FINAL STATEMENT OF REASONS
FOR THE ADOPTION OF RULES UNDER
THE CALIFORNIA FINANCE LENDERS LAW AND
THE CALIFORNIA RESIDENTIAL MORTGAGE LENDING ACT
PRO 03/13

UPDATE OF INITIAL STATEMENT OF REASONS [Government Code Section 11346.9, Subdivision (a)(1)]

In the initial statement of reasons for this rulemaking action, the Department of Business Oversight ("Department") highlighted four objectives it sought to achieve through this rulemaking action. The Department sought to (1) promote the uniform oversight of nondepository consumer lending in California; (2) ensure that regulatory requirements and consumer protections under the California Finance Lenders Law ("CFLL") and the California Residential Mortgage Lending Act ("CRMLA") are uniformly applicable to consumer finance and mortgage lenders and brokers; (3) ensure that California borrowers have a state regulator that can assist them with consumer complaints and requests for assistance; and (4) ensure that the state regulator has authority to exercise visitorial powers over nondepository lending institutions doing business in this state, for the protection of consumers against unlawful, unfair or deceptive lending practices. All of the objectives were applicable to consumer lending, and consequently the proposed rules excluded certain lenders not engaged in the business of making consumer loans in this state.

The proposed rulemaking action was solely applicable to nondepository institutions because the past Commissioner's Opinions were only provided to these types of financial institutions. Nevertheless, the proposed rulemaking action did not solely withdraw the past Commissioner's Opinions identified in the initial statement of reasons; it clarified the licensure requirement for all nondepository institutions that were subsidiaries or affiliates of specified depository institutions, regardless of whether a past opinion had been issued. The rules were broader than the past Commissioner's Opinions in order to provide clarity and guidance on the applicability of the depository exemptions in the CFLL and the CRMLA, and to achieve the Department's objectives set forth in the initial statement of reasons and updated herein. The proposed text was also applicable to all activities licensed under the CFLL and CRMLA, including the making and brokering of loans, and servicing residential mortgage loans, to achieve the Department's objectives of greater consumer protection.

In addition to the objectives set forth in the initial statement of reasons, through this rulemaking action the Department seeks to (1) promote uniform oversight of nondepository brokering of consumer loans and servicing of residential mortgage loans in California; (2) ensure that regulatory requirements and consumer protections under the CRMLA are uniformly applicable to residential mortgage servicers; and (3) ensure that the state regulator has authority to exercise visitorial powers over nondepository brokering and residential mortgage servicing institutions doing business in this state, for the protection of consumers against unlawful, unfair or deceptive lending practices. The proposed rules are necessary to achieve these objectives, in addition to the objectives already highlighted.

The initial text of this rulemaking action was applicable to "subsidiaries, affiliates, and agents" of depository institutions, consistent with sections 1044, 1045, and 1046 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,[1] and the terms were intended to have

[1] P.L. 111-203.

the same meanings as set forth in that act.[2]

July 23, 2015 Modifications to the Text

With respect to the proposed rule under the CFLL, commenters highlighted concerns with the uncertainty caused by the Department's language excluding commercial lending activity from the proposed rule. For example, commenters questioned why the rule only included operating subsidiaries of certain federal depositories, and whether the rule would then have the effect of requiring licensure for all other subsidiaries of depository institutions engaged in commercial lending. If the rule was now requiring licensure of some commercial lending subsidiaries because the express language did not exclude these lenders, commenters questioned how this new requirement achieved the Department's objectives in this rulemaking action which were all directed at consumer lending and consumer protection.

The Department agreed with the commenters that the objectives of this rulemaking action were not applicable to commercial lending activity by nondepository subsidiaries of depository institutions. The Department further agreed that the Department's proposed language excluding some commercial lenders resulted in marketplace uncertainty. Therefore, amendments were necessary to ensure the scope of the rule was aligned with the Department's objectives and did not result in marketplace uncertainty. The Department worked with interested parties to redraft the rules to solely apply to nondepository consumer lenders that are affiliates or subsidiaries of depository institutions. By only covering consumer lending and eliminating the commercial lending exclusion, the text no longer created uncertainty as to which commercial lenders fell within its exclusion.

