

# CALIFORNIA ARCHITECTS BOARD

## FINAL STATEMENT OF REASONS

**Subject Matter of Proposed Regulations:** Filing of Applications

**Section(s) Affected:** Amend Article 2, Section 109 of California Code of Regulations (CCR)<sup>1</sup>, Title 16, Division 2.

### **Updated Information:**

The Board's Filing of Applications regulatory proposal was originally approved by the Board at its September 8, 2023, meeting. The Notice documents were submitted to the Office of Administrative Law (OAL) on December 22, 2023, and published on January 5, 2024.

The 45-day public comment period closed on February 21, 2024, and the Board received no comments.

During additional review of the language, the Board identified and corrected language for clarity and consistency and to address changes in law that have occurred since the rulemaking file was originally noticed as described further below. The Board approved modified text and noticing of additional documents and changes to forms incorporated by reference for an additional 15-day comment period at its meeting on June 6, 2024.

During final review, additional non-substantive clarifications were identified and required clarification. Specifically, Section 109(b)(3)(A) added language stating the submitted fees are non-refundable to account for the workload costs associated with the staff time taken to process the initial application. Also, the Initial Statement of Reasons contained a misstatement that the version number of the Employment Verification Form is being removed; however, no such change is being made.

### **Summary of Purpose and Rationale for Additional Changes**

The Board's Employment Verification Form 19C-12 is being redesigned and is considered new; therefore, the reference name needs to be identified as "New" rather than "Rev" to clarify the overhaul which will be reflected in the regulation text and on the form. Therefore, as part of the modified text and on the form itself, the title was revised to strike "REV. 5/2023" and replace it with "NEW 6/2024".

The Application for Eligibility Evaluation, Form 19-C-1 (rev. 3/2015), Test Application Form, 19C-11 (3/2006), the National Council of Architectural Registration Boards (NCARB) Intern Development Program (IDP) Guidelines dated July 2015, and the Canadian Architectural Licensing Authorities Internship in Architecture Program Guidelines dated January 2012, were struck in the originally proposed language as outdated, but the forms and guidelines documents themselves were not part of the

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<sup>1</sup> All CCR references are to title 16 unless otherwise noted.

noticed documents that were posted and made available on the Board’s website. These have been noticed to the public as part of the Board’s 15-day modified text notice and added to the file with a watermark indicating they are being repealed on each document or form.

The Board has also made other non-substantive changes to add the words “Space Force” to the description of the branches of the US Armed Forces in the Skillbridge expedite question, add a new statutory reference to BPC section 480 in the Note section of this section, and to correct grammar, punctuation, underline and strikeout and paragraph numbering where appropriate to correctly reflect changes to existing text.

As part of the modified text, the Board proposes to update other language as follows and for the following reasons:

- Under (b)(1) “Candidates shall pay all required fees and comply with all NCARB procedures required to establish a NCARB Record” is being added to clarify the candidate’s responsibility to create this record as part of the Board’s process for determining eligibility to take the Architect Registration Examination (ARE). This is a requirement of the examination administrator, which is the National Council of Architectural Registration Boards (NCARB) and candidates who fail to comply with all NCARB requirements to create that record, including paying all required fees and complying with NCARB procedures, are not eligible. Adding this additional text provides candidates with advance notice of this requirement to help avoid deficiencies in the application process.
- Under (b)(2) language “experience-based program” is being replaced with “Architectural Experience Program (AXP)” to specify the NCARB administered experience-based program as the Architectural Experience Program (AXP) to resolve a clarity issue. This will remove any potential ambiguity and confusion among applicants regarding what internship program candidates must comply with and which program is considered an “experience-based program”.
- Under (b)(3)(A) “subsection (a) or (b) of” and “as applicable unless waived per paragraph (6),” is being added. This is to more accurately describe what the specified “non-refundable fee” is, and provide a waiver should the candidate meet the requirements of Business and Professions Code (BPC) section 115.5, which requires the Board to waive the licensure application fee and the initial license fee for spouses or domestic partners of members of the US Armed Forces who are assigned to a duty station in California under official active duty military orders.
- Under (b)(3)(B)(i-v) the word “applicant” is being replaced with “candidate’s” for consistency. The term candidate is primarily used in this regulation and so this change is necessary to make these sub paragraphs consistent and avoid confusion by the users.
- Under (b)(3)(C)(i) “proof of completion of the AXP, which shall include” is being added to more accurately describe and give notice of what is required by the

Board to provide proof of completion of the required program (i.e., NCARB record transmitted from NCARB or verification of completion of the requirements from Canada's IAP).

