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UPDATED FINAL STATEMENT OF REASONS

Hearing Date: January 10, 2023

Subject Matter of Proposed Regulations: Sale, Transfer, or Discontinuance of Licensee's Practice

Sections Affected: Title 16, California Code of Regulations (CCR), Division 1, Article 9, Sections 54.3 and 54.4

Updated Information

The Informative Digest and Initial Statement of Reasons are included in the rulemaking file and are incorporated herein by reference. The information contained therein is updated as follows:

In the Underlying Data list in the Initial Statement of Reasons, two items were listed as "in production": 1) Minutes of the September 22-23, 2022 CBA's Committee on Professional Conduct (CPC) Meeting, and 2) Minutes of the September 22-23, 2022 CBA Meeting. Both items were produced and available during the entirety of the 45-day public comment period. Additionally, both items listed the meetings as September 22-23, 2022, but the meeting minutes are only from September 22, 2022, as the meetings adjourned earlier than expected, and therefore did not continue into the following day as originally scheduled.

Substantive and non-substantive changes have been made to the originally approved and noticed text. Below is a description of the modifications that were made to the text:

Modification: Title 16 of the California Code of Regulations (CCR) sections 54.3(d) and 54.4(b) were modified to add the following clarifying language regarding the client notification requirements outlined in the proposed regulatory text: "A notice returned to the licensee, either by mail or electronic transmission, would demonstrate that the attempt to contact the client was unsuccessful."

Rationale: These modifications improve the clarity of the proposed regulatory text by ensuring licensees understand that sending the written notice does not automatically guarantee the client received it. The licensee may have outdated contact information for the client, and the attempt to contact that client may therefore be unsuccessful, in which

case, that client's records shall not be transferred to the successor person. These modifications provide clarifying information to help licensees determine whether the attempt to contact the client was successful, to ensure client records are not being transferred without the client's consent, or presumed consent as described in CCR section 54.3(a).

Modification: The following non-substantive changes were made throughout the text:

Section 54.3(a): Replaced "its" with "that client's", and replaced "it" with "the client".

Section 54.3(b) and section 54.4: Replaced "its" with "their".

Rationale: These modifications eliminate the use of the general terms "it" and "its", in favor of more specific language, to provide further clarity, and improve readability. The modifications are grammatical in nature.

The California Board of Accountancy (CBA) held a 45-day public comment period from November 18, 2022 through January 3, 2023. Pursuant to Business and Professions Code (BPC) section 5018, notice of the proposed changes was mailed to all licensees on December 9, 2022. Written comments, including those sent by mail, facsimile, and email were accepted during the comment period. The CBA received forty-seven (47) comments during the public comment period, and four (4) comments after the comment period ended. The CBA also held a public hearing on January 10, 2023. The CBA considered all timely written comments at its March 23-24, 2023 board meeting, approved the responses, and voted to accept the proposed text without making any changes.

Based on feedback from the Office of Administrative Law (OAL), the CBA made modifications to the proposed regulatory text as described above. The CBA approved the modified text at its September 21-22, 2023 board meeting, directed staff to notice the modified text for a 15-day public comment period, and approved a staff-recommended response to any written comments the CBA receives during the 15-day comment period that are not specifically directed at the most recent modifications to the proposed regulations. The vote also included a provision that, should no timely, relevant, adverse comments be received during the 15-day public comment period that are specifically directed at the most recent modifications, the Board would adopt the text as modified.

The CBA held a 15-day public comment period from September 26, 2023 through 5:00pm on October 11, 2023. Written comments, including those sent by mail, facsimile, and email were accepted during the comment period. The CBA received two (2) comments during the public comment period, and one (1) comment before the comment period officially started. Since none of the comments were specifically directed at the most recent modifications, the CBA responded to each comment with the response

approved at the September 2023 board meeting, and the CBA adopted the text as modified.

Local Mandate

There are no local mandates imposed on local agencies or school districts.

Small Business Impact

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

Benefits Anticipated from Regulatory Action

This regulatory proposal will safeguard confidential client information when a licensee sells, transfers, or discontinues a practice, by requiring licensees to follow specified procedures regarding notification, disclosure, retention, and disposal of client records. The proposed regulations will benefit licensees by providing them with clear direction for notifying clients and appropriately handling client records when selling, transferring, or discontinuing their accountancy practice. This proposal will protect consumers by ensuring that licensees notify their clients of the sale, transfer, or discontinuance of their practice, and by providing affected consumers with the opportunity to determine whether they would like their records transferred to the successor person, or if they would like to make arrangements to have their records returned. Further, it ensures the confidentiality of client information by establishing requirements for licensees to follow when transferring client records to a successor person, or when properly disposing of the records in a manner that would make the records unreadable or undecipherable through any means.

Consideration of Alternatives

No reasonable alternative that was considered, or that has otherwise been identified and brought to the CBA's attention as part of public comments or at the CBA's meetings, would be more effective in carrying out the purpose for which the regulations are proposed, would be as effective and less burdensome to affected private persons than the proposed regulations, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Objections or Recommendations/Responses

I. Comments Received During the 45-Day Public Comment Period

Below are the summarized comments the CBA received regarding the proposed text during the 45-day public comment period, followed by the CBA's responses.

A. Email received December 9, 2022, from Commenter 1

Comment A-1

Summary of Comment:

Commenter states that the four-year retention of client records in both sections 54.3 and 54.4 is too stringent, and suggests that it should be 12-18 months from the time written notice has been sent to the last known address or email address, because "It's an undue expense to store [client records] both electronically and physically. Retiring CPA's want to move on with their lives. Not incur additional costs due to negligent clients who don't claim their records."

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The retention period in sections 54.3 and 54.4 is consistent with other familiar professional standards, provides a reasonable period of time for clients to obtain their records before they are destroyed, and for the CBA to audit compliance with the requirement. The CBA notes that most client records are typically retained by the licensee in digital format, and any transfer or retention of these records would occur digitally, which would not likely result in additional costs.

B. Email received December 9, 2022, from Commenter 2

Comment B-1

Summary of Comment:

Commenter doesn't agree with the proposed regulatory changes, and views them as "unnecessary" and a "burden on the practitioner."

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any

amendments to the proposed text based thereon.

The Legislature established the CBA and entrusted it with the regulation of the accounting profession, with an express purpose to protect consumers. This is reflected in the CBA's mission statement: "To protect consumers by ensuring only qualified licensees practice public accountancy in accordance with established professional standards." It is also reflected in California Business and Professions Code (BPC) section 5000.1, which states, "Protection of the public shall be the highest priority for the California Board of Accountancy in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."

Ensuring that confidential client information is safeguarded when a licensee sells, transfers, or discontinues a practice conforms to the Legislature's mandate and supports the CBA's consumer protection mission. The proposed regulations are anticipated to further the CBA's consumer protection mission by ensuring that licensees notify their clients of the sale, transfer, or discontinuance of their practice, and by providing affected consumers with the opportunity to determine whether they would like their records transferred to the successor person, or if they would like to make arrangements to have their records returned. Further, the proposed regulations would safeguard confidential client information when disposing of client records, should that become necessary, by requiring licensees to dispose of the records in a manner that would make the records unreadable or undecipherable through any means.

Additionally, the CBA has determined that the regulatory proposal would not have a significant impact on licensees as licensees are required, pursuant to 16 CCR section 58, to comply with all applicable professional standards, which includes the American Institute of Certified Public Accountants (AICPA) Code of Professional Conduct interpretations 1.400.205 (Transfer of Files and Return of Client Records in Sale, Transfer, Discontinuance or Acquisition of a Practice) and 1.700.050 (Disclosing Client Information in Connection With a Review or *Acquisition* of the Member's Practice), as discussed in the Initial Statement of Reasons for this proposed rulemaking. Further, the proposed regulations are consistent with existing laws and regulations, specifically Civil Code section 1798.81, BPC section 5063.3, and 16 CCR sections 54 and 54.1.

Comment B-2

Summary of Comment:

Commenter suggests that at a minimum, the CBA should obtain "the CPA's VOTE", to see who agrees or disagrees with these proposed regulations.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA held a 45-day public comment period from November 18, 2022 through January 3, 2023, and also held a public hearing on January 10, 2023. This provided the public, which includes licensees, a meaningful opportunity to participate in the consideration and adoption of these regulations by submitting written comments to the CBA and/or presenting oral arguments at a public hearing. The CBA values the feedback provided, and has thoroughly evaluated and given thoughtful consideration to all of the comments received.

C. Email received December 10, 2022, from Commenter 3

Comment C-1

Summary of Comment:

Commenter states: “There seems to be an inconsistency in proposed regulation 54.3 (a) and (d).”

(a) States, “until either the client’s consent is obtained, or the 90 days has lapsed without any objection from the client.”

And

(d) States, “If the licensee is unable to contact a client, that client’s records shall not be transferred.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

Section 54.3(a) proposes that client consent will be presumed if the client does not notify the licensee that it objects within 90 days from the date of the written notice. The supposition here is that the client was contacted successfully in order for this to apply, whereas, in section 54.3(d), the client’s consent is not presumed (and the records shall not be transferred), because the licensee was unable to successfully contact the client. A notice returned to the licensee, either by mail or email, would demonstrate that the attempt to contact the client was unsuccessful.

D. Email Received December 11, 2022, from Commenter 4

Comment D-1

Summary of Comment:

Commenter states: “Any sale or transfer needs to provide the successor the ability to meet any filing or reporting deadlines of the client(s). Deadlines or filing requirements might well fall within or very shortly after the 90 day period, thereby severely hampering the successor’s ability to perform timely necessary work without access to the client files.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

Although the licensee may not transfer any client records to the successor person until either the client’s consent is obtained, or 90 days has lapsed without any objection from the client, it is unlikely that all clients will wait the full 90 days to respond or will not respond at all. As soon as the client’s consent is obtained, client records may be transferred to the successor person, so in most cases, licensees will be able to transfer client records sooner than 90 days.

Additionally, these proposed regulations establish minimum requirements. Licensees may make additional efforts beyond the minimum requirements to contact clients to obtain a response if time constraints are a concern.

Furthermore, the 90-day time frame was determined in an effort to be consistent with existing professional standards set forth in the AICPA Code of Professional Conduct, specifically, interpretation 1.400.205, which establishes a 90-day period.

Lastly, the CBA incorporates by reference the response to Comment B-1, above.

Comment D-2

Summary of Comment:

Commenter states: “The proposals provide no exception for transfer of a practice due to sudden illness or death of the licensee, when clearly a successor would need to access client records immediately to allow an orderly transition. Imagine a sole proprietor of a tax practice becoming incapacitated or dying in February or March after taking possession of the clients’ tax information, but not yet having completed their tax returns. How will clients approval be obtained to allow a successor to complete the work prior to April 15th if no access to the files is allowed? Who will be held responsible for the failure to complete the work?”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

16 CCR section 58 requires licensees engaged in the practice of public accountancy to comply with all applicable professional standards, including but not limited to generally accepted accounting principles and generally accepted auditing standards.

As one example of an applicable professional standard, the Code of Federal Regulations outlines requirements regarding disclosure of tax return information due to a tax return preparer's incapacity or death, [26 CFR 301.7216 2\(r\)](#).