In addition, to provide greater clarity on which entities were included in the phrase "nondepository subsidiary, affiliate, or agent" from the original text, the Department worked with interested parties to provide greater specificity. The changes were necessary to clearly identify the entities subject to the rule. The revised text modified July 23, 2015, no longer included the phrase "nondepository subsidiary, affiliate, or agent," and instead specifically identified the affiliates and subsidiaries that were subject to the rules under both the CFLL and the CRMLA. These entities included a bank holding company, savings and loan holding company, subsidiary of a bank, trust company, savings and loan association or credit union, subsidiary of a bank holding company, and subsidiary of a savings and loan holding company. All of these entities, except a subsidiary a trust company, were included in the introduced version of the text, but the revised text clarified the identity of the subsidiaries and affiliates referenced in the initial text. The July 23, 2015 text included subsidiaries of trust companies to avoid any uncertainty over whether such entities may rely on the exemptions in subdivision (a) of Financial Code section 22050 or subdivision (c)(1) of Financial Code section 50002, since trust companies are included in the statutory text and therefore their omission may result in uncertainty. Consequently, the revised text clarified that any nondepository subsidiary of a trust company engaged in making or brokering of consumer loans, or servicing of residential mortgage loans, would be subject to licensure. For clarity, the revised text specifically identified bank holding companies, savings and loan holding companies, and their subsidiaries, although these entities had been included in the initial text's reference to "affiliates." The revised text also clarified that a depository institution identified in the statutory exemptions may continue to rely on the statutory exemption, regardless of whether it was a subsidiary or affiliate of a depository institution.

The revised text further proposed language under both the CFLL and the CRMLA

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[2] 12 U.S.C. §§ 1813, 1841.

providing that the sections added by the rulemaking action were not operative until 180 days after the effective date of the sections. The purpose of this language was to provide impacted parties with sufficient time to seek licensure prior to the operative date of the rule.

September 4, 2015 Modifications to the Text

During the comment period of the revised text dated July 23, 2015, interested parties identified new shortcomings in the syntax of the July 23, 2015 text. Specifically, the text was unclear with respect to whether the phrase “that engages in the business of making consumer loans in this state” was applicable to the affiliates and subsidiaries identified in paragraphs (a)(1) through (a)(4) of the July 23, 2015 text, or solely applicable to subsidiaries identified in paragraph (a)(4), thereby again raising the question of whether the remainder of the rule was applicable to commercial lenders. In addition, the Department identified another shortcoming. The July 23, 2015 text was solely applicable to affiliates and subsidiaries of depository institutions in the business of making loans, whereas the originally proposed text was intended to cover all licensed activity under the CFLL and the CRMLA. Specifically, the rules were intended to cover all subsidiaries and affiliates engaged in the business of making and brokering loans or servicing residential mortgage loans. To clarify the scope of the rules, avoid uncertainty, and coordinate the text of the rules with the statutory exemption, changes to the rule were necessary. The Department again entirely revised the text to ameliorate the shortcomings of the text, and these revisions are the final rules.

The final text also included an amendment to improve the consistency of the rule. The July 23, 2015 text included a reference to a “savings and loan association” that had the meaning set forth in chapter 1 of division 1 of the Financial Code. However, that chapter does not define “savings and loan association,” but instead section 197 of chapter 1 of division 1 of the Financial Code defines “savings association” to include a savings association, a savings and loan association, and a savings bank. Thus, the final rule was amended to include a “savings association” rather than a “savings and loan association” to capture the depository institutions set forth in section 197, since the nondepository subsidiaries of any of these entities would be subject to licensure under this rulemaking action, and to resolve an incorrect definition in the July 23, 2015 text.

