Department of Consumer Affairs

TITLE 10. INVESTMENT

CHAPTER 6.5

Bureau of Real Estate Appraisers

INITIAL STATEMENT OF REASONS

Hearing Date: No hearing has been scheduled.

Subject Matter of Proposed Regulations: Petitions to Remove Published Discipline from Bureau's Website

Section(s) Affected: Amend sections 3581 and 3582 in Article 5 and Adopt section 3734 in Article 12 of Chapter 6.5 of Title 10 of the California Code of Regulations (CCR)[1]

Background and Statement of the Problem:

The Bureau of Real Estate Appraisers (Bureau) licenses, regulates, and disciplines real estate appraisers, trainees, and registers appraisal management companies (AMC). In 1989, Title XI of the federal Financial Institutions Reform, Recovery and Enforcement Act ("FIRREA" 12 U.S.C. § 3331 et seq.) was adopted by Congress mandating states to license and certify real estate appraisers who appraise property for federally related transactions. The federal law was enacted as a result of the savings and loan disaster. In response to the federal mandate, the Real Estate Appraisers Licensing and Certification Law was enacted by the California Legislature in 1990 (AB 527, Chapter 491 of 1990) and the Bureau of Real Estate Appraisers ("Bureau") was later established within the Department of Consumer Affairs, a department within the Business, Consumer Services, and Housing Agency. The Bureau is charged with developing and implementing a real estate appraiser licensing and certification program compliant with the federal mandate. Section 4 of Stats.1990, c. 491 (Assembly Bill (AB) 527), provides:

> "It is the intent of the Legislature in enacting this act to implement the policy of the Congress as expressed in the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Public Law No. 101-73 (FIRREA), and to establish a state program to license and certify real estate appraisers." (See Bus. & Prof. Code § 11300.)

Business and Professions Code (BPC) section 11317 requires that the Bureau publish a summary of disciplinary actions taken by the office, including resignations while under investigation and the violations upon which these actions are based, which shall meet, at a minimum, the requirements of the appraisal subcommittee. Additionally, Business and Professions Code section 11317.2 provides, in pertinent part, that: ". . . the bureau shall provide on the internet information regarding the status of every license and registration

[1] All CCR references are to Title 10 unless otherwise noted.

issued by the bureau in accordance with the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). Subdivision (2) of Business and Professions Code section 11317.2 states that, "[T]he public information to be provided on the internet shall include information on suspensions and revocations of licenses and registrations issued by the bureau and accusations filed pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) relative to persons or businesses subject to licensure, registration, or regulation by the bureau."

On September 22, 2024, Senate Bill (SB) 1225 (Chapter 461, Statutes 2024) was enacted, which amended Business and Professions Code section 11317.2, effective January 1, 2025, to allow certain licensees and immediate family members or heirs of deceased licensees to remove certain disciplinary matters from the Bureau's summary of public actions on its internet website. BPC section 11317.2 provides that the Bureau may develop, through regulations, the amount of the fee and the minimum information to be included in a licensee's petition including, but not limited to, a written justification and evidence of rehabilitation pursuant to BPC section 482, and the amount of the fee and the minimum information to be included in a petition submitted by an immediate family member or heir of a deceased licensee. The Bureau currently does not have regulations to implement these statutory amendments. This rulemaking seeks to promulgate the fees, process and criteria for petitioning for removal of disciplinary information from the Bureau of Real Estate Appraisers' summary of disciplinary actions on its internet website by either a licensee or immediate family or heirs of deceased licensee, as specified in a proposed new CCR section 3734, including a form incorporated by reference for that purpose.

Additionally, Section 3582 of Title 10 of the California Code of Regulations (CCR) sets forth a filing fee table describing the fees associated with filing of specific documents. Because this rulemaking will be establishing new fees associated with the filing of a petition for removal of discipline, CCR section 3582 will need to be amended to include the fees associated with such petitions.

Finally, Business and Professions Code section 11400(b) states that the Bureau may accept credit cards for payment of fees. The proposed amendment to CCR section 3581 will clarify that the Bureau will accept "authorized" credit cards (VISA and Mastercard) as specified for payment of fees including adopting a form incorporated by reference for that purpose, given that such acceptance is authorized by statute and many of the Bureau's licensees and applicants prefer to use credit cards for payment of fees.

Anticipated benefits from this regulatory action:

This regulatory action is expected to provide several benefits to the public, applicants, and the regulatory agency by establishing a clear, efficient and transparent process for applications submitted pursuant to Business and Professions Code section 11317.2 (c) and (d). These sections pertain to licensees' or immediate family members or heirs of deceased licensees' ability to remove certain disciplinary information from the Bureau's website.

By specifying the required fees, forms, documentation and procedures, the regulations eliminate ambiguities for applicants and ensure consistency in how applications are received and reviewed. This increases fairness and transparency while also reducing the likelihood of errors, delays or incomplete applications.

Additionally, the fees established through this regulatory action are designed to cover the reasonable costs associated with reviewing and processing applications, and removing the disciplinary information from the Bureau's website, which promotes fiscal responsibility and ensures that the process does not place an undue burden on other licensees.

Overall, by ensuring that applicants meet statutory and regulatory requirements through a structured and well-defined process, this regulatory action supports the Bureau's highest priority: protection of the public while also seeking to eliminate barriers for licensees where posting of the discipline is no longer required to prevent a credible risk to members of the public.

Specific purpose of, and rationale for, each adoption and amendment:

I. Amending CCR section 3581(a) and (d)

Purpose and Rationale: This proposal would add the term "authorized credit card" to the list of payment submission methods currently listed in the first sentence of subdivision (a). It would also add new subparagraph numbers (1) and (2) to subdivision (a) to add a new sentence to the existing requirements to allow the Bureau to delay performance of any service until the Bureau has received payment from the credit card provider or has received confirmation of the receipt and deposit of finds provided by credit card that is not subject to cancellation, reversion or return to the person submitting the payment or to any financial institution or other intermediary through which the payment was made ("payment validation requirement"). This ensures that the Bureau does not spend resources on applications, renewals, petitions or requests for other services it provides per CCR section 3582 for which payment is not secured. The Bureau would add new subparagraph numbers (1) and (2) within subdivision (a) for syntax purposes and greater readability.

Adoption of new subdivision (d)

Purpose: This section also includes a new subdivision (d) and form titled "Authorized Credit Card Payments," REA 2031 (New 8/2025), which is incorporated by reference, to be completed when submitting any fee by credit card and specifying that "authorized credit card" shall mean VISA or Mastercard.

Rationale: Government Code sections 6162 and 6163 authorizes all state agencies, including the Bureau, to accept payment made by means of a credit card or other payment device. In addition, BPC section 11400(b) specifically permits the Bureau “may accept” credit cards for the payment of fees. The Bureau currently has a contract that permits it to process credit card payments via VISA or Mastercard. However, existing regulation at CCR section 3581 does not specify that credit card payments are an acceptable payment method for the Bureau in every case or under what conditions a credit card will be accepted.

These amendments would address those issues by allowing an individual to use authorized credit cards (VISA or Mastercard) as specified to pay for Bureau fees in proposed amendments to subdivision (a) and propose a new form for this purpose in proposed adoption of subdivision (d). Authorizing credit card payments (VISA and Mastercard) for payment of fees will offer an efficient and flexible payment option for licensees, applicants and petitioners. Such transactions reduce the need for physical checks or money orders and allow for faster submission of payments. This will lead to more efficient processing of applications, renewals, petitions or other services, and will contribute to shorter turnaround times and improved customer service. Allowing credit card payments also aligns the Bureau with the payment practices of many other California regulatory agencies and meets the expectations of the average consumer who prefers an option for credit card payment methods.

Purpose and Rationale for Adoption of New Form REA 2031 (New 8/2025)

Form REA 2031 would include the following and for the following reasons:

(A) Notices advising individuals of the Bureau’s forms and information available on the BREA website at: www.brea.ca.gov; or by phone or mail from staff at the address and telephone number listed on the form. This information is necessary to provide notice of the availability of the Bureau’s forms and information and the Bureau’s website, which would help direct applicants, licensees and other interested parties to where such information is readily available.

(B) Payment information that includes:

(1) <u>notice that an individual can use this form if they would like to pay any fee required by the Bureau as set forth in Title 10, California Code of Regulations section 3582 (10 CCR) using a VISA or MasterCard (MC). Other forms of credit or debit card are not accepted payment methods</u>. This notice is necessary to provide notice of the purpose of this form, to specify that VISA or MasterCard (MC) are the only credit cards accepted (so that the public is aware that those are the only two authorized forms of credit payment that the Bureau can currently process), and direct applicants to CCR section 3582 if they need further information about the Bureau’s regulatory requirements for payment methods.

