

DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
INITIAL STATEMENT OF REASONS
FOR REGULATIONS UNDER DIGITAL FINANCIAL ASSETS LAW
PRO 02-23

As required by section 11346.2 of the Government Code, the Commissioner of the California Department of Financial Protection and Innovation (“Commissioner”) sets forth below the reasons for the following proposed amendment to section 80.3002 of Title 10 of the California Code of Regulations and proposed adoption of sections 2045-2059, as subchapter 16 of Title 10 of the California Code of Regulations. The Department of Financial Protection and Innovation (“Department”) administers the Digital Financial Assets Law (“DFAL”), the Money Transmission Act (“MTA”), and related regulations.

The DFAL establishes a licensing and regulatory framework, administered by the Department, for digital financial asset business activity. The DFAL requires that companies that provide certain digital financial asset-related products and services to California residents must apply for a license from the Department by July 1, 2026.

The MTA prohibits companies from engaging in money transmission in California unless they are licensed by the Department or are otherwise exempt.

PROBLEM STATEMENT & SPECIFIC PURPOSE OF REGULATIONS [Government Code Section 11346.2, Subdivision (b)(1)]

The proposed rulemaking would adopt license application forms, requirements to obtain a license to engage in digital financial asset business activity, and other requirements related to licensure. The Legislature enacted the DFAL to require persons engaging in digital financial asset business activity to be licensed and to authorize the Department to license, regulate, investigate, and examine these persons.¹ The DFAL applies to persons performing digital financial asset business activity with or on behalf of California residents.²

The DFAL licensing requirement prohibits a person from engaging in digital financial asset business activity, or holding itself out as being able to engage in such activity, with or on behalf of a California resident, unless the person is licensed, has submitted a licensing application on or before July 1, 2026 and is awaiting approval or denial of the application, or is exempt from licensure.³ While the statute provides guidelines as to what an applicant must include in its application, this proposed rulemaking would adopt the license application and related requirements to provide additional clarity about the application process for persons to follow to apply for a license. It would also provide additional information that will be required in the application, pursuant to Financial Code section 3203, subdivision (a)(2)(X). Further, it amends

¹ Assem. Bill No. 39 (Chap.792, Stats. 2023.); Sen. Bill No. 401 (Chap. 871, Stats. 2023.).

² Fin. Code, § 3103, subd. (a).

³ Fin. Code, § 3201.

the Money Transmission Act regulations to provide that DFAL licensees conducting money transmission of legal tender in the normal course of digital financial asset activity are exempt from the Money Transmission Act.

This proposed rulemaking action:

- Clarifies the applicability of the Money Transmission Act to those who conduct money transmission of legal tender that is incidental to their digital financial asset business activities;
- Provides the process and requirements to apply for a DFAL license;
- Requires applicants to apply for a license and maintain the license through the Nationwide Multistate Licensing System & Registry (“NMLS”) and identify the California-specific documents, fees, and other information that must be filed with NMLS, as well as the timeframes for filing such information;
- Specifies the non-refundable application fee owed by applicants;
- Specifies the information required to enable the Commissioner to investigate applicants in order to determine whether each applicant meets the standards for licensure established in the DFAL; and
- Provides the processes to challenge information entered in NMLS by the Commissioner, to submit and maintain a surety bond, to surrender a license, and to change information in the license application, including changing information related to digital financial asset transaction kiosks or other business locations or making changes to key personnel.

PROPOSED AMENDED RULES

Section 80.3002. Exemptions.

The Money Transmission Act prohibits a person from engaging in the business of money transmission, which is defined to include receiving money for transmission, unless the person is licensed or exempt from licensure. The Department proposes amending section 80.3002 to exempt from the MTA licensure requirements any transmission of legal tender that occurs in, is associated with, or is related to, the normal, typical, or customary performance of digital financial asset business activity. This transmission activity will already be regulated to some extent pursuant to the DFAL and therefore it is not necessary to regulate the same activity under a second, largely duplicative regulatory scheme.

PROPOSED RULES

Section 2045. Definitions.

The Department proposes adopting this section to define certain terms used in the proposed regulations. The definitions are necessary to help applicants and licensees understand the process and requirements to apply for a DFAL license, which may help avoid misunderstandings

and unnecessary delays in issuing licenses. This section also clarifies that the terms in the proposed rules have the same definitions as in the DFAL.

Subdivision (a) defines “Commissioner” to mean the Commissioner of Financial Protection and Innovation, and subdivision (d) defines “Digital Financial Assets Law” to mean California Financial Code section 3101 et seq. The DFAL requires individuals and businesses to obtain a license to engage in digital financial asset business activities.⁴ Some applicants may be unfamiliar with California regulatory governance and therefore the definitions in subdivisions (a) and (d) are necessary to identify the California regulator of this industry and the law authorizing the adoption of these regulations.

Subdivision (b) is necessary to clarify the definition of the term “control” when used in reference to a person. This definition is consistent with the definitions provided in the DFAL⁵ and with the control definitions provided in other laws that the Department implements.⁶

Subdivision (c) defines “DFPI Form 2” to explain precisely which form certain individuals must complete in order to comply with the proposed rules. DFPI Form 2 was developed by the Department and is incorporated by reference in its entirety in the proposed regulations. DFPI Form 2 is attached to the proposed regulations as Exhibit 1.

Subdivision (g) defines “NMLS” to mean the Nationwide Multistate Licensing System & Registry and subdivision (h) defines “UAAR” to mean the Uniform Authorized Agent Reporting system developed by NMLS. Subdivision (e) defines NMLS form “MU1” to mean the form used to provide information on the company (or sole proprietor), and subdivision (f) defines NMLS form “MU2” to mean the form used to provide information on individuals who own or control the company. Applicants must use these form MU1 and MU2 to file information to apply for and maintain a license under the DFAL. The definitions in these subdivisions are necessary to help applicants understand the forms they must complete and file through NMLS to apply for a license. Forms MU1 and MU2 are incorporated by reference in their entirety and attached to the proposed regulations as Exhibits 2 and 3.

Section 2046. Electronic Filings.

The Department proposes to adopt in this section rules for electronic filings. Subdivision (a) designates NMLS to receive applications and other filings, and to collect fees from applicants and licensees on behalf of the Commissioner. The DFAL provides that the Commissioner is authorized to use NMLS to collect and maintain records and process fees related to the licensing of DFAL applicants.⁷ NMLS is an electronic system of record-keeping used by state regulators nationwide to license non-depository financial services providers, including virtual currency exchange and trading services. The Commissioner has determined that using NMLS to

⁴ Fin. Code, § 3201.

⁵ Fin. Code, §§ 3102 & 3309.

⁶ See, for example, Fin. Code, § 1250, subd. (b) & § 2003, subd. (h).

⁷ Fin. Code, § 3217.

process applications and other filings electronically, instead of by paper, is convenient for applicants, licensees, and the Department, and that NMLS is the most efficient and effective way to license a person under the DFAL. Subdivision (a) is necessary to inform applicants and licensees that the Commissioner will require license applications to be filed and maintained through NMLS.