Section 1422.3 of the final rules provides that, under the CFLL, a nondepository lender or broker that engages in the business of making or brokering consumer loans in this state is not exempt from licensure under subdivision (a) of Financial Code section 22050 unless that nondepository lender or broker is a bank, trust company, savings and loan association, insurance premium finance agency, credit union, small business investment company, community advantage lender, California business and industrial development corporation, or pawnbroker. Subdivision (a) of Financial Code section 22050 expressly exempts these entities from the CFLL. The section further defines “nondepository lender or broker” to mean a finance lender or broker as defined in the CFLL, where the finance lender or broker is also a subsidiary of a depository institution, a subsidiary of a depository institution holding company, or a depository institution holding company. Finally, the rule provides that it is not operative until 180 days after the effective date of the rule. The final text is clearer than the two prior versions with respect to the nondepositories intended to fall within the rule, and the types of activities intended to fall within the rule.

Similarly, under the CRMLA, section 1950.122.4.2 of the final rules provides that a nondepository lender or servicer that engages in the business of mortgage lending or servicing in this state is not exempt from licensure under subdivision (c)(1), (2) or (3) of Financial Code

section 50002 unless that nondepository lender or servicer is a bank, trust company, insurance company, industrial loan company, savings and loan association, savings bank, or credit union. Subdivisions (c)(1), (2) and (3) of Financial Code section 50002 expressly exempt these entities from the CRMLA. The rule further defines "nondepository lender or servicer" to mean a finance lender or mortgage servicer as defined in the CRMLA, where the lender or mortgage servicer is also a subsidiary of a depository institution, a subsidiary of a depository institution holding company, or a depository institution holding company. Finally, the rule provides that it is not operative until 180 days after the effective date of the rule. As with the revisions to the rule under the CFLL, the final text of the rule under the CRMLA is clearer than the two prior versions with respect to the nondepositories intended to fall within the rule, and the types of activities intended to fall within the rule.

NONSUBSTANTIVE CHANGES TO TEXT MADE DURING OAL REVIEW

During OAL's review of the final text, nonsubstantive changes were made to the text to conform the final text to the statutory language of subdivision (a) of Financial Code section 22050 and subdivisions (c)(1) through (3) of Financial Code section 50002. Specifically, the changes to section 1422.3 of the final rules include the following:

1. Changing "California business and industrial development corporation" to "California business and industrial development corporation when acting under federal law or other state authority";
2. Changing "pawnbroker" to "licensed pawnbroker when acting under the authority of that license"
3. Capitalizing the section title;
4. Removing Financial Code section 22100 from the authority for the rule; and
5. Adding Financial Code section 22100 to the reference for the rule.

The changes to section 1950.122.4.2 include the following:

1. Changing "industrial loan company" to "industrial loan company doing business under the authority of, or in accordance with, a license, certificate or charter as provided in subdivision (c)(1) of Financial Code section 50002";
2. Changing "savings and loan association, savings bank, or credit union" to "a federally chartered savings and loan association, federal savings bank, or federal credit union that is authorized to transact business in this state; or a savings and loan association, savings bank, or credit union organized under the law of this or any other state that is authorized to transact business in this state";
3. Capitalizing the section title; and
4. Correcting spelling and punctuation mistakes.

The purpose of the changes is to bring the text of the regulations within the scope of the statutes. The changes are nonsubstantive as they are a restatement of statutory law for the purpose of consistency.

LOCAL MANDATE DETERMINATION [Government Code Section 11346.9, Subdivision (a)(2)]

The Commissioner has determined that the adoption of the regulation does not impose a mandate on local agencies or school districts. Thus, the Commissioner has determined that the adoption of the regulation does not require the state to provide reimbursement to local agencies or school districts.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL NOTICE PERIOD OF [insert publication date] THROUGH DECEMBER 8, 2015.
[Government Code Section 11346.9, Subdivision (a)(3)]

The Department received three public comment letters during the 45-day public comment period. The comments are summarized below, together with the Department's response.

1. Commentor: Letter dated December 2, 2014, from Henry M. Fields, Morrison & Foerster LLP, on behalf of the **International Bankers Association of California** ("IBAC"). IBAC's comments are limited to proposed new section 1422.3 of title 10 of the California Code of Regulations, relating to the CFLL, and IBAC provided no comments on proposed new section 1950.122.4.2, relating to the CRMLA.