(2) <u>notice that no application, renewal, petition, or request for other services listed in 10 CCR 3582 shall be considered complete until the required fee has been received and processed and providing a definition for “received and processed</u>”: These statements are <u>necessary to provide notice that the Bureau will not consider any request for service to</u>

the Bureau (application, renewal, petition, etc.) eligible for processing until the required fee (as specified in CCR section 3582) has been received and processed. The proposed notice would include a definition that restates the "payment validation requirement" language previously proposed and explained above for changes proposed at CCR section 3581(a). This ensures consistency in terminology and understanding between the regulatory requirements in both the text in CCR section 3581 and the form used by the public.

(3) <u>notice that to submit payment of any fee to BREA using a VISA or MC, please complete the following sections on this form and mail it along with your completed application, renewal, petition or other request to the address listed above</u>: These statements are necessary to provide notice of how to use this form and where to send it to help ensure receipt by the Bureau and fewer deficiencies in processing these requests.

<u>(C) Identifying and Bureau transaction information, which includes</u>:
(1) the applicant/licensee/petitioner/requester's name if it is different from the cardholder's name (so that the payment of fees can be credited to the appropriate application, petition and/or other fee, if the identity of the cardholder is not the same as the identity of the applicant or licensee); and,
(2) BREA license number (if applicable, to ensure that the payment of fees can be credited to the appropriate application, petition and/or other fee); and,
(3) a box that is solely for the Bureau's use that allows it to record the approval number, reference number, transaction date and initials of the individual who processed the credit card payment (so that the Bureau can track this information for accounting and reporting purposes).

<u>(D) Credit Card Information that includes</u>:
(1) card type, which includes Visa or MC (so that the public is aware that those are the only two authorized forms of credit payment that the Bureau accepts);
(2) credit card number (so that the Bureau has the credit card number necessary to process the credit card payment);
(3) expiration date (the expiration date of the credit card is required in order for the credit card payment processor to process the credit payment);
(4) CVC code with picture of card showing where it is located for ease of reference (the CVC code is a numerical code on the back of each credit card, which is required in order for the credit card payment processors to process the credit card payment);
(5) amount authorized (so that the Bureau knows how much it is authorized to charge the credit card);
(6) printed cardholder's name – Last, First, Middle (in order to ensure that the credit card number matches the cardholder's identity and to ensure that the payment of fees is credited to the correct individual's account)
(7) daytime phone number (in order for the Bureau to have a way to contact the cardholder in the event that there is a problem with processing the credit card payment);
(8) billing address (the billing address is required in order for the credit card payment processor to process the credit card payment).
(9) signature of cardholder (this is required in order to demonstrate the cardholder is

authorizing the credit card payment and it also documents the authorization in the event that there is a later issue with whether or not the charge was authorized and also certifies that the cardholder understands that the fee remitted is deemed earned upon receipt and cannot be refunded).

(E) Privacy Notice that is required by Civil Code section 1798.17 whenever personal or confidential information is collected from individuals. Because the form collects personal and confidential information from anyone who intends to use a credit card in order to make payment to the Bureau, this notice is required to be provided.

II. Amending CCR section 3582

Amendments to subdivision (a)

Purpose and Rationale: This proposal would add the words "and 11317.2" to the introductory sentence for the Bureau's fee schedule. BPC section 11317.2 was amended by SB 1225 to add the following authority:

> (d) (1) Upon petition by an immediate family member or heir of a deceased licensee that is accompanied by a fee sufficient to defray administrative costs associated with consideration of a petition pursuant to this subdivision, the bureau may remove from the posting of discipline described in subdivision (a) an item that has been posted on the bureau's internet website with regard to the deceased licensee for any duration.

This change is therefore necessary to specify, consistent with amendments to the Real Estate Appraisers Licensing and Certification Law, that the fee schedule includes these new fees (discussed more specifically below).

Amendments to subdivision (b)

Purpose: This section includes amendments to the Bureau's current fee table to establish the fee amounts needed for filing a petition for the submission of various documents. Because CCR section 3734 (further discussed below) will be adopted, which sets forth new petition fees and processes for processing petitions for removal of posted discipline, CCR section 3582 needs to be amended to add the petition fee amounts for petitions submitted in connection with Section 3734. The section adds one fee at paragraph 7)A. for a "Petition Fee for Licensee to Request Removal of Posted Discipline from Website," which is $200 and a separate "Petition Fee for Immediate Family Member or Heir of a Deceased Licensee to Request Removal of Posted Discipline from Website, which is $116 at paragraph 7)B. ("Petitions for Removal of Posted Discipline").

Rationale: On September 22, 2024, Senate Bill (SB) 1225 (Chapter 461, Statutes 2024) was enacted, which amended Business and Professions Code section 11317.2, effective January 1, 2025, to allow certain licensees and immediate family members or heirs of deceased licensees to remove certain disciplinary matters from the Bureau's summary of public actions on its internet website and to authorize the Bureau to set the fee amount for processing these requests. As a result, this section needs to be amended to include the fees for Petitions for Removal of Posted Discipline for both a licensee or an immediate family member or heir of a deceased licensee in BREA's current fee table in CCR section 3582 so that applicants and licensees are aware of the fees associated with submitting such Petitions. This section will make it clear to petitioners what fees must be submitted with Petitions for Removal of Posted Discipline and will also provide transparency of the fee amounts to the public. Without a section setting forth a fee which is tied to the administrative costs associated with the consideration of the petition, petitioners will have no guidance as to the fees associated with such petitions. This section will make it clear to petitioners the fee associated with such petitions so that they can make an informed decision as to whether they want to consider filing a petition.

Pursuant to Business and Professions Code sections 11317.2 (c)(1) and 11317.2 (d)(1), "the petition shall be a fee sufficient to defray administrative costs with consideration of a petition . . . ." The State of California State Administrative Manual (SAM), section 9210, provides that it is state policy for departments to recover full costs whenever goods or services are provided to others. Section 9210 of the SAM specifies that full costs include "all costs attributable directly to the activity plus a fair share of indirect costs which can be ascribed reasonably to the good or service provided." Thus, the fees proposed within proposed CCR Section 3582(b)7)A. and (b)7)B. have been evaluated to ensure that they are tied to the administrative costs to the Bureau associated with the processing and consideration of the petitions (see Underlying Data). This proposal is necessary to help ensure the Bureau has sufficient resources to maintain the highest priority of consumer protection and recover costs for administration and enforcement of the Real Estate Appraisers Licensing and Certification Law.

Other existing paragraphs would be renumbered to accommodate the addition of these new paragraphs 7)A. and 7)B. to this subdivision.

Amendments to subdivision (c)

Purpose and Rationale: This existing subdivision details the consequences to a licensee if payment of any fees is dishonored by the issuing institution. This proposal would amend this subdivision to add references to "or credit card provider" and actions they could take to show nonpayment by adding the words "or otherwise cancelled or reverted." These amendments are necessary to make consistent the addition of the Bureau's new credit card authorization process described in changes noted above to CCR section 3581 since the term "dishonored" is commonly understood to refer to check or money order transactions. This would give notice to licensees that their license will be automatically suspended if their credit card payment is otherwise cancelled or reverted by the credit card provider. This ensures consistent treatment of licensees who fail to pay required fees no matter what method of payment is chosen.

Adoption of subdivision (e)

Purpose: This proposal would add a requirement that fees collected pursuant to this section shall be refunded if the Director determines, upon a person's written request for a refund and withdrawal of their application, renewal, petition or other applicable item (since the fee table includes services other than the standard licensing, application and renewal fees), that the Bureau has not started its review of the applicable item(s).

Rationale: BPC section 11400(b) provides:

> All fees shall be paid by cashier's check, certified check, or money order. In addition, the bureau may accept personal checks or credit cards for the payment of fees. All fees shall be deemed earned by the bureau upon receipt and are **refundable at the discretion of the director**. (Emphasis added.)

This proposal is necessary to resolve how the Director would exercise discretion to provide a refund of any fees charged by the Bureau in CCR section 3582 and under what circumstances an individual might be eligible. Since it is state policy, as set forth in the State of California's State Administrative Manual (SAM), section 9210, for departments to recover full costs whenever goods or services are provided to others, the Bureau proposes that the Director would authorize a refund only if state resources had not been allocated by way of a "review" of the item. In other words, if time and state resources have been expended to process the item, then refund would not be permitted. This is consistent with how refunds are processed in Sections 13142 of the Government Code, which does not authorize state agencies to provide a refund in cases where:

> (a) The payor, either before or after the issuance of a permit, has exercised or enjoyed, or has not been prevented by law from exercising or enjoying, the rights and privileges conferred thereby.
> (b) The payor has been granted permission to take an examination.
> **(c) The State agency has made an examination, inspection or filing**. (Emphasis added.)

As a result, only in cases where the Bureau has not started its review and therefore not earned the fee submitted, would an individual be eligible for a refund. Adding that the refund would be made "upon a person's written request" and the Director's determination that the Bureau has not started its review of the applicable item(s) ensures notice to affected individuals of the refund process and eligibility requirements. This interpretation is also consistent with the interpretation of new limitations for petitions proposed to be adopted in CCR section 3734(c)(3).

