as a tax on CPA licenses to support another profession.

Furthermore, as a bureau under the Department, the Professional Fiduciaries Bureau does not have the discretion to make independent legislative recommendations, as do the independent regulatory boards under the Department. Therefore, under the Administration’s direct oversight, the Bureau has not recommended consolidation with any other agency, but instead has recommended extending the current sunset of the Bureau. Therefore, it does not appear to be appropriate at this time to consolidate the Bureau under the CBA.

Staff Recommendation: *The Professional Fiduciaries Bureau should not be combined with the California Board of Accountancy.*

LICENSING AND PRACTICE ISSUES

ISSUE # 2: Has PFB adopted regulations regarding disclosure of license identification numbers?

Background: Section 138 of the B&P Code provides that every board and bureau in the Department, shall initiate the process of adopting regulations to require its licensees to Section 23.8, to provide notice to clients or customers that the practitioner is licensed by this state.

Notifying consumers that a professional is licensed by the state is a basic element of consumer protection, putting the consumer on alert that a state agency stands in a

regulatory relationship to the licensee, and that consumers may turn to that agency for questions or to register complaints about the practitioner.

It is unclear whether the Bureau has taken any steps to begin regulations in compliance with Section 138.

Staff Recommendation: *The PFB should update the Committee on its plans to establish regulations requiring its licensees to notify clients or consumers that they are licensed by the Bureau.*

ISSUE # 3: Enrolled agents exemption.

Background: When the Legislature enacted SB 1550 in 2006, the law created a limited exemption for a person who is enrolled as an agent to practice before the Internal Revenue Service acting within the scope of practice as an enrolled agent, as specified.

Enrolled agents are certified to represent taxpayers before the Internal Revenue Service. Under Section 10.2 of Subpart A, Rules Governing Authority to Practice, of Part 10 of Title 31 of the Code of Federal Regulations, the following defines the scope of practice for an enrolled agent:

Practice before the Internal Revenue Service comprehends all matters connected with a presentation to the Internal Revenue Service or any of its officers or employees relating to a taxpayer's rights, privileges, or liabilities under laws or regulations administered by the Internal Revenue Service. Such presentations include, but are not limited to, preparing and filing documents, corresponding and communicating with the Internal Revenue Service, rendering written advice with respect to any entity, transaction, plan or arrangement, or other plan or arrangement having a potential for tax avoidance or evasion, and representing a client at conferences, hearings and meetings.

On February 2, 2009, (then) Bureau Chief Mellonie Yang, issued a licensing advisory that any activities of an enrolled agent that are not within the scope of practice pursuant to the federal regulations would fall outside the exemption, stating:

“For example, if an enrolled agent is performing activities as a conservator, guardian, trustee, or agent under durable power of attorney for health care or finances within the definition of a professional fiduciary pursuant to the Professional Fiduciaries Act (Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code) that are not within the scope of practice described in Part 10 of Title 31 of the Code of Federal Regulations, they must obtain a license from the Professional Fiduciaries Bureau to comply with the law.”

The California Society of Enrolled Agents (CSEA) has expressed great concern with the Bureau’s interpretation of the exemption. Furthermore, in 2010 CSEA sponsored AB 276

(Hyashi) to amend B&P Code Section 6530 to clarify the exemption. That bill was held in the Assembly Appropriations Committee on the Suspense File.

The CSEA subsequently requested that clarification of the exemption in Section 6530(d) be considered by the Committee in its oversight recommendations. CSEA states that “the current language and narrow interpretation of the Professional Fiduciaries Act has created a burdensome regulatory scheme for EAs, who are already licensed by the U.S. Department of the Treasury, undergoing a background check and fingerprinting for that license.” CSEA argues that the licensing scheme was intended to prevent unethical or incompetent individuals from financially abusing the public, not to deter EAs who are meeting the needs of their clients.

CSEA further suggests an EA who holds themselves out as Professional Fiduciaries or solicit fiduciary or conservatory assignments through the courts, and provides specific fiduciary services separate from tax planning reasonably should be required to become licensed under the Act. Most EAs offer fiduciary services only rarely, when they have been asked by long-term clients to act as trustees. Relationships have been built and private and confidential materials have already been shared.