Comment: IBAC suggests that the rationale for excluding some commercial lending from the proposed rule is equally applicable to all nondepository subsidiaries and affiliates of depository institutions that engage exclusively in commercial lending. IBAC highlights the Department's observation that commercial lending transactions do not raise the equivalent borrower protection concerns that motivated the regulatory action. IBAC requests that all commercial lending for nondepository subsidiaries and affiliates of depository institutions be excluded from the rule. IBAC specifically identifies the commercial lending of various subsidiaries and affiliates of state and federal financial institutions, and provides reasons that the rulemaking action should not extend to their commercial lending activities.

Response: The Department agrees with IBAC that the Department's impetus for initiating this rulemaking action is for the protection of consumers. The Department has redrafted the initially proposed rules to only be applicable to the making, brokering or servicing of consumer loans.

2. Commentor: Electronic mail dated December 8, 2014, from **Keith Paul Bishop**, in his individual capacity and not on behalf of a client or other person.

Comment: Mr. Bishop suggests that the proposed rule violates the consistency standard of the California Administrative Procedure Act. Subdivision (d) of Government Code section 11349 provides that "consistency" means being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law. Mr. Bishop suggests that the proposed rulemaking action violates the consistency standard in two ways. First, the rulemaking is inconsistent with the plain meaning of the statute it is interpreting (subdivision (a) of Financial Code section 22050). Second, the rulemaking action makes a distinction between state and federal banks that is inconsistent with the same statute.

Response:

Plain Meaning

The Department disagrees that the rulemaking action is inconsistent with the plain meaning of the statute, based on an interpretation of equivalent statutory language in an Attorney General opinion under the Real Estate Law (68 Ops.Cal.Atty.Gen. 286 (1985)). The Attorney General was asked whether a real estate licensing exemption existing at that time in subdivision (a) of section 10133.1 of the Business and Professions Code was applicable to licensable activities of wholly-owned subsidiaries of banks, savings and loan associations, or any other institutions enumerated in the subdivision at that time. The opinion concluded that the real estate

licensing exemption was not applicable to the activities of wholly-owned subsidiaries of banks, savings and loan associations, or any of the other institutions enumerated in the subdivision solely by reason of their status as subsidiaries.

Similar to subdivision (a) of Financial Code section 22050, subdivision (a) of Business and Professions Code section 10133.1 exempted from licensure "Any person or employee thereof doing business under any law of this state, any other state, or of the United States relating to banks, trust companies, savings and loan associations, industrial loan companies, pension trusts, credit unions, or insurance companies." Subdivision (a) of Financial Code section 22050 sets forth an exemption for "any person doing business under any law of any state or of the United States relating to banks, trust companies, savings and loan associations, insurance premium finance agencies, [and] credit unions," among others. In light of the Attorney General's conclusion that a similar exemption in the Real Estate Law was not applicable to subsidiaries, we cannot agree that subsidiaries fall within the plain meaning of the exemption in the CFLL. The applicability of the exemption is subject to interpretation. Through this rulemaking action, the Department is reversing its past interpretations, based on changed circumstances that suggest the past interpretation is not consistent with the borrower protection purposes of the CFLL, and thereby suggesting that the Department's past interpretation may not have been intended by the Legislature. In addition, the "relating to" language in the CFLL exemption appears to date back to a predecessor law enacted in 1933. As noted in the Attorney General's 1985 opinion, the entry of banks and savings and loan associations into the area of mortgage banking through wholly-owned subsidiaries was a recent occurrence. We cannot conclude that in 1933 the Legislature contemplated the exemption to apply to the emergence of mortgage banking subsidiaries in the 1980s. Consequently, we disagree that the plain meaning of the statutory exemption includes the subsidiaries and affiliates that we are, by rule, excluding from the exemption.