Subdivision (b) specifies that all documents and information must be filed through NMLS, including applications, amendments, supporting documents, and surety bonds. The DFAL provides that the Commissioner may require applications to be made through NMLS and may require an applicant for a license to make some or all of the filings with the Commissioner through NMLS.⁸ The Commissioner will require all filings to be made through NMLS unless indicated otherwise. Subdivision (b) is necessary to inform applicants that they must file license applications and all other information electronically through NMLS.

Subdivision (b)(1) provides how an applicant, licensee, or authorized officer of the applicant or licensee must sign any filing made through NMLS that requires a signature. It also clarifies that filings electronically signed constitute irrefutable evidence of legal signature. Subdivision (b)(1) is necessary to notify applicants and licensees how to electronically sign their filings in the NMLS digital environment.

Subdivision (b)(2) provides that documents submitted through NMLS are not considered filed with the Commissioner until the document is transmitted from NMLS to the Commissioner. The DFAL provides that the Commissioner may issue a license when the application is complete and the applicant has satisfied the requirements.⁹ Subdivision (b)(2) is necessary to prevent any misunderstandings with applicants concerning when the application has been filed.

Subdivision (b)(3) requires the applicant to submit a surety bond using NMLS's electronic surety bond function. The surety bond is required pursuant to Financial Code section 3207, and using the electronic surety bond function is a quick, efficient, and cost-effective way for applicants to satisfy this statutory obligation. This requirement is necessary to clarify how an applicant can demonstrate compliance with Financial Code section 3207.

Subdivision (b)(4) requires applicants to authorize NMLS to obtain credit reports. The DFAL authorizes the Commissioner to investigate an applicant's executive officers, responsible individuals, and control persons to determine whether each has the requisite competence, experience, good character, and general fitness.¹⁰ By requiring credit reports of these parties, the Commissioner will be able to better understand the respective party's competence and general fitness. This section is necessary to inform applicants that they are required to authorize NMLS to obtain their credit reports, which will be used in the Commissioner's investigation.

⁸ Fin. Code, § 3217.

⁹ Fin. Code, § 3203, subd. (g).

¹⁰ Fin. Code, § 3203, subd. (b)(1)(C).

Subdivision (b)(5) provides that any documents that cannot be filed through NMLS must be filed directly with the Commissioner. NMLS is a uniform electronic record-keeping system used by regulators nationwide and the NMLS filing protocols are not specific to California regulatory requirements. It is possible that NMLS may not have the capability to accept and transmit to the Commissioner some types of documents or information. Subdivision (b)(4) is necessary to require applicants and licensees to still file those documents with the Commissioner if the documents cannot be filed through NMLS.

Section 2047. Language.

This section requires each document filed with the Commissioner to be written in English. This will allow the Department to review the documents without the additional time and cost of hiring a translator. However, recognizing that some documents relied upon in the investigative background report may have already been written in another language, the Department has determined that permitting applicants to provide an English translation of the investigative background report, rather than requiring the original report to be written in English, is reasonable, provided that the translator's certification is also provided to ensure that the translation is a true and accurate translation of the report. This benefits applicants by reducing costs to prepare the reports without adversely impacting the Department's ability to investigate the individuals.

Section 2048. License Application.

Subdivision (a)

The Department proposes adopting in this section the application form and other requirements to apply for a DFAL license. Subdivision (a) requires the license application to be filed on Form MU1 through NMLS, and specifies that the application must include all exhibits and supporting documents related to the application and subsequent amendments.

The Department has decided to use NMLS for applications because NMLS is a secure, efficient, quick, and cost-effective system. It is a system with which the Department has experience. NMLS is used by the Department for many of the laws and programs that the Department administers,¹¹ as well as by most other state-level financial regulatory agencies nationwide. Launched in January 2008, NMLS was created by the Conference of State Bank Supervisors ("CSBS") and the American Association of Residential Mortgage Regulators. It is owned and operated by the State Regulatory Registry LLC ("SRR"), a wholly owned subsidiary of CSBS.¹²

¹¹ See, e.g., the California Residential Mortgage Lending Act (Fin. Code, § 50000 et seq.) and implementing regulations (Cal. Code Regs, tit. 10, § 1950.003 et seq.); see also the California Financing Law (Fin. Code, § 22000 et seq.) and implementing regulations (Cal. Code Regs., tit. 10, § 1422.4 et seq.)

¹² "About NMLS <<https://mortgage.nationwidelicensingsystem.org/about/Pages/default.aspx>> (as of August 31, 2018).

NMLS allows applicants to reuse documents already submitted to another state agency, which reduces costs and complexity. The state and federal privacy notices set forth in section 2052, which are required by law, will be a part of every application in order to clarify applicable law to applicants.

Form MU1 is the uniform license application filing form used by most state regulators when licensing persons in financial service industries. Form MU1 provides information about the person applying for a license. The information requested from the applicant in Form MU1 is necessary for the Department to determine whether an applicant meets the requirements for licensure under the DFAL.

- Section 1 of Form MU1 requires the applicant to identify the specific business activities in which it wishes to engage that require a DFAL license. This information is necessary to identify the type of license that the applicant is seeking because Form MU1 is used for several other laws.
- Section 2 requires basic identifying information, including the applicant's name, address, IRS Employer Identification Number (EIN), phone and fax numbers, and email and physical addresses. This information is necessary because the Department must know which companies are applying for licensure, must be able to contact the company, and must be able to conduct its statutorily mandated investigation of the applicant.
- Section 3 requires the applicant to list other trade names (also referred to as "doing business as" names or "DBAs" or "fictitious business names") it has used and/or wishes to use. This will allow the Department to confirm whether the applicant has complied with the legal requirement to use trade names in California. The applicant must also upload a copy of a filed and date-stamped document that has been filed with a county clerk, which evidences compliance with trade name usage law in California. This will also allow the Department to assess whether the applicant has complied with applicable laws and will allow the Department and the public to better understand the products and services being offered in California.
- Section 4 requires the company to list its registered or resident agent. This is necessary so that the Department has a way to communicate with the applicant within the state.
- Section 5 requires the company to list its web addresses so the Department can learn about the applicant's products and services, and how the applicant represents them to the public. This information is necessary to help the Department understand the various ways the applicant is conducting its business.
- Section 6 requires the company to list a primary company contact and a primary consumer complaint (regulator) contact to receive all compliance and licensing information, communications and mailings, and be responsible for disseminating it to

others within the company as necessary. It is necessary to designate two employees as the points of contact for the Department so the Department will know immediately who to contact within the company to obtain required information. This information will streamline communications between the Department and the company, saving both time and money.

