

NOTICE OF RULEMAKING ACTION
TITLE 10. CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT

NOTICE IS HEREBY GIVEN (Government Code Section 11346.5, Subdivision (a)(1))

The Commissioner of the Department of Business Oversight (Department) proposes to adopt Section 1422.3 within article 1 of subchapter 5, and Section 950.122.4.2 within article 2 of subchapter 11.5, of title 10, chapter 3 of the California Code of Regulations. The proposed sections relate to the exemptions for federally-regulated depository institutions set forth in Financial Code section 22050, and subdivision (c)(1) and (c)(2) of Financial Code section 50002. The proposed rule would effectively withdraw several past Commissioner's Opinions¹ that interpreted subsidiaries of federally-regulated depository institutions as within the statutory exemption from licensure under respective financial services licensing laws, and instead provide that non-depository subsidiaries, affiliates, and agents of banks and other depository institutions do not fall within the licensure exemptions for a bank or savings association under the California Finance Lenders Law ("CFLL") or the California Residential Mortgage Lending Act ("CRMLA"), except as provided.

AUTHORITY (Government Code Section 11346.5, Subdivision (a)(2))

The Department proposed this regulatory action under the authority vested in Financial Code sections 22150 and 50002.

REFERENCE (Government Code Section 11346.5, Subdivision (a)(2))

The Department proposes this regulatory action to implement, interpret, and make specific Financial Code sections 22050 and 50002.

INFORMATIVE DIGEST (Government Code Section 11346.5, Subdivision (a)(3))

Under the CFLL, no person may engage in the business of a finance lender or broker without obtaining a finance lender license. However, the law is not applicable to any person doing business under any law of any state or the United States relating to banks or savings and loan associations. Under the CRMLA, no person may engage in the business of making residential mortgage loans or servicing residential mortgage loans in this state, without first obtaining a license under the CRMLA. However, banks doing business under the authority of, or in accordance with, a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United State are exempt from the licensure requirement under the CRMLA. In addition, federally chartered savings and loans associations, federal savings banks, and federal credit unions authorized to transact business in this state are exempt from the licensure requirement under the CRMLA.

¹ Commissioner's Opinion No. 95/1 RMLA, 1995 Cal. Sec. LEXIS 3, October 11, 1995; Commissioner's Opinion No. OP 6590 CFLL, 1996 Cal. Sec. LEXIS 6, October 22, 1996; Commissioner's Opinion No. OP 6595 CFLL, 1996 Cal. Sec. LEXIS 9, November 5, 1996; and Commissioner's Opinion No. OP 6738 CFLL, 1999 Cal. Sec. LEXIS 1, August 5, 1999.

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.

The broad objectives and specific benefits of this rulemaking action include promoting the uniform oversight of nondepository consumer lending in California, including ensuring that regulatory requirements and consumer protections under the CFLL and the CRMLA are uniformly applicable to consumer finance and mortgage lenders and brokers. In addition, the objectives and benefits include ensuring that California borrowers have a state regulator that can assist them with consumer complaints and requests for assistance, without regard to the organizational structure of the nondepository lending institution. Finally, the objectives and benefits include ensuring 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.

The Department has evaluated whether the proposed rulemaking action is inconsistent or incompatible with existing regulations, and has determined that the proposed rulemaking action is not inconsistent or incompatible with existing regulations. On January 10, 2014, Section 1422 of title 10 of the California Code of Regulations was amended to no longer require an applicant for a finance lender license to represent that it is not operating subsidiary of a federally chartered bank or financial institution.

ANY OTHER MATTERS PRESCRIBED BY STATUTE (Government Code 11346.5, Subdivision (a)(4))

No other matters are prescribed by statute.

DETERMINATION REGARDING MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS (Government Code 11346.5, Subdivision (a)(5))

This regulatory action does not impose a mandate on local agencies or school districts.

ESTIMATE OF COST OR SAVINGS (Government Code Section 11346.5, Subdivision (a)(6))

State Agency

This regulatory action may result in an increase in the number of license applications received by the Department under both the CFLL and CRMLA. The Department anticipates reviewing fewer than 50 additional applications, combined, under both the CRMLA and the CFLL licensing programs. The Department anticipates that this increase will be absorbable within existing resources.

Other

This regulatory action will not result in any cost to any local agency or school district required to be reimbursed, will not result in other nondiscretionary cost or savings imposed on local agencies, and will not result in cost or savings in federal funding to the state.

DETERMINATION REGARDING ADVERSE ECONOMIC IMPACT (Government Code Section 11346.5, Subdivision (a)(7) and (8))

The Department has made an initial determination that this regulatory action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

DESCRIPTION OF ALL COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS (Government Code Section 11346.5 Subdivision (a)(9))

While this rulemaking action will not impact existing licensees, the Department anticipates that the rulemaking action will impact federal banks and savings associations that have operating subsidiaries, affiliates or agents that are engaged in mortgage or finance lending in this state but not licensed by the Department. The Department anticipates the cost to obtain a license to be in the range of \$10,000, which includes the license and fingerprint fees, professional fees, and labor to complete application. The Department anticipates the annual ongoing cost to be \$8,500 a year, which includes annual fees, reports, and periodic regulatory examinations. The Department invites comments from interested parties on the cost of licensure.

