

May 19, 2025

Department of Financial Protection and Innovation
Attn: Diana Pha, Regulations Coordinator, Legal Division
651 Bannon Street, Ste. 300
Sacramento, CA 95811
e-mail: regulations@dfpi.ca.gov

Re: Notice of Proposed Rulemaking, PRO 02-23 (Apr. 4, 2025).

Dear Commissioner Mohseni,

This letter is written on behalf of the members of the Money Services Business Association¹ (“MSBA”) regarding the notice of proposed rulemaking (“NPRM”) to solicit public comment on questions relating to the implementation of the Digital Financial Assets Law (“DFAL”). The MSBA is grateful for the opportunity to provide its comments to the Department of Financial Protection and Innovation (“DFPI”) regarding its proposed rules for the DFAL. As indicated in footnote 1 below, the MSBA’s members are overwhelmingly from the “money services business” or MSB sector, including remittance companies, licensed money transmitters, and other similar fintech businesses. Many of our members would likely be in the scope of the DFAL and its implementing rules under the NPRM. Our members will certainly be directly impacted by this development.

The MSBA agrees with the general substance and objective of the NPRM. However, we would like to offer our recommendations on technical corrections to remove ambiguity and to remain consistent with current law. Below is a section-by-section commentary with recommended revisions. Underlined text refers to additions, whereas ~~stricken text~~ refers to deletions.

CAL. CODE REGS. TIT. 10, § 80.3002(a). Exemptions.

Commentary: The MSBA believe that the money transmission license exemption for legal tender is ambiguous and could result in inconsistent application by the industry. To prevent case-by-case requests for regulatory relief or possible gamesmanship, we recommend a brightline exemption that clarifies that money transmission of legal tender is exempt if that transmission is connected to a digital asset transaction.

¹ The MSBA is a trade association focused on the non-bank money services industry, including licensed money transmitters and their agents and/or authorized delegates, payment card issuers and distributors, payment processors, international remittance companies, bill payment companies, mobile payment application providers, payment aggregators, virtual currency exchanges and administrators, money orders and other similar money services providers that are engaged in payments. See www.msassociation.org.

Recommended revision: the Commissioner exempts from the Money Transmission Act . . . (5) Any money transmission of legal tender if that transmission is only in connection with ~~occurring in, associated with, or related to the normal, typical, or customary performance of~~ digital financial asset business activity, as that term is defined in the Digital Financial Asset Law. For purposes of this paragraph, “legal tender” means a medium of exchange or unit of value, including the coin or paper money of the United States, issued by the United States or by another government.

CAL. CODE REGS. TIT. 10, § 2045. Definitions.

Commentary: We appreciate the consistency of your definitions, and the adoption of NMLS’s forms. However, the definitions of “Form MU1” and “Form MU2” reference the specific dated versions of such forms (Version 14.0, dated March 10, 2025, and Version 1, dated May 2024, respectively). We recommend removing references to dates because these forms will change in the future.

Recommended revision: (e) “Form MU1” means the uniform licensing form, entitled “NMLS Company Form,” developed by the Nationwide Multistate Licensing System & Registry and used to provide information on a company or sole proprietor license applicant. ~~Version 14.0, dated March 10, 2025, is hereby incorporated by reference in its entirety.~~ (f) “Form MU2” means the uniform licensing form, entitled “NMLS Individual Form,” developed by the Nationwide Multistate Licensing System & Registry and used to provide information on each executive officer, responsible individual, and person who has control. ~~Version 1, dated May 2024, is hereby incorporated by reference in its entirety.~~

CAL. CODE REGS. TIT. 10, § 2046. Electronic Filings.

No comment at this time.

CAL. CODE REGS. TIT. 10, § 2047. Language.

No comment at this time.

CAL. CODE REGS. TIT. 10, § 2048. License Application and Issuance.

Commentary: Audited financial statements are expensive and can be difficult to obtain for companies that have been newly formed. We understand, however, that these concerns must be balanced with ensuring the financial stability of the licensee. We have therefore added a provision intended to provide this balance by requiring audited financials of a startup applicant’s parent corporation.

Separately, licensing can stall and overwhelm both applicants and regulators when there are no clear deadlines for action. We therefore recommend that an application be approved after a period of nonobjection by the regulator. These provisions do not tie up regulatory resources and facilitate a smooth pathway to licensing.