To clarify the exemption, CSEA recommends amending Section 6530 (d) to provide:

This section does not apply to a person enrolled as an agent to practice before the Internal Revenue Service who is providing ancillary fiduciary services to clients at their request. Notwithstanding this section, Enrolled Agents who are soliciting clients for fiduciary services or holding themselves out as fiduciaries are required to obtain a Professional Fiduciary license in accordance with the Professional Fiduciary Act.

Committee staff notes that the Bureau’s interpretation is consistent with the wording of the existing exemption, and it does not necessarily follow that an enrolled agent who is trained and educated in tax issues would be qualified or able to safely represent a tax client as a conservator of the person or guardian of the person, or to act as a durable power of attorney for health care, making health care decisions on behalf of a client, or decisions about where the client will live and treatment options for a client’s mental, emotional or physical health.

However, it may be appropriate to make a clarifying amendment to somewhat broaden the existing exemption in the Act.

Staff Recommendation: It would seem reasonable to make a narrowly-crafted clarification to the existing exemption in B&P Code Section 6530(d) of the Professional Fiduciaries Act relating to enrolled agents. However, the term “ancillary fiduciary services” is not precise and should be clearly defined, and the services should only apply to those clients with whom the enrolled agent already has an existing professional relationship.

ENFORCEMENT ISSUES

ISSUE # 4: Enforcement issues

Background: As a newly created regulatory the Bureau, in its sunset report, the Bureau reported very few enforcement actions. In its first full year of existence in FY 2008/09, the Bureau reported 60 complaints received and closed 28 complaints. In FY 2009/10, the Bureau received 47 complaints and closed 50 complaints. During the same period of time, the Bureau referred 4 cases to the AG's office and did not revoke any licenses. The Report states that the Bureau continues to work to build an effective enforcement program. This effort has been significantly restricted by the smaller than expected licensee base and the repayment of substantial startup loans. The Bureau has been limited to one analyst that primarily focuses on licensing and other administrative duties, one part-time investigator, one borrowed staff position to review and manage consumer complaints and a part-time Acting Bureau Chief.

Since the sunset report was submitted, on February 11, 2010, The *San Diego Union Tribune* reported that, a San Diego County professional fiduciary licensed by the Bureau was accused by the U.S. Attorney's Office in a civil complaint of siphoning large sums of money from clients to feed a near-daily gambling habit at a casino. The licensed professional fiduciary had served as a probate court trustee for the San Diego Superior Court, where she was appointed to oversee conservatorships, family trusts, and estates for the past 13 years. The licensee was accused of opening legitimate bank accounts for numerous trusts, and then using online banking to regularly transfer funds into a personal account.

On February 18, the newspaper further reported that the professional fiduciary additionally pleaded guilty in federal court to wire fraud and money laundering, admitting to taking \$191,500 over one three month period, and laundering some \$18,000 in funds through business and personal bank accounts. According to the newspaper, the fraud charge carries a maximum of 20 years in prison, and money laundering charge of 10 years.

In discussing the case with Committee staff, the Acting Bureau Chief stated that the Bureau had been extensively involved with the investigation of the case. In a review of the Bureau's online license verification, the status of the license is shown as "Suspended, Federal Temporary Restraining Order."

It appears that although the Bureau has a number of limitations because its size and loan repayment constraints, the Bureau efficiently performed its responsibilities in working with federal prosecutors in this enforcement matter.

On January 31, 2011, the Bureau filed an accusation against a licensee for unprofessional conduct and dishonesty.

Staff Recommendation: *Although the Acting Chief may be limited in what he may be able to say about this case on the public record, he should update the Committee on this case and relate any initial conclusions that he may have reached about how to most effectively carry out the Bureau's enforcement responsibilities.*

ISSUE # 5: Adoption of regulations establishing a system for issuing citations and fines and fines.

Background: B&P Code Section 6583 requires the Bureau to establish a system of administrative citations and fines under Section 125.9 for violations of the Professional Fiduciaries Act, the Professional Fiduciaries Code of Ethics, or any regulation adopted under the Act. The Bureau is in the process of developing a regulations package to enhance its enforcement program by implementing a cite and fine program for those that are either practicing illegally or are found to have violated the Act

Without a citation and fine provision, if the Bureau identifies a violation by a licensee, in order to take action, the Bureau would have to initiate a formal disciplinary action against the licensee, which can take a good deal of time and a great deal of the Bureau's resources for enforcement and legal staff. Such formal action may not always be warranted, especially in cases where there are lesser violations of the Act by a licensee, or on occasions where it is appropriate to take action to immediately assure compliance with the law rather than a formal disciplinary action against a licensee.

