

## Compliance Guidance

### LICENSURE EXEMPTION FOR NONPROFIT ORGANIZATIONS FACILITATING ZERO-INTEREST CONSUMER LOANS

Senate Bill No. 896  
Chapter 190, Statutes of 2014

Effective January 1, 2015, the California Finance Lenders Law includes an exemption for nonprofit organizations facilitating zero-interest, low-cost consumer loans through lending circles and other programs that allow individuals to establish and build credit histories or to improve their credit score.

#### Requirements

To qualify for the exemption, the nonprofit organization (known as an Exempt Organization) must meet the following five requirements:

1. Application

An Exempt Organization must apply for the exemption and pay an application fee of \$100. Upon approval from the Department of Business Oversight, the Exempt Organization may facilitate lending under the exemption. A Nonprofit Organization must submit the application on the following form: [DBO - CFL – FC 22066 \(c\)\(5\)](#).

2. Annual Report

An Exempt Organization must submit an annual report with the Department of Business Oversight on or before March 15<sup>th</sup> of every year. The annual report provides information on the characteristics of the lending facilitated under the exemption by the Exempt Organization and all of its reported Partnering Organizations. The Exempt Organization must submit the annual report on the following form: [DBO - CFL – FC 22066 \(c\)\(5\)](#).

3. Notice of Partnering Organizations

An Exempt Organization must notify the Department of Business Oversight within 30 days of entering into a written agreement with a Partnering Organization on the following form: [DBO - CFL – FC 22066\(d\)\(4\)](#). After notice is provided to the Department of Business Oversight, the Partnering Organization may begin facilitating loans that comply with the requirements of the exemption. The Partnering Organization is not required to submit an application to the Department of Business Oversight, but instead may facilitate lending under the umbrella of the

Exempt Organization's exemption, upon the Exempt Organization providing the required notice of the agreement to the Department on the Department's form.

4. Regulatory Examination

Upon notice, an Exempt Organization and a Partnering Organization must submit to regulatory examination intended to ensure that the loans facilitated are in compliance with the exemption.

5. Compliance with Lending Restrictions

An Exempt Organization and Partnering Organization must ensure that facilitated loans meet the minimum requirements of the exemption. The lending restrictions are outlined below in the section entitled, "Lending Restrictions."

LENDING RESTRICTIONS

Financial Code section 22066 contains the minimum requirements for loans facilitated by Exempt Organizations and Partnering Organizations under the exemption. The requirements are as follows:

1. No broker's fee may be paid in connection with the making of any loan.
2. The loan must be unsecured.
3. No interest may be imposed.
4. An administrative fee may be charged in an amount not to exceed:
  - a. Seven percent of the principal amount of the loan, exclusive of the administrative fee, or ninety dollars, whichever is less, on the first loan made to a borrower.
  - b. Six percent of the principal amount of the loan, exclusive of the administrative fee, or seventy-five dollars, whichever is less, on the second and subsequent loans made to that borrower.
5. A borrower may not be charged an administrative fee more than once in any four month period. Each administrative fee is fully earned immediately upon consummation of a loan agreement.

6. A borrower may be charged up to ten dollars to cover an insufficient funds fee incurred due to the actions of a borrower. A borrower may not be charged more than two insufficient funds fees in a single month.
7. The following information must be disclosed to borrowers in writing, in typeface no smaller than 12-point type, at the time of the loan application:
  - a. The amount to be borrowed, the total dollar cost of the loan to the borrower if the loan is paid back on time, including the total of the administrative fee and principal amount borrowed, the corresponding annual percentage rate, calculated in accordance with Federal Reserve Board Regulation Z (12 C.F.R. 226.1), the periodic payment amount, the payment frequency, and the insufficient funds fee, if applicable.
  - b. An explanation of whether, and under what circumstances, a borrower may exit a loan agreement.
8. Each loan must have a minimum principal amount upon origination of two hundred fifty dollars (\$250) and a maximum principal amount upon origination of two thousand five hundred dollars (\$2,500), and a term of not less than the following:
  - a. Ninety days for loans whose principal balance upon origination is less than five hundred dollars (\$500).
  - b. One hundred twenty days for loans whose principal balance upon origination is at least five hundred dollars (\$500), but is less than one thousand five hundred dollars (\$1,500).
  - c. One hundred eighty days for loans whose principal balance upon origination is at least one thousand five hundred dollars (\$1,500).
9. The loan may not be refinanced.
10. Neither the organization nor any of its wholly owned subsidiaries shall sell or assign unpaid debt to an independent party for collection before at least 90 has passed since the start of the delinquency.
11. Prior to disbursement of loan proceeds, the organization shall either:
  - a. Offer a credit education program or seminar to the borrower that has been previously reviewed and approved by the Commissioner for use in complying with the exemption, or

- b. Invite the borrower to a credit education program or seminar offered by an independent third party that has been previously reviewed and approved by the Commissioner for use in complying with this exemption.