Additionally, the AICPA has resources regarding succession planning, and recommends that a practice continuation agreement should be drawn up when a practice is established because it can help protect the practice, the business interest of its clients, and the financial interests of the practitioner and their family, in the event of the practitioner's death or temporary or permanent disability.

Resources regarding succession planning can be found on the AICPA website at <https://us.aicpa.org/interestareas/privatecompaniespracticesection/strategy-planning/center.html>.

Comment D-3

Summary of Comment:

Commenter asks if the CBA is suggesting that all licensees include a provision in their engagement letters that requests the client to agree upfront to any possible successor in the event of a practice transfer or sale, and believes that very few clients would find such a provision acceptable.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

Commenter is inquiring about subject matter not addressed in the proposed regulations. The proposed regulatory text requires licensees to provide a written notice to clients regarding the sale, transfer, or discontinuance of a licensee's practice; however, the proposal does not require licensees to include such a notification in their engagement letters.

Comment D-4

Summary of Comment:

Commenter asks: “Why write a regulation that is impossible to comply with?”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1, above. Based on the experience of the CBA, and in light of the standards created by the AICPA, the proposed regulations are reasonable for sales, transfers, and discontinuances of practices.

E. Email Received December 11, 2022, from Commenter 5

Comment E-1

Summary of Comment:

Commenter states that the proposed changes are unnecessary and will do nothing but create additional administrative burden for professional accountants, and unnecessary additional workload and costs for the CBA.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1, above.

In addition to protecting the public, this proposed rulemaking brings the CBA’s regulations into alignment with the AICPA standards mentioned in the Initial Statement of Reasons for this rulemaking. Licensees are required under 16 CCR section 58 to comply with all applicable professional standards. This rulemaking clarifies for licensees the standards applicable. As licensees would already be subject to any costs associated with meeting the standards, pursuant to 16 CCR section 58, the proposed regulations specific to the sale, transfer, or discontinuance (54.3 and 54.4) will not create an additional significant economic impact for licensees. The CBA does not anticipate additional workload or costs caused by these regulations, as noted in the Notice to this rulemaking.

Comment E-2

Summary of Comment:

Commenter states that the proposed changes do not recognize that most sales of practices nowadays transact by way of admitting new partners. Therefore, there is no clear-cut timing as to when the practice is sold.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The proposed regulations only pertain to the sale, transfer, or discontinuance of a licensee's practice; the addition of new partners to a practice is a separate matter not addressed in the proposed regulations.

F. Email Received December 12, 2022, from Commenter 6

Comment F-1

Summary of Comment:

Commenter states that when practices are sold, clients are already notified in a joint letter from the seller and buyer for the benefit of retention, that this solution has worked for 100 years, and that limited data is transferred to another licensed, professional, reliable custodian. Commenter suggests limiting the time-frame to 10 days from the date of the notification letter that is "always sent to the client", before transferring client records, and suggests that the letter can include a paragraph explaining that if the client objects to the transfer of data the client should mail or email their objection within 10 days, noting if no objection is received, the transfer of data would proceed. Commenter claims there is no need for "SPECIAL CORRESPONDENCE" regarding record transfers, as this will confuse the client, burden CPAs, and make "bureaucrats 'feel good.'"

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1, above. The joint letter described by the commenter does not align with the existing requirements of the AICPA standards described in the Initial Statement of Reasons for this proposed rulemaking. This rulemaking not only proposes requirements beyond a letter to ensure client approval of the transfer of records, but also establishes through written law rather than informal practice expected licensee conduct.

Regarding the length of time required for the notice, the CBA incorporates by reference the response to Comment D-1, above.

As to the suggestion a client should mail or email their objection within 10 days, the CBA refers back to the response to Comment D-1, above.

Regarding the commenter's suggestion that if no objection is received, the transfer of data would proceed, the CBA notes the proposed rulemaking already contains a presumption of consent. Regarding the suggestion that there is no need for "SPECIAL CORRESPONDENCE" regarding record transfers, as this will confuse the client, burden CPAs, and make "bureaucrats 'feel good,'" the CBA refers back to its response to Comment B-1.

G. Email Received December 12, 2022, from Commenter 7

Comment G-1

Summary of Comment:

Commenter states that the proposed regulations are an extreme hardship on the licensee who is selling, transferring, or discontinuing their practice, and that licensees are already burdened with too many regulations.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1, above, and the response to Comment E-1, above, regarding the costs associated with compliance with this rulemaking.

H. Email Received December 12, 2022, from Commenter 8

Comment H-1

Summary of Comment:

Commenter is opposed to the proposed revisions, contends the proposed regulations are simply "more bureaucracy", and states that standardizing the return or destruction of client records in the event of practice sales could be useful, but that licensees already exercise the practices proposed, or similar in those circumstances.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1, above. Further, as noted in the response to comment F-1 above, although Commenter 8 does not describe the existing practices they believe are sufficient, this rulemaking not only proposes requirements beyond a letter to ensure client approval of the transfer of records, but also establishes through written law rather than informal practice expected licensee conduct.

Additionally, the proposed regulations expand upon existing requirements regarding disclosure of confidential information, and provide additional guidelines in regard to safeguarding that information, in the interest of consumer protection.

Comment H-2

Summary of Comment:

Commenter states that mandating a communication that a licensee is discontinuing their practice seems simple, but it could be misleading. Commenter asks, “What if I discontinue doing tax returns but plan to take on a corporate accounting position. The “announcement” of discontinued practice implies a full retirement. The proposals don’t seem to address “partially retired” licensees.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

Section 54.4 outlines the requirements for a licensee that discontinues their practice, but does not sell or transfer the practice to another person. A licensee who sells, transfers, or discontinues their practice would be subject to the proposed regulations regardless of if they continued working in the profession. The proposed regulations establish minimum requirements for the contents of the notice in the circumstance where a licensee’s business is discontinued. A licensee continuing to practice after discontinuance would be required to retain any client records and maintain compliance with applicable professional standards.

I. Email Received December 12, 2022, from Commenter 9

Comment I-1

Summary of Comment:

Commenter is opposed to the proposed regulations, and states that the proposed regulations assume or imply that “the purchasing CPA firm may not protect the data they acquire from a selling firm unless the clients are notified [and] their approval is received beforehand,” but alleges there is no basis for this concern.

Commenter further states that the proposed regulations are redundant since licensees already adhere to consumer privacy laws and safeguard their clients’ data, and that the CPA firm receiving the purchased firm’s client data will also follow state privacy laws.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1. Further, as noted in the response to Comment H-1, above, the proposed regulations expand upon existing requirements regarding disclosure of confidential information, and provide additional guidelines in regard to safeguarding that information, in the interest of consumer protection.

These proposed regulations clarify to both licensees and clients the rights and responsibilities relating to client records in the specific event of a sale, transfer, or discontinuance of a practice, which improve public protection by allowing the client to knowingly consent or object to the transfer of records at the time the transfer occurs.

Comment I-2

Summary of Comment:

Commenter states that the proposed regulations do not take into account the tremendous negative impact that this requirement will have on the valuation of a CPA practice. Commenter suggests that if a practitioner is required to announce to their entire client list that they are planning to sell their practice before the sale is completed, the purchaser may require to wait and receive those authorizations before completing the purchase, and may adjust the purchase price downwards if a certain percentage of clients do not approve the transfer of their records.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1, above. The CBA

must take into consideration its mission of consumer protection when evaluating competing interests, such as firm valuation, regarding the regulation of the accounting profession. The Legislature enacted BPC section 5000.1 which states, “Protection of the public shall be the highest priority for the California Board of Accountancy in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.”

J. Email received December 12, 2022, from Commenter 10

Comment J-1

Summary of Comment:

Commenter states that the proposed regulations are unnecessary and add undue “burden to small practitioners transitioning their business to future generations of small business owners,” specifically calling out the following language: “the Licensee may not transfer any client records to the successor person until either client’s consent is obtained, or the 90 days has lapsed without any objection from the client, whichever is shorter.”

The commenter notes the 90-day mandate of the proposed regulation “creates a smaller window for transferors to successfully execute the transition of a business,” which can place additional undue pressure on the transferee to assist with the transfer. As an example, commenter states that they assisted with the transfer of the practice of an older CPA to their existing business, as this CPA did not have the technical skill or wherewithal to go through a lengthy transfer process and needed to retire due to familial health concerns.

Had there been a mandated 90-day window where they could not perform any activity, they would likely have “missed the window” as busy season demands would have dominated their time, and they would have been unable to complete the transaction. Commenter suggests that in situations such as this, where continuing the practice is not an option, CPAs may experience significant economic impact by being unable to transfer the practice.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

Regarding the 90-day mandate of the proposed regulation, the CBA incorporates by reference the response to Comment D-1, above.

Regarding the proposed regulations being unnecessary and an undue burden to small practitioners, the CBA incorporates by reference the responses to Comments B-1 and E-1. Further, the proposed regulations treat all licensees equally, as all are required to comply with the proposed regulations.

Comment J-2

Summary of Comment:

In regard to section 54.3(a), which reads, “The licensee is required to retain a copy of the written notice, and any document reflecting the client’s consent or objection to the transfer of its records, in either written or electronic format, for not less than four years from the date of sale or transfer of the licensee’s practice. Any written or electronic copy of the notice specified in this section, and any document reflecting the client’s consent or objection shall be legible, complete, and accurate reproduction of the original business record”:

Commenter questions why licensees would comply with this and asks what incentive they have. Commenter states that once their business is sold, it seems their accountability has ended, assuming they are no longer practicing accounting in California, and suggests that adding document retention requirements to retired persons seems like quite a burden.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

CPAs are held in high regard due, in part, to their adherence to high quality ethical standards and principles, including integrity, confidentiality, and professional behavior. These principles reflect the profession’s recognition of its public interest responsibility. Even when leaving the profession, acting in a professional and ethical manner reflects well on the individual and the profession as a whole.

Additionally, regardless of the status of an individual’s license, the CBA maintains jurisdiction and authority to investigate and/or discipline, per BPC section 5109, which states:

The expiration, cancellation, forfeiture, or suspension of a license, practice privilege, or other authority to practice public accountancy by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of or action or disciplinary proceeding against the licensee, or to render a

decision suspending or revoking the license.

Lastly, the CBA incorporates by reference the response to Comment B-1, above.

Comment J-3

Summary of Comment:

In regard to section 54.3(d), which reads, “If the licensee is unable to contact a client, that client’s records shall not be transferred, and shall be retained by the licensee for a period of not less than four years”:

Commenter asks, “If we are attempting to contact the client by certified mail, do we assume we have contacted the client, or not?”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

A letter mailed in a manner compliant with California Evidence Code section 641 would be presumed to have been received in the ordinary course of mail. When sending letters via certified or first-class mail, tracking mechanisms are in place to ensure successful delivery. However, if certified mail is returned to the licensee by the Post Office, or if the licensee receives email messages indicating that a sent email was “undeliverable”, that would indicate an unsuccessful attempt to contact the client.

Comment J-4

Summary of Comment:

Commenter asks what happens in the event of a practitioner’s death.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment D-2, above.