III. Adopting title and CCR section 3734

Purpose: The Bureau proposes to adopt a new CCR section 3734 and title "Petitions for Removal of Posted License Discipline Information from the Bureau's Website." The proposed new section and title provide notice to interested parties of the Bureau's petition process, establishes the process and standards for processing a petition per BPC section 11317.2, provides implementing definitions, and establishes the criteria for evaluating a petition, rendering a decision on the completeness and the eligibility of a petition, and providing notice of those decisions to a petitioner. The section would also specify how and when a petitioner can submit a new petition for the Bureau's consideration.

Rationale: On September 22, 2024, Senate Bill (SB) 1225 (Chapter 461, Statutes 2024) was enacted, which amended Business and Professions Code section 11317.2, effective January 1, 2025, to allow certain licensees and immediate family members or heirs of deceased licensees to remove certain disciplinary matters from the Bureau's summary of public actions on its internet website. BPC section 11317.2 provides that the Bureau may develop, through regulations, the amount of the fee and the minimum information to be included in a licensee's petition including, but not limited to, a written justification and evidence of rehabilitation pursuant to BPC section 482, and the amount of the fee and the minimum information to be included in a petition submitted by an immediate family member or heir of a deceased licensee. The Bureau currently does not have regulations to implement these statutory amendments. This would adopt a process and criteria for petitioning for removal of disciplinary information from the Bureau of Real Estate Appraisers' summary of disciplinary actions on its internet website by either a licensee or immediate family or heirs of deceased licensee, as specified in a proposed new CCR section 3734.

Overall, this section is necessary to provide notice of and specify the process and standards for, a petition for: (1) a licensee, seeking removal of their own license discipline information from the Bureau's website ("the website" adopted as a shortform term for ease of reference) for license discipline with a posting date of no less than (10) years prior to the date of filing of the petition application specified in subdivision (c); and (2) an immediate family member or heir of a deceased former licensee seeking to remove that deceased licensee's discipline information for any duration, pursuant to Section 11317.2 of the Business and Professions Code. Additionally, without a section setting forth the specific information or factors that will be taken into consideration in evaluating a petition, a petitioner would have no guidance on how to submit a petition, what information is needed to submit a complete petition, what criteria will be used to evaluate the petition, and when a petitioner can resubmit a new petition if the original petition is denied. This section will make it clear to petitioners what information they need to gather and provide; what types of information will be considered in evaluating the petition, and when a petitioner can submit a new petition if the original petition is denied. This section will also provide transparency of the process to the public.

Adopt Subdivision (a)

Purpose: The Bureau proposes to adopt subdivision (a) that specifies the purpose of this new section and the qualifying individuals who may file a petition in accordance with BPC section 11317.2, as follows:

> (a) This section establishes the process and standards for a petition for: (1) a licensee, seeking removal of their own license discipline information from the Bureau's website ("the website") for license discipline with a posting date of no less than ten (10) years prior to the date of filing of the petition application specified in subdivision (c); and (2) an immediate family member or heir of a deceased former licensee seeking to remove that deceased licensee's

discipline information for any duration, pursuant to Section 11317.2 of the Business and Professions Code.

Rationale: Adoption of the shortform reference to the Bureau's website as "the website," ensures ease of use and easier understanding throughout this section. Per BPC section 11317.2, the two categories of petitioners eligible to petition are set forth in subdivision (c)(1) and (d)(1), as follows:

> (c) (1) (A) Except as specified in subparagraph (B), upon petition by a licensee that is accompanied by a fee sufficient to defray administrative costs associated with consideration of a petition pursuant to this subdivision, the bureau may remove from the posting of discipline described in subdivision (a) an item that has been posted on the bureau's internet website for no less than 10 years and for which the licensee provides evidence of rehabilitation indicating that the notice is no longer required in order to prevent a credible risk to members of the public utilizing licensed activity of the licensee.
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> . . .
>
> d) (1) Upon petition by an immediate family member or heir of a deceased licensee that is accompanied by a fee sufficient to defray administrative costs associated with consideration of a petition pursuant to this subdivision, the bureau may remove from the posting of discipline described in subdivision (a) an item that has been posted on the bureau's internet website with regard to the deceased licensee for any duration.

In general, the Bureau proposes to adopt this subdivision to ensure that individuals who wish to apply to petition in accordance with BPC section 11317.2 have adequate notice of the qualifications, the scope and purpose of this section and the Bureau's authority to consider their petition as noted above. Although there is some duplication of statutory language noted above, this proposal is necessary to centralize these requirements in one location for ease of reference. In addition, to specify the point in time when a licensee is eligible to petition for removal of posted discipline, this proposal indicates that the discipline for which they are requesting removal must have "a posting date of no less than (10) years prior to the date of filing of the petition application." Since petitioners per BPC section 11317.2 would qualify for removal starting 10 years or more from the Bureau's "posting" of the actual discipline document, this would resolve confusion as to the date a disciplinary action would qualify for removal, which is no less than ten years from the Bureau's actual posting date of the action.

Adopt Subdivision (b)

Purpose and Rationale: The Bureau proposes to adopt subdivision (b) that provides definitions for various terms that are used within this section of the regulation as follows and for the following reasons:

(b) "Definitions. For the purposes of this section, the following definitions shall apply:" Because some of the terms that are used in this section can have multiple meanings, this introduction and these definitions are necessary so that this section is clear to the public and the Bureau regarding what these terms mean in processing such petitions. This introduction and subdivision will provide notice and regarding the terms used in this subdivision by providing definitions for terms used in this section that specify who is eligible to file such petitions.

(1) "Discipline" shall mean the license has been placed on probation, revoked, suspended, reproved, censured, reprimanded, restricted, limited, or conditioned. This definition is necessary to ensure notice and consistency in the use of this term throughout the Bureau's regulations. The term "discipline" is defined in this section consistent with the definition in form REA 3070 (discussed below) and to resolve possible ambiguity for users that includes commonly understood restrictions on a license (see e.g., BPC section 11315.3 and Government Code section 11503).

(2) "Heir" shall mean those individuals who are defined as heirs pursuant to California Probate Code section 44. This definition is necessary to ensure consistency of understanding this term under California Probate law and that aligns with the meaning of the term in California Probate Code section 44, which states:

"Heir" means any person, including the surviving spouse, who is entitled to take property of the decedent by intestate succession under this code.

(3) "Immediate family member" shall mean spouse, registered domestic partner, child, stepchild, brother, sister, step-sibling, mother, father, or stepparent. This definition is necessary to avoid ambiguity regarding what "immediate family member" includes and is consistent with commonly understood use of this term and other statutory definitions (see Gov. Code, § 12945.2 and implementing regulations of the California Family Rights Act at Cal. Code. Regs, tit. 2, § 11087).

(4) "Immediate family member or heir petitioner" means an immediate family member or heir of a deceased licensee applying on behalf of a former and now deceased licensee for removal of discipline as specified in subdivision (a). Since this term is capable of more than one meaning, the Bureau adds this definition to avoid ambiguity and confusion for applicants when this term is used in CCR section 3734, which incorporates the "immediate family member" definition above for consistency in terminology throughout the Bureau's regulations.

(5) "Licensee" means a person holding a current and active license as defined in Section 11302 of the Business and Professions Code. To avoid ambiguity and for consistency of use in terminology with Real Estate Appraisers Licensing and Certification Law at BPC section 11302, the Bureau proposes to

incorporate BPC section 11302's definition for "License", which includes: "any license, certificate, permit, registration, or other means issued by the bureau authorizing the person to whom it is issued to act pursuant to this part within this state." Further, the Bureau adds the terms "current and active" to the definition since individuals often mistakenly believe they are still a "licensee" when expired or cancelled.

(6) "Licensee petitioner" means a licensee applying on their own behalf for removal of discipline as specified in subdivision (a). Since this term is capable of more than one meaning, the Bureau adds this definition to avoid ambiguity and confusion for applicants when this term is used in CCR section 3734, which incorporates the "licensee" definition above for consistency in terminology throughout the Bureau's regulations.

(7) "Pending investigation" shall mean any proceeding or investigation under the authority of any licensing jurisdiction in any state, district, or territory of the United States, federal agency or another country pursuant to which licensee discipline may be imposed on the petitioner that is substantially related to the qualifications, functions or duties of the licensee in accordance with Section 3722. This definition is necessary to provide notice and resolve ambiguity as to what the Bureau, in its experience, deems a "pending investigation." The term is broadly interpreted to include any proceeding or investigation under the authority of any licensing jurisdiction in any state, district, or territory of the United States, federal agency or another country to ensure greater public protection in interpreting what is a "credible risk" (as explained further below). The Bureau adds criteria that the proceeding or pending investigation be "substantially related" related to the qualifications, functions or duties of the licensee in accordance with CCR Section 3722 (that describes how the Bureau makes these substantial relationship determinations) consistent with how the Bureau evaluates licensing and enforcement actions (see, for example, the requirements of BPC sections 141 and 480). Adopting a substantial relationship criteria standard also helps ensure the legal enforceability of the Bureau's standards (see, for example, the California Court of Appeal's determination that for disciplinary actions acts must be substantially related to the profession to withstand constitutional scrutiny since "[t]here must be a logical connection of licensees' conduct to their fitness or competence to practice the profession or to the qualifications, functions, or duties of the profession in question." (*Clare v. State Bd. of Accountancy* (1992) 10 Cal.App.4th 294, 302.))