Recommended revision: (a)(7) The applicant shall file through NMLS the following information:
... (C) However, if the applicant is a start-up company, only certified unaudited financial statements for the most recent fiscal year are required. If the applicant is a wholly owned subsidiary of another corporation, the applicant must also submit either the parent corporation's consolidated audited financial statements for the current year and for the immediately preceding two-year period or the parent corporation's form 10K reports filed with the United States Securities and Exchange Commission for the prior three years.

...

(e) When an application for an original license under this [Act] appears to include all the items and addresses all of the matters that are required, the application is complete and the [Commissioner] shall promptly notify the applicant in a record of the date on which the application is determined to be complete, and:

(1) The Commissioner shall approve or deny the application within 120 days after the completion date: or

(2) if the application is not approved or denied within 120 days after the completion date:

(A) the application is approved; and

(B) the license takes effect as of the first business day after expiration of the 120-day period.

(C) The Commissioner may for good cause extend the application period.

CAL. CODE REGS. TIT. 10, § 2049. Consent to Service of Process.

No comment at this time.

CAL. CODE REGS. TIT. 10, § 2050. Applications Submitted Before July 1, 2026.

No comment at this time.

CAL. CODE REGS. TIT. 10, § 2051. Information Regarding Individuals who are not Residents of the United States.

No comment at this time.

CAL. CODE REGS. TIT. 10, § 2052. Notices Included with Application.

No comment at this time.

CAL. CODE REGS. TIT. 10, § 2053. Challenge Process for Information Entered Into NMLS.

No comment at this time.

CAL. CODE REGS. TIT. 10, § 2054. Designated Email Address.

No comment at this time.

CAL. CODE REGS. TIT. 10, § 2055. Notice of Changes.

Commentary: The requirement to file “any change in” the licensee’s information filed in NMLS is broad and implicates nonmaterial changes. We would not want licensees to overwhelm DFPI with filing every single change, unless they are material. We therefore recommend adding a materiality requirement to a licensee’s change in information notice practice.

Recommended revision: (a) A licensee shall, upon any material change in the information contained in its application for a license, file the changed information with the Commissioner through NMLS.

CAL. CODE REGS. TIT. 10, § 2056. Officers, Directors, Partners, and Other Persons: Maintenance of Current List with Commissioner: Information Required.

Commentary: In order to align with other industry requirements, we recommend granting slightly more time within which to file such changes.

Recommended revision: (b) In the event of any change in the executive officers, control persons, and responsible persons named in the application, a licensee shall, within thirty (30) ~~fifteen (15)~~ calendar days of the date of the change, file an amendment to the application containing the same information in relation to the new person(s) as is required on Forms MU1 and MU2 and pay the fees, if any, to file the changed information.

CAL. CODE REGS. TIT. 10, § 2057. New Registration or Change in Location of Digital Financial Asset Transaction Kiosk, Quarterly Reports.

No comment at this time.

CAL. CODE REGS. TIT. 10, § 2058. Surety Bond.

Commentary: Neither the DFAL nor the NPRM proscribe minimum surety bond requirements.² The MSBA recommends providing clarity on the actual amount that will be required for such bonds in keeping with industry standards.

Recommended revision:

(e) The amount of the required security shall be the greater of \$100,000 or an amount equal to one hundred percent of the licensee’s average daily money transmission liability in this state calculated for the most recently completed three-month period, up to a maximum of \$500,000.

CAL. CODE REGS. TIT. 10, § 2059. Surrender of License.

Commentary: In general, there is no licensed attributed to an MU2, which is an individual form. Therefore, an application to surrender a license need not be filed on Form MU2.

² CAL. FIN. CODE § 3207(a)(1)(A) (“A licensee shall maintain a surety bond or trust account in United States dollars in a form and amount as determined by the department for the protection of residents that engage in digital financial asset business activity with the licensee.”).

Recommended revision: (a) An application to surrender a license shall be filed on Form MU1 ~~and MU2, as applicable,~~ through NMLS in accordance with the procedures for transmission to the Commissioner.

Summary: Thank you for your consideration of our comments. As noted above, we overwhelmingly support the goals of this NPRM but have provided areas for improvement regarding clarity and consistency with other laws. We would be happy to schedule a call or meeting to answer your questions.

Sincerely,

A black rectangular redaction box covering the signature of Kathy Tomasofsky.

Kathy Tomasofsky

Executive Director

Money Services Business Association, Inc.

Cc: Jeremy McLaughlin, Partner

K&L Gates, LLP