Differing Treatment of State and Federal Institutions

The Department acknowledges the argument that the proposed text appeared to establish different standards for subsidiaries and affiliates of state and federal depository institutions. Since the Department had never issued any interpretative opinions to subsidiaries or affiliates of state depository institutions based solely on their status as subsidiaries or affiliates, the Department did not propose a rule to withdraw the interpretation. However, the Department acknowledges that by negative implication the rule suggested the need for licensure may be different. The Department has revised the language to clarify that the need for licensure is the same, regardless of whether the entity is a subsidiary or an affiliate of a state or a federal depository institution.

3. Commentor: Letter dated December 8, 2015, from Leland Chan, General Counsel, **California Bankers Association** ("CBA"). The letter appends a May 6, 2014 comment letter to the Department in response to the Department's involvement of interested parties in accordance with Government Code sections 11346 and 11346.45. The May 6, 2014 letter is jointly from Leland Chan, General Counsel, CBA, and Scott Govenar, **California Financial Services Association**.

Comment No. 1: CBA suggests that the Department's rule is inconsistent with and in conflict with the underlying statute that it is interpreting or implementing. Specifically, CBA indicates that the CFLL exempts "any person doing business under any law of any state or of the United States relating to banks, trust companies, savings and loan associations. . . " CBA suggests that lending subsidiaries and affiliates of all depositories operate under laws related to banking and are therefore exempt under subdivision (a) of Financial Code section 22050. CBA suggests that whether the CFLL applies to corporate affiliates of depository institutions is a

question of statutory interpretation. CBA suggests that the exemption in the CFLL for "any person doing business under any law of any state or of the United States relating to banks, trust companies, savings and loan associations . . . when acting under federal law or other state authority" applies more broadly than to just depositories. CBA further suggests that it is difficult to imagine what kind of entities the Legislative intended to exempt if not those that have an actual corporate relationship with a depository.

Response: The Department disagrees that the proposed rule is inconsistent or in conflict with the underlying statute, or that the statute must apply more broadly than to just depositories. In looking at the legislative history of the statutory exemption, an iteration of the exemption first appeared in 1933 in the Personal Property Brokers Act. The exemption read as follows:

> "This act shall not apply to any person, association, copartnership, trust or corporation doing business under any law in this State or of the United States relating to banks, trust companies, building and loan associations, industrial loan companies, credit unions or licensed pawnbrokers."

Similarly, in 1939 another predecessor law, the California Small Loan Act, was enacted, which contained the following similar exemption:

> "This act shall not apply to any person, association, copartnership, trust or corporation doing business under any law in this State or of the United States relating to banks, trust companies, building and loan associations, industrial loan companies, credit unions or licensed pawnbrokers."

The Department does not agree that subdivision (a) of Financial Code section 22050 was intended by the Legislature to apply to entities with a corporate relationship with a depository, based on the legislative history of the language. The corporate relationships between lenders and depositories is a business model that has developed since the time the predecessor language was enacted, and therefore would not have been contemplated by the Legislature.

Further, the lack of definitions in the CFLL for the entities identified in the exemption also explains the imprecise language of the exemption. For example, the National Bank Act does not define "bank," but instead regulates the "business of banking," which would explain why the Legislature would describe the exemption as doing business under a law related to banks, as opposed to simply exempting "banks." Finally, the imprecise language of the statutory exemption, in conjunction with the rulemaking authority provided under the law, provides the Commissioner with the authority to interpret the exemption to effectuate the intent of the Legislature to protect borrowers as the business of the depositories change over time. It is reasonable to conclude that the Legislature intended the imprecise language to provide the Commissioner with the necessary authority to define the exemption to promote the underlying purposes and policies of the CFLL, as set forth in Financial Code section 22001. For example, prior to out-of-state banks being added to the exemption in 2007, the language of the exemption allowed the Commissioner to review whether state banks chartered in another state were doing business under laws of the United States relating to banks, where the state bank was insured by the Federal Deposit Insurance Corporation or a member bank of the Federal Reserve System. Thus, for the reasons set forth above, the Department cannot agree that the language of the exemption was intended by the Legislature to apply to entities with a corporate relationship to a depository institution.