(8) "Posting of discipline" means placing or publishing disciplinary information about a licensee on the website as described in Section 11317.2 of the Business and Professions Code. The "date of posting" or "posting date" for the purposes of this section shall mean the effective date of the disciplinary action

at issue. Existing law at BPC section 11317.2 does not describe in practical terms what “posting of discipline” or “posting date” means as it relates to the Bureau’s website. Designating the posting date or posting of discipline to mean the effective date of the disciplinary action is consistent with current Bureau practice to post on the effective date and also provides a convenient way for a potential petitioner to know when they might be eligible to file a petition per the requirements of CCR section 3734 (since the posting date starts the clock for determining eligibility per BPC section 11317.2(c)(1)).

Adopt Subdivision (c)

Purpose and Rationale: Generally, the Bureau proposes to adopt subdivision (c) to: (1) clarify to the public the process for how to file a petition to remove discipline from the Bureau’s website; (2) let the public know that once the Bureau has started its review of the petition, the petition fees are nonrefundable; (3) let the public know that license revocations and voluntary surrenders that were the result of a pending investigation are not eligible for removal from the Bureau’s website; (4) let the public know that when a petitioner is seeking to have their own discipline removed from the Bureau’s website, the Bureau shall apply its Criteria of Rehabilitation and any evidence of rehabilitation submitted by the Petitioner; and (5) clarify to the public that the Bureau will take into consideration other violations that present a credible risk to the public (which “credible risk” is defined within this subdivision). The specific purpose and rationale for each subdivision follows.

Adoption of Subdivision (c)(1)

Purpose and Rationale: This proposal would add the following requirements and for the following reasons:

(c)(1) To request that the Bureau remove an item or items from the posting of discipline, a licensee petitioner shall submit by mail to the Bureau a completed form titled “Petition Application for Removal of Discipline, REA 3070 (New 2/2026),” (REA 3070) which is hereby incorporated by reference, and pay the petition fee for licensee to request removal of posted discipline from website specified in Section 3582.

This paragraph is necessary to place all requirements for processing a petition to request removal of posted discipline in one convenient location. Specifying requirements for the submission by “mail” of the “completed” REA 3070 form, and payment of the petition fee in CCR section 3582 ensure greater accuracy in petition submissions and notice of the Bureau’s acceptance and processing criteria, thereby helping to avoid deficiencies in the application process.

Adoption of New Petition Application for Removal of Discipline, REA 3070 (New 2/2026),” (REA 3070): This form would be used to gather the evidence the Bureau believes is necessary to evaluate a petitioner’s eligibility, and to provide petitioners with directions for how to comply with the Bureau's requirements for a completed petition application, as follows.

<u>Introduction and Instructions</u>
This proposal would add an introductory title "Petition for Application for Removal of Discipline (Removal of Discipline Information from BREA Website) Read all directions prior to completing this application," for greater notice and understanding of the purpose of this form.

This proposal would also add the following instructions to ensure that applicant petitioners understand all requirements for submission. While many of the instructions duplicate the requirements adopted in BPC section 11317.2 and CCR sections 3581, 3582 and 3734, the Bureau finds these duplications necessary to ensure more complete, accurate submissions from applicants and to address the types of most frequently asked questions. These instructions would include:

1. Notice that these instructions do not provide a complete description of all eligibility requirements and grounds for denial of a petition and directing petitioners to CCR sections 3581, 3582, and 3734 to fully understand all eligibility requirements.

2. Specific directions for "Licensee petitioners" consistent with requirements set forth in BPC section 11317.2(c)(1) and CCR 3734, including that: (A) licensees may seek removal of their own license discipline information from the Bureau's Internet website if the discipline was effective no less than 10 years prior to the date of filing of this petition application; and, (B) disciplinary actions that resulted in license revocation or voluntary surrender as a result of pending investigation are not eligible for removal (any such requests will be rejected as ineligible).

3. Specific notice for "Immediate family member or heir petitioners" consistent with requirements in BPC section 11317.2(d)(1) and CCR section 3734 including that an immediate family member or heir of a deceased licensee seeking to remove that deceased licensee's discipline information may file this petition application at any time for removal of any type of discipline of any duration.

4. Direct applicants to "type or print clearly in blue or black ink and provide an original signature" to ensure applications are legible and meet Bureau signature requirements for certifying this paper application under penalty of perjury.

5. Notice that all fees paid must be paid in accordance with the requirements in CCR section 3581 including pre-printed personal or company check, cashiers' check, certified check, money order, or governmental purchase order which shall clearly indicate the name of the applicant or licensee to whom it applies. Payments may also be made using a credit card (VISA or Master Card) by submitting a completed

“Authorized Credit Card Payments,” Form REA 2031 (New 8/2025) to the Bureau with this application. This ensures consistency with the new amendments proposed and terminology used in CCR section 3581 and accurate submission to the Bureau of the required fees.

6. Notice that once the Bureau has started its review of their application, any fees a petitioner submits will not be refunded even if they are not eligible, or the Bureau denies their petition application. This is to ensure consistency in interpretation with CCR sections 3582(e) and 3734(c)(3), which prescribe these limitations on refunds.

7. Provide address and telephone contact information for applicants to direct their questions to help petitioners obtain further information.

8. Notice regarding where to mail the completed application, fee and required documents (as further specified below) to the Bureau’s address and “Enforcement Unit” within the Bureau. This direction will help ensure more efficient processing of these petition applications.

Required Disclosures on the REA 3070 form

1. Relationship to Licensee section: Applicants would be required to disclose their “Relationship to Licensee” by checking either a box for “Myself” or “Immediate Family Member or Heir of Licensee” and would be directed to complete the applicable Parts of the form and submit the applicable fee ($200 for licensees and $116 for immediate family member or heir of licensee”). These requirements are necessary to ensure petitioners complete their applications in compliance with the requirements of this section, the Bureau has all the information it needs to process and evaluate the petition, and applicants have additional notice of the fee payment requirements applicable to their type of petition (as set by amendments to CCR section 3734).

2. Part I: Licensee Self-Petition
   Section A: Licensee Information: This part of the application requires the licensee to provide personally identifying information that the Bureau needs to identify the licensee petitioner and contact them if there is any further information needed or questions about their petition, including: license level (trainee license, residential license, certified residential, and certified general), license number, name (as it appears on most recent licensed issued by BREA), physical address, licensee mailing address (if different than physical address), home or personal phone number, business phone number (if applicable, meaning they have one) and email address (if applicable, meaning they have one).

3. <u>Section B: Licensee Background</u>
   In the Bureau's experience the questions listed in this section of the form are necessary to conduct an effective and complete background investigation of the petitioner for the protection of the public. Since the Bureau would be removing posted discipline accessible to the public from its website, it is of paramount concern that the Bureau have assurances that the petitioner would not present a "credible risk" to the public and that grounds for denial do not exist on that basis per the mandates in BPC section 11317.2. These questions would include questions based on criteria in proposed subdivision (c)(6), as follows:

   1. Whether applicant is currently registered as a sex offender in California or in another state, district or territory of the United States (Subd. (c)(6)(A)).
   2. Whether the applicant is currently on criminal probation or parole (Subd. (c)(6)(B)).
   3. Whether their Bureau-issued license currently subject to disciplinary restrictions by the Bureau including suspension or probation (Subd. (c)(6)(D)).
   4. Whether their Bureau-issued license is currently subject to disciplinary restrictions by the Bureau including suspension or probation and provides a definition for "discipline" to resolve possible ambiguity that includes commonly understood restrictions on a license (see e.g., BPC section 11315.3 and Government Code section 11503). (Subd. (c)(6)(E).)

      In addition, to allow the Bureau to consider all circumstances surrounding a "yes" answer to any potentially actionable discipline that may be considered in granting or denying a petition, and to adequately evaluate any mitigating or rehabilitation evidence, the Bureau requests the following:

      "If YES, the applicant shall attach copies of the disciplinary decision taken by the licensing board, agency, or other governmental organization ("board") that contains the following information:

      (A) the type of disciplinary action taken (e.g., revocation, suspension, probation),
      (B) the effective date of the disciplinary action,
      (C) the license type,
      (D) the license number,
      (E) the name and location of the licensing board, and
      (F) an explanation of the violations found by the licensing board."

      In addition, the applicant may submit a statement or documents showing the applicant's rehabilitation efforts or any mitigating information that the applicant would like the Bureau to consider related to this discipline disclosure. BPC section 11317.2(c)(1) requires a licensee to provide evidence of rehabilitation indicating that the notice of posted discipline is no longer required in order to prevent a credible risk to members of the public utilizing licensed activity of the licensee. This question will enable the Bureau to collect this information to fully evaluate all applicable information regarding a possible "credible risk" considering any possible rehabilitation or mitigating evidence consistent with current rehabilitation criteria at CCR section 3723 (made applicable by CCR section 3734(c)(5)).