In such cases, the ability to issue an administrative citation and fine can be an effective tool to gain compliance with the law for lesser violations. Licensees do not lose the ability to appeal an administrative citation and fine, but are given the right to request a hearing before an Administrative Law Judge. Promulgating citation and fine regulations will help both consumers and licensees, by allowing the Bureau to more quickly address violations with licensees, and by directing licensees to more quickly correct those items found to be in violation.

Staff Recommendation: *The Bureau should inform the Committee of the status of its citation and fine regulations, giving an estimated timeframe for the final adoption of the regulatory package.*

ISSUE # 6: Should the Bureau be given authority to enter into stipulated settlements without filing an accusation against a licensee?

Background: The Administrative Procedures Act (APA) requires an agency to file an accusation or statement of issues against a licensee before the regulatory agency can reach a stipulated settlement with the licensee. While many licensees will not agree to a stipulated settlement without the pressure of a formal accusation having been filed, it is the experience of a number of regulatory boards that there are instances in which a licensee is willing to agree to a stipulated settlement earlier on in the investigation stage of the enforcement process. Licensees may be willing to do this in order to minimize the cost of an administrative hearing, or in order to expedite the resolution of a disciplinary matter. In such cases in which a licensee may be agreeable to the disciplinary action of the Bureau, the ability to directly enter into a stipulated settlement would save time and costs for both the licensee and the Bureau.

The provision to enter into a stipulated settlement should require the settlement to include language identifying the factual basis for the action taken, and a list of the statutes or regulations violated. In addition, the provision should also allow a licensee to file a petition to modify the terms of the settlement or petition for early termination of probation if probation is part of the settlement.

Staff Recommendation: *The Bureau should be authorized to enter into a settlement agreement with a licensee or applicant prior to the Bureau’s issuance of an accusation or statement of issues against the licensee.*

BUDGET ISSUES

ISSUE # 7: In light of the smaller than expected licensing population, and the resultant budget limitations, is the Bureau sustainable as a viable regulatory agency?

Background: The licensing and regulation of professional fiduciaries was enacted in response to a series of investigative reports in the *Los Angeles Times* in 2005 and 2006. Those reports found numerous instances of abuse in conservatorship and guardianship cases in California and called for a greater oversight role by the state. As a result several pieces of legislation were introduced dealing with various aspects of conservatorship and guardianship oversight. Senator Liz Figueroa introduced SB 1550 to establish a licensing and regulatory framework for professional fiduciaries and create the Professional Fiduciaries Bureau as the licensing and regulatory agency. The initial projections of the Department had placed the approximate number of licensees at 1,300, the actual number has not reached that level. Currently there are 507 professional fiduciaries licensed by the Bureau.

As a special fund agency, the Bureau operates solely off fees generated from licensing revenue. SB 1550 did not establish any statutory fee levels; instead it required the Bureau to set the fees through regulation at a level necessary to meet the program’s operational costs. As a consequence the licensing fees are large; \$700 each year for license renewal.

Fee Schedule	Current Fee	Statutory Limit
Application Fee	\$400	Not set in statute
Exam Fee	\$250	Not set in statute
Original License Fee	\$600	Not set in statute
Original License Fee- Prorated	Variable*	Not set in statute
Renewal Fee	\$700	Not set in statute

Revenues for the current year FY 2010/11 are projected to be \$398,000, and expenditures are projected at \$293,000. In addition, the Bureau expects to pay off the final loan of \$215,000 which was necessary for the Bureau startup costs in FY 2010/11. The Bureau

states that once the loan is repaid, fund reserves are anticipated to increase to appropriate levels. This will also free up resources that will be directed towards enforcement.

Over the three years of the Bureau's existence, the Bureau has spent on program costs an average of 8.7% of its expenditures on enforcement, 52.6 % on licensing, and 38:% on administrative costs. It is assumed that the levels for enforcement costs will rise, as the Bureau utilizes revenues that were previously used for loan repayment.