Comment J-5

Summary of Comment:

Commenter states that they are already bound by the CBA rules and ethics, so some of the elements of the proposed regulations seem to add unnecessary procedure to an already complicated and stressful enterprise of transitioning a practice to a new practitioner, “to assuage the unreasonable objections of a vast minority of people.” Commenter disagrees with the proposed regulations.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1, above. As noted in the response to Comment B-1, licensees are required, pursuant to 16 CCR section 58, to comply with all applicable professional standards, which includes the AICPA Code of Professional Conduct interpretations 1.400.205 (Transfer of Files and Return of Client Records in Sale, Transfer, Discontinuance or Acquisition of a Practice) and 1.700.050 (Disclosing Client Information in Connection With a Review or *Acquisition* of the Member’s Practice), as discussed in the Initial Statement of Reasons for this proposed rulemaking. Further, the proposed regulations are consistent with existing laws and regulations, specifically Civil Code section 1798.81, BPC section 5063.3, and 16 CCR sections 54 and 54.1.

Comment J-6

Summary of Comment:

Commenter states:

After having transferred 3 practices and over 600 clients in my career, I can count on 3 occasions where a client has become angry that records were transferred. We apologized to those clients and deleted their records and wished them well in their search for a new professional. Adding these processes and procedures seems unnecessary, burdensome, and in some instances, impossible to follow.

This paragraph implies the commenter’s existing practices are sufficient.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1. Further, as noted in the response to Comment H-1, above, the proposed regulations expand upon existing requirements regarding disclosure of confidential information, and provide additional

guidelines in regard to safeguarding that information, in the interest of consumer protection.

K. Email received December 12, 2022, from Commenter 11

Comment K-1

Summary of Comment:

Commenter states that this change is not needed or wanted, noting “only a licensed CPA can purchase a CPA firm.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

As noted in the Initial Statement of Reasons to this Rulemaking:

One of the issues raised by stakeholders was how the term defining the successor entity was defined in this proposed regulation. The terms ‘person,’ and ‘successor person’ via proposed section 54.4, are described in the proposed text as “defined by section 5035 of the Business and Professions Code” to cover all of the successor entities that, in CBA’s experience, may be involved in a sale, transfer, or discontinuance of a practice, whether those entities are individuals, partnerships, firms, associations, limited liability companies, or corporations.

In the CBA’s experience, it is possible for a non-CPA to acquire a portion of a business. The proposed rulemaking has been written in a manner that considers this possibility.

Comment K-2

Summary of Comment:

The commenter states, “There’s not much difference from hiring a CPA to one acquiring a firm,” and asks “is that next? Requesting client permission to have a licensed CPA work on the client’s account? What about higher risk non-licensed employees?”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

These comments are outside the scope of the proposed regulations. The proposed

regulations apply to a licensee selling, transferring, or discontinuing a practice, and are not related to hiring employees.

Comment K-3

Summary of Comment:

The commenter asks, “What are you trying to accomplish that is already accomplished by having high standards to practice?”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1. Further, as noted in the response to Comment H-1, above, the proposed regulations expand upon existing requirements regarding disclosure of confidential information, and provide additional guidelines in regard to safeguarding that information, in the interest of consumer protection.

Comment K-4

Summary of Comment:

The commenter states they see “no purpose to this except bean counting bureaucrats attempting to ‘do something’” and expresses that no further regulation is needed.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1 above.

Comment K-5

Summary of Comment:

The commenter states that this rulemaking is unnecessary because “If the acquiring CPA does not take the utmost care of his newly acquired clients he can easily find himself a defendant in a lawsuit.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1 above. Further, the proposed regulations enhance public protection by creating accountability under the Accountancy Act separate from general civil liability.

L. Email received December 12, 2022, from Commenter 12

Comment L-1

Summary of Comment:

Commenter is not in favor of adding these regulations. Commenter states that most CPAs do something very similar anyway, and states that adding more procedures to their professional duties takes more time away from servicing clients, running a firm, and developing staff. Commenter notes, “CPA’s should be educated as to the consequences of not engaging in the sort of practices the CBA is trying to dictate through regulatory requirements.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1. Further, as noted in the response to Comment H-1, above, the proposed regulations expand upon existing requirements regarding disclosure of confidential information, and provide additional guidelines in regard to safeguarding that information, in the interest of consumer protection.

In regard to the Commenter’s statement, “CPA’s should be educated as to the consequences of not engaging in the sort of practices the CBA is trying to dictate through regulatory requirements”, the CBA provides resources on the CBA website, including the CBA’s statutes and regulations, Disciplinary Guidelines and Model Order, and public enforcement actions.

M. Email received December 12, 2022, from Commenter 13

Comment M-1

Summary of Comment:

The commenter objects to the changes in this proposed rulemaking, noting CPAs “do not have an equivalent to Attorney Client privilege and, as such, should not be subject to similar rules,” and that “to make this change mandatory will prohibit CPAs from selling their practices,” noting “it is already difficult enough to find competent personnel.” The commenter asks, “now you want to make a change to our regulations that handcuff retiring CPAs?”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1 above. This rulemaking is consistent with existing regulations requiring compliance with all applicable professional standards, and regulations relating to record confidentiality.

Comment M-2

Summary of Comment:

The commenter states that CPAs live by ethical standards and self-regulate on a constant basis, take pride in their work, and make sure that the public knows they can and will be treated with dignity and respect.

Regarding existing standards, the commenter notes by way of example that when he has purchased a practice, he has previously sent a letter to clients in conjunction with the selling CPA, and that this has been sufficient. If a client does not respond, his practice is to “retain the client data as though they were a client in our normal client material retention process and policies.” The commenter states if a CPA were to retire or close their business without selling it, they would automatically contact their clients, and contends this is sufficient.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1. Further, as noted in the response to Comment H-1, above, the proposed regulations expand upon existing requirements regarding disclosure of confidential information, and provide additional guidelines in regard to safeguarding that information, in the interest of consumer protection.

Comment M-3

Summary of Comment:

Commenter finds the proposed regulations disturbing, extremely overreaching, offensive, abhorrent, completely unnecessary, and they strongly oppose the change. The commenter states forcing this upon the profession is absolutely uncalled for.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1 above.

N. Email received December 12, 2022, from Commenter 14

Comment N-1

Summary of Comment:

Commenter suggests that these new regulations should not be passed because when the licensee sells the practice to the successor, the licensee usually makes an effort to stay a period of time to work with the successor to make sure the successor and the clients are able to know each other and make sure they transfer smoothly.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1. Further, as noted in the response to Comment H-1, above, the proposed regulations expand upon existing requirements regarding disclosure of confidential information, and provide additional guidelines in regard to safeguarding that information, in the interest of consumer protection.

Comment N-2

Summary of Comment:

The commenter states if a licensee sends a letter to the client to tell the client the client's accounting and tax information will be transferred to another person, and to ask permission or objection for the transfer, that the client will be confused because they are "unfamiliar with the successor and will cause unnecessary trouble for the clients." The

commenter states if a client receiving such a letter made a decision about permission, that this will be the wrong decision because the client will not “have known the new successor well to make the right decisions,” and rather that if the transfer is made “without knowledge of the clients,” the “licensee will stay long enough to make sure the clients and successor know each other well and naturally it will benefit both sides.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1, above. These proposed regulations protect the public by affording clients the opportunity to make an informed decision about the disposition of their records at the time of the sale, transfer, or discontinuance of a practice.

O. Email received December 13, 2022, from Commenter 15

Comment O-1

Summary of Comment:

Commenter asks the following questions:

1. How can a seller maintain custody of workpapers and software for 90 days without disclosing the information to the buyer?
 - a. Does this proposed change mean that the buyer cannot take possession or access the data contained in the seller’s business for 90 days, essentially creating a 90-day escrow type period for all sales?
 - i. How does this effect the continuity of the business and their employees, vendors, and clients? Is the buyer supposed to become an employee of the seller so they can be present for the 90 days and work on the transition with the staff?

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment D-1, above.

In the interest of consumer protection, the proposed regulations require client consent to be obtained before transferring client records to the successor person, but do not require the successor person to become an employee of the licensee in order to work

on the transition with the staff.

Comment O-2

Summary of Comment:

Commenter asks the following questions:

1. If a seller only retains digital workpapers, do they have to give the client a copy of the digital workpapers (this assumes that the client's original documents were already returned)?
2. If the client opts out, how does a departing licensee keep digital documents? If a licensee retires or pursues something outside of tax, are they supposed to keep the digital files from the tax software, digital data files from the other software platforms and digital files of years of workpapers and tax returns?
3. If workpapers for a tax practice contain W2's, etc., and they are stored digitally, does the proposed regulation require that the seller should "delete all traces of opt out clients from digital storage and every software platform"?
4. For section 54.4(d), if the client gave us their email, did they not consent to emailed communication? If they didn't consent to email, why did they give us their email address? Why would we need written confirmation of such agreement?

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

Response to O-2 #1:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

Under these proposed regulations, working papers as defined by 16 CCR section 68.1 would need to be returned in the circumstance they constitute 'client records' under proposed 16 CCR section 54.3(g) and have not been previously returned. Records maintained electronically would be included.

Response to O-2 #2:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

These proposed regulations describe record return and retention requirements. If a

client objects to the transfer of client records, the licensee would be required under proposed 16 CCR section 54.3 to return any client records. If a licensee is unable to contact a client, the client's records shall not be transferred and shall be retained by the licensee as described in proposed 16 CCR section 54.3(d). The proposed regulations do not explicitly prohibit the retention of records electronically.

Response to O-2 #3:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

As noted above, if a client objects to the transfer of client records, the licensee would be required under proposed 16 CCR section 54.3 to return any client records. If a licensee is unable to contact a client, the client's records shall not be transferred and shall be retained by the licensee as described in proposed 16 CCR section 54.3(d) and disposed of as described in proposed 16 CCR section 54.3(e).

Response to O-2 #4:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA notes the intent of the proposed rulemaking is to require a specific written consent to receive via electronic transmission notice of the disposition of their client records. Subdivision (a) of proposed 16 CCR sections 54.3 (for sale or transfer of a practice) and 54.4 (for discontinuance of a practice) permits notices to be sent "via electronic transmission as provided in this section." Both 16 CCR sections 54.3(f) and 54.4(d) require "written confirmation" from the client to receive information via electronic transmission.

To ensure the consumer is fully informed about the uses for which their email addresses may be used, and that they knowingly and voluntarily agree to service of notice regarding the disposition of these important records, the CPA must show that they have received written permission to specifically serve such notices via electronic transmission instead of through other established methods of delivering such legal required notices.

P. Email received December 13, 2022, from Commenter 16

Comment P-1

Summary of Comment:

Commenter states, "Many practices are listed after tax season has concluded and the eventual sale may not occur until November or early December. To wait 90 days to

transfer records to the new CPA puts the new firm at a severe disadvantage in getting up to speed with the clients and would prove to be disruptive. Some clients will respond and some clients will just wait the 90 days and then go to the new firm, or change firms when they are ready to do their tax return. Clients are not slaves and are free to leave any firm at any time. They can simply request their files if they have been transferred to the new firm and leave at any time.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment D-1, above.

Comment P-2

Summary of Comment:

The commenter notes, “I don’t see any abuse that you are trying to cure.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1 above.