5. Whether the applicant will make themselves reasonably available for interview by the Bureau investigator (e.g., Accept phone calls from the Bureau, meet with Bureau representatives, or respond to emails). (Subd. (c)(6)(F).) To resolve ambiguity regarding what "reasonably available" means the Bureau would add a parenthetical to give examples of what such availability would be expected to include. This ensures notice and sets expectations for licensees and notice that the Bureau expects licensees to cooperate in the investigation of their petition application as part of eligibility for removal of posted discipline. (Subd. (c)(6)(F).)

6. Whether the licensee has reimbursed the Bureau for payments made from the Recovery Account specified in 11412 of the Business and Professions Code associated with the claim filed where they were the judgment debtor. (Subd. (c)(6)(G).)

7. Whether the applicant has a written statement or documents showing the applicant's rehabilitation efforts or any mitigating information that the applicant would like to submit in support of their petition. This will enable the Bureau to evaluate all applicable information regarding whether there is a "credible risk" in removing posted discipline consistent with its rehabilitation criteria as set forth in CCR section 3723 (made applicable by CCR section 3734(c)(5)).

8. Whether the applicant has any criminal convictions to report since the effective date of the disciplinary action (posting date) for which they are requesting removal from the Bureau's website. (Subd. (c)(6)(C).)

   To allow the Bureau to consider all circumstances surrounding a "yes" answer to any potentially actionable conviction, and to adequately evaluate any mitigating or rehabilitation evidence pursuant to existing criteria at CCR section 3723, the Bureau requests the following:

"*If YES, the applicant shall attach documents or a written statement on a separate sheet(s) of paper that contains the following information, as applicable:

- o (A) plea/conviction date,
- o (B) incarceration date,
- o (C) incarceration release date,
- o (D) probation/parole release date,
- o (E) arresting agency,
- o (F) court name/location,
- o (G) name of the case and case/docket number,
- o (H) list of codes or laws violated,
- o (I) explanation of the offense(s)/details of the crime(s), and,
- o (J) a statement of any rehabilitation efforts or mitigating information that the applicant would like to submit."

This information will allow the Bureau to properly investigate the applicant's qualifications and whether the conviction is substantially related as defined consistent with existing criteria at CCR section 3722.

Since these questions track the criteria proposed to be adopted in CCR section 3734(c)(6)(A)-(G) for defining "credible risk," the Bureau hereby incorporates the purpose and rationale below for explaining why these questions are necessary. The criteria are proposed to be recast in the form of questions on Form REA 3070 to collect the information needed to determine whether posting of the discipline is "no longer required in order to prevent a credible risk to members of the public utilizing licensed activity of the licensee" (as authorized by BPC section 11317.2(c)(1)), and whether grounds for denial exist for "credible risk" per the criteria specified in CCR section 3734.

4. Part II: Immediate Family Member or Heir Petitioners Petitioning for a Former Licensee (Deceased)
Section A: Licensee Information: This part of the application requires applicant family members or heirs to provide personally identifying information about the deceased licensee that the Bureau needs to identify the former licensee and confirm eligibility, including: licensee name (as it appears on most recent licensed issued by BREA), licensee last known physical address, licensee last known mailing address (if different than physical address), last know home or personal phone number, licensee last known business phone number, licensee last license level (trainee license, residential license, certified residential, and certified general) (if known), licensee license number and licensee date of death. To ensure verification of eligibility to petition per BPC 11317.2, the Bureau asks the applicant to attach a copy of the licensee's certified death certificate as specified in the section below.

Section B: Petitioner Information:
This part of the application requires the applicant petitioner (immediate family member or heir) to provide personally identifying information about themselves that the Bureau needs to identify them, verify familial or relationship to the deceased licensee, and contact them if there is any further information needed or questions about their petition, including: petitioner name, petitioner physical address, petitioner mailing address (if different than physical address), petitioner home or personal phone number, petitioner business phone number (if applicable, meaning they have one), petitioner email address (if applicable, meaning they have one), and petitioner's relationship to licensee.

Section C: Required Documents
This section of the form asks petitioners to include with this application any documents required by Part I or Part II of this application (as applicable). For immediate family members, the Bureau directs these applicants to also include a copy of the certified death certificate for the deceased licensee from the California Department of Public Health - Vital Records (CDPH-VR) or the County Recorder/Clerk's office in the county where the death occurred.

These instructions are necessary to provide notice to applicants of the process for submitting documentation required by this form and to ensure completed petition applications are received by the Bureau. The requirement for submission of a certified death certificate is needed to verify that the former licensee is deceased. Death certificates are the best evidence of death since they serve as *prima facie* evidence of death as a matter of law (Health & Safety Code, § 103550). To assist family members with locating this information, the Bureau specifies that these certificates are available from CDPH-VR or the County Recorder/Clerk's office in the county where the death occurred.

5. Part III: Discipline Requested To Be Removed
This part of the form requires all petitioners to list what discipline is being requested to be removed and provides a table for them to complete that discloses the "Effective Date of Bureau Disciplinary Order," and "Description of Bureau Discipline (Name of Licensee and Bureau Case No.)." This information is necessary to verify the disciplinary action(s) proposed to be removed by the petitioner and allows the Bureau to verify whether such actions qualify for removal (for licensee petitioners).

6. Notice of Collection of Personal Information: the form includes these required notices and disclosures to the petitioners for the Bureau's collection of their personal information for the purpose of compliance with Civil Code section 1798.17.

7. Part IV: Petitioner Declaration

This part of the form requires the petitioner to sign and date the application below, and which requires a certification under penalty of perjury under the laws of the State of California that the foregoing information and information provided on any attachments is true and correct. Certification under penalty of perjury helps to ensure that the documentation contains truthful, factual representations made in good faith. (See e.g., *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [judicial explanation for the use of certifications].) The Bureau relies upon applicants' self-reported information in evaluating applications and qualifications for examination and licensure as required by the Act. In addition, the certification under penalty of perjury helps ensure the reliability of the statements to the Bureau (since certifying under penalty of perjury can have a deterrent effect on those who may be considering not providing true, accurate or complete information), and provides the Bureau with the option of seeking sanctions and referring the matter to law enforcement in the event that such information is not true, complete or accurate. ["The oath or declaration must be in such form that criminal sanctions of perjury might apply where material facts so declared to be true, are in fact not true or are not known to be true*." In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [holding modified by *Laborde v. Aronson* (2001) 92 Cal.App.4th 459.] This attestation is also necessary to comply with the requirements for certifications as prescribed by California Code of Civil Procedure section 2015.5.

<u>Adoption of Subdivision (c)(2)</u>

<u>Purpose and Rationale</u>: This proposal would add the following requirements and for the following reasons:

<u>(2) To request that the Bureau remove an item or items from the posting of discipline, an immediate family member or heir petitioner shall submit by mail to the Bureau a completed form REA 3070 as specified in paragraph (1) and pay the petition fee for immediate family member or heir of a deceased licensee requesting removal of posted discipline from website specified in Section 3582.</u>

Existing regulations do not specify how an heir or immediate family member can request removal of an item or items from the posting of discipline. This section would address those issues by specifying that these petitioners shall use the same form REA 3070 (discussed immediately above) as licensees, that it shall be "completed", and they shall pay the fee noted above as specified in CCR section 3582. This helps ensure that the Bureau receives completed applications and reduces the likelihood of delays in the processing of these petition applications.

<u>Adoption of Subdivision (c)(3)</u>

Purpose and Rationale: This proposal would add the following requirements and for the following reasons:

(3) In accordance with Section 3582, once the Bureau has started its review of REA 3070, fees that were submitted with REA 3070 shall not be refunded even if the petitioner withdraws their petition, does not qualify in accordance with subdivisions (a) or (c)(4), or the Bureau denies the petition in accordance with subdivision (e).

In the Bureau's experience, individuals may mistakenly believe that withdrawal of their petition, disqualification or denial means that services were not rendered by the Bureau and therefore they are eligible for a refund. This regulation would therefore place applicants on notice that such refunds are not available under these conditions since the Bureau considers the fee earned when review is started and staff time and resources are expended on processing the petition (see explanation above for the addition of amendments to CCR section 3582(e)).

Adoption of Subdivision (c)(4)

Purpose and Rationale: This proposal would add the following requirements and for the following reasons:

(4) Notwithstanding subdivision (c)(1), a licensee petitioner shall not qualify for, and the Bureau shall reject as ineligible, any petition received requesting removal from the posting of discipline of either of the following: (1) a license revocation or (2) a voluntary surrender that was the result of a pending investigation.

BPC section 11317.2 a licensee shall not petition to remove from the posting of discipline described in subdivision (a) either of the following:

(i) A license revocation.

(ii) A voluntary surrender that was the result of a pending investigation.