- In Section 7, the Department will require the applicant to list additional contacts. Again, the intent of designating employees to communicate with the Department is increased efficiency.
- Section 8 requires the applicant to specify custodian(s) of records and storage location(s). This is necessary because the DFAL allows the Department to conduct regulatory examinations of licensees, which may include reviewing a licensee's accounts, books, correspondence, memoranda, papers, and other records.¹³ The Department must know where records are located and who to contact to access these records in order to conduct more efficient examinations.
- Section 9 requires applicants to specify any approvals or designations the company holds including, but not limited to, being registered with the federal Financial Crimes Enforcement Network ("FinCEN"). This information is required, if applicable, pursuant to Financial Code section 3203, subdivision (a)(2)(R).
- Section 10 requires an applicant to provide bank account information. This information is required pursuant to Financial Code section 3203, subdivision (a)(2)(H).
- Section 11 requires applicants to specify their legal structure (e.g., corporation, partnership, limited liability company, etc.) and status. This information is necessary because the Department must know how the applicant is organized, and if the applicant is in compliance with applicable laws. Compliance with state business registration requirements specified in the California Corporations Code, and concomitant good standing with the Secretary of State, is a factor demonstrating good character and general fitness, which are requirements for licensure.¹⁴ If the applicant is formed under the laws of another state, the Department must know whether it went to the effort to follow the corporate laws of applicant's home state or state of formation. If formed under another state's law, entities must apply for and be qualified to do business in California by the California Secretary of State.¹⁵ Compliance with required business entity registration laws in the applicant's state of formation and California demonstrates that the applicant has made efforts to comply with the applicable legal requirements. The public will also be better protected, as they will be able to locate and obtain information from government agencies about the duly organized entity.

¹³ Fin. Code, § 3301.

¹⁴ Fin. Code, § 3203, subd. (b).

¹⁵ Corp. Code, § 2105.

- Section 12 requires applicants to list affiliates and subsidiaries. This information will allow the Department to research entities under common ownership with the applicant or controlled by the applicant. This research will help the Department understand the applicant's corporate structure and how its operations may be impacted by those affiliates and subsidiaries.
- Section 13 requires applicants to identify all financial institutions, if any, which control the applicant. This information is necessary to determine whether control entities are in good standing with their regulator(s), demonstrating good character and general fitness, and qualification for licensure.¹⁶
- Section 14 requires the applicant, control persons, and those controlled by the applicant, to list the criminal, civil, regulatory, and financial history of the applicant and any affiliates controlling, or controlled by, the applicant. This information is required by the DFAL to be provided in the application¹⁷ and is necessary to determine whether the applicant and control entities demonstrate good character and general fitness.¹⁸
- Sections 15 and 16 require applicants to list information identifying direct and indirect owners, and executive officers. This information is required by the DFAL to be provided in the application¹⁹ and will allow the Department to determine which individuals must complete and submit NMLS Form MU2, an Individual Control Form. Information about control individuals is necessary for the Department to approve or disapprove individuals who may impact company operations and to make determinations about competence and general fitness.²⁰
- Section 17 is required to be completed by responsible individuals²¹ pursuant to Financial Code section 3203, subdivision (a)(2)(B).
- The execution section requires an officer or control person to represent that the information is current, true and complete. This attestation is necessary to ensure the Department can rely upon the information the applicant provides in the form.

Subdivisions (a)(1)(A) and (B) identify the information applicants must provide on Form MU1 and file through NMLS in order to use a fictitious business name in California. This includes providing all fictitious business names the applicant uses, plans to use, or has used in the past. The applicant must provide a copy of the filed Fictitious Business Name Statement for each fictitious business name it uses or plans to use. These provisions are necessary to prevent the

¹⁶ Fin. Code, § 3203, subd. (b).

¹⁷ Fin. Code, § 3203, subds. (a)(2)(E), (a)(2)(F), & (a)(2)(G),

¹⁸ Fin. Code, § 3203, subd. (b).

¹⁹ Fin. Code, § 3203, subd. (a)(2)(B).

²⁰ Fin. Code, § 3203, subd. (b).

²¹ Fin. Code, § 3102, subd. (s).

Department and the public from being misled about a company's identity and to ensure that fictitious business names comply with California requirements. Additionally, this is consistent with the Financial Code section 3203, subdivision (a)(2)(A), requirement that an applicant provide any fictitious business name the applicant uses or plans to use.

Subdivision (a)(2) requires the applicant to upload into NMLS a business plan. The DFAL requires an applicant to submit a business plan as a part of its application.²² This information will allow the Department to understand the specific digital financial asset business activities the applicant wishes to engage in, how and to whom those activities will be marketed, how much consumers will be charged, and how the applicant's business will be internally structured and operated. This information is necessary for the Department to fully understand how the applicant intends to operate the business in order to complete the investigation required pursuant to Financial Code section 3203, subdivision (b), and determine whether to approve, conditionally approve, or deny the application pursuant to Financial Code section 3203, subdivision (c).

Subdivision (a)(3) requires that if an applicant is a covered exchange that is listing or offering a digital financial asset that it can exchange on behalf of a resident, it must complete a certification attesting to certain statutory required findings. Financial Code section 3505 requires such certification be made on a form provided by the Department. This subdivision specifies that form of certification.

Subdivision (a)(4) requires the applicant to upload into NMLS a description of each transaction or service to be conducted under a DFAL license. This subdivision is necessary for the Department to have a complete understanding of the applicant's proposed business activities.

Subdivision (a)(5) requires applicants to upload into NMLS a certificate of good standing, as required under the DFAL.²³ Applicants also are required to upload additional documents, based on their particular type of business structure (domestic or foreign corporation, general partnership, limited liability company, or limited partnership), evidencing that the entity is properly formed under the laws of the state of formation, and that the entity is authorized to transact business in California. This allows the Commissioner to know that the applicant's entities are validly formed, operating, authorized under their respective formation documents to engage in digital financial asset business activity, and compliant with the law.

Subdivision (a)(6) requires the applicant to upload into NMLS an organizational chart identifying all parent companies, subsidiaries, and control persons. This is necessary so the Commissioner can determine the responsible persons and control persons that the Commissioner must investigate pursuant to Financial Code section 3203, subdivision (b), and to understand how the applicant's business is structured, which will help the Department understand whether the

²² Fin. Code, § 3203, subd. (a)(2)(C).

²³ Fin. Code, § 3203, subd. (a)(2)(N).

applicant can meet licensing standards, including whether the applicant has a reasonable promise of success.²⁴

Subdivision (a)(7) requires the applicant to upload into NMLS its financial statements, which are required pursuant to Financial Code section 3203, subdivision (a)(2)(J). This section is necessary to clarify which specific financial statements must be included and, if audited, must be prepared by a Certified Public Accountant in accordance with Generally Accepted Accounting Principles. This ensures that the financial statements will be prepared in a manner that can be understood by the Department.

Subdivision (a)(8) requires the applicant to file with NMLS a chart identifying, by individual name and title, the applicant's directors, officer, and managers. This chart is required to allow the Department to understand the organization of the business, which will assist the Department in making its determination, pursuant to Financial Code section 3203, subdivision (b), whether the applicant meets licensing standards, including whether it has a reasonable promise of success in engaging in digital financial business activity and whether the executive officers and responsible individuals included in the chart have the proper competence, experience, good character, and general fitness to lead in their respective areas.

Subdivision (a)(9) requires the applicant to upload in NMLS the disclosures²⁵ and policies or procedures²⁶ required pursuant to the DFAL. This subdivision is required to allow the Department to determine whether the applicant will comply with the DFAL by adopting required disclosures, policies, and procedures.²⁷

Subdivision (a)(10)(A) requires an applicant to provide, through NMLS on Form MU2, the names, personal history, and experience of executive officers and control persons identified on Form MU1 as "Direct Owners and Executive Officers," "Indirect Owners," as applicable, and responsible persons identified on Form MU1 as "Qualifying Individuals."