- Under (b)(3)(C)(iii) the date for the Employment Verification Form, 19C-12, is being updated from the originally proposed revision date of 5/2023 to “New 6/2024” to reflect the new, rather than revised, form approved by the Board at its June 6, 2024, meeting.
- Under (b)(4) the word “applicant” is being replaced with “candidate’s” for consistency. The term candidate is primarily used in this regulation, so this change is necessary to make these sub-paragraphs consistent and avoid confusion by the users.
- Paragraph (b)(5) is added to address the military SkillBridge program as identified in BPC section 115.4(b). The Board is required to expedite the review of candidates in this program and language is being added to meet this requirement, which became effective on July 1, 2024, and operative on or after July 1, 2024, pursuant to Assembly Bill 883 (Stats. 2023, Ch. 348). A representative from the Department of Consumer Affairs consulted with representatives from the Department of Defense (DOD) in the development of these criteria and these revisions were made consistent with the Board’s understanding of those common requirements for showing approval of such enrollees in the DOD SkillBridge partner application process across all branches of the US Armed Forces. This amendment is necessary to ensure consistency in the implementation of this expedited review requirement and give adequate notice of these qualifying requirements to obtain expedited review per BPC section 115.4(b).
- Under (b)(6), (b)(6)(C), and (b)(7) the word “applicant” is being replaced with “candidate’s” for consistency. The term candidate is primarily used in this regulation, so this change is necessary to make these sub- paragraphs consistent and avoid confusion by the users.
- Under (b)(7) “The Board may assist such an applicant with the initial licensure process” is being removed from the proposed language in this subparagraph as unnecessary and ambiguous as to when such assistance “may” occur, and “For the purposes of this paragraph, “evidence” shall include the following:” is being added to avoid ambiguity over the required evidence needed to expedite applications for this category of candidate qualifying for the ARE examination. This proposed text will clearly indicate the documents required for candidates applying for an expedited processing due to an asylum, refugee, or special immigrant status pursuant to BPC section 135.4 as further explained below.
- Under (b)(7)(A-D) are being added to clearly specify the required documents and evidence. This will clearly indicate the documents required for candidates applying for an expedited processing due to an asylum status pursuant to BPC section 135.4. If the candidate answers “yes” to the question listed in (b)(7), the Board

requests they attach official documents commonly issued by federal agencies or the courts for the categories of individuals listed in Section 135.4 as evidence of their status as a refugee, asylee, or special immigrant visa holder, which includes:

- (A) Form I-94, arrival/departure record, with an admission class code such as “re” (refugee) or “ay” (asylee) or other information designating the person a refugee or asylee.
- (B) Special immigrant visa that includes the “si” or “sq.”
- (C) A permanent resident card (Form I-551), commonly known as a “green card,” with a category designation indicating that the person was admitted as a refugee or asylee.
- (D) An order from a court of competent jurisdiction or other documentary evidence that provides reasonable assurances to the Board that the applicant qualifies for expedited licensure per BPC section 135.4.

These documents are necessary to verify and ensure the applicant meets the statutory requirements for expediting the initial application process. Copies of official government documents will help ensure the accuracy of the information provided by the candidates to the Board.