Q. Email received December 14, 2022, from Commenter 17

Comment Q-1

Summary of Comment:

Commenter asks, “Why change something that has worked since the Accountancy Act was made law?”, stating that these proposed regulations are too restrictive and appear to protect the client, but the restrictions placed on the seller CPA could have a negative effect to the point the sale may not be completed. The commenter notes he knows a Nevada CPA who sold his practice to a non-CPA without any of the restrictions proposed in this rulemaking.

Commenter asks to not enforce the proposed regulation or at a minimum, eliminate the client restrictions that could have a negative effect on the sale.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1, above.

Relating to current practices, as noted in the response to Comment H-1, above, the proposed regulations expand upon existing requirements regarding disclosure of confidential information, and provide additional guidelines in regard to safeguarding that information, in the interest of consumer protection.

R. Email received December 14, 2022, from Commenter 18

Comment R-1

Summary of Comment:

Commenter states that for sections 54.3(b) & (c) and 54.4(a), in reference to the language “shall return any client records”, it should include the phrase “not previously returned.” Commenter states that the proposed regulations would require the CPA to return the entire file, and that most, if not all of it was likely sent earlier. Commenter asks why they should they incur the cost to resend it if it was already sent.

Response to Comment

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

These regulations apply to clients of a practice at the time of a sale, transfer, or discontinuance of a practice. Former clients are explicitly excluded under proposed 16 CCR section 54.4. Proposed 16 CCR section 54.3(a) applies only to clients “subject to the sale or transfer,” which would not include former clients. Clients who consent to the transfer of records would not need records returned.

Further, 16 CCR section 68 states “A licensee, after demand by or on behalf of a client, for books, records or other data, whether in written or machine sensible form, that are the client's records shall not retain such records. Unpaid fees do not constitute justification for retention of client records.”

In the event a current client has objected to the transfer of client records, and has already had applicable records returned, and copies of those records are available, these proposed regulations do not require the records to be returned again.

Comment R-2

Summary of Comment:

Commenter states section 54.3(g) with reference to: “include working papers” makes no sense as there could be notes the clients shouldn’t see (*i.e.*, concern if client is reporting correctly, comments for staff that client should not see, things to watch out for, etc.) and this could open problems for the outgoing CPA. The commenter notes this might also include information the client does not need.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA notes not all “working papers” would necessarily be included. Proposed 16 CCR sections 54.3(g) and 54.4(e) specify that “client records” shall have the meaning set forth in CCR section 68, and will include working papers, as defined in CCR section 68.1, if they are considered part of the client’s records as specified by CCR section 68.

S. Email received December 14, 2022, from Commenter 19

Comment S-1

Summary of Comment:

On the issue of the practicality of this proposal, the commenter states:

“It is impractical to request a client's consent to transfer its records to the successor person. I would recommend a negative consent, that is, if the client should object then the client should notify the selling CPA.” To support this, the commenter notes “I never had a client object to the "negative consent" method.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1, above. These proposed regulations also protect the public by affording clients the opportunity to make an informed decision about the disposition of their records at the time of the sale, transfer, or discontinuance of a practice. Further, this proposed rulemaking already requires a client receiving notification to notify the selling licensee the client objects to the transfer of client records.

Comment S-2

Summary of Comment:

On the issue of the timing of sales, the commenter states:

“Every sale I was involved with involved an SBA loan and the closing always came down to the wire, as the new tax season was approaching.” The commenter also notes “Also clients don’t follow instructions and may not open the mail for several weeks or until the commencement of tax season,” and separately, “In a perfect world the proposed consent method would be nice, but the world of tax season is anything but perfect.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment D-1, above.

Comment S-3

Summary of Comment:

The commenter claims, “Waiting for consent from clients would be a logistical nightmare, not to mention the record keeping burden.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment D-1, above.

T. Email received December 15, 2022, from Commenter 20

Comment T-1

Summary of Comment:

Commenter states that the proposed changes are reasonable to them.

Response to Comment:

The CBA appreciates the positive feedback.

U. Email received December 15, 2022, from Commenter 21

Comment U-1

Summary of Comment:

Commenter strongly objects to the proposed changes. “The proposed regulation is discriminatory...This regulation is solely aimed at the sole practitioner or small partnership. Large and medium sized practices appear to be exempt under this proposed regulation. When licensed members of large and medium sized firms retire or otherwise discontinue to practice, these firms generally replace the partner with another partner and there is no required notification to the client. The retired partner then receives the benefit of the firm’s partner retirement plan, which essentially is his or her buyout from the firm. Why should small and local CPA firms have this notification requirement when the large firms do not? Moreover, when firms merge or acquire another practice and there is partner termination, there is no similar notification requirement. Accordingly, the proposed regulation disproportionately discriminates against the smaller firms or individual CPA.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The proposed regulations outline requirements related to the sale, transfer, or discontinuance of a licensee’s practice, regardless of the size of the practice. Retirement of a partner or shareholder within a larger firm does not in itself constitute a sale, transfer, or discontinuance of the practice, and therefore, these regulations would not be applicable.

Comment U-2

Summary of Comment:

Commenter states: “The proposed regulation contradicts regular business practices. Dentists, Chiropractors, Insurance Agents, Bankers, and other similar professional services have no similar client notification requirement. The clients are generally informed of the change upon renewal of their engagement and at that time, have the option of transferring their business to another business.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA has jurisdiction over and regulates licensed CPAs and those engaging in the practice of accountancy.

The CBA incorporates by reference the response to Comment B-1, above. Licensees are required, pursuant to 16 CCR section 58, to comply with all applicable professional standards, which includes the AICPA Code of Professional Conduct interpretations 1.400.205 (Transfer of Files and Return of Client Records in Sale, Transfer, Discontinuance or Acquisition of a Practice) and 1.700.050 (Disclosing Client Information in Connection With a Review or *Acquisition* of the Member's Practice), as discussed in the Initial Statement of Reasons for this proposed rulemaking. Further, the proposed regulations are consistent with existing laws and regulations, specifically Civil Code section 1798.81, BPC section 5063.3, and 16 CCR sections 54 and 54.1. These are the appropriate standards for the CBA's regulations.

Comment U-3

Summary of Comment:

Commenter states: "The proposed regulation puts the value of the accounting firm at risk. When a practitioner sells his or her practice the value of the practice is based upon the retention of clients and historical revenues. This regulation puts that value at risk in that client retention is at issue. Most clients are very loyal to their CPA and it has been my experience that they will "try out" the new CPA that has acquired the practice. Moreover, clients are familiar with the CPA's staff and business practices. This proposed regulation puts that loyalty in jeopardy and diminishes the value of that CPA's practice."

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1, above. Regarding the commenter's concerns about the valuation of a practice, the CBA incorporates by reference the response to Comment I-2.

Comment U-4

Summary of Comment:

Commenter states: “The proposed regulation is redundant. I sold my accounting practice in 2007. As part of that sale, client record retention and confidentiality were clearly addressed with the acquiring firm in the purchase agreement. When a CPA sells his or her practice, generally all the assets and client records go to the acquiring firm and are under the normal retention guidelines for all CPAs.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1. Further, as noted in the response to Comment H-1, above, the proposed regulations expand upon existing requirements regarding disclosure of confidential information, and provide additional guidelines in regard to safeguarding that information, in the interest of consumer protection.

Comment U-5

Summary of Comment:

Commenter states: “In the normal course of business, and as clients get experience with the acquiring firm, they will decide to continue with that firm or not. Such decisions may extend beyond a year or longer from the acquisition date.”

Commenter further states “requiring the selling CPA to reacquire, maintain, and then subsequently destroy or return clients records, should they exist, appears to be both burdensome and redundant. The burden of notifying, collecting, monitoring, and documenting this proposed regulation would be excessive on the sole practitioner.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1. Allowing a client to discontinue a relationship with a firm differs from allowing a client to make an informed decision about whether to allow client records to be transferred to a successor. These proposed regulations clarify to both licensees and clients the rights and responsibilities relating to client records in the specific event of a sale, transfer, or discontinuance of a practice, which improve public protection by allowing the client to knowingly consent or object to the transfer of records at the time the transfer occurs.

These proposed regulations do not apply to sales, transfers, or discontinuances that

occurred prior to their effective date. The proposed regulations do not require a licensee to reacquire records.

Comment U-6

Summary of Comment:

Commenter states: “When a client leaves any CPA firm, they are entitled to certain privileges, including the return of any client documents. In the normal course of business, these requests are generally complied with by all CPAs in a timely manner. It would be inappropriate not to do so. Moreover, my experience has been that the CPA retains few if any such documents. The CPA simply returns to the client all the original documents they may have collected to do the required work. To store such documents for the client would be too cumbersome. Clients pay us to do the work, not to store their records.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1. Further, as noted in the response to Comment H-1, above, the proposed regulations expand upon existing requirements regarding disclosure of confidential information, and provide additional guidelines in regard to safeguarding that information, in the interest of consumer protection.

These comments are outside the scope of the proposed regulations. The proposed regulations apply to a licensee selling, transferring, or discontinuing a practice, and are not related to clients leaving a CPA firm.

Comment U-7

Summary of Comment:

Commenter strongly suggests that this proposed regulation not be adopted, noting the difficulty in competing for qualified staff and enduring higher costs. The CBA must consider the burdensome cost of compliance with these regulations to the sole practitioner as larger entities have taken over larger portions of the market. The health of the local CPA practice does not look good and burdening them with additional regulations that are duplicative in nature may drive people out of the practice of accountancy.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the responses to Comments B-1, E-1, and U-4, above.

V. Letter received December 16, 2022, from Commenter 22

Comment V-1

Summary of Comment:

Commenter strongly objects to the proposed regulations and notes: “I see this as one more regulation proposing a ‘fix’ – for something that is not a problem. To subject the entire practitioner community to more busy work to redress the grievances of a few individuals is unnecessary – both in terms of time and money.” Commenter asks: “exactly how many real problems will these burdensome regulations actually solve?”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the responses to Comments B-1 and E-1, above.

W. Letter received December 19, 2022, from Commenter 23

Comment W-1

Summary of Comment:

Commenter states the 90-day notification to clients is too long and suggests the notification be changed to 30 days to notify the client and require their response.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment D-1, above.

Comment W-2

Summary of Comment:

Commenter asks what the effective date of the proposed regulations is.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The proposed regulations have not yet been adopted, and as such, there is no effective date for their implementation. The effective date of the proposed regulations will depend on the date of the submission of this rulemaking file to the Office of Administrative Law for review.

X. Email received December 19, 2022, from Commenter 24

Comment X-1

Summary of Comment:

Commenter states the proposed wording is a good step in the right direction as it helps clear up time duration and steps that licensees need to take to inform current clients.

Response to Comment:

The CBA appreciates the positive feedback.

Y. Email received December 19, 2022, from Commenter 25

Comment Y-1

Summary of Comment:

Commenter opposes the proposed regulations, stating “I think this proposal will have too big of a burden on practitioners trying to sell their practice.” Commenter recommends the 90 days to be reduced to 30 days. Commenter states that it is important to ask the client for their consent, but 90 days is too long and would disrupt the new practitioner especially if the sale is close to the busy season.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

Regarding the commenter’s statement on the burdensomeness of these proposed regulations, the CBA incorporates by reference the response to comment B-1, above.