In addition, many other states have similar statutes exempting from their consumer finance laws persons who are "doing business under" laws "relating to" banks and other

depository institutions, and the phrases are not interpreted in a single manner. The approach taken by various states in interpreting this language is evidence that the "plain meaning" of the phrase is not clear. In Illinois, Vermont, Maine, Washington, Rhode Island, North Dakota, Pennsylvania, Idaho and Michigan, the language is interpreted as not providing an exemption for subsidiaries. In Kentucky, the language is interpreted as providing an exemption. In many states, provisions have been added to the law to clarify whether subsidiaries must be licensed, including Arkansas, Indiana, Utah, Hawaii, Oregon, Virginia, Nevada, and Delaware. Thus, the Department cannot concur that the text is clear and not in need of interpretation. The fact that the Department issued past Commissioner's Opinions interpreting the language is further evidence that the statutory language warranted clarification. The Department further cannot agree that the proposed rule is inconsistent or in conflict with the underlying statute, for the same reason.

Comment No. 2: CBA raised concerns with the Department's differing treatment of state and federal depository charters, and suggested that state depositories would be disadvantaged by the regulation.

Response: The Department's proposed regulation was intended to withdraw the Commissioner's past opinions regarding non-depository subsidiaries and affiliates of depository institutions. Since the Commissioner had not issued any opinions to subsidiaries or affiliates of state depository institutions, these entities were not contemplated in the rule. However, CBA highlighted the shortcomings of this approach. Consequently, the final rule includes revised language that is equally applicable to both federal and state depository institutions, so that neither charter would be advantaged or disadvantaged by the rule.

CBA raised the following comments by letter dated May 6, 2014, which the CBA appended to its December 8, 2014 letter.

Comment No. 3: CBA suggests the Department's prior opinions properly interpreted the CFLL exemption. CBA indicates that the proper legal question is whether a subsidiary is doing business under the laws related to depository institutions. The past opinions considered this question, and concluded that the subsidiaries were doing business under the laws related to depository institutions.

Response: The Department has reconsidered its past opinions, and determined that withdrawing the opinions is appropriate. The exemptions set forth in section 22050 of the Financial Code are grounded in the rationale that the entities are regulated elsewhere, and therefore oversight by the Department under the CFLL is unnecessary. However, as described in the initial statement of reasons for this regulatory action, the events of the past decade highlighted for the Department that the past Commissioner's Opinions broadly extending the depository exemptions to subsidiaries and affiliates were unsound. The opinions generally concluded that the cumulative oversight from certain regulators, such as the Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation, the former Office of Thrift Supervision, or the Federal Reserve, as applicable, was sufficient to constitute doing business under the laws relating to banks. However, the subsequent events illustrated that lenders and servicers were not necessarily doing business under laws related to banks, but were doing business under laws related to lending and servicing, similar to all of the other Department licensees. Depository institution regulators oversee the safety and soundness of the depository institutions, for the protection of depositors. This resulted in a gap in consumer protection. Congress responded to this gap, in part, with the creation of the Consumer Financial Protection Bureau ("CFPB"). While now a new federal regulator has jurisdiction to protect consumers, that doesn't mean subsidiaries and affiliates are now doing business under laws "relating to" depository institutions. CFPB is a

financial services regulatory agency, and it does not administer the banking or savings association laws; these are administered by the OCC. Thus, the Department does not agree that subsidiaries and affiliates of depository institutions are doing business under the laws relating to depository institutions, as intended by the language of subdivision (a) of Financial Code section 22050.

Comment No. 4: CBA indicates that the CRMLA explicitly exempts subsidiaries of federal savings association in subdivision c)(5) of section 50002. Specifically, subdivision (c)(5) exempts a wholly owned service corporation of a savings and loan association or savings bank. Therefore, the Department's rule is in conflict with the statute.

