

TITLE 10. CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION

Notice published April 4, 2025

NOTICE OF PROPOSED RULEMAKING

The Commissioner of the Department of Financial Protection and Innovation (Department) proposes to amend the regulations listed below after considering all comments, objections, and recommendations regarding the proposed action.

PUBLIC HEARING

The Department has not scheduled a public hearing on this proposed action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department, addressed as follows:

Regular Mail

Department of Financial Protection and Innovation
Attn: Diana Pha, Regulations Coordinator, Legal Division
651 Bannon Street, Ste. 300
Sacramento, CA 95811

Electronic Mail: regulations@dfpi.ca.gov

Comments may be submitted through May 19, 2025.

AUTHORITY

Sections 334, 2011, 3203, 3207, 3215, 3217, and 3413, Financial Code.

REFERENCE

Sections 331.5, 2011, 3102, 3201, 3203, 3205, 3207, 3217, 3219, 3307, 3409, 3413, 3501, 3603, 3701, 3702, 3905, and 3906, Financial Code; Sections 494.5, 17900, 17910, 17913, 17915, 17916, and 17926, Business and Professions Code; Sections 1798.17 and 1798.24, Civil Code; Section 995.320, Code of Civil Procedure; Section 17520, Family Code; Sections 11019.9 and 11523, Government Code; and 5 U.S.C. section 552a.

INFORMATIVE DIGEST

Policy Statement Overview and Specific Benefits Anticipated from the Regulatory Action

The objective of the proposed regulations is to implement the provisions of the Digital Financial Assets Law as efficiently and effectively as possible, by:

- Explaining that a person incidentally conducting money transmission of legal tender in the normal course of digital financial asset activity is exempt from the requirements of the Money Transmission Act;
- Explaining, in easily understandable detail, the process and requirements for applying for a license as a covered person;
- Requiring applicants and licensees to notify the Department of any subsequent change to information in applications; and
- Explaining how a licensee can surrender its DFAL license.

The proposed regulatory action establishes a structure for the Department to evaluate an applicant and be notified of changes to an applicant's or licensee's location or licensing status.

The benefits anticipated from this regulatory action include protective benefits for consumers and transparency in the application process for covered persons, which will improve the Department's regulatory oversight of the digital financial asset industry.

The proposed rulemaking is expected to benefit California's economy by facilitating a process by which covered persons can become licensed and provide Californians a safe, regulated opportunity to participate in digital financial asset business activity.

Summary of Existing Laws and Regulations and Effect of Proposed Action

Digital Financial Assets Law

On October 13, 2023, Governor Gavin Newsom signed Assembly Bill 39 and Senate Bill 401, which together created the Digital Financial Assets Law (DFAL). Later, on September 29, 2024, Governor Newsom signed AB 1934 which extended the date of licensure under DFAL from July 1, 2025 to July 1, 2026.

The DFAL prohibits, on or after July 1, 2026, a person from engaging in digital financial asset business activity, or holding itself out as being able to engage in digital financial asset business activity, with or on behalf of a resident, unless the person is licensed with the Department of Financial Protection and Innovation (DFPI), has submitted a license application on or before July 1, 2026 and is awaiting approval or denial of that application, or is exempt from licensure.

Financial Code sections 3203 and 3307 specify the information that must be included in an application, the investigation the Department must conduct of the applicant and related parties, and requirements for a licensee in the event of a material change information. The proposed regulations clarify how an application should be submitted, the items required in the application, and how an applicant can inform the Department of material changes to information contained in its application.

Financial Code section 3207 states that a licensee is required to maintain a surety bond. The proposed regulations clarify this requirement, including how the licensee can provide evidence of such bond.

Financial Code sections 3217 and 3219 permit the Department to use the Nationwide Multistate Licensing System and Registry (NMLS) to collect and maintain records and process transaction fees or other fees. The proposed regulations clarify that applicants and licensees are required to submit records and fees through NMLS.

Financial Code section 3906 requires digital financial asset transaction kiosks operators to provide location information of such kiosks and to provide updates in the event of any changes. The proposed regulations clarify how to submit that information.