A credit education program or seminar must be provided at no cost to the borrower.

12. The organization must report each borrower's payment performance to at least one consumer reporting agency that compiles and maintains files on borrowers on a nationwide basis, upon acceptance as a data furnisher by that consumer reporting agency. For purposes of this requirement, a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis is one that meets the definition in Section 603(p) of the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681a(p)). Any Exempt Organization that is accepted as a data furnisher after being granted an exemption by the Commissioner must report all borrower payment performance since its inception of lending under the program, as soon as practicable after its acceptance into the program, but in no event more than six months after its acceptance into the program.
13. The organization must underwrite each loan and must ensure that a loan is not made if, through its underwriting, the organization determines that the borrower's total monthly debt service payments, at the time of loan origination, including the loan for which the borrower is being considered, and across all outstanding forms of credit that can be independently verified by the organization, exceed 50 percent of the borrower's gross monthly household income. If income is verified based on a signed statement from the borrower, a loan may not be made if the borrower's total monthly debt service payments exceed 25 percent of the borrower's gross monthly household income.
  - a. The organization must seek information and documentation pertaining to all of a borrower's outstanding debt obligations during the loan application and underwriting process, including loans that are self-reported by the borrower but not available through independent verification.
  - b. The organization also must verify the information using a credit report from at least one consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, or through other available electronic debt verification services that provide reliable evidence of a borrower's outstanding debt obligations.
  - c. The organization must also request from the borrower and include all information obtained from the borrower regarding outstanding deferred deposit transactions (i.e., payday loans) in the calculation of the borrower's outstanding debt obligations.

- d. The organization is not required to consider, for purposes of debt-to-income ratio evaluation, loans from friends or family.
  - e. The organization must verify the borrower's household income that the organization relies on to determine the borrower's debt-to-income ratio using information from any of the following:
    - i. Electronic means or services that provide reliable evidence of the borrower's actual income.
    - ii. Internal Revenue Service Form W-2, tax returns, payroll receipts, bank statements, or other third-party documents that provide reasonably reliable evidence of the borrower's actual income.
    - iii. A signed statement from the borrower stating sources and amounts of income, if the borrower's actual income cannot be independently verified using electronic means or services, Internal Revenue Service forms, tax returns, payroll receipts, bank statements, or other third-party documents. If income is verified using a signed statement from a borrower, a loan may not be made if the borrower's total monthly debt service payments, at the time of loan origination, including the loan for which the borrower is being considered, and across all outstanding forms of credit, exceed 25 percent of the borrower's gross monthly household income.
14. At least two days prior to each payment due date, the organization must notify each borrower of the amount due and the payment due date. Notification may be provided by any means mutually acceptable to the borrower and the organization. A borrower has the right to opt out of this notification at any time, upon electronic or written request to the organization. The organization must notify each borrower of this right prior to disbursing loan proceeds.
15. An organization may not offer, sell, or require a borrower to contract for "credit insurance" or insurance on tangible personal or real property, in connection with, or incidental to, the facilitating of any loan.
16. An organization may not require that a borrower waive any right, penalty, remedy, forum, or procedure provided for in any law applicable to the loan, including the right to file and pursue a civil action or file a complaint with or otherwise communicate with the Commissioner or any court or other public entity, or that the borrower agree to resolve disputes in a jurisdiction outside of California or to the application of laws other than those of California.

17. An organization may not refuse to do business with or discriminate against a borrower or applicant on the basis that the borrower or applicant refuses to waive any right, penalty, remedy, forum, or procedure, including the right to file and pursue a civil action or complaint with, or otherwise notify, the Commissioner or any court or other public entity.

#### ADDITIONAL REQUIREMENTS

Exempt Organizations and Partnering Organizations must meet the following minimum requirements:

1. The organizations must be exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code and must be organized and operated exclusively for one or more of the purposes described in that section.
2. No part of the net earnings of the organizations may inure to the benefit of a private shareholder or individual.

The partnership of each Exempt Organization and each Partnering Organization must be formalized through a written agreement that specifies the obligations of each party. Each written agreement must contain a provision establishing that the Partnering Organization agrees to comply with the provisions of the exemption and any regulations that may be adopted by the Commissioner. Each agreement must be provided to the Commissioner upon request.

For additional guidance on the exemption, see Financial Code sections 22066 and 22067.