These requirements are therefore necessary to ensure that applicants understand the foregoing limitations imposed by law and have notice that these types of disciplinary actions do not qualify for removal from the Bureau's website. Further, consistent with these prohibitions in Section 11317.2, the Bureau provides notice that the Bureau shall reject as ineligible, any petition meeting the foregoing requirements, notwithstanding the opportunity to request removal afforded by subdivision (c)(1) of this section.

Adoption of Subdivision (c)(5)

Purpose and Rationale: This proposal would add the following requirements and for the following reasons:

(5) Where a licensee petitioner seeks removal of their own discipline from the Bureau's website pursuant to subdivision (c), the Bureau shall consider and apply the criteria for rehabilitation set forth in paragraph (a) of Section 3723 when evaluating the petition and any evidence of rehabilitation submitted by the petitioner.

To ensure consistency in interpretation of rehabilitation evidence for all applicants, the Bureau proposes to make the rehabilitation criteria adopted in CCR section 3723(a) applicable to licensee petitioners (these are the criteria the Bureau has adopted to implement BPC section 482, and made applicable to these petition applications by BPC section 11317.2(c)(2)). BPC 11317.2(c)(1) also requires the Bureau to take into consideration any rehabilitation evidence submitted by a licensee petitioner. Further, rehabilitation evidence is critical in enforcement decisions because it demonstrates an applicant's personal reform, honesty, and professional fitness, allowing the Bureau to distinguish rehabilitated individuals from those still posing a risk to the public. It allows for a case-by-case evaluation, focusing on mitigating factors, employment history, and positive character changes since the prior discipline occurred and allowing the Bureau to make an informed decision about whether to remove the posted discipline requested by the petitioner.

Adoption of Subdivision (c)(6)
Purpose and Rationale: This proposal would add the following requirements and for the following reasons:

(6) In evaluating a petition from a licensee under subdivision (c)(1), the Bureau shall take into consideration other violations that present a credible risk to the members of the public since the posting of discipline requested for removal. The Bureau shall consider, when assessing the credible risk to members of the public utilizing licensed activity by the petitioner, any evidence gathered from an investigation that reflects on petitioner's propensity to honestly and fairly engage in activities requiring a real estate appraiser's license or appraisal management company certificate. For purposes of this subdivision, a "credible risk" exists if any of the following circumstances apply:

BPC section 11317.2(c)(1)(C) provides, in part:

> In evaluating a petition filed pursuant to this subdivision, the bureau shall **take into consideration other violations that present a credible risk to the members of the public since the posting of discipline requested for removal.** (Emphasis added.)

Existing regulations do not specify how the Bureau would take into consideration other violations that present a credible risk and when consideration of evidence of rehabilitation submitted by a petitioner might affect a determination whether to grant or deny a petition submitted by a licensee.

This proposal would address these issues by prescribing the criteria that the Bureau would consider to determining “credible risk” in this subdivision (see similar regulations for the Department of Real Estate at 10 CCR section 2915) and providing notice that it will be based on evidence gathered from an investigation that reflects on petitioner’s propensity to honestly and fairly engage in activities requiring a real estate appraiser’s license or appraisal management company certificate (license types issued by the Bureau). The Bureau considers honesty and fairness to be essential to safe practice and would be a necessary consideration in evaluating a petitioner’s rehabilitation and ability to practice with safety to the public when considering discipline removal. With that in mind, the Bureau provides a specific list of other violations that it has determined present a credible risk to the members of the public and show a failure to rehabilitate since the posting of discipline requested for removal, as follows in subparagraphs (A)-(G) of CCR section 3734(c)(6).

(A) Licensee petitioner is currently registered pursuant to the provisions of section 290 of the Penal Code or registered as a convicted sex offender in another state, district or territory of the United States.

Most jurisdictions in the U.S. — including California and federal law — require individuals convicted of certain sexual offenses to follow strict registration and tracking rules to monitor them for the protection of the public after they have completed their sentences (see e.g., “Sex Offender Registration Act -- Pen. Code, § 290 et seq.). This public policy recognizes the inherent safety risks to the public involved with these types of criminal convictions and the increased risk of recurrent behavior. This is why California makes it a crime to violate sex-offender registration requirements under Penal Code section 290.018.

As the California Supreme Court has noted “based on the high recidivism rate, persons convicted of the specified sex crimes are deemed to be a threat to the public long after their crimes are committed and any sentence is served.” *People v. Ansell* (2001) 25 Cal.4th 868, 869. Further, these individuals would be subject to sex offender registration requirements, enabling them to be monitored and tracked by law enforcement to prevent recurrence of the violations and protect the public. As a result, the Bureau considers this evidence of a violation (a sexually related criminal conviction that requires sex offender registration) that is a credible risk to the public.

(B) Licensee petitioner is currently on criminal probation or parole.

A requirement to be on probation or parole indicates a person is in a supervised, active phase of rehabilitation following a criminal conviction but not completely able to independently reintegrate into society without supervision. It signifies that while they have been released from incarceration or avoided it entirely, they must comply with court-ordered conditions, such as counseling, drug testing, and employment, to reintegrate safely into society. It also shows that the individual is unable to demonstrate they can independently practice their profession with safety to the public.

As the California Supreme Court has stated, cases authorizing re-admission to practice without restriction or penalty on the basis of rehabilitation commonly involve a substantial period of exemplary conduct following the applicant's misdeeds, and since persons under the direct supervision of law enforcement or correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that an applicant did not commit additional crimes while in prison or while on probation or parole. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

As a result, the Bureau considers this evidence of a violation (a criminal conviction that requires continued supervision of the individual in the form of parole or probation) that is a credible risk to the public.

(C) Licensee petitioner has substantially related conviction(s) pursuant to Section 3722 that have occurred since the date of the posting of discipline requested for removal from the Bureau's website and the Petitioner has not demonstrated rehabilitation using the criteria set forth in Section 3723.

The Bureau adds this "credible risk" violation item for convictions that are substantially related in accordance with CCR Section 3722 (that describes how the Bureau makes these substantial relationship determinations) consistent with how the Bureau evaluates licensing and enforcement actions in criminal conviction cases (see, for example, the requirements of BPC sections 480, and 490). Adopting a substantial relationship criteria standard also helps ensure the legal enforceability of the Bureau's standards (see, for example, the California Court of Appeal's determination that for disciplinary actions acts must be substantially related to the profession to withstand constitutional scrutiny since "[t]here must be a logical connection of licensees' conduct to their fitness or competence to practice the profession or to the qualifications, functions, or duties of the profession in question." (*Clare v. State Bd. of Accountancy* (1992) 10 Cal.App.4th 294, 302.)) The Bureau also specifies that the eligible convictions have occurred since the date of the posting of discipline requested for removal from the Bureau's website consistent with the requirements for considering subsequent misconduct in BPC section 11317.2(c)(1)(C).

As noted above, courts have held that rehabilitation means living crime-free for a meaningful period after the original offense. Further, a failure to demonstrate rehabilitation (analyzed under existing rehabilitation criteria at CCR section 3723 for consistency across all Bureau administrative actions), presents the risk of recurrence of misconduct. A new conviction shows a pattern of violating the law, poor judgment, and that the person has not yet achieved the stability or behavioral change the Bureau requires to ensure safe practice with the public. As a result, the Bureau considers this evidence of a violation that is a credible risk to the public since the posting of discipline requested for removal.

(D) Licensee petitioner is currently subject to disciplinary restrictions by the Bureau including a suspension or a license placed on probation. For the same reasons set forth in paragraph (C) above, the Bureau considers this evidence of a continuing violation of the Bureau's laws that is a credible risk to the public since the posting of discipline requested for removal. Additionally, a new disciplinary action by the Bureau where the individual is operating under a restricted license (including suspension or on probation) shows a pattern of disregarding Bureau standards, violating California law, poor judgment, and that the person has not yet achieved the stability or behavioral change the Bureau requires to ensure safe practice with the public.

(E) Licensee petitioner has professional license discipline that is substantially related to the qualifications, functions or duties of the licensee in accordance with Section 3722 from any other licensing agency, in or outside of California, that have occurred since the date of posting of discipline requested for removal from the Bureau's website; and, the Petitioner has not demonstrated rehabilitation using the criteria set forth in Section 3723.

This violation issue is considered a credible risk since violations substantially related to the profession committed in other jurisdictions demonstrate a pattern of violating the law, poor judgment, and that the person has not yet achieved the stability or behavioral change the Bureau requires to ensure safe practice with the public. To ensure consistency in interpretation of standards, the Bureau would specify that it would use its existing substantially related criteria (as discussed previously for other uses of the term) in CCR section 3722.

Finally, as noted above, courts have held that rehabilitation means living crime-free for a meaningful period after the original offense. Further, a failure to demonstrate rehabilitation (analyzed under existing rehabilitation criteria at CCR section 3723 for consistency across all Bureau administrative actions), presents the risk of recurrence of misconduct. A new disciplinary action shows a pattern of violating the law, poor judgment, and that the person has not yet achieved the stability or behavioral change the Bureau requires to ensure safe practice with the public. As a result, the Bureau considers this evidence of a violation that is a credible risk to the public since the posting of discipline requested for removal.