The CBA incorporates by reference the response to Comment D-1, above.

Z. Email received December 19, 2022, from Commenter 26

Comment Z-1

Summary of Comment:

Commenter is opposed to the regulation and requirement to transfer their records to clients, as they have “never kept client records to render services to them,” but they “always make copies and return any originals to the client.”

The commenter notes any workpapers related to their work belong to the practitioner, which the commenter states “is the common standard for professional firms as far as I know.” Further, per the commenter, the clients already have their records and have the responsibility to retain whatever is necessary for their purposes.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

Regarding the commenter’s statements about the practice of making copies and returning originals to clients before rendering services, as noted in the response to Comment I-1, these proposed regulations clarify to both licensees and clients the rights and responsibilities relating to client records in the specific event of a sale, transfer, or discontinuance of a practice, which improve public protection by allowing the client to knowingly consent or object to the transfer of records at the time the transfer occurs.

This important public protection should apply even in circumstances where client records are returned prior to services being rendered.

The CBA incorporates by reference the response to Comment B-1. Further, as noted in the response to Comment H-1, above, the proposed regulations expand upon existing requirements regarding disclosure of confidential information, and provide additional guidelines in regard to safeguarding that information, in the interest of consumer protection.

AA. Email received December 19, 2022, from Commenter 27

Comment AA-1

Summary of Comment:

Commenter requests having record retention rules similar to IRS Circular 230 as “this will allow for CPA Office and CPA Firm administration (quality management) to be streamlined between federal and state regulations. This will also make it much more understandable to the consumer.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA noted its rationale for the record retention period described in this proposed rulemaking at pages 6 and 7 of the Initial Statement of Reasons. The four-year time period is consistent with other familiar professional standards, such as record retention requirements for tax preparers, and provides a reasonable period of time for clients to obtain their records before they are destroyed, and for the CBA to audit compliance with the requirement. As a client’s records could also include audit documentation, allowing for a potentially longer retention timeframe consistent with 16 CCR section 68.3 is reasonably necessary to ensure that audit documentation is retained as required by statute.

IRS Circular 230 is limited in scope to practice before the Internal Revenue Service, which is only a portion of the types of services rendered by licensees of the CBA. The practice of public accountancy is more broadly described in Business and Professions Code section 5051.

Comment AA-2

Summary of Comment:

The commenter notes “the sale of a client to another licensed CPA in California should be governed by professional standards and ethics,” and that “many CPAs rely on the sale of their practice for retirement.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1 above.

Comment AA-3

Summary of Comment:

Commenter states: “the workpapers are the property of the CPA Firm or office based on IRS Circular 230. The tax documents are the client’s and a client can respectfully request a copy of these client provided tax documents or they can reach out to the Internal Revenue Service (IRS) for such. These workpapers are not medical records, on the contrary, they are highly sensitive tax/legal documents with probable tax positions in these workpapers. Many of these workpapers are not meant for public disclosure without legal or CPA counsel.”

The commenter asks the CBA to not “end up hurting the overall California CPA profession with an undue burden on California CPA offices and Firms.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1, above. The proposed regulations represent the CBA’s determination that the appropriate standards are reflected in the AICPA Code of Professional Conduct.

Licensees of the CBA must adhere to the requirements of the Business and Professions Code, regulations adopted thereto, and any other relevant statutes or regulations. IRS Circular 230 is limited in scope to practice before the Internal Revenue Service, which is only a portion of the types of services rendered by licensees of the CBA. The practice of public accountancy is more broadly described in Business and Professions Code section 5051.

Regarding the comments about workpapers, the CBA incorporates by reference the response to Comment R-2, above.

Comment AA-4

Summary of Comment:

Commenter states that a simple letter of intent should be enough to satisfy consumer safety as the professional standards and ethics should govern the rest.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1, above.

BB. Email received December 20, 2022, from Commenter 28

Comment BB-1

Summary of Comment:

Commenter acknowledges the improvements made to the latest proposed regulations as 1) it allows for electronic transmission/communication, and 2) it reduces the retention timeline for untransferred records from seven years to four years. Both changes are steps in the right direction that acknowledge modern-day firms and practices, and are less onerous to retiring practitioners.

Response to Comment:

The CBA appreciates the positive feedback.

Comment BB-2

Summary of Comment:

Commenter states they are a 90% paperless office that retains no client originals, so they would have nothing to send or return to clients when they close their practice.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

As noted in the response to Comment R-1, in the event a current client has objected to the transfer of client records, and has already had applicable records returned, and copies of those records are available, these proposed regulations do not require the records to be returned again.

Comment BB-3

Summary of Comment:

Commenter strongly objects to the new regulations for the following reason: "An advance 90-day notice requirement destroys a selling business owner's competitive advantage. No other industry is required to provide such a prior notice to its client/customer base before selling a client list."

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment U-2 regarding the CBA's jurisdiction, above.

Regarding competitive advantage, the CBA must take into consideration its mission of consumer protection when evaluating competing interests, such as competitive advantage, regarding the regulation of the accounting profession. The Legislature enacted BPC section 5000.1 which states, "Protection of the public shall be the highest priority for the California Board of Accountancy in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."

The CBA incorporates by reference the response to Comment D-1.

Comment BB-4

Summary of Comment:

Commenter states: "These regulations only apply to CPA's. Enrolled Agents and CTEC holders with PTINs can sell their practices without this advance requirement. This may actually create an incentive for near-retiring CPA's to surrender their licenses before sale. I would actually recommend it, if these requirements pass."

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the responses to Comments B-1, J-2 above, and as noted in the response to Comment U-2, the CBA has jurisdiction over and regulates licensed CPAs and those engaging in the practice of accountancy.

Comment BB-5

Summary of Comment:

Commenter states: "Existing consumer privacy laws already sufficiently protect client data. Both the seller and buyer need to do sufficient due diligence and have appropriate

physical and/or electronic safeguards in place. If any of this isn't done or is violated, consumers have other recourse without these regulations.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1. Further, as noted in the response to Comment H-1, above, the proposed regulations expand upon existing requirements regarding disclosure of confidential information, and provide additional guidelines in regard to safeguarding that information, in the interest of consumer protection.

CC. Email received December 20, 2022, from Commenter 29

Comment CC-1

Summary of Comment:

Commenter states that the proposed time period of 90 days is too burdensome, and that “many practice sales take place after October 15, and it can take months to onboard the clients from the old firm to the new firm.” The commenter notes in such an example 90 days from October 15th would be January 15th, by which point it would be “too late to onboard the clients to the new firm,” and that some clients may respond but others may not. This difference in responses would lead to inefficient onboarding, and that “onboarding of clients should be done at the same time,” as “intermittent additions of new clients runs the risk of omission and errors in their setup.”

The commenter notes “the time period between Oct 15 and Dec 31 is the best time for a practice transition to happen. There is too much work to do during the other months of the year to attempt a transition.”

The commenter notes, “If the 90 day period was shortened to 30 days, I think it would still be possible to protect client information and give clients time to object to their information being transferred... A 30 day time period would still give the new firm time to onboard the clients before the start of the following tax season. The 90 day limitation puts too much of a burden on the buyer for onboarding the clients and this will make the sale of accounting firms much more difficult and infrequent in the future. Clients will be left with no where to turn if their sole practitioner CPA retires without selling the practice to another firm.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment D-1, above.

DD. Email received December 22, 2022, from Commenter 30

Comment DD-1

Summary of Comment:

Commenter states it does not seem right to not be able to sell their business unless the clients agree, noting “this really will hinder the ability for CPA’s to sell their businesses in a time when so many of us are in the time of our lives that retirement is here or around the corner.”

The commenter notes the proposed regulations will negatively impact all the CPAs at a greater price than what the clients are gaining. Most CPAs that sell their practices notify their clients of the transition and clients have a choice to move on to another practice. The proposed regulations will only hurt the industry. Another reason for young people not wanting to start a practice if there are additional requirements and the possibility of the practice being worth less.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1. Further, as noted in the response to Comment H-1, above, the proposed regulations expand upon existing requirements regarding disclosure of confidential information, and provide additional guidelines in regard to safeguarding that information, in the interest of consumer protection.

The CBA also notes these proposed regulations do not require clients to agree to the sale, transfer, or discontinuance of a practice, but only that they consent or object to the transfer of client records.

EE. Email received December 22, 2022, from Commenter 31

Comment EE-1

Summary of Comment:

Commenter states: “I disagree with the CBA Regulations Section 54.3 and 54.4. I believe that as a CPA practicing for about 30 years, while I will be willing to sell my practice and go through a smooth transition by way of introducing my clients to the successor CPA, I think by sending an advance notice to my clients regarding the sale of practice, potentially it would [cause] a significant decrease [in] the value of my business that I have built for 30 years because some client might decide to leave my firm before the transition. I think the CBA should reconsider its proposal.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1, above. Regarding firm valuation, the CBA incorporates by reference the response to Comment I-2, above. Regarding concerns about giving clients advance notice, the CBA incorporates by reference the response to Comment N-2, noting these proposed regulations protect the public by affording clients the opportunity to make an informed decision about the disposition of their records at the time of the sale, transfer, or discontinuance of a practice.

FF. Email received December 22, 2022, from Commenter 32

Comment FF-1

Summary of Comment:

Commenter states that regulating CPAs with the proposed regulations while not requiring other tax preparers to do the same puts CPAs at a disadvantage.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the responses to Comments B-1 and U-2, above.

Comment FF-2

Summary of Comment:

Commenter opposes the proposed regulations because accounting practice sales that occur at the end of the year would be greatly hindered by having to wait 90 days or getting proactive approval from new clients, who have had no contact with the new tax

preparer/CPA. The process of transferring clients is a difficult one. There are so many reasons for the clients to leave the new preparer. Adding another factor like the proposed regulations would increase this difficulty and make practice sales, either all or partial, fraught with more economic uncertainty for both the seller and buyer.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the responses to Comments B-1 and D-1, above. Further, to the extent the commenter is concerned with the financial cost of compliance, the CBA incorporates by reference the response to comment E-1, above.

Comment FF-3

Summary of Comment:

Commenter is against the proposed regulations. Commenter noted they had “purchased clients from another Tax Preparer, one a CPA and another an EA. Both transactions transpired in January. Had this law been in effect, the smooth transfer of clients would have been hindered and the clients' tax returns would have been late, perhaps with penalties.”

Commenter also notes “An important factor is the trust a client has with the selling CPA. Without a certain level of trust, doing anything is difficult. Your proposals assume no trust and thus no loyalty. The sale to a new CPA is based on assigning the existing loyalty to the buyer. If a sale has to wait 90 days to complete, it breaks the underlying bonds that predicate the sale in the first place. If you need clients to affirm proactively to a new CPA, I would imagine most would ignore the letter or just say no.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the responses to Comments B-1 and D-1, above. Further, as noted in the response to Comment H-1, above, the proposed regulations expand upon existing requirements regarding disclosure of confidential information, and provide additional guidelines in regard to safeguarding that information, in the interest of consumer protection.