- Sections 1 through 5 of Form MU2 request basic information about the individual, including identifying and contact information, citizenship, other names used, residential and employment history, and other companies with which the applicant is engaged. This information is necessary for the Commissioner to investigate applicants, executive officers, responsible individuals, and control persons of the applicant. This information allows the Commissioner to assess the individual's competence, experience, good character, and general fitness.
- Section 6 of Form MU2 requires the individual to answer questions about the individual's criminal, civil, regulatory, and financial history, and whether the individual

²⁴ Fin. Code, § 3203, subd. (b)(1)(E).

²⁵ Fin. Code, §§ 3501, subd. (b), & 3905.

²⁶ Fin. Code, §§ 3701 & 3702.

²⁷ Fin. Code, § 3203, subd. (b)(1)(F).

was ever terminated from employment based on inappropriate behavior. This information is critical for the Commissioner to determine whether the individual has the competence, experience, good character, and general fitness required for an applicant's licensure.²⁸

- Section 7 of Form MU2 requires the individual to consent to fingerprinting. Fingerprinting is statutorily required and necessary for the Commissioner to conduct a criminal history search.²⁹
- Section 8 of Form MU2 requires individuals to authorize a credit report. Financial Code section 3203, subdivision (b)(1)(C), authorizes the Commissioner to investigate each executive officer, responsible individual, and person that has control for purposes of determining that each has competence, experience, good character, and general fitness. By being able to use information specified in the credit reports of these parties, the Commissioner will be able to better understand the respective party's competence and general fitness. This section is necessary to inform applicants that the Commissioner will use information in the credit reports to investigate them and that they are required to authorize NMLS to obtain credit reports.
- Section 9 of Form MU2 requires an individual with authority to bind the company applicant to list the relationship of the MU2 applicant to the company. The signatory takes responsibility for the individual's actions on behalf of the company. This includes representations that the individual completing the MU2 will be familiar with the DFAL and implementing rules; that the individual will be qualified for their position; that the authorized signatory has verified the accuracy and completeness of the MU2 information; that the company will appropriately supervise the individual completing the MU2; and that the individual merits approval. This information is necessary for the Commissioner to determine whether the applicant meets the standards for licensure, including competence, experience, good character, and general fitness.³⁰
- Section 10 of Form MU2 is the individual's attestation under penalty of perjury. This attestation is necessary as a certification the information is true and complete, and the Department may rely on it as such. It further certifies that the individual will update the information as needed to keep such information current. The attestation specifically authorizes the Department to conduct a statutorily required investigation into the individual's qualification for licensure. The individual also states that they will comply with the DFAL. The Department must be able to rely on the information provided by the individual, to determine whether to approve the individual's application for licensure.

²⁸ Fin. Code, § 3203, subd. (b)(1)(C).

²⁹ Fin. Code, § 3219.

³⁰ Fin. Code, § 3203 subd. (b)(1)(C).

Subdivision (a)(10)(B) requires individuals who complete a Form MU2, and do not meet certain residency requirements, to provide an investigative background report. The investigative report is necessary because the Department is required to conduct investigations into these parties,³¹ but any state and federal criminal history information available to the Department would relate to domestic activity only, not activity outside the United States. The investigatory report requirement ensures that the Department has the information necessary to fulfill its statutory obligations.

Subdivision (a)(10)(C) is necessary to clarify that the fees related to fingerprinting, the criminal history background check, and investigative background report are to be paid by the applicant.

Subdivision (a)(11)(A) requires individuals for whom a Form MU2 will be filed to authorize NMLS to obtain credit reports. The DFAL authorizes the Commissioner to investigate each executive officer, responsible individual, and person that has control for purposes of determining that each has competence, experience, good character, and general fitness.³² By requiring credit reports of these parties, the Commissioner will be able to use the information contained in the reports to better understand the respective party's competence and general fitness. This section is necessary to inform applicants that the Commissioner will use information in the credit reports to investigate them and that they are required to authorize NMLS to obtain credit reports.

Subdivision (a)(11)(B) requires individuals who complete a Form MU2 to consent to fingerprinting and to subsequently deliver fingerprints to facilitate a criminal history check, as required pursuant to Financial Code section 3219.

Subdivision (a)(11)(C) requires individuals who are executive officers or responsible individuals to upload a resume or curriculum vitae. This section is necessary to clarify how an individual must comply with the employment history requirements of Financial Code section 3203, subdivision (a)(2)(T).

Subdivision (a)(11)(D) requires individuals who are directors, officers, or control persons to upload personal financial statements on DFPI Form MU2. This information is needed to determine whether each individual has the requisite competence and general fitness.³³

Subdivision (a)(12) requires an applicant to report through the NMLS UAAR the locations of all digital financial asset transaction kiosks and other business locations that the applicant owns, operates, or manages in California. This is necessary to provide instructions regarding how the applicant must comply with the requirements of Financial Code sections 3211, subdivision (b)(9), and 3906, subdivision (a). The applicant must report information including the company name and employer identification number, physical and mailing address, "doing business as"

³¹ Fin. Code, § 3203 subd. (b)(1)(C).

³² Id.

³³ Fin. Code, § 3203, subd. (b)(1)(C).

information, contact information, and beginning and end operating dates. This information is necessary to understand all places where a digital financial transaction kiosk is being used or business transacted and who the Department should contact in the event of a concern or issue.

Subdivision (a)(13) specifies who may attest to the filing of an application through NMLS and provides that the attestation constitutes an agreement to comply with the DFAL. Subdivision (a)(13) is necessary to ensure the application is filed by an individual with the authority to do so on behalf of the applicant and that the applicant can be held accountable for the truth and accuracy of the information provided through the application process.

Subdivision (b)

Subdivision (b) sets at \$7,500 the nonrefundable application fee to “cover the reasonable costs of application review” required under Financial Code section 3203, subdivision (a)(3). The \$7,500 fee will cover a review of the application to ensure that all the required elements under subdivision (a)(3) have been submitted. This review is separate from the reasonable costs of the Department’s investigation under subdivision (b).³⁴

The Department has determined that it will need 62.5 hours of examiner staff time to conduct an application review under subdivision (a)(3). At a rate of \$120 per hour for a Department examiner,³⁵ the review will cost the Department \$7,500 in personnel costs.

To determine the minimum number of hours required for the initial application review, the Department considered the tasks that an examiner will need to perform as part of this review.

The Department has determined that an examiner will need to review 23 categories of documents submitted by a license applicant through NMLS and assess whether those 23 categories of documents contain the information required by the statute.³⁶ Among other things, an examiner will have to review a license applicant’s financial statements and related information to determine whether the license applicant has sufficient capital and liquidity.³⁷ An examiner will also have to review at least 9 separate policies and programs of a license applicant, such as an applicant’s anti-money laundering program, which often contains over 50 pages, to ensure that the applicant has submitted the required plans called for by Financial Code section 302, subdivision (a)(2)(U). An examiner will further need to verify various other elements of the application to ensure the application is complete.

Based on its experience administering many other financial services licensing laws, the Department concluded that these tasks will require 62.5 hours of an examiner’s time.