<u>(F) Licensee petitioner does not make themself reasonably available for interview by the Bureau investigator in the course of the petition investigation.</u> The Bureau generally considers a licensee petitioner not making themselves "reasonably available" (as further specified on Form REA 3070 discussed above) to present a credible risk because it directly hinders the Bureau's ability to investigate an individual's application and qualifications, thereby hampering the Bureau's legal mandate to protect public safety and uphold professional standards. This conduct also shows the applicant's inability to be responsible to the Bureau, adequately communicate and resolve issues, and deal fairly with others. All these characteristics present a "credible risk" to the public in the Bureau's experience as this behavior tends to show a lack of personal responsibility and rehabilitation as well as be a great predictor of future misconduct.

<u>(G) Licensee petitioner has not reimbursed the Bureau for payments made from the Recovery Account specified in Section 11411 of the Business and Professions Code associated with an application for payment filed pursuant to Section 11413 of the Business and Professions Code wherein the petitioner was the judgment debtor.</u> Chapter 8 of Part 3 of Division of Division 4 of the Business and Professions Code sections 11411-11419.3) establish the Bureau of Real Estate Appraisers (BREA) Recovery Account, a fund intended to compensate individuals who have suffered financial losses due to fraud, misrepresentation, or deceit by a licensed real estate

appraiser in California. Failure to reimburse the Bureau for payment of any claim or application for payment filed per BPC section 11413 from this fund is considered grounds for discipline and results in automatic suspension of the license per BPC section 11418.2. Repayment to the Bureau does not nullify any disciplinary action based on this violation per BPC section 11419.3 and would be reflected in the license history of the licensee. Nonpayment of this claim shows a disregard for professional obligations and failure to follow legal requirements, all of which demonstrate a "credible risk" to the public as specified in this subdivision.

Adopt Subdivision (d)

Purpose: The Bureau proposes to adopt subdivision (d) that gives written notice to the petitioner within 90 days of the date the Bureau receives the form REA 3070 regarding whether or not the petition is complete, an estimated timeframe as to when the Bureau intends to issue a decision if the petition is complete, and a notice of deficiencies and a deadline to provide deficient information if the petition is incomplete as follows:

(d) Within 90 days of the date of receipt of form REA 3070, the Bureau shall give written notice to Petitioner that:

(A) The petition is complete and the estimated time when the Bureau intends to issue a decision on the petition; or,

(B) The petition is incomplete. The written notice shall contain a description of what information is deficient and a deadline to provide the requested information to complete the petition before it is considered denied per subdivision (e)(3). A petition is deficient if the petitioner has not completed and provided the Bureau with all of the items required by subdivision (c)(1) or (2) as applicable, or any other information requested by the Bureau to complete the Petition.

Rationale: In the Bureau's experience, applicants frequently ask for clarification on processing times and acknowledgement of receipt. This notice would help provide advance notice of the process and set reasonable expectations. Ninety days is sufficient time in the Bureau's experience to provide an initial review and provide written notice to the petitioner of the status of their application (deemed "complete" or "incomplete" as specified above). This provides notice to the public regarding the timeframe for processing petitions and clarifies that the petitioner will be notified of any deficiencies in the petition process and will be given an opportunity to clear any deficiencies before the petition is denied based on failure to exercise due diligence as provided in subdivision (e)(3) (further explained below). It also lets petitioners know when they should expect to receive a response from the Bureau in relation to a petition filed under this section.

Since "deficient" is capable of more than one interpretation, the Bureau proposes to define deficiency relative to what is generally required for the Bureau to consider an application complete and for the Bureau to conduct its review and investigation of the application including meeting the requirements specified in subdivision (c)(1) or (2) depending on the type of petitioner and also other information specific to each applicant requested by the Bureau to complete the petition.

Adopt Subdivision (e)

Purpose: The Bureau proposes to adopt subdivision (e) that identifies the grounds for denial of a petition under this section as follows:

(e) Grounds for denial. The Bureau shall deny a petition if any of the following conditions exist:

(1) The petitioner does not meet the requirements of this section or Section 11317.2 of the Code, as applicable.

(2) The Bureau finds a credible risk as described in subdivision (c)(6).

(3) The petitioner did not exercise due diligence in the completion of their application as specified in Section 3571.

Rationale: This subdivision provides guidance to the public as to what conditions will result in a denial of a petition under this section by providing all grounds for denial in one convenient location. Denial conditions in subdivision (e)(1) based upon failure to meet statutory or regulatory requirements for consideration of the petition ensure that only compliant applicants are considered eligible for removal of posted discipline for the protection of the public. Denial based on "credible risk" criteria as set forth in subdivision (e)(2) ensures that only fully rehabilitated licensees are eligible for removal of posted discipline and those with a high probability of re-offending do not receive the benefit of this petition process to the detriment of the public.

CCR section 3571 provides that an application shall be denied whenever an applicant does not exercise due diligence in the completion of an application including failure to complete an application within one year of submission to the Bureau; and, failure to respond to a written request from the Bureau for additional information within 60 days of the request. The adoption of subdivision (e)(3) is necessary to make these criteria specifically applicable to these petition applications, and place applicants on notice that applicants must act with diligence in completing their application. Diligence in responding to deficiencies also demonstrates a petitioner's professionalism, reliability, and respect for the process, while lack of due diligence shows the opposite. Finally, this new subdivision provides the public with information that will help them with determining whether or not they want to file a petition under this section given this information and provides notice regarding the consequences of failing to exercise diligence in providing requested information to the Bureau (denial of the application).

Adopt Subdivision (f)

Purpose: The Bureau proposes to adopt subdivision (f) that identifies what will happen if the Bureau grants the petition made under this section and provides a timeframe for removal of the discipline from the Bureau's website if the Petition is granted as follows:

> (f) If the Bureau grants the petition after investigation, the Bureau will order removal of the eligible discipline item or items from the licensee's or a former deceased licensee's entry in the Public License Information feature on the website within five (5) business days from the date of the letter notifying the petitioner of the granting of the petition.

Rationale: Existing regulations do not specify when or how the Bureau might proceed after granting a petition. This subdivision provides notice to the public as to how they would receive notice their petition has been granted (by letter) and when they can expect to have the discipline removed from the Bureau's website if their Petition is granted, which would be five (5) business days from the date of the letter notifying the petitioner of the granting of the petition. This provides some assurances to the public that the Bureau would act as expeditiously as possible to identify and remove the posted discipline, and update its website (under the "Public License Information website feature") under existing business capabilities.

Adopt Subdivision (g)

Purpose: The Bureau proposes to adopt subdivision (g) that clarifies for the public that once a Petition is denied, the denial decision is final and that the Petitioner cannot file another Petition under this section until at least one year has elapsed from the effective date of the denial as follows:

> (g) If the Bureau denies the petition for removal of discipline from the Public License Information website feature, such denial shall be final, and the petitioner may not submit a new petition for a minimum of one year from the effective date of the denial.

Rationale: This subdivision prevents the Bureau from having to expend significant amounts of time repeatedly vetting the same petition once it has been denied, as such work would impact the Bureau's ability to complete its other regulatory functions without providing the Bureau with any new substantive evidence to consider. In the Bureau's experience in processing application denials (see similar one-year "time out" period set forth in BPC section 486(a)), one year is a sufficient amount of time to elapse in order for the petitioner to obtain potentially additional information/evidence to demonstrate that petitioner no longer poses a credible risk to the public, prepare a more complete application, and understand the importance of acting with due diligence in responding to Bureau inquiries or completing their application.

Adopt Subdivision (h)

Purpose: The Bureau proposes to adopt subdivision (h) that provides notice that if a Petitioner files another petition after denial of an earlier petition, the Petitioner must file a new petition and submit a new petition fee in order for the Bureau to process another petition as follows:

(h) A petitioner who is denied must submit a new petition and fee to again seek the Bureau's approval to remove an item or items from the Bureau's posting of discipline.

Rationale: The Bureau proposes to require a new application be submitted after an applicant abandons an application to simply and clearly communicate to affected applicants that they must submit a new application to obtain Bureau approval if they are denied for any of the reasons set forth in subdivision (e). This section is necessary to fully implement the Bureau's due diligence requirements and to explain what occurs if a denial is issued by the Bureau and the applicant wishes to seek approval again. In the Bureau's experience, setting such a standard encourages applicants to submit timely information and complete their applications in compliance with regulatory requirements or risk having to resubmit a new petition and fee again to seek the Bureau's approval. This subdivision also ensures that the Bureau's cost in assessing such Petitions is recovered for services rendered consistent with CCR section 3582(e) and 3734(c)(3).