Regarding concerns about giving clients advance notice, the CBA incorporates by reference the response to Comment N-2, noting these proposed regulations protect the

public by affording clients the opportunity to make an informed decision about the disposition of their records at the time of the sale, transfer, or discontinuance of a practice.

GG. Email received December 23, 2022, from Commenter 33

Comment GG-1

Summary of Comment:

Commenter asks the following as a CPA licensed in Georgia and California with no physical presence in California but with clients who are residents of California: “Would [the proposed regulations] apply to me? Wouldn’t I just have to stop my California license before I sell, transfer, or discontinue my business to get out of complying with these regulations? Must I only notify California clients or all clients? Or, is it even applicable, if I have no presence in California?”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The proposed regulations require notices to issue to “each client that is subject to the sale or transfer” in the case of sale or transfer in proposed 16 CCR section 54.3, and to “each client” in the case of discontinuance in proposed 16 CCR section 54.4.

All California licensees shall comply with CBA’s laws and regulations, specifically when providing services to California clients, regardless of physical location. Failure to do so may result in disciplinary action or denial of petition for reinstatement.

HH. Email received December 27, 2022, from Commenter 34

Comment HH-1

Summary of Comment:

Commenter asks if the proposed regulations would apply in a situation where a partner or shareholder in an existing accountancy firm retires, and the firm acquires their partnership/corporate interest, and any clients they are responsible for are transferred to others in the firm.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any

amendments to the proposed text based thereon.

The proposed regulations outline requirements related to the sale, transfer, or discontinuance of a licensee's practice. Retirement of a partner or shareholder within a firm does not in itself constitute a sale, transfer, or discontinuance of the practice, and therefore, these regulations would not be applicable. In situations such as this, clients are normally aware that there are multiple partners or shareholders within the firm that may work on their engagement.

II. Email received December 27, 2022, from Commenter 35

Comment II-1

Summary of Comment:

Commenter is "against this intrusion into free enterprise", stating: "I have seen many changes in this state which move to over-regulate our practices, while not giving us the same privileges that attorneys have. Yet, you are proposing this regulation to align CPAs as [though] we are attorneys – without any of the right[s] and privileges that attorneys enjoy. We are not in the legal profession. Please step back and review how CPAs work in industry – not how attorneys work and I think you will find this proposed Section deleterious to the profession."

Commenter further notes, "A Public Accounting practice is not a legal practice. It differs in many ways. Treating the CPA practice like a legal practice will reduce the ability of the CPA to move to different firms, merge with others, and reduce the ability to sell the practice due to retirement, or death."

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1, above.

Additionally, the CBA incorporates by reference the response to Comment U-2, above, regarding the CBA's jurisdiction.

Comment II-2

Summary of Comment:

Commenter states: "The legal practice has a long term relationship with individuals that have far reaching effects: estate planning can go on for 40 years; contractual

obligations can be set interminably. Malpractice insurance requires coverage for attorneys in a manner that displays how long the effects of legal documents can last. Lawyers have complete client/attorney privilege. CPA PRACTICES ENJOY NONE OF THIS.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1, above. The CBA incorporates by reference the response to Comment U-2, above, regarding the CBA’s jurisdiction. These comments are outside the scope of the proposed regulations. The proposed regulations apply to a licensee selling, transferring, or discontinuing a practice, and are not related to legal practice.

Comment II-3

Summary of Comment:

Commenter states that while clients "may return each year for tax services, the services are only one year in duration", and that malpractice covers only a few years due to statutes of limitations covering tax preparation and financial audits. Commenter notes, "clients are free to leave at any time and many times they leave without even advising the CPA of their transition. You cannot do that when you are entwined with legal services due [to] the nature of the ongoing contractual obligations. CPA contracts (engagement letters for tax compliance or financial statement audits) are annual only. While we may help our clients in long term planning, we cannot draft contracts, plans, documents. All that is left to attorneys and other licensed professionals. We are advisers in the current sense, nothing more."

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1. Further, as noted in the response to Comment H-1, above, the proposed regulations expand upon existing requirements regarding disclosure of confidential information, and provide additional guidelines in regard to safeguarding that information, in the interest of consumer protection.

The CBA also incorporates by reference the response to Comment U-2, above, regarding the CBA’s jurisdiction. Much of this comment is outside the scope of the

proposed regulations. The proposed regulations apply to a licensee selling, transferring, or discontinuing a practice, and are not related to malpractice, or the legal profession.

Comment II-4

Summary of Comment:

Commenter states, “Many of our services are commoditized by the public, and even the government itself. Lawyers are the only people who can create legal documents, but anyone can prepare a tax return. CPAs in other states can prepare financial statements and tax returns without being covered by the California CBA. How is that proprietary enough to thwart fair trade? There are CPAs, EAs, CTECs, unlicensed bookkeepers all preparing tax returns. They are not precluded from “selling” their practice. Why hobble the CPA that has worked for years, paying their dues with education, governmental regulations, and fees?”

Further, Commenter asks, “Does H&R Block or Jackson Hewitt have a client list? They get new clients every year and [others] drop off. It is ludicrous to assume that they need to ‘inform’ clients of their merging or terminating... What about CPAs licensed in other states practicing in or near California? They can prepare federal returns anywhere. Perhaps a large contingent of CPAs will flee California then sell their practices to avoid the issues. CPA practices can be conducted remotely now. I have clients I have never met residing in other states. How can you regulate that?”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comments B-1 and J-2, above, and as noted in the response to Comment U-2, the CBA has jurisdiction over and regulates licensed CPAs and those engaging in the practice of accountancy. Further, as noted in the response to Comment H-1, above, the proposed regulations expand upon existing requirements regarding disclosure of confidential information, and provide additional guidelines in regard to safeguarding that information, in the interest of consumer protection.

In regard to Commenter’s question regarding clients residing in other states, the CBA incorporates by reference the response to Comment GG-1, above.

Comment II-5

Summary of Comment:

Commenter states, “Many CPAs do not retain original documents. We have workpapers, but return documents. The original filings for federal, state, and city governments are all kept by the client. They are free to take their documents anywhere they want to go. How are these items so proprietary that that we cannot use our “goodwill” to sell our practices?”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1. Further, as noted in the response to Comment H-1, above, the proposed regulations expand upon existing requirements regarding disclosure of confidential information, and provide additional guidelines in regard to safeguarding that information, in the interest of consumer protection.

As noted in the response to Comment R-1, in the event a current client has objected to the transfer of client records, and has already had applicable records returned, and copies of those records are available, these proposed regulations do not require the records to be returned again.

Comment II-6

Summary of Comment:

Commenter states, “We cannot tether our clients to our practice and the documents we create (Tax returns, audits, etc.) can be reproduced fairly easily and quickly by other competent preparers. There are already rules in place about financial statement audits and how the audits are handed off to new CPAs. There are already rules in place to allow for transition of client information with their permission. Isn’t this enough?”

Commenter further notes, “CPAs do work each year for clients. The clients choose to return for good service/pricing etc. But they are not tethered to the practice”.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1. Further, as noted in the response to Comment H-1, above, the proposed regulations expand upon existing requirements regarding disclosure of confidential information, and provide additional guidelines in regard to safeguarding that information, in the interest of consumer

protection.

Comment II-7

Summary of Comment:

Commenter states the proposed regulations allow the client to “do what he/she wants, but unilaterally curtails the CPAs from any freedom of action.” Commenter also states, “[Over-regulation] is what kills business in this state. When you hobble the owner’s ability to determine the direction of his own business with rules that are not equally applied to others in the same industry - you kill the ability to conduct business at all. The result is fewer competent business people; lost revenue for the state (as CPAs will go to other states where there is less regulation and lower taxes and fees), and a contraction of the available businesses. If you have not already noticed: there is already a shortage of competent CPAs [in] this state due to death, retirement, taxes, and over-regulation... Entry into public accounting is at an [all-time] low... [and] potential candidates - educated individuals - view the CPA profession as already too difficult to enter. You want to make it worse.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1, above. The CBA must take into consideration its mission of consumer protection when evaluating competing interests regarding the regulation of the accounting profession. The Legislature enacted BPC section 5000.1 which states, “Protection of the public shall be the highest priority for the California Board of Accountancy in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.”

Additionally, as noted in the response to Comment U-2, the CBA has jurisdiction over licensed CPAs and those engaging in the practice of accountancy.

Comment II-8

Summary of Comment:

Commenter suggests the CBA concentrate on regulating those individuals who are [under-educated], not licensed, and are performing services in this state to an uneducated public, noting, “To this day, I have to explain the differences between a CPA and an EA to some clients.” Commenter further suggests the CBA should

concentrate on “promoting and saving our profession rather than killing it with regulations that make no sense and deter competent CPAs from even coming to or staying in this state.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA does not anticipate this regulation will impact CPAs coming to or continuing to practice in California.

The CBA incorporates by reference the response to Comment B-1, above. The CBA must take into consideration its mission of consumer protection when evaluating competing interests regarding the regulation of the accounting profession. The Legislature enacted BPC section 5000.1 which states, “Protection of the public shall be the highest priority for the California Board of Accountancy in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.”

Regarding the commenter’s suggestion that the CBA should concentrate on regulating under-educated and unlicensed individuals, the CBA regulates unlicensed practice through regulations such as BPC sections 5050, 5051, and 5121. Additionally, the CBA provides resources on the CBA website, including the CBA’s statutes and regulations, Disciplinary Guidelines and Model Order, and public enforcement actions.

JJ. Letter received December 29, 2022, from Commenter 36

Comment JJ-1

Summary of Comment:

Commenter states the regulations “seem to be written in contemplation of a licensee’s long-contemplated retirement and transfer of a practice to an entirely unrelated party. I have to wonder how often this happens – and how often it does not.”

Commenter asks: “How often are practices curtailed by a licensee’s health issues or disability – permanent or temporary? How often are practices wrapped-up by widows or other heirs? What if a vacationing licensee is seized by Russian authorities and held in a Siberian penal camp, or put into indefinite quarantine outside the country?”

Commenter notes: “I am not in a position to see how many practices are transferred to strangers for cash or discontinued in long-anticipated retirement scenarios – as

opposed to some sort of ad-hoc ‘pitch-out’ under serious time pressures and stress. But this information is likely available to the Board and should be part of the public record.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1, above.

Additionally, as noted in the response to Comment D-2, above, the AICPA has resources regarding succession planning, and recommends that a practice continuation agreement should be drawn up when a practice is established because it can help protect the practice, the business interest of its clients, and the financial interests of the practitioner and their family, in the event of the practitioner’s death or temporary or permanent disability.

Regarding the commenter’s suggestion that the CBA likely has information regarding the various reasons practices are transferred, that information is not available to the CBA. However, that information is immaterial to this rulemaking, as compliance with the proposed regulations is not dependent upon the catalyst for the sale, transfer, or discontinuance of a practice.

Resources regarding succession planning can be found on the AICPA website at <https://us.aicpa.org/interestareas/privatecompaniespracticesection/strategy-planning/center.html>

Comment JJ-2

Summary of Comment:

The commenter states, “Further, what about the nature of the practice? A practice that focuses on individual tax return preparation would run on a different timetable than one that prepares weekly payroll, or one that provides audit services.”