- Under (b)(8) “eligibility as defined” is being replaced with “for failure to meet the requirements” to avoid confusion over the requirements contained in CCR section 116. CCR 116 does not contain a definition of eligibility, but rather specifies the eligibility requirements for candidates who are not licensed architects and who are not eligible for reciprocity. This change resolves that potential ambiguity and clarifies that the requirements of CCR Section 116 have not been met, rather than eligibility being defined.
- Under (g)(1) “unless waived per subsection (b), paragraph (6)” is being added to avoid confusion regarding whether the Board waives the original license fee in accordance with BPC section 115.5. Since the Board is required to waive the license fee, this amendment is necessary to clearly indicate the fee is required unless waived per the requirements of this prior section referring to the criteria the Board uses to expedite and waive fee requirements for spouses or domestic partners as specified in BPC section 115.5.
- Subsection (g)(2) is adding “Candidates who had applications expedited pursuant to subsection (b) paragraphs (4), (5), and (7) shall have the Application for Licensure expedited.” This clarifies that those candidates who have had their applications expedited previously, will also have their licensure application expedited automatically since meeting those criteria necessarily means that the Board will be expediting the remaining parts of the licensure process for these applicants in accordance with BPC sections 115.4, 115.5, and 135.7. This is

necessary to fully comply with the aforementioned statutes and provide advance notice to applicants of their eligibility for expedited review.

- Under (g)(4) and (5), the word “applicant” is being replaced with “candidate’s” for consistency. The term candidate is primarily used in this regulation, so this change is necessary to make these subparagraphs consistent and avoid confusion by the users.
- Under (g)(6) “A disciplinary question requiring the applicant disclose whether they have had a registration denied, suspended, revoked, or if the applicant has otherwise been disciplined by a public agency in any state or country. If yes, the applicant may attach a statement of explanation” is being replaced and expanded under subsection (g)(6)(A-B) to clarify discipline disclosure as follows:

“A disclosure regarding whether the candidate has, within the preceding seven years from the date of the application, had a license, permit, registration, or certification (“license”) that was formally disciplined by a licensing board in or outside of California.

(A) For the purposes of this paragraph, “disciplined” shall mean suspended, revoked, placed on probation, public reproof, reprimand or any other form of restriction placed upon any other license, registration, certification or permit that the candidate held or currently holds. A candidate shall not be required to disclose any discipline that was based upon a conviction that has been dismissed pursuant to 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 of the Penal Code or a comparable dismissal or expungement.

(B) If the candidate answers in the affirmative to the disclosure question in this paragraph, the candidate shall provide all of the following as part of the application:

(i) the type of disciplinary action taken (e.g., revocation, suspension, probation),

(ii) the effective date of the disciplinary action,

(iii) the license type,

(iv) the license number,

(v) the name and location of the licensing board,

(vi) an explanation of the violations found by the licensing board; and,

(vii) any statement or documents showing the candidate’s rehabilitation efforts or any mitigating information that the candidate would like the Board to consider; and,

(7) A statement signed under penalty of perjury of the laws of the State of California that the information provided on the application or any accompanying attachments provided with the application is true and correct.”

This clarification is necessary for the Board to be in compliance with BPC section 480. BPC section 480 (a)(2) limits the Board’s ability to request past disciplinary history to “the preceding seven years from the date of application based on professional misconduct that would have been cause for discipline before the board for which the present application is made...” BPC section 480(c) also limits the

Board’s ability to deny “on the basis of any conviction, or on the basis of the acts underlying the conviction, that has been dismissed pursuant to Section 1203.4, 1203.4a, 1203.41, 1203.42, or 1203.425 of the Penal Code, or a comparable dismissal or expungement”. As a result, the board has revised its discipline question to ensure that only relevant and necessary disclosures that may be used by the Board to deny an application are collected. Further, the question has been revised to request, when a candidate answers in the affirmative to the disclosure question in this paragraph that the candidate shall provide specified disclosures regarding “discipline” as defined, as part of the application for the reasons further explained below.

Rationale for definition for “disciplined”

To ensure applicants fully understand what “disciplined” means in responding to this question, and to provide a definition that includes the types of actions the Board is authorized to take under the Act and pursuant to the Administrative Procedure Act (see Gov. Code, § 11503), the definition for “disciplined” shall mean suspended, revoked, placed on probation, public reproof, reprimand or any other form of restriction placed upon any other license, registration, certification or permit that the applicant held or currently holds.