Underlying Data

Technical, theoretical, or empirical studies, reports, or documents relied upon:

1. Senate Bill 1225 (Jones) Chapter 461, Statutes 2024
2. Senate Committee on Business, Professions and Economic Development Committee Analysis on Senate Bill 1225, dated March 18, 2024
3. Assembly Committee on Business and Professions Committee Analysis on Senate Bill 1225, dated June 11, 2024
4. CA Bureau of Real Estate Appraisers Petitions to Remove Published Disciplinary Actions - Fiscal Impact (workload costs)

Fiscal Impact:

The Bureau estimates approximately 300 individuals are currently eligible to submit a petition and projects up to 16 individuals would be eligible annually thereafter. A licensee would be required to pay a $200 petition fee and family members would pay a $116 petition fee. However, the Bureau does not maintain data on whether these individuals are alive or deceased and because submitting a petition is voluntary, it is difficult to project the number of petitions submitted per year either by a licensee or by a family member.

Assuming the Bureau receives a petition from every current (300) and ongoing (16) eligible individuals either from the licensee or from a family member, the Bureau estimates workload costs and revenues as follows:

Workload Costs:

Licensee: Workload costs (including 2.5% credit card convenience charge) up to

$61,500 in year-one of implementation and ranging from approximately $3,400 to $4,300 per year thereafter and up to $95,700 over a ten-year period as follows:

California Bureau of Real Estate Appraisers Petitions (CCR 3581, 3582 & 3734) - Fiscal Impact (Costs)													
Type	Applicants Per Year	Costs	Years Ongoing[1]										
			1	2	3	4	5	6	7	8	9	10	Total
Licensee Petition	300/16[2]	$200	$60,000	$3,296	$3,395	$3,497	$3,602	$3,710	$3,821	$3,936	$4,054	$4,175	$93,484
Credit Card Convenience Fee	2.5%	$5	$1,500	$80	$80	$80	$80	$80	$80	$80	$80	$80	$2,220
		Total Costs:	**$61,500**	**$3,376**	**$3,475**	**$3,577**	**$3,682**	**$3,790**	**$3,901**	**$4,016**	**$4,134**	**$4,255**	**$95,704**

[1]Includes 3 percent annual growth factor
[2]Currently 300 eligible individuals & 16 per year thereafter

Family Member: Workload costs (including 2.5% credit card convenience charge) up to approximately $17,800 in year-one of implementation and ranging from approximately $2,000 to $2,500 per year thereafter and up to $37,700 over a ten-year period as follows:

California Bureau of Real Estate Appraisers Petitions (CCR 3581, 3582 & 3734) - Fiscal Impact (Costs)													
Type	Applicants Per Year	Costs	Years Ongoing[1]										
			1	2	3	4	5	6	7	8	9	10	Total
Family Member Petition	300/16[2]	$116	$17,400	$1,912	$1,969	$2,028	$2,089	$2,152	$2,216	$2,283	$2,351	$2,422	$36,821
Credit Card Convenience Fee	2.5%	$3	$435	$48	$48	$48	$48	$48	$48	$48	$48	$48	$867
		Total Costs:	**$17,835**	**$1,960**	**$2,017**	**$2,076**	**$2,137**	**$2,200**	**$2,264**	**$2,331**	**$2,399**	**$2,470**	**$37,688**

[1]Includes 3 percent annual growth factor
[2]Currently 300 eligible individuals & 16 per year thereafter

Additionally, the Bureau will incur one-time information technology costs of approximately $1,000 to create and post the two application forms to the Bureau's website.

Revenues:

Licensee: Revenues up to $60,000 in year-one of implementation and $3,200 annually thereafter and up to $88,800 over a ten-year period as follows:

California Bureau of Real Estate Appraisers Petitions (CCR 3581, 3582 & 3734) - Fiscal Impact (Revenues)													
Type	Applicants Per Year	Fee Amount	Years Ongoing										
			1	2	3	4	5	6	7	8	9	10	Total
Licensee Petition	300/16*	$200	$60,000	$3,200	$3,200	$3,200	$3,200	$3,200	$3,200	$3,200	$3,200	$3,200	$88,800
		Total Revenues:	**$60,000**	**$3,200**	**$3,200**	**$3,200**	**$3,200**	**$3,200**	**$3,200**	**$3,200**	**$3,200**	**$3,200**	**$88,800**

*Currently 300 eligible individuals & 16 per year thereafter

Family Member: Revenues up to $17,400 in year-one of implementation and approximately $1,900 annually thereafter and up to $34,100 over a ten-year period as follows:

California Bureau of Real Estate Appraisers													
Type	Applicants Per Year	Fee Amount	Years Ongoing										
			1	2	3	4	5	6	7	8	9	10	Total
Family Member Petition	300/16*	$116	$17,400	$1,856	$1,856	$1,856	$1,856	$1,856	$1,856	$1,856	$1,856	$1,856	$34,104
		Total Revenues:	**$17,400**	**$1,856**	**$1,856**	**$1,856**	**$1,856**	**$1,856**	**$1,856**	**$1,856**	**$1,856**	**$1,856**	**$34,104**

*Currently 300 eligible individuals & 16 per year thereafter

Business Impact:

The Bureau has made the initial determination that the proposed regulations will not have a significant statewide adverse economic impact on businesses including the ability of California businesses to compete with businesses in other states. This determination is based on the following facts: this regulation establishes a process and fees for a Petition to Remove Discipline for living and immediate family members or heirs of deceased licensees who meet certain criteria. Thus, not every individual who has published discipline on the Bureau's website will be eligible to have it removed and the fees for individuals ($200) and family members ($116) are minimal and reasonable.

Economic Impact Assessment:

The Bureau has determined that this regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California, as it is solely to put in place a process and fees for submissions by individuals to remove certain eligible disciplinary actions from the Bureau's website. The petition process is voluntary and will apply to a limited number of current or former licensees whose disciplinary actions could be subject to removal from the Bureau's website. As such, the economic activity is expected to be minimal and will not meaningfully impact jobs.

- It would not create new business or eliminate existing businesses within the State of California because the petition process is voluntary and will apply to a limited number of current or former licensees whose disciplinary actions could be subject to removal from the Bureau's website. As such, the economic activity is expected to be minimal and will not meaningfully impact jobs or businesses.

- It will not affect the expansion of businesses currently doing business within the State of California because the Bureau does not anticipate that any businesses, including any businesses employing real estate appraisers, would be significantly impacted by whether or not an active licensee is able to remove published discipline from the Bureau's website.

- This regulatory action benefits the health and welfare of California residents by establishing a clear, efficient and transparent process for applications submitted pursuant to Business and Professions Code section 11317.2 (c) and (d). These sections pertain to licensees' or immediate family members or heirs of deceased licensees' ability to remove certain disciplinary information from the Bureau's website.

- This regulatory proposal does not affect worker safety or the state's environment because it does not involve worker safety or the state's environment.

The Bureau estimates approximately 300 individuals are currently eligible to submit a petition and projects up to 16 individuals would be eligible annually thereafter. A licensee would be required to pay a $200 petition fee and family members would pay a $116 petition fee. However, the Bureau does not maintain data on whether these individuals are alive or deceased and because submitting a petition is voluntary, it is difficult to project the number of petitions submitted per year either by a licensee or by a family member.

Assuming the Bureau receives a petition from every current (300) and ongoing (16) eligible individuals either from the licensee or from a family member, the Bureau estimates workload costs and revenues as follows:

Licensee: Costs up to $60,000 in year-one of implementation and up to $3,200 annually thereafter and up to $88,800 over a ten-year period as follows:

California Bureau of Real Estate Appraisers Petitions (CCR 3581, 3582 & 3734) - Economic Impact (Costs)													
Type	Applicants Per Year	Fees	Years Ongoing										
			1	2	3	4	5	6	7	8	9	10	Total
Licensee Petition	300/16*	$200	$60,000	$3,200	$3,200	$3,200	$3,200	$3,200	$3,200	$3,200	$3,200	$3,200	$88,800
		Total Costs:	**$60,000**	**$3,200**	**$3,200**	**$3,200**	**$3,200**	**$3,200**	**$3,200**	**$3,200**	**$3,200**	**$3,200**	**$88,800**

*Currently 300 eligible individuals & 16 per year thereafter

Family Member: Costs up to $17,400 in year-one of implementation and up to approximately $1,900 annually thereafter and up to $34,100 over a ten-year period as follows:

California Bureau of Real Estate Appraisers													
Type	Applicants Per Year	Fees	Years Ongoing										
			1	2	3	4	5	6	7	8	9	10	Total
Family Member Petition	300/16*	$116	$17,400	$1,856	$1,856	$1,856	$1,856	$1,856	$1,856	$1,856	$1,856	$1,856	$34,104
		Total Costs:	**$17,400**	**$1,856**	**$1,856**	**$1,856**	**$1,856**	**$1,856**	**$1,856**	**$1,856**	**$1,856**	**$1,856**	**$34,104**

*Currently 300 eligible individuals & 16 per year thereafter

The regulations do not result in costs or savings in federal funding to the state.

Specific Technologies or Equipment:

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

No such alternatives have been proposed, however, the Bureau welcomes comments from the public.

<u>Description of reasonable alternatives to the regulation that would lessen any adverse impact on small business:</u>

No such alternatives have been proposed, however, the Bureau welcomes comments from the public.