³⁴ See Fin. Code, § 3203, subd. (e)

³⁵ The \$120 hourly rate covers \$100 per hour for direct salary and benefits for the Department’s financial examiners and \$20 per hour for overhead. See Crowe LLP, Fiscal and Cost Allocation Plan Analysis (Nov. 18, 2024) <<https://dfpi.ca.gov/wp-content/uploads/2024/11/Fiscal-and-CAP-Analysis-Report.pdf>> (as of January 13, 2025).

³⁶ Fin. Code, § 3203, subds. (a)(2)(A)–(X).

³⁷ Fin. Code, § 3203, subd. (a)(2)(J).

Subdivision (c)

Subdivision (c) requires applicants to file an amendment through NMLS for any change to the information provided in the license application and, if the license has not yet been issued, to file the new information within 15 calendar days of the change. Subdivision (c) clarifies the statutory requirement to provide reports of changes in the application.³⁸ It is necessary to ensure the information on file with the Department is accurate and to provide the Department adequate time to review the amended information before issuing the license.

Subdivision (d)

Subdivision (d) clarifies that, during the application review, the Commissioner may identify deficiencies in an application and request information to address any such deficiencies.³⁹ This additional information will aid the Department in making its determination whether to approve, conditionally approve, or deny an application. It also confirms that the applicant will have an opportunity to provide any required information, rather than facing a denial based on lack of completeness. This subdivision also clarifies that an application will be considered abandoned if the applicant does not provide the information required to correct the deficiency within 60 days of a written notification requesting such information, unless otherwise given an extension of time. This is necessary to provide clarity about the status of the application.

Section 2049. Consent to Service of Process.

The Department proposes to adopt this section to require applicants to appoint the Commissioner as their agent for service of process to receive legal service of noncriminal judicial and administrative proceedings against the applicant.

Subsection (a) requires applicants to appoint the Commissioner by completing the Appointment of Commissioner as Agent for Service of Process form. Subsection (b) requires the form to be signed by an individual authorized by the applicant, and subsection (c) requires the applicant to file the completed and signed form through NMLS. Subsections (a), (b), and (c) are necessary to ensure that service of process can be accomplished and the appointment is made by an individual with authority to do so on behalf of the applicant, prevent licensees from avoiding service of process by requiring them to appoint the Commissioner as their agent for service of process, and clarify that the form is required as part of the application and must be filed through NMLS. Requiring applicants to sign, date, and provide the signer's title on the form, and the signer to be authorized to sign, is necessary to identify the individual who is appointing the Commissioner on behalf of the applicant and to ensure the appointment will be binding on the applicant.

³⁸ Fin. Code, § 3307.

Section 2050. Applications Submitted Before July 1, 2026.

The DFAL authorizes a person to engage in digital financial asset business activity, or hold itself out as being able to engage in digital financial asset business activity if they submitted an application on or before July 1, 2026, and is awaiting approval or denial of that application.⁴⁰ The Department proposes to adopt this section to clarify that such application must be a “complete application” as that term is defined at Financial Code section 3203, subdivision (g).

The Department has determined that this is the only interpretation of Financial Code section 3201, subdivision (b), that is consistent with the totality of the DFAL’s application process. The Department can approve or deny an application only “[a]fter completing the investigation required by [Financial Code section 3203,] subdivision (b).” And the Department can conduct its investigation only “[o]n receipt of a completed application,” per Financial Code section 3203, subdivision (b)(1). Thus, an applicant would be “awaiting approval or denial of that application” only if the application submitted on or before July 1, 2026 was a “completed application.”

This rule clarifies that an applicant simply submit a partial or incomplete application in order to temporarily do business with California residents pending the Department’s review. This clarification is necessary for the protection of California residents.

Section 2051. Information Regarding Individuals Who Are Not Residents of the United States.

The Department proposes to adopt in this section the requirements for applicants to investigate individuals who reside outside the United States. Subdivisions (a)(1) through (a)(5) require an applicant to use a search firm to investigate individuals who live outside the United States, or who have not resided in the United States at any time in the last 10 years; and to file an investigative background report, , which must be written in the English language, with the Commissioner through NMLS. If the report is in another language, the report must be translated to English and include a translator’s certificate. This section also requires the search firm to demonstrate it is licensed, has sufficient resources to perform the work, and is not affiliated with the applicant or individual who is the subject of the search. It also clarifies that the investigative background report is required in addition to fingerprinting of the individual and that the cost of the investigation must be paid by the applicant or individual.

The investigative report is necessary because the Department is required to conduct investigations into these parties,⁴¹ but any state and federal criminal history information available to the Department would relate to domestic activity only, not activity outside the United States. Requiring the search firm to be licensed, have sufficient resources to conduct the investigation, and not be affiliated with the applicant or individual is necessary to help ensure the search firm is competent, independent, and unbiased, and the report contains the information required and is complete. The proposed rule requires the report to be written in

⁴⁰ Fin. Code, § 3201, subd. (b).

⁴¹ Fin. Code, § 3201, subd. (b).

English, or if the report is in another language, the report must be translated to English and include a translator's certificate. This will enable Department staff to review the report in deciding whether to approve or deny the application.

The DFAL provides that the Commissioner must investigate applicants and specified individuals to determine the applicant's eligibility for licensure.⁴² The Federal Bureau of Investigation's background check provides information only on criminal history in the United States. Investigating individuals who reside outside the United States is difficult and costly for the Commissioner and would require increasing the fees on all applicants to cover the cost. Subdivision (a) is necessary to enable the Commissioner to cost-effectively investigate individuals who live outside the U.S. or have resided outside the United States at any time in the last ten years without increasing the fees for all applicants.

Subdivision (b) specifies the information that must be included in the investigative report, including credit history and civil and criminal actions involving the individual. Subdivision (b) is necessary for the Department to receive comparable information on these individuals to enable the Department to determine whether the applicant is eligible for licensure. The information required in subdivision (b)(1) through (b)(7) is essentially the same information the Department obtains and/or uses to review or corroborate the personal and professional information provided by individuals residing in the United States. The information in the investigative background report is necessary to ensure that the Department's review of applicants outside the United States is as thorough as its review of applicants in the United States.

Subdivision (c) requires the report to specify the scope of the search and the independence of the search firm, and to provide the firm's contact information. Subdivision (c) is necessary to enable the Department to determine whether the report can be relied on for investigative purposes and, if necessary, to contact the search firm to follow up on the information in the report.

Subdivision (d) permits applicants under certain circumstances to submit a previous report that was prepared for another licensing agency within 12 months of the filing a DFAL application. If the applicant or individual elects to file a previous report with the Commissioner, the subdivision requires the applicant or individual to file a statement with the report indicating that there are no material changes to the report. The subdivision specifies the information to include in the statement, including the name of the individual and applicant, and requires the statement to be dated and signed by the individual or applicant. These statement requirements are necessary to help ensure the information the Department receives concerning the individual is accurate and current.

The subdivision's requirements that the applicant obtain permission from the search firm or other licensing agency to use their report and that the report to be no older than 12 months are necessary to ensure the information in the report is current and the search firm or licensing

⁴² Fin. Code, § 3203, subd. (b).

agency is aware of how their report is being used. Subdivision (d) is necessary to avoid costly duplication of work and applicants incurring costs when unnecessary.