Response: The Department disagrees that its rulemaking is in conflict with the licensing exemption in subdivision (c)(5) of section 50002 the CRMLA, but has clarified the rule to address any potential confusion. The proposed rule as amended is only applicable to the exemptions set forth in subdivisions (c)(1), (c)(2), and (c)(3) of Financial Code section 50002. Subdivision (c)(5) exempts from licensure a wholly owned service corporation of a savings and loan association or savings bank, as provided. Nothing in this rulemaking restricts the ability of a wholly owned service corporation to rely on the exemption set forth in that subdivision. The exemption in subdivision (c)(5) of section 50002 is limited to companies providing permissible services to savings associations (and otherwise meeting the conditions of the exemption), and the exemption does not extend to subsidiaries or affiliates that are engaged in lending or servicing that are not wholly owned service corporations. To the extent the Department has interpreted the exemption more broadly in any past opinion; the Department is withdrawing that interpretation through this rulemaking action.

Comment No. 5: CBA indicates that the scaling back of federal preemption of the licensure of certain subsidiaries and affiliates of federal depository institutions is not equivalent to a grant of authority for the Department to require licensure.

Response: The Department agrees that Dodd-Frank is not a grant of authority to require licensure of certain subsidiaries and affiliates of federal depository institutions. The Department obtains its authority from the CFLL and the CRMLA to, through this regulatory action, withdraw its past interpretations of the exemptions for subsidiaries and affiliates of depository institutions, and to clarify in the regulations that these entities may not rely upon the exemptions for depository institutions. Both licensing laws provide the Commissioner with authority to adopt rules for the administration of the law.

Comment No. 6: CBA indicates that the Department's reason for changing its past interpretation is not supported by the increased federal oversight over the activities of subsidiaries and affiliates of depository institutions. Specifically, CBA points to the Department's claim that its past interpretive opinions "were based on a presumption of federal oversight and adequate consumer protection that no longer appears warranted and may have been misguided, given the marketplace events of the last decade." CBA asserts that in its CFLL opinion, the Department ascertained the existence of banking-related laws that applied to the subsidiary, not the quality of the regulatory oversight.

Response: The Department agrees with CBA that neither the statutory exemptions nor the past interpretive opinions were based on the quality of federal oversight. The Department further agrees that collective federal oversight of depositories, lenders and servicers has increased since Dodd-Frank. The Department's description of the reason for the rulemaking action merged the Department's impetus for reevaluating the meaning of the exemptions with the interpretation. The marketplace events of the past decade highlighted the need to reevaluate

whether the past interpretive opinions continued to be supportable. Upon examination, the Department has determined that the subsidiary and affiliate lenders, brokers and servicer s are not doing business under the laws related to depository institutions. These financial service providers are doing business under the laws relating to lending and servicing, and have independent, separate corporate existences apart from their parent depository institution. The Commissioner is no longer of the opinion that these financial service providers were intended to be wrapped into the exemptions for depository institutions.

Comment No. 7: CBA states that heightened federal regulation casts doubt on the necessity and propriety of layering additional state regulation. CBA stresses the difficulty of meeting the new mandates, and suggests adding CRMLA licensing would not provide benefits that justify the new burdens.

Response: The Department appreciates the compliance burden of other mandates, but the Department has identified a substantial benefit from this rulemaking action that outweighs the burden. During the financial crisis of the past decade, the Department was unable to assist California borrowers who were customers of subsidiaries of depository institutions. Thousands of borrowers experiencing personal financial crises reached out to the Department for assistance, and the Department had to send these citizens away to seek assistance from lenders, servicers and other regulatory authorities that were often unresponsive. This rulemaking action ensures that the Department has authority to assist borrowers of lenders and servicers not expressly exempted by statute.

Comment No. 8: CBA requests that the Department not include commercial lending in its rulemaking, as the Department has not substantiated the need for oversight or reversing the longstanding interpretation.