RESULTS OF ECONOMIC IMPACT ASSESSMENT (Government Code Section 11346.5, Subdivision (a)(10))

The Department has assessed the potential for adverse economic impact on California business enterprises and individuals, with consideration of the ability of California businesses to compete with businesses in other states.

The Department finds that this regulatory action will not result in the creation or elimination of jobs within the state; will not result in the creation of new businesses or the elimination of existing businesses within the state; and will not result in the expansion of businesses currently doing business within the state. The Department finds that this regulatory action will benefit the welfare of California residents by ensuring that nondepository mortgage and finance lenders making loans in this state are subject to the licensure and oversight requirements of the CFLL and CRMLA.

DETERMINATION OF EFFECT ON SMALL BUSINESS (Section 4 of Title 1 of the California Code of Regulations)

This regulatory action will not impact small business. Under subdivision (b)(1) of Government Code section 11342.610, consumer finance companies, commercial finance companies, and mortgage bankers are not small businesses.

FINDING REGARDING REPORT (Government Code Section 11346.5, Subdivision (a)(11))

This regulatory action does not require a report.

EFFECT ON HOUSING COSTS (Government Code Section 11346.5, Subdivision (a)(12))

This regulatory action will not have a significant effect on housing costs.

STATEMENT REGARDING REASONABLE ALTERNATIVES (Government Code Section 11346.5, Subdivision (a)(13))

The Department must determine that no reasonable alternative considered by the Department or that otherwise been identified and brought to the attention of the Department 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.

COMMENT DEADLINE (Government Code Section 11346.5, Subdivision (a)(15))

Written comments related to the proposed action must be received by December 8, 2014 to be considered by the Department before it proceeds with this regulatory action. Comments may be submitted by e-mail to the following address:

regulations@dbo.ca.gov

Comments may be submitted by U.S. mail to the following address:

Department of Business Oversight
Attention: Regulations Coordinator
1515 K St., Ste. 200
Sacramento, CA 95814

PUBLIC HEARING (Government Code Section 11346.5, Subdivision (a)(17))

A public hearing has not been scheduled. Any interested person or his or her duly authorized representative may request a public hearing no later than 15 days prior to the close of the written comment period. If the Department receives a request for a public hearing, the Department will provide notice of the time, date, and place of the hearing by mailing the notice to every person who has filed a request for notice with the Department.

AVAILABILITY OF THE NOTICE, STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND RULEMAKING FILE (Government Code Section 11346.5, Subdivisions (a)(16) and (20), and (b))

The Department has prepared a statement of reasons for the proposed action, and has available all the information upon which the proposal is based and the express terms of the proposed action. This notice of rulemaking, the text of the proposed regulatory action, and the initial statement of reasons for the proposed regulatory action are available on the Department's website at www.dbo.ca.gov. To access the documents from the Department's Web site, click on the "Laws & Regs" tab at the top of the home page, click on the "Rulemaking" link under "Division of Corporations", and then click on the "California Finance Lenders Law" or "California Residential Mortgage Lending Act" link.

The initial statement of reasons and proposed text may also be obtained at the front counter of any of the Department's locations, below, by requesting Document PRO 03/13-B or 03/13-C. The documents are also available from the contact person designated at the end of this notice.

Los Angeles Office:

320 West 4th Street, Suite 750
Los Angeles, CA 90013-2344

Sacramento Office:

1515 K Street, Suite 200
Sacramento, CA 95814-4052

San Diego Office:

1350 Front Street, Room 2034
San Diego, CA 92101-3697

San Francisco Office:

One Sansome Street, Suite 600
San Francisco, CA 94104-4448

As required by the Administrative Procedure Act, the Legal Division maintains the rulemaking file. The rulemaking file is available for public inspection and copying throughout the rulemaking process at the Department of Business Oversight, Legal Division, 1515 K Street, Suite 200, Sacramento, California 95814.

AVAILABILITY OF CHANGED OR MODIFIED TEXT (Government Code Section 11346.5, Subdivision (a)(18))

If the Department makes changes 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, amends, or repeals the proposed text. A request for a copy of any modified text should be addressed to the contact person designated below. The modified text will also be available on the Department's Web site. The Department will accept written comments on the modified text for at least 15 days after the date on which it is made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS (Government Code Section 11346.5, Subdivision (a)(19))

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 PERSON (Government Code Section 11346.5, Subdivision (a)(14))

Nonsubstantive inquiries concerning this action, such as requests for copies of the

proposed regulation or questions regarding the timelines or rulemaking status, may be directed to:

Daniel Warren
Regulations Coordinator
1515 K Street, Suite 200
Sacramento, California 95814
Telephone: (916) 322-3553
e-mail: Dan.Warren@dbo.ca.gov

Inquiries regarding the substance of the proposed regulation may be directed to:

Colleen Monahan
Senior Counsel
1515 K Street, Suite 200
Sacramento, California 95814
Telephone: (916) 322-3553
e-mail: Colleen.Monahan@dbo.ca.gov