Commenter provides an example, stating, “About forty years ago I worked for a firm that had clients in the entertainment industry... we had clients that might be incommunicado, filming on location in Tunisia, during tax season – we’d file extensions for them, expecting (but not knowing) that they’d show up sometime with a shoebox full of [check stubs] and receipts.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any

amendments to the proposed text based thereon.

The CBA incorporates by reference the responses to Comments B-1 and D-1, above.

Comment JJ-3

Summary of Comment:

Commenter asks, “What if the practice itself is damaged – a ransomware attack leaves the practice crippled or a tornado does through the file room? The licensee decides to take any insurance money and shut down. Is the insurance company the “successor person”? Exactly what obligations might the licensee be expected to honor?”

Commenter asks to briefly contemplate a scenario which they suspect is fairly common: “A licensee runs a practice as a sole proprietor, but with three senior staff who are also CPAs – one tax, one audit, and one generalist. She feels ‘a little off’, goes into the doctor, and is told that she has three to nine months to live. Thinking of her clients’ welfare, she determines that she is going to transfer her clients’ tax files to her tax guy; her clients’ audit files to her audit guy; and other clients’ files to her other guy – in return for notes in favor of her spouse. During her illness, her previous lieutenants inform clients that they will continue to be served by the same staff and same senior people, but that there will be no final review by the licensee as she is indisposed. Clients are also informed that their information belongs to them and may be taken away to another firm or destroyed as they see fit.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1, above.

Additionally, as noted in the Initial Statement of Reasons to this Rulemaking:

One of the issues raised by stakeholders was how the term defining the successor entity was defined in this proposed regulation. The terms ‘person,’ and ‘successor person’ via proposed sections 54.3 and 54.4, are described in the proposed text as “defined by section 5035 of the Business and Professions Code” to cover all of the successor entities that, in CBA’s experience, may be involved in a sale, transfer, or discontinuance of a practice, whether those entities are individuals, partnerships, firms, associations, limited liability companies, or corporations.

A practice would only involve a successor person in the event of a sale or transfer. A

practice that shuts down would be a discontinuance of a practice, and would not involve a successor person.

In regard to the commenter's posed scenario, the proposed regulations would not apply unless the licensee is selling, transferring, or discontinuing the practice.

Comment JJ-4

Summary of Comment:

Commenter states, "While I certainly agree that client records are owned by the client and should be held in confidence by a firm, there should be some balance between formal custodial handoff and client service."

Commenter further notes, "It should be recognized that excess licensee obligations in a shutdown or transfer context are written on sand. The licensee may still be a hostage in a foreign country, in a coma, or dead while these obligations continue. There should be some mechanism to contractually delegate these obligations."

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1, above. Based on the experience of the CBA, and in light of the standards created by AICPA, the proposed regulations are reasonable for sales, transfers, and discontinuances of practices.

Additionally, as noted in the response to Comment I-1, these proposed regulations clarify to both licensees and clients the rights and responsibilities relating to client records in the specific event of a sale, transfer, or discontinuance of a practice, which improve public protection by allowing the client to knowingly consent or object to the transfer of records at the time the transfer occurs.

Furthermore, as noted in the response to Comment D-2, above, the AICPA has resources regarding succession planning, and recommends that a practice continuation agreement should be drawn up when a practice is established because it can help protect the practice, the business interest of its clients, and the financial interests of the practitioner and their family, in the event of the practitioner's death or temporary or permanent disability.

Resources regarding succession planning can be found on the AICPA website at <https://us.aicpa.org/interestareas/privatecompaniespracticesection/strategy->

Comment JJ-5

Summary of Comment:

Commenter states that due to the “wide variety of situations where these Regulations are likely to be applied, they might better be formatted as ‘Goals’, ‘Implementation Examples’, and ‘Safe Harbors’. In addition, a mechanism to review variant implementations would be extremely valuable.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1, above. As noted in the response to Comment B-1, licensees are required, pursuant to 16 CCR section 58, to comply with all applicable professional standards, which includes the AICPA Code of Professional Conduct interpretations 1.400.205 (Transfer of Files and Return of Client Records in Sale, Transfer, Discontinuance or Acquisition of a Practice) and 1.700.050 (Disclosing Client Information in Connection With a Review or *Acquisition* of the Member’s Practice), as discussed in the Initial Statement of Reasons for this proposed rulemaking. Further, the proposed regulations are consistent with existing laws and regulations, specifically Civil Code section 1798.81, BPC section 5063.3, and 16 CCR sections 54 and 54.1.

In regard to Commenter’s statement about a mechanism to review variant implementations, the CBA does not regulate from a stance of best practices. It establishes specific rules for the regulation of the practice.

Comment JJ-6

Summary of Comment:

Commenter states, “Finally, it might be noted that all these requirements falling on a licensee during the act where a practice is sold or discontinued absolutely beg the question, ‘.....or what?’. If the sole penalty for ignoring any of these Regulations is going to be revocation of a license, the licensee may very well shred the license in advance... they’re not going to be using it any more, anyway.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any

amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1, above. The CBA incorporates by reference the response to Comment J-2, above.

KK. Letter received December 30, 2022, from Commenter 37

Comment KK-1

Summary of Comment:

Commenter states sections 54.3 and 54.4 provide undue burden to the seller. It will “make the CPA practices harder that are already very challenging and will deter good and younger CPAs coming [in to] provide services while [the] elder generation retires.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1, above.

LL. Email received December 30, 2022, from Commenter 38

Comment LL-1

Summary of Comment:

Commenter expresses their strongest objection to the proposed Regulations Sections 54.3 and 54.4 due to the following reason: “It is Unnecessary: The thought behind these requirements is to protect client confidentiality. This idea is good, but isn’t all CPAs already are doing their best to protect their clients’ confidentiality? To what degree are we going to make rules to mandate what we are already doing? Just like the CPA firms, a bank, or a law firm, holds confidential client information. There is no requirement for a bank or a law practice, to obtain their client approval prior to merger or acquisition.

With the constant changes of ownership in the banking industry and legal profession, we have rarely had any incidence in that the new bank, or the new law firm, breach confidentiality due to negligence or ignorance. So why the requirement being placed on CPA firms?”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any

amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1. Further, as noted in the response to Comment H-1, above, the proposed regulations expand upon existing requirements regarding disclosure of confidential information, and provide additional guidelines in regard to safeguarding that information, in the interest of consumer protection.

The CBA incorporates the response to Comment U-2 above regarding the CBA's jurisdiction.

Finally, regarding concerns about giving clients advance notice, the CBA incorporates by reference the response to Comment N-2, noting these proposed regulations protect the public by affording clients the opportunity to make an informed decision about the disposition of their records at the time of the sale, transfer, or discontinuance of a practice.

Comment LL-2

Summary of Comment:

Commenter states: "if the CBA is so determined in not trusting the purchasing CPA, maybe they should require the same client consent every time a CPA firm uses seasonal per diem help. Maybe the CBA should require the same consent every time a CPA firm hires a new employee, including receptionist, because every employee will have access to client confidential data."

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment K-2.

Comment LL-3

Summary of Comment:

Commenter expresses their strongest objection to the proposed Regulations Sections 54.3 and 54.4 due to the following reason: "It is Unreasonable: CPA's practices, especially the smaller ones are highly personal and relationship oriented. The clients have a high level of trust and loyalty to the CPA personally and vice versa. Any transition of the ownership is almost always done in the most gradual and discrete manner. The goal is to continue the services to clients without causing unnecessary

disturbance. Reaching out to all clients to request their approval to sell the practice is the same as notifying clients that it is time to move because the personal relationship that they have been depended upon will no longer be there. It is foreseeable that a good portion of the clientele will move to “their brother’s neighbor”. Every single CPA I know is against these proposals. I am deeply disappointed that California Society of CPA’s was not on board for the fight.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1, above. Regarding concerns about giving clients advance notice, the CBA incorporates by reference the response to Comment N-2, noting these proposed regulations protect the public by affording clients the opportunity to make an informed decision about the disposition of their records at the time of the sale, transfer, or discontinuance of a practice.

MM. Email received December 30, 2022, from Commenter 39

Comment MM-1

Summary of Comment:

Commenter is requesting to not move forward with regulations requiring notification to clients of a sale or transfer and the 90-day waiting period. The commenter states “considering we buy CPA practices based on revenue, the State is now creating scenarios for clients to become afraid and leave the practice,” noting this causes confusion among clients, creates unnecessary costs in maintaining consent statements, and reducing the price of the business. It is best to let the owners determine the best way to contact clients and transfer ownership of a business as owners know their clients best.

To illustrate the commenter’s concerns, the commenter states “I have purchased two CPA practices in the past and the number one thing that scares clients is change. The clients get used to working with a certain individual or group of individuals.”

Separately, the commenter states “With these new requirements (CCR, Title 16, Division 1, Article 9, Sections 54.3 and 54.4), you are forcing us to operate a business when we do not want to operate, creating unnecessary costs in maintaining consent statements, and you are reducing the price of the business which we worked hard to build up.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the responses to Comments B-1 and D-1, above. Regarding concerns about giving clients advance notice, the CBA incorporates by reference the response to Comment N-2, noting these proposed regulations protect the public by affording clients the opportunity to make an informed decision about the disposition of their records at the time of the sale, transfer, or discontinuance of a practice.

Regarding concerns of firm valuation, the CBA incorporates by reference the response to Comment I-2. Regarding concerns of costs caused by this rulemaking, the CBA incorporates the response to comment E-1.

Comment MM-2

Summary of Comment:

Commenter states these regulations are unnecessary and do not help the public, don't apply to TurboTax, other online software providers, non-CPA businesses that operate in the state, and non-CPA owners within a CPA practice, so why penalize CPAs? The commenter also suggests it would be better for the CBA to pursue legislative changes to give the CBA "authority to shutdown non-CPA businesses that compete in our industry."

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the responses to Comments B-1 and U-2, above. The suggested legislation is beyond the scope of the proposed regulations as it relates to non-CPA businesses.

NN. Email received January 2, 2023, from Commenter 40

Comment NN-1

Summary of Comment:

Commenter states that "there is a limit regarding the sale, transfer, or discontinuance of a licensee's practice because it includes the privacy of clients. So licensees and CBA

should be careful of the regulation. If the information of clients opens to many parties, it will be hard to keep the information confidential safely.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1, above. The proposed regulations involve only the selling, transferring, or discontinuing licensee, any successor, and the client. These proposed regulations protect the public by affording clients the opportunity to make an informed decision about the disposition of their records at the time of the sale, transfer, or discontinuance of a practice.

OO. Email received January 2, 2023, from Commenter 41

Comment OO-1

Summary of Comment:

Commenter states that when they sold their business in 2013, their notification documents were sent to every client, and they believe these documents should have covered the notification required by the State of California. Commenter states that these documents have been used many times in the past with no repercussions, and they did not have any negative replies within the 90-day period.

Attached to the comment were documents sent to every client during the sale in 2013, including a ‘Bill of Sale’ and a ‘Record Retention Policy of the Buyer’.