Money Transmission Act

Effective January 1, 2014, the California Legislature enacted AB 2209, which included numerous substantive and technical amendments to the Money Transmission Act (MTA) (Financial Code section 2000 et seq.). The MTA prohibits a person from engaging in the business of money transmission in California unless the person is licensed under the MTA, or the person is exempt from licensure. The proposed regulations clarify a person is exempt from MTA licensure for money transmission of legal tender incidental to the normal course of digital financial asset activity.

Existing Federal Regulation or Statute

The Department has determined that these proposed regulations are not inconsistent or incompatible with existing federal regulation or statute.

Existing State Regulations

The Department has determined that these proposed regulations are not inconsistent or incompatible with existing state regulations. No existing state regulations pertain specifically to the implementation of the Digital Financial Assets Law.

Forms Incorporated by Reference

The following forms are incorporated by reference:

- NMLS Company Form, Version 14.0, dated March 10, 2025;
- NMLS Individual Form, Version 1, dated May 2024; and
- “Personal Financial Statement for the Confidential Use of the Commissioner of Financial Protection and Innovation,” Version Rev. 03-25

DISCLOSURES REGARDING THE PROPOSED ACTION

The Department has made the following initial determinations:

Mandate on local agencies and school districts: none.

Cost or savings to any state agency: none.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630: none.

Other nondiscretionary cost or savings imposed on local agencies: none.

Cost or savings in federal funding to the state: none.

Cost or impacts on a representative private person or business: \$8,190.18 for the first full year, and \$150 per year thereafter.

Significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: none.

Significant effect on housing costs: none.

Results of the Economic Impact Analysis/Assessment:

The Department has determined that:

- The proposed action will not create new jobs or eliminate existing jobs within the state;
- The proposed action will not create new businesses or eliminate existing businesses within this state;
- The proposed action will not have a negative impact on the expansion of businesses currently doing business within California;

- As stated above, the benefits to the health and welfare of California residents include protection for consumers and transparency in the application process, economic opportunities, and improvement in the Department's oversight of the digital financial asset industry. No benefits or adverse impacts to worker safety or to the state's environment are anticipated from this regulatory action.

Business Reporting Requirement

The Department finds that it is necessary for the health, safety, or welfare of the people of California that the reporting requirements in these regulations apply to businesses.

Effect on Small Business

Entities engaging in digital financial business activity are excluded from the Government Code's definition of a "small business," as provided in section 11342.610, subdivision (b)(1). Thus, the Department has determined these proposed regulations will not directly affect small businesses, except to the extent they receive a consumer protection benefit from the Department's regulation of the digital financial assets industry.

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be 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 implementing the statutory policy or other provision of law.

The Department invites interested persons to submit alternatives with respect to the proposed regulations during the comment period. A discussion of alternatives that the Department itself considered are described in the Initial Statement of Reasons.

AVAILABILITY OF THE NOTICE, STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND RULEMAKING FILE

The Department will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office located at the address listed in this notice. As of the date this notice is published, the rulemaking file consists of this notice, the initial statement of reasons, and the proposed text of the regulations. Copies may be obtained by contacting the contact person at the address or phone number listed in this notice.

AVAILABILITY OF THE DOCUMENTS ON THE INTERNET

The notice, initial statement of reasons and proposed text are also available on the Department's website at www.dfpi.ca.gov. To access the documents from the Department's website, click on "Laws and Regulations" under the "Rules & Enforcement" tab at the top of the home page, then on the "Digital Financial Assets Law" link under the heading "Proposed and Approved Regulations (By subject)".

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After considering all timely and relevant comments received, the Department may adopt the proposed regulations as substantially described in this notice. If the Department makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. A request for a copy of any modified regulation(s) should be addressed to the contact person named in this notice. The Department will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the final statement of reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website listed above.

CONTACT PERSONS

Inquiries concerning the proposed administrative action including requests for copies of the proposed text (the "express terms") of the regulations, the initial statement of reasons, or the modified text of the regulations, or questions regarding the timelines or rulemaking status, may be directed to:

Diana Pha, Regulations Coordinator
Department of Financial Protection and Innovation
651 Bannon Street, Suite 300
Sacramento, CA 95811
Telephone: (916) 208-8326
e-mail: regulations@dfpi.ca.gov

The backup contact person for these inquiries is:

Adam Wright
Department of Financial Protection and Innovation

340 West Fourth Street
Los Angeles California 90013
Telephone: (213) 576-7523
e-mail: adam.wright@dfpi.ca.gov