Section 2052. Notices Included with Applications.

The Department proposes to adopt its information practices and privacy notices in this section. The California Information Practices Act of 1977⁴³ and the Federal Privacy Act of 1974⁴⁴ require the Department, when requesting personal information, including social security numbers, to notify the individuals whether disclosure of the social security number is voluntary or mandatory, the statutory authority for requesting social security numbers, and the purpose for which the social security numbers will be used.

The Department's purpose for collecting social security numbers from individuals under the DFAL is to investigate applicants, obtain prior disciplinary and criminal history, determine whether entities and individuals are conducting themselves in accordance with applicable law, and determine whether to issue a license to an applicant. Among other things, the notices identify foreseeable disclosures of the information, which include to NMLS, law enforcement and regulatory agencies, and provide information about the Department's information storage location and right to access the information. The information required in subdivisions (a) through (j) is required by law under the California Information Practices Act of 1977 and the Federal Privacy Act of 1974.

Adopting the notices in the proposed rulemaking is necessary to ensure that all applicants receive the required notices, which may assist them in understanding whether they are required to disclose social security numbers and how the Department will maintain and use their social security number. Subdivisions (a) through (j) are necessary to comply with the California Information Practices Act of 1977 and the Federal Privacy Act of 1974.

Section 2053. Challenge Process for Information Entered into NMLS.

The Department proposes to adopt in this section the process for applicants and licensees to challenge information in NMLS. The DFAL requires the Commissioner to report violations of the law, enforcement actions, and other relevant information to NMLS and to establish a process through which applicants and licensees may challenge the information entered into NMLS by the Commissioner.⁴⁵ Subdivision (a) of the proposed regulation requires applicants and licensees to submit a written request to the Department, and subdivision (b) specifies the information that must be included in the request. Subdivision (c) requires the Commissioner to investigate the request. If the Commissioner finds a correction is warranted, subdivision (d) requires the Commissioner to request NMLS correct the incorrect information. If the Commissioner finds a correction is not warranted, subdivision (e) requires the Commissioner to

⁴³ Civ. Code, § 1798.17.

⁴⁴ 5 U.S.C. § 552a.

⁴⁵ Fin. Code, § 3217.

deny in writing that the information is incorrect. Subdivisions (a) through (e) are necessary to provide a clear and fair process for applicants and licensees to seek to correct information in NMLS. The regulation does this by providing how and to whom to make the request, specifying the information that must be provided to enable the Department to identify the applicant or licensee in NMLS and the disputed information, and requiring a resolution by requiring the Commissioner to either request NMLS to correct the information or notify the applicant or licensee that the information was not incorrect. Subdivisions (f) through (h) provide the applicant's or licensee's right to request an administrative hearing if the applicant or licensee disagrees with the Department's decision. If the applicant or licensee prevails, the regulations require the Commissioner, within 30 calendar days of the notice of finding that the information is incorrect, to request NMLS to correct the information. Subdivisions (f) through (h) are necessary to help ensure that applicants and licensees will be treated fairly and in accordance with due process when challenging the Commissioner's reporting of information in NMLS, and to timely address any inaccurate information in the applicant's or licensee's records.

Section 2054. Designated Email Address.

The Department proposes to adopt this section to inform applicants that they must establish a designated email address for purposes of receiving communications and documents, including assessment notices, from the Commissioner. Financial Code section 331.50 requires licensees to notify the Commissioner prior to changing the email address and to provide the new email address, and it allows the Commissioner to charge a fine of up to \$50 per day, not to exceed a total of \$1,000, on a licensee that fails to notify the Commissioner before changing its email address or fails to provide the new email address. The proposed rule is necessary to notify applicants of this licensing requirement, which will ensure they receive Department communications and help prevent them from violating the law by failing to provide a designated email address. The proposed rule also clarifies the Department may notify licensees by emailing assessment notices to the licensee's designated email address. The Department's authority to provide the notification by email instead of postal mail was unclear under another law the Department administers. The proposed rule is necessary to clarify any ambiguity concerning the Department's authority to provide assessment notices via email to the designated email address.

Section 2055. Notice of Changes.

The Department proposes to adopt this section to inform licensees how to report changes to the information in the license application. The DFAL requires licensees to notify the Commissioner in writing of any change to the information provided in the license application not later than 15 days after the occurrence of the event that results in the information becoming inaccurate or incomplete.⁴⁶ Subdivision (a) informs licensees that they are required to file any changes to the information in the license application and subdivision (b) specifies that the changes must be filed through NMLS on Forms MU1, MU2, and through the UAAR

⁴⁶ Fin. Code, § 3307.

system, as applicable, or directly to the Commissioner if the change cannot be filed through NLMS, and any fees must be paid by licensees. Subdivision (c) provides that changes must be filed within 15 calendar days of the change. This is necessary to ensure the Department's information concerning the licensee remains current. It also clarifies that the 15-day requirement in the DFAL is 15 calendar days.

Subdivision (d) provide the requirements for using a fictitious business name, including obtaining the Department's prior approval and filing a copy of the Fictitious Business Name Statement, with the "filed" stamp from the county clerk's office through NMLS. This is necessary for the Department to be able to identify how a licensee is conducting its digital financial asset business activities and to be able to effectively investigate complaints in which the person submitting the complaint knows only the fictitious business name, and not the legal name, of the licensee.

Requiring licensees in subdivision (e) to provide the specified information in the notice to the Commissioner is necessary to ensure oversight of activities at licensed locations. The Department must have current information in order to be able to carry out its oversight obligations, including examining the business and any office of the licensee.⁴⁷

Section 2056. Officers, Directors, Partners, and Other Persons: Maintenance of Current List with Commissioner: Information Required.

The Department proposes to adopt this section to require licensees to keep the Commissioner informed of the identity of all key personnel. Subdivision (a) notifies licensees that they must maintain on file with NMLS a current list of executive officers, control persons, and responsible persons named in the license application, and subdivision (b) provides that any change related to these individuals must be provided on Forms MU1 and MU2 within 15 calendar days of the change, and any fees for filing the changed information must be paid by the licensee. Subdivisions (a) and (b) are necessary to provide the Department with accurate information on the identity of individuals responsible for the licensee's business operations, which will enable the Department to promptly investigate the individuals and prevent bad actors from conducting digital financial asset business activity in California.

Section 2057. New Registration or Change in Location of Digital Financial Asset Transaction Kiosk; Quarterly Reports.

The DFAL requires operators of digital financial asset transaction kiosks to report any changes in the location of such digital financial asset transaction kiosks within 30 calendar days.⁴⁸ This section is necessary to inform the licensee that the appropriate way to notify the Department of such changes is to use the UAAR. This regulation also requires licensees to report changes in the location of other business locations to ensure that the Department is aware of all places

⁴⁷ See Fin. Code, § 3301, subd. (a).

⁴⁸ Fin. Code, § 3906, subd. (b).

that the licensee is conducting business. It also clarifies that the 30-day requirement in the DFAL is 30 calendar days.