A top goal of the Bureau, as stated in its Report is increasing the Bureau's licensee population. An increase in the number of licensees would provide more revenue for the Bureau that could help add additional staff, streamline office operations and enhance the enforcement program.

California's population of people 65 years of age or older is surpassing that in other states. The number of California's population 65 years of age or older is expected to grow from 3.6 million people in the year 2000, to 6.2 million people in the year 2020, an increase of 72 percent. As the population of California continues to grow and age, an increasing number of people in the state 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. In addition, there is an increasing use of trusts and durable powers of attorney by individuals seeking to provide for potential incapacity. As a result, it is likely that the population of licensed professional fiduciaries will continue to increase as the population ages.

The establishment of the Bureau is partially based on the premise that the number of people in California who are going to need a licensed fiduciary is going to increase significantly in the coming decade. This increase could also result in more people wanting to become professional fiduciaries, thereby expanding the licensee base

Staff Recommendation: The Bureau should discuss with the Committee its projections for increasing its revenue base, including its plans for expanding enforcement capabilities after all startup loans have been repaid. The Bureau should also discuss the viability of its revenue stream into the foreseeable future.

CONTINUED REGULATION OF THE PROFESSION BY THE PROFESSIONAL FIDUCIARIES BUREAU

ISSUE # 8: Should the "reverse sunset" on the Professional Fiduciaries Bureau be eliminated, thereby indefinitely continuing the regulatory agency as a bureau? Should the licensing and regulation of professional fiduciaries continue to be regulated by the current Professional Fiduciaries Bureau?

Background: As noted above, the Professional Fiduciaries Bureau contains what might be called a "reverse sunset." Under the Department of Consumer Affairs, each regulatory board has a statutorily established date upon which that board is made inoperative and is repealed. As enacted in the original bill which established the Sunset Review process in

California SB 2036 (McCorquodale, Chapter 908, Statutes of 1994) when the code sections authorizing the existence of the regulatory board became inoperative and repealed, that board would be abolished and the regulatory functions would be carried out as a bureau under the DCA. In 1996, when the Legislature enacted SB 1550 (Figueroa, Chapter 491, Statutes of 2006), creating the current Bureau, the legislation provided that if the Professional Fiduciaries Bureau sunsets and is abolished, as provided in law, the Bureau's Advisory Committee shall succeed to and be vested with all the duties, powers, purposes, responsibilities, and jurisdiction of the Bureau. The law additionally provides that the Advisory Committee would further be established as the Professional Fiduciaries Committee in DCA with the authority and function of a Board of the Department.

In signing the SB 1550 in September 2006, Governor Schwarzenegger issued a signing message indicating that he believed the bill is important to protect California's vulnerable population from the financial abuse of unscrupulous professional fiduciaries that seek to do intentional harm. The Governor further noted:

“However clean-up legislation will be necessary in the next legislative session because of the way the author structured the bill. This bill establishes an unnecessary and complicated mechanism of transferring the responsibilities and jurisdiction of the newly created Professional Fiduciaries Bureau (Bureau) to a newly created Professional Fiduciaries Advisory Committee, which would then be established as a board within the Department of Consumer Affairs, after July 1, 2011. The creation of this arrangement is not justified and will leave consumers and the general public more confused by this regulatory scheme. Moreover, there is no rational, analytical justification to assume that in five years the Bureau would even need to be reconstituted as a full board. I would rather have a future Legislature evaluate that need at the time of the sunset review, instead of establishing the presumption now.

Therefore, my Administration will work with the Legislature to eventually clean up this bill so that the public can have faith that its State government is open, transparent, and easy to understand while protecting the interests of all Californians, especially its most vulnerable citizens.”

Committee staff notes that in the more than four years since the bill was signed, this Committee has not received any phone calls from consumers, licensees, the Bureau's staff, or the general public indicating any confusion over this provision.

In its Sunset Report, the Bureau recommends that the next sunset review be established three 3 years from now. The Bureau believes this should provide sufficient time to demonstrate the continued increase in the number of licensees, the sustainability of the Bureau's budget and the value of the consumer protection that is provided.

Although the PFB faces a number of challenges, it should be continued with the recommendation for further review by the Committee in three years

Staff Recommendation: *Recommend that the profession should continue to be regulated by the current Professional Fiduciaries Bureau in order to protect the interests of the public and be reviewed once again in three years.*