Response: The Department agrees that the impetus for the rulemaking action is to ensure Department oversight of consumer lending and the related activities of brokering and servicing loans. Consequently, the Department is not including commercial lending in this rulemaking action.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 15-DAY COMMENT PERIOD OF JULY 23, 2015 THROUGH AUGUST 7, 2015 [Government Code Section 11346.9, Subdivision (a)(3)]

The Department did not receive any public comments during this comment period.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 15-DAY COMMENT PERIOD OF AUGUEST 19, 2015 THROUGH SEPTEMBER 3, 2015 [Government Code Section 11346.9, Subdivision (a)(3)]

The Department received two comments by telephone during the 15-day public comment period. Both Henry Fields, Morrison & Foerster LLP, and Leland Chan, California Bankers Association, notified the Department that the proposed text was formatted in a manner that made the meaning of the text subject to different interpretations, and thus unclear. Specifically, the text was unclear regarding whether the phrase “that engages in the business of making consumer loans in this state” was applicable to the affiliates and subsidiaries identified in the preceding paragraphs of the July 23, 2015 text, or solely applicable to subsidiaries identified in paragraph (a)(4) of that text, thereby again raising the question of whether the

remainder of the rule was applicable to commercial lenders. To resolve this uncertainty, the Department revised the text to clarify that the rule in its entirety is only applicable to the making or brokering of consumer loans, or the servicing of residential mortgage loans.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 15-DAY COMMENT PERIOD OF SEPTEMBER 4, 2015 THROUGH SEPTEMBER 21, 2015 [Government Code Section 11346.9, Subdivision (a)(3)]

The Department did not receive any public comments during this comment period.

ALTERNATIVES THAT WOULD LESSEN THE ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES [Government Code Section 11346.9, Subdivision (a)(5)]

Brokers, lenders and servicers licensed under the CFLL and CRMLA are not small businesses under Government Code section 11342.610, subdivision (b), and therefore no alternatives would lessen the impact of the proposed regulations on small businesses.

ALTERNATIVES DETERMINATION [Government Code Section 11346.9, Subdivision (a)(4)]

The Department has determined that no alternative it considered or that was otherwise identified and brought to its attention would be more effective in carrying out the purposes for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The regulations adopted by the Department are the only regulatory provisions identified by the Department that ensure the Department has oversight of subsidiaries and affiliates of nondepository institutions that lending, brokering or servicing in this state, for the protection of borrowers. No other alternative has been proposed or otherwise brought to the Department's attention that is equally effective.

UPDATED INFORMATIVE DIGEST [Government Code Section 11346.9, Subdivision (b)]

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The initial informative digest, as published in the California Regulatory Notice Register dated October 24, 2014 (Register 2014, No. 43-Z), provided that this proposed action would provide that the exemptions for depository institutions in the CFLL and the CRMLA do not include a nondepository subsidiary, affiliate or agent of a depository institution, unless that subsidiary, affiliate or agent is itself chartered as a national bank or federal savings association, or unless the lender is a nondepository operating subsidiary of a national bank or federal savings association making commercial loans.

This final regulatory action, as amended through the rulemaking process, provides that the exemptions for depository institutions in the CFLL and the CRMLA do not include a nondepository lender, broker, or servicer that is making, brokering, or servicing consumer loans, unless that nondepository lender, broker, or servicer is a financial institution or other entity named in the exemption. The final regulatory action defines "nondepository lender or broker" in the rule adopted under the CFLL to mean a finance lender or broker as defined in the CFLL, and also (1) a bank holding company or subsidiary of a bank holding company, (2) a

savings and loan holding company or a subsidiary of a savings and loan holding company, or (3) a subsidiary of a bank, trust company, savings association or credit union. Similarly, the final regulatory action defines “nondepository lender or servicer” in the rule adopted under the CRMLA to mean a lender or mortgage servicer as defined in the CRMLA and also (1) a bank holding company or subsidiary of a bank holding company, (2) a savings and loan holding company or a subsidiary of a savings and loan holding company, or (3) a subsidiary of a bank, trust company, savings association or credit union.

The final rules no longer impact commercial lending, and are solely applicable to consumer lending, as described above. Further, the final rules set forth definitions to define the subsidiaries and affiliates that are subject to licensure under the rules, and identify the activities (brokering, servicing, and lending) that require licensure.

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