This section also requires a licensee to provide a quarterly report of all digital financial asset transaction kiosks, even if no changes have occurred. This is necessary to ensure that the list of digital financial asset transaction kiosks posted on the Department's website, pursuant to Financial Code section 3906, subdivision (c), is complete and accurate.

Section 2058. Surety Bond.

The Department proposes to adopt this section to provide the requirements for submitting and maintaining a surety bond with the Commissioner.⁴⁹ Subdivisions (a) and (b) are necessary to state that all surety bonds, and matters related to surety bonds, shall be processed through NMLS and its electronic surety bond function. This information provides clarity and certainty to servicers, and eliminates misunderstandings.

The regulations specify in subdivision (b) that the surety bond shall be in the form of the "electronic surety bond form," titled "SURETY BOND, DIGITAL FINANCIAL ASSETS LAW LICENSEE BOND," set forth in title 11, section 31.30 of the California Code of Regulations. This is necessary to inform applicants and the regulated public about the surety bond form which bond companies retained by applicants and licensees must use to obtain a license.

Requiring applicants to apply for licensure through NMLS and submit uniform forms provides applicants, licensees and the Department with a quick, cost effective, secure and efficient mechanism to become licensed in California.

Subdivision (d) requires 30 days' advance notice to the Commissioner of prospective bond cancellation. This is necessary so that the Department can monitor the servicer to ensure that it replaces the cancelled bond on or before the cancellation date in compliance with statute.

Subdivision (e) requires that the company issuing the bond provide notice to the Commissioner within 10 days of service of any action against the bond. This is necessary to allow the Department to monitor the status of the claim, and immediately, in the event of payment of a claim, to ensure that the bond amount is restored to the legally required amount.

Section 2059. Surrender of License.

The Department proposes to adopt this section to provide the procedure for surrendering a license. Subdivision (a) requires licensees to apply to surrender their license through NMLS by filing Form MU1 and MU2 as applicable. Subdivision (a) is necessary because the Commissioner has designated NMLS to manage all filings related to licenses. Subdivision (b) requires licensees to file a plan directly with the Commissioner for the Commissioner's approval and requires the

⁴⁹ Fin. Code, § 3207.

plan to include, among other things, a plan for closing out the digital financial asset business and the time frame for closing or transferring the business to another company. Subdivision (b) is necessary to ensure the orderly closing of the business, protect residents against the mishandling of files, and enable the Department to ensure any company taking over the business is licensed. This subdivision also clarifies when a surrender is deemed effective.

NON-DUPLICATION STANDARD [Title 1, California Code of Regulations, Section 12, Subdivision (b)(1)]

The proposed regulations duplicate state statutes which are cited as authority or reference for the proposed regulations. The duplication is necessary to satisfy the clarity standard of Government Code section 11349.1, subdivision (a)(3). Specifically, the rules in sections 2045, 2052, and 2058 include language which repeats or rephrases in whole or in part state statutes for the purpose of helping licensees understand the rules or the Department's authority to adopt the rules.

BENEFITS ANTICIPATED FROM REGULATORY ACTION [Government Code Section 11346.2, Subdivision (b)(1)]

Nonmonetary benefits to licensees are expected to include: clarifying the process and requirements for applying for a license through NMLS by providing instructions on California-specific application requirements; ensuring that applicants and licensees are treated fairly by providing the process to challenge the Commissioner's reporting of information in NMLS; requiring applicants to investigate and pay for the costs of investigating associated individuals who do not reside in the United States, which helps keep the fees and Department costs to administer the licensing program reasonable for all applicants; providing regulatory certainty when applying for a license to prevent licensees from inadvertently violating the DFAL; promoting fairness and equity by ensuring all persons engaged in digital financial asset business activity are licensed and regulated under the DFAL (unless otherwise exempt); and providing the opportunity to participate in adopting balanced regulations.

The regulatory action increases transparency in government and encourages public participation in adopting balanced regulations through compliance with California's administrative rulemaking requirements.

POTENTIAL FOR ADVERSE ECONOMIC IMPACT ON BUSINESS AND INDIVIDUALS [Government Code Section 11346.3, Subdivision (a)]

The proposed regulatory action does not have the potential for significant adverse economic impact on individuals or business, including the ability to compete with businesses in other states. Rather, these rules, which implement the licensing requirement in Financial Code section 3203, would have moderate aggregate costs of \$11,775,208 in the first full year and would not deter digital financial asset businesses from operating in California.

ECONOMIC IMPACT ASSESSMENT [Government Code Section 11346.3, Subdivision (b)]

The Creation or Elimination of Jobs Within the State.

The proposed regulations will not significantly impact the creation or elimination of jobs in California. The regulations do not incentivize job creation; rather, they set forth the procedures and requirements for digital financial asset businesses to apply for a license in California. Net employment impacts may vary based on firm behavior, including hiring of new compliance staff, investing in new technology, and offsetting cost reductions in both staff and other capital spending.

The Creation of New Businesses or the Elimination of Existing Businesses Within the State.

The proposed regulations will neither create new businesses nor eliminate existing businesses in California. These rules, which implement the licensing requirement in Financial Code section 3203, would have moderate aggregate costs of \$11,775,208 in the first full year and would not burden businesses to the extent of eliminating them.

The Expansion of Businesses Currently Doing Business Within the State.

The proposed regulations will not result in the expansion of businesses currently doing business within the state. The licensing procedures and requirements in the proposed rules do not incentivize the expansion of business.

The Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety and the State's Environment.

There is no significant incremental benefit to California residents due to the proposed regulations beyond what is already provided for by existing statutes, including Financial Code section 3203, subdivision (a)(2). The regulatory proposal will not benefit worker safety or California's environment.

Finding Regarding Reports [Government Code section 11346.3, subd. (d).]

The Commissioner finds it necessary for the health, safety, or welfare of the people of the state that the reporting required by this rulemaking action apply to businesses.

TECHNICAL, THEORETICAL AND/OR EMPIRICAL STUDIES, REPORTS OR DOCUMENTS
[Government Code Section 11346.2, Subdivision (b)(3)]

The Commissioner relied on the following documents in proposing the adoption of the proposed regulations under the DFAL:

- Economic Impact Analysis prepared by Berkeley Economic Advising and Research, LLC (“Background for Completing Form 399 Standardized Regulatory Impact Assessment, Notes on the Threshold Assessment, January 2025”)
- Analysis by TRM Labs
- Database of money services businesses (MSB) registered with the Financial Crimes Enforcement Network (FinCEN) <available for download at <https://www.fincen.gov/msb-state-selector>>.
- “The Emerging Crypto Industry: Global Market Size and Geographical Distribution,” Technical Report, K33. July 2023.
- Fiscal and Cost Allocation Plan Analysis prepared by Crowe LLP (Nov. 18, 2024) <available at <https://dfpi.ca.gov/wp-content/uploads/2024/11/Fiscal-and-CAP-Analysis-Report.pdf> (as of January 13, 2025)>.
- Budget Change Proposal for Digital Financial Asset Law (AB 39) <available at https://bcp.dof.ca.gov/2425/FY2425_ORG1701_BCP7479.pdf>.