Rationale for additional documentation requirement for “yes” answers: To allow the Board to consider all circumstances surrounding a “yes” answer to any potentially actionable discipline, and to adequately evaluate any mitigating or rehabilitation evidence or apply substantial relationship criteria pursuant to CCR sections 110 and 110.1, the Board requests the following: “• (A) the type of disciplinary action taken (e.g., revocation, suspension, probation), • (B) the effective date of the disciplinary action, • (C) the license type, • (C) the license number, • (D) the name and location of the licensing board, and • (E) an explanation of the violations found by the licensing board.”

Rationale for submission of rehabilitation or mitigation information: In addition, the candidate may submit a statement or documents showing the candidate’s rehabilitation efforts or any mitigating information that the applicant would like the Board to consider. This will enable the Board to evaluate all applicable information regarding fitness for licensure consistent with its rehabilitation criteria as set forth in CCR section 110.1.

Finally, the Board adds the words “of the laws of the State of California” and “or any accompanying attachments provided with the application” to its existing proposed declaration requirement to complete the application in accordance with the requirements of Code of Civil Procedure section 2015.5. This is necessary to ensure admissibility in any potential criminal case for perjury that the Board may wish to pursue when applicable.

Certification under penalty of perjury helps to ensure that the documentation contains truthful, factual representations made in good faith. (See e.g., *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [judicial explanation for the use of certifications].) The Board relies upon applicants’ self-reported information in

evaluating applications and qualifications for examination and licensure as required by the Board's laws. In addition, the certification under penalty of perjury helps ensure the reliability of the statements to the Board (since certifying under penalty of perjury can have a deterrent effect on those who may be considering not providing true, accurate or complete information), and provides the Board with the option of seeking sanctions and referring the matter to law enforcement in the event that such information is not true, complete or accurate. ["The oath or declaration must be in such form that criminal sanctions of perjury might apply where material facts so declared to be true, are in fact not true or are not known to be true." *In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1223 [holding modified by *Laborde v. Aronson* (2001) 92 Cal.App.4th 459.]

- Under (g)(7) "laws of the State of California" and "or any accompanying attachments provided with the application" is being added for clarity. This is clarifying the requirements are held to California and also apply to any attachments submitted with an application.
- Under Reference citation added BPC 480 to clarify the ability of the Board to require disciplinary documentation.

The Board reviewed the modified language and approved it at the Board's June 6, 2024, meeting. The Second Modified Text showing all of the above modifications was sent out for public comment from June 11, 2024, to June 26, 2024. During this 15-day public comment period, the Board received no comments, and the Board adopted the text as modified at its June 6, 2024, meeting.

### **Local Mandate:**

A local mandate is not imposed on local agencies or school districts.

### **Small Business Impact:**

The Board currently regulates approximately 21,000 licensed architects and 10,000 applicants who are in the process of meeting examination and licensure requirements. The Board has determined that the proposed regulations will not affect small businesses. Although small businesses owned by candidates of the Board may be impacted, any costs of compliance are a result of current law.

### **Consideration of Alternatives:**

No public comments were received during the public comment period and the Board did not identify any alternatives at its meetings, therefore, the Board has determined that no reasonable alternative to the regulatory proposal considered by the Board or otherwise identified and brought to its attention would be either more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons, and equally effective in achieving the

purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

**Objections or Concerns Received During 45-Day Public Comment Period and Board Responses:**

No comments were received regarding the proposed action during the 45-day public comment period. Therefore, no comments were considered by the Board and no changes to the text were deemed necessary.

**Objections or Concerns Received During 15-Day Public Comment Period and Board Responses:**

No comments were received regarding the proposed action during the 15-day public comment period. Therefore, no comments were considered by the Board and no changes to the text were deemed necessary.

**Incorporation by Reference – 1 CCR 20**

The incorporation by reference method was used for the Employment Verification Form, 19C-12 (New 6/2024) in this proposal because it would be impractical and cumbersome to publish this form in the California Code of Regulations (CCR). The form is intended to assist applicants with complying with the Board's numerous regulatory requirements in the simplest way possible. The form was developed to establish consistency in Board implementation and facilitate greater compliance with these statutory and regulatory requirements by the regulated community. If the form was incorporated into the CCR, it would increase the size and complexity of Division 2 and may cause confusion for the affected applicants. The aforementioned form was made available to the public and was posted on the Board's website.