The ‘Bill of Sale’ the commenter provided indicates who the “Seller” is, and who the “Buyer” is, and states:

“BE IT KNOWN that Seller does hereby sell, transfer, convey and assign forever unto Buyer and its successors and assigns, all of Seller’s rights, title and interest in and to the assets referred to in Section 1 of the Agreement, located on, or used in connection with Seller’s business:

Provided, nevertheless, that Seller hereby warrants that it has good and sufficient title to said assets, that said assets are being sold free and clear of all liens, encumbrances, liabilities or adverse claims thereto, and that Seller warrants to Buyer good and marketable title to each and all assets and shall defend against and fully indemnify and save Buyer from any claims adverse thereto.”

The ‘Record Retention Policy of the Buyer’ the commenter provided states:

“The Buyer shall retain ownership of all original source documents and working papers generated by Seller for each client for a period of the later of six (6) years from the date of preparation or six (6) years from the tax return date of filing. As records surpass the six-year retention period, the records may be shredded under the supervision of one of the Buyer’s employees or appointed representatives. Confidentiality and privacy standards shall be strictly followed in accordance with the confidentiality requirements of the appropriate professional standards (e.g. AICPA, CSEA, NAEA or the like), applicable board of accountancy rules and regulations, and other applicable laws, rules and regulations including, but not limited to, California Civil Code Sec. 1798.85.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1. Further, as noted in the response to Comment H-1, above, the proposed regulations expand upon existing requirements regarding disclosure of confidential information, and provide additional guidelines in regard to safeguarding that information, in the interest of consumer protection.

PP. Email received January 2, 2023, from Commenter 42

Comment PP-1

Summary of Comment:

Commenter suggests the following edits (in **bold below**):

Section 54.3(a): “The licensee may not transfer any client records to the successor person until either the client’s consent is obtained, ~~or~~ the 90 days has lapsed without any objection **or notice** from the client, whichever is shorter.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

Commenter’s suggestion is already covered in proposed 16 CCR section 54.3(a), which specifies that “the client’s consent will be presumed if it does not notify the licensee that it objects within 90 days from the date of the written notice”. In instances where the licensee’s attempt to contact the client was successful, but the 90 days has lapsed and

the client has not responded to the notice, consent is presumed, and that client's records may be transferred to the successor person.

It is also unclear what is intended to be included in "notice" as suggested in these changes. The current options for clients receiving a notice in the circumstance of a sale, transfer, or discontinuance of a practice is to either consent, object, or do nothing. The only other response type relevant to the proposed regulations is a consent, which is covered in the existing text.

The CBA also incorporates by reference the response to Comments B-1.

Comment PP-2

Summary of Comment:

Commenter suggests the following edits (in **bold below**):

Section 54.3(d): "If the licensee is unable to contact a client, **or if the client does not provide a response**, that client's records shall not be transferred, and shall be retained by the licensee for a period of not less than four years from the date of sale or transfer of the licensee's practice, or if the client's records include audit documentation as defined in section 68.2, for the time period set by section 68.3, whichever is longer."

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

Proposed 16 CCR section 54.3(d) pertains only to instances in which the licensee's attempt to contact the client is unsuccessful (e.g., mail or email is returned to the licensee, indicating that the client never received the notice).

In instances where the licensee's attempt to contact the client was successful (i.e., the client received the notification), proposed 16 CCR section 54.3(a) specifies that "the client's consent will be presumed if it does not notify the licensee that it objects within 90 days from the date of the written notice".

Commenter's suggestion to add "**or if the client does not provide a response**" to proposed 16 CCR section 54.3(d) would substantially alter the meaning, and would imply that in any instance where the client does not respond, that client's records may not be transferred, which would contradict proposed 16 CCR section 54.3(a).

The CBA also incorporates by reference the response to Comments B-1.

QQ. Email received January 3, 2023, from Commenter 43

Comment QQ-1

Summary of Comment:

Commenter opposes this rulemaking, noting a series of challenges in the profession, including tax law changes, employee shortages, tax return due date stress, dealing with the IRS, and an uneducated public. The commenter objects to giving clients 90 days to object.

The commenter claims that the CBA is interrupting the flow of practice, and states the federal government has been doing the same with tax law over the past 3 years.

The commenter states that the laws and rules are fine the way they are currently written as far as the sale of a practice. Commenter is fine with rules on record-keeping, but asks the CBA not to change the “current transfer rules as far as the number of days are concerned,” and contends that existing practices such as clauses to readjust a purchase price are sufficient.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1. Further, as noted in the response to Comment H-1, above, the proposed regulations expand upon existing requirements regarding disclosure of confidential information, and provide additional guidelines in regard to safeguarding that information, in the interest of consumer protection.

The CBA incorporates by reference the response to Comment D-1, above.

Recognizing the commenter’s concerns about actions the commenter believes are being taken by the federal government, the CBA views public protection as its highest priority, as reflected by these proposed regulations.

Finally, a clause to readjust the valuation of a firm taking into account changes in receipts does not address the purpose of the proposed rulemaking. These proposed regulations protect the public by affording clients the opportunity to make an informed decision about the disposition of their records at the time of the sale, transfer, or discontinuance of a practice.

Comment QQ-2

Summary of Comment:

Commenter is completely against the proposed regulatory changes for section 54.3 and the “90 day rule”. Commenter states that in 90 days, what CPAs have worked 20, 30, or 40 years for may just vanish.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment D-1, above.

RR. Email received January 3, 2023, from Commenter 44

Comment RR-1

Summary of Comment:

Commenter states that for proposed 16 CCR sections 54.3(b) & (c) and 54.4(a), in reference to the language “shall return any client records”, it should include the phrase “not previously returned.” Commenter states that the proposed regulations would require the CPA to return the entire file, and that most, if not all of it was likely sent earlier. Commenter asks why they should they incur the cost to resend it, if it was already sent.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment R-1, above.

Comment RR-2

Summary of Comment:

Commenter states that section 54.3(g) with reference to: “include working papers” makes no sense as there could be notes the clients shouldn’t see (i.e., concern if client is reporting correctly, comments for staff that client should not see, things to watch out for, etc.) and this could open problems for the outgoing CPA.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment R-2, above.

Comment RR-3

Summary of Comment:

Commenter requests that the proposed regulations be adjusted, and states, “If you have been following tax practice sales, you are aware that the value of heavy tax-based firms is not very desirable, and many accountants are leaving the industry. If you adopt these proposed regulations, you will make them even less desirable than they are already.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1, above. On the issue of firm valuation, the CBA incorporates by reference the response to Comment I-2, above.

SS. Email received January 3, 2023, from Commenter 45

Comment SS-1

Summary of Comment:

Commenter is against the proposed regulation as it adds an unnecessary burden to any licensee that is selling their practice or client list. Time is a resource for most CPA and the language is adding time to a practice sale. Selling or purchasing a practice is already time consuming without adding more regulatory oversight and costs from those regulations.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the responses to Comments B-1, D-1, and E-1, above.

Comment SS-2

Summary of Comment:

Commenter does not see the value to the clients with respect to the proposed language. Many clients do not pay attention to non 'busy season' communication from their CPAs, that there will likely be little to no response to a letter, and that puts more burden on the transacting licensees.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1, above. Further, these proposed regulations establish minimum requirements. Licensees may make additional efforts beyond the minimum requirements to contact clients to obtain a response.

TT. Email received January 3, 2023, from Commenter 46

Comment TT-1

Summary of Comment:

Commenter asks the CBA to not impose “unneeded and unnecessary regulations,” stating “the CBA's proposal is heavily prejudiced in favor of the client and hugely impacts the licensee's ability to pass his/her practice on to a successor. For example, I purchased my current practice on 1-1-2001. My predecessor did notify all of his clients of the change in ownership. However, he was not subject to the 90 day hold period.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1. Further, as noted in the response to Comment H-1, above, the proposed regulations expand upon existing requirements regarding disclosure of confidential information, and provide additional guidelines in regard to safeguarding that information, in the interest of consumer protection.

Comment TT-2

Summary of Comment:

Commenter states “How would tax season have been navigated if he had to wait to obtain any objections? What that essentially does is limit the times during the year when ownership can transfer to between May through September. How unfair to those of us who have spent our careers in public accounting.”

Commenter states “The ninety day hold is an undue burden. Generally regulations are proposed and imposed because someone has not acted in their clients best interest or a client has complained. Please hold the perpetrators responsible instead of impacting all CPA's.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment D-1, above.

Comment TT-3

Summary of Comment:

Commenter states: “I have actually been involved in two practice purchases in my career. Both times, most clients voiced that if the predecessor CPA trusted the sale to the successor CPA, then the client was willing to trust that choice as well. In this age of regulation and mistrust, asking a client to grant permission to have files turned over to a successor generates questions and concerns that are unfounded in a field where ethics are already clear. Many years ago when I established a records retention policy in my office, I advised all clients of my plan to destroy files past a certain date. Only one client (out of over 300) even responded to my offer of providing access to those old files prior to destruction.”

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1. Further, as noted in the response to Comment H-1, above, the proposed regulations expand upon existing requirements regarding disclosure of confidential information, and provide additional guidelines in regard to safeguarding that information, in the interest of consumer protection.

Regarding concerns about giving clients advance notice, the CBA incorporates by reference the response to Comment N-2, noting these proposed regulations protect the public by affording clients the opportunity to make an informed decision about the disposition of their records at the time of the sale, transfer, or discontinuance of a practice.

UU. Email received January 3, 2023, from Commenter 47

Comment UU-1

Summary of Comment:

Commenter does not agree with the changes to regulations regarding the sale, transfer, or discontinuance of a licensee's practice.

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

The CBA incorporates by reference the response to Comment B-1, above.

II. Comments Received During the 15-Day Modified Text Comment Period

Below are the comments the CBA received regarding the proposed modified text during the 15-day public comment period, followed by the CBA's responses.

A. Email received September 25, 2023, from Commenter 1

Comment: "Based on a quick reading of the new proposed regulations, it would appear my previously submitted comments did not merit adjustment to the regulations. I will look forward to reading why they were ignored when the regulations are approved by the board. I am again submitting my comments of 12/14/22, and suggesting the board reconsider the regulations as currently proposed."

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

Comment is not specifically directed at the most recent modifications to the proposed regulations.

B. Email received September 29, 2023, from Commenter 2

Comment: "I disagree to the Proposed regulation section 54.3 and 54.4 in Title 16 of the CA Code of Regulations related to the SALE\TRANSFER\ OR DISCONT OF LICENSEE'S PRACTICE."

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

Comment is not specifically directed at the most recent modifications to the proposed regulations.

C. Email received October 2, 2023, from Commenter 3

Comment: "I offer the following: I'm a Georgia resident with CPA licenses in GA and CA. With your proposals would these proposals apply to me? I have no physical presence in CA, but do have clients who are residents of CA. Wouldn't I just have to stop my CA license before I sell, transfer or discontinue my business, to get out of complying with these regulations? Must I only notify CA clients? Or all clients? Or, is it even applicable, if I have no presence in the state?"

Response to Comment:

The CBA has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

Comment is not specifically directed at the most recent modifications to the proposed regulations.

Reports Required

The proposed amendments do not require licensees to submit a report.

Incorporation by Reference

There are no forms being incorporated by reference.

Fiscal Impact

The regulations do not result in a fiscal impact to the state.