The documents are available and on file with the Department. The Commissioner did not rely on any other technical, theoretical, or empirical study, report, or other similar document in proposing this regulatory action.

REASONABLE ALTERNATIVES AND REASONS FOR REJECTING THOSE ALTERNATIVES

[Government Code Section 11346.2, Subdivision (b)(4)(A)]

1. The Department considered providing applicants the option to apply for a license by paper filing. However, requiring applications to be filed electronically in NMLS is more cost effective and efficient.
2. The Department considered charging \$20,000 for the application fee required under Financial Code 3203, subdivision (a)(3). The \$20,000 fee could include the technology costs associated with the review, as well as additional expenses and costs. After assessing the licensure structure and engaging with stakeholders the Department decided to charge the lower application fee of \$7,500 for the initial application review.
3. The Department considered potentially charging \$5,000 for the application fee required under Financial Code 3203, subdivision (a)(3). A \$5,000 application fee would mirror the amount the Department charges for a money transmitter license under the California Money Transmission Act (“MTA”),⁵⁰ as well as the amount the New York Department of Financial Services (“DFS”) charges for its virtual currency “BitLicense.”⁵¹ However, unlike the MTA license or the New York BitLicense, the DFAL explicitly requires the Department to recoup the reasonable costs of review in its application fee.⁵² The Department

⁵⁰ See Fin Code § 2000 et seq.

⁵¹ See N.Y. Code Rules & Regs., tit. 23, pt. 200 et seq.

⁵² “The application *shall be* accompanied by a nonrefundable fee in the amount determined by the department to cover *the reasonable costs of application review.*” Fin. Code 3203, subd. (a)(3) (italics added).

expects the reasonable costs of review for a DFAL application to be at least \$7,500.⁵³ Thus, a \$5000 fee would not meet the requirements of the statute.

The MTA license and the New York DFS BitLicense have other differences from the DFAL license.

A DFAL license is different from an MTA license because, in addition to covering money transmission (facilitating the transfer of funds between parties), the DFAL license also covers exchanging and storing digital financial assets and engaging in digital financial asset administration. Further, the review of traditional money transmission applications will not include review of cybersecurity and other elements that are critically important to address the risks specific to digital financial asset businesses.

A DFAL license is different from a New York DFS BitLicense in several respects. Notably, DFS BitLicensees frequently have to pay for a separate DFS money transmitter license application, which has a fee of \$3,000, in addition to the \$5,000 BitLicense fee.⁵⁴ The Department will not be collecting a separate MTA fee for most DFAL applicants. Under the Department's proposed rules, the DFAL program will be conducting that aspect of application reviews itself—the DFAL program will not be relying on the money transmitter program. Hence, a higher application fee would be expected. Further, DFS set the fee for the BitLicense in 2015, so 10 years have passed since DFS decided on that amount.

4. The Department considered charging a lower application fee for small business applicants, but the Department determined that the actual cost of review under section 3203, subdivision (a), is roughly the same for all applicants, regardless of applicant size. Thus, it would not be appropriate to charge a lower fee for small business applicants.
5. The Department considered requiring preapproval of the use of trade names/fictitious business names. However, based on stakeholder feedback, the Department determined this would be too disruptive to licensees.
6. The Department considered requiring those applying for a conditional license pursuant to Financial Code section 3205 to provide evidence of such license, including a letter of good standing or similar document. However, based on stakeholder feedback, the Department determined this requirement would be unduly burdensome on both the applicant and the New York Department of Financial Services, and the information could otherwise be obtained online.

⁵³ See discussion under proposed section 2048, subdivision (b), above.

⁵⁴ See New York State Department of Financial Services, Fee Schedule for Depository Institutions <https://www.dfs.ny.gov/apps_and_licensing/application_fee_schedule> (as of January 28, 2025.).

REASONABLE ALTERNATIVES THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESSES AND REASONS FOR REJECTING THOSE ALTERNATIVES
[Government Code Section 11346.2, Subdivision (b)(4)(B)]

The Department considered the reasonable alternatives discussed directly above in conjunction with the requirements of Government Code Section 11346.2, subdivision (b)(4)(A).

Of these reasonable alternatives, Alternatives 1, 3, and 4 might lessen the impact on small businesses. The Department rejected those alternatives for the reasons discussed in the section above regarding Government Code Section 11346.2, subdivision (b)(4)(A).

FACTS, EVIDENCE, DOCUMENTS, TESTIMONY OR OTHER EVIDENCE RELIED ON BY AGENCY
[Government Code Section 11346.2, Subdivision (b)(5)(A)]

- Economic Impact Analysis prepared by Berkeley Economic Advising and Research, LLC (“Notes on the Threshold Assessment, November 2024”)
- Analysis by TRM Labs
- Database of money services businesses (MSB) registered with the Financial Crimes Enforcement Network (FinCEN) <available for download at <https://www.fincen.gov/msb-state-selector>>.
- “The Emerging Crypto Industry: Global Market Size and Geographical Distribution,” Technical Report, K33. July 2023.
- Fiscal and Cost Allocation Plan Analysis prepared by Crowe LLP (Nov. 18, 2024) <available at <https://dfpi.ca.gov/wp-content/uploads/2024/11/Fiscal-and-CAP-Analysis-Report.pdf> (as of January 13, 2025)>.
- Budget Change Proposal for Digital Financial Asset Law (AB 39) <available at https://bcp.dof.ca.gov/2425/FY2425_ORG1701_BCP7479.pdf>.
- Transcript of Department’s January 8, 2024 informal listening session associated with the Department’s November 20, 2023 “Invitation for Comments on Proposed Application-Related Rulemaking Under the Digital Financial Assets Law”

The documents are available and on file with the Department. The Department also relied upon the following letters from stakeholders submitted in response to the Department’s informal invitation for comments on implementation of the DFAL issued on November 20, 2023:⁵⁵

- Americans for Financial Reform
- Andreessen Horowitz
- Bitcoin Depot
- Chainalysis
- Chamber of Progress
- Circle Internet Financial

⁵⁵ All comments available at: <https://dfpi.ca.gov/regulated-industries/digital-financial-assets/comments-on-pro-02-23-digital-financial-assets-law/>.

- Coinbase
- Consumer Federation of CA
- Crypto Council for Innovation
- Electronic Transactions Association
- Kathleen Oriente
- Kraken
- Ripple
- Sean Donahoe
- sFOX
- T.Grayson from L.Reidenbach
- Tavarus Blackmon Art
- The California Blockchain Advocacy Coalition

The Department also relied upon the following letters from stakeholders submitted in response to the Department's informal invitation for comments on implementation of the DFAL issued on October 2, 2024:⁵⁶

- a16z Crypto
- Bitcoin Depot
- Blockchain Advocacy Coalition
- Circle Internet Financial, LLP
- Coinbase
- Coincafe
- Crypto Council for Innovation
- Digital Asset Investment Management
- Digital Sovereignty Alliance
- Kraken
- Sungrown Developments

The documents are available and on file with the Department.

⁵⁶ All comments available at: <https://dfpi.ca.gov/rules-enforcement/laws-and-regulations/digital-financial-assets-law-regulations-opinions-releases/comments-on-pro-02-23-second-invitation/>.