

FINAL STATEMENT OF REASONS
FOR THE ADOPTION OF RULES UNDER THE
CALIFORNIA FINANCE LENDERS LAW

As required by section 11346.2 of the Government Code, the California Corporations Commissioner (“Commissioner”) sets forth below the reasons for the nonsubstantive amendment of section 250.51, the adoption of sections 1422 and 1423 to Article 2 of Subchapter 6 of Chapter 3 of Title 10 of the California Code of Regulations. (10 C.C.R. sections 250.51, 1422 and 1423.)

Under the California Finance Lenders Law (“CFLL”), the Department of Corporations (“Department”) licenses and regulates finance lenders and brokers conducting business in this state. The CFLL provides that no person shall engage in the business of a finance lender or broker without obtaining a license from the Commissioner. (Financial Code section 22100.) The CFLL further provides that the application for a finance lender or broker’s license shall be in the form and contain the information that the Commissioner may by rule require. (Financial Code section 22101, subdivision (a).) The Commissioner may also establish a short form application and procedure for use by a licensee with one or more licensed locations who is seeking an additional location license. (Financial Code section 22102.)

The Department’s application form is used by applicants seeking to become licensed as finance lenders or brokers. The form is available to the public either at the Department’s offices or on its web site at www.corp.ca.gov. However, this form has not been formally adopted as a regulation pursuant to the Administrative Procedure Act (“APA”). (Government Code section 11370, et seq.) Nor has a short form application been adopted as a regulation.

Accordingly, in order to comply with the APA, the Department proposes to add section 1422 to Title 10, Chapter 3, Subchapter 6, Article 2 of the California Code of Regulations, the text of which will be the “Application For a License Under the California Finance Lenders Law.” The Department further proposes to add section 1423 to this title and chapter, to enable applicants who qualify to file a short form application for licensure with the Department. The Department also proposes to make a nonsubstantive amendment to section 250.51 which lists the processing time for all permit applications, to include the processing time for the long-form and short-form of the application for licensure under the California Finance Lenders Law.

It is noteworthy this rulemaking is a product of a departmental work group comprised of industry representatives and experienced staff, and convened for the purpose of reviewing and developing the application forms which are now being adopted as regulations.

I. PROPOSAL TO MAKE A NONSUBSTANTIVE AMENDMENT TO TITLE 10, CHAPTER 3, SECTION 250.51 OF THE CALIFORNIA CODE OF REGULATIONS.

Section 250.51 sets forth the listing of processing times for permit applications. The Department proposes to make a nonsubstantive amendment to section 250.51 to include the processing times of the California License Lenders Law long-form and short-form on the already existing chart of permit processing times of programs regulated by the Department of Corporations.

II. PROPOSAL TO ADD TITLE 10, CHAPTER 3, SECTION 1422 TO THE CALIFORNIA CODE OF REGULATIONS

Section 1422 contains the “Application for a License Under the California Finance Lenders Law” (“Application”). Generally, the application form needs to be added to the regulations because it has not been adopted as required by the APA, and is not contained elsewhere in the CFLL or regulations. More specific reasons for the necessity of the provisions in the proposed form are discussed below.

In order for a person to engage in business as a lender and/or broker under the CFLL, an application for licensure must first be filed with the Department. (See Financial Code section 22100.) This rule adopting the Application is necessary to ensure that the Department obtains the information needed to make a determination that the applicant meets the specified requirements for licensure under the CFLL, and to provide the applicant notice of the information that will be necessary for the Department to make such a determination. Additionally, Financial Code sections 22101, subdivision (a), and 22102 expressly authorize the Department to set forth the form of the application by regulation.

The information requested in items 1 through 4 of the Application relates to general information about the applicant, including the applicant’s name and fictitious business name, the form in which the applicant plans to conduct business, and the location of the applicant’s place of business. Existing law does not require applicants to submit this information to the Department. This general information is necessary to provide a means by which the Department may obtain identifying information about the applicant and information about the form and location of the applicant’s business. (As examples, see Financial Code sections 22106 [name of licensee, address, whether applicant is corporation or partnership]; 22153 [change of place of business]; 22154 [business conducted at location where other business is conducted]; and 22155 [name of business].)

The information in item 5 is requested for an applicant operating as a partnership, and concerns the date of organization of the applicant, the state in which it was organized, and the names and addresses of each general partner. Existing law does not require applicants to submit this information to the Department. The requested items are necessary to provide the Department with identifying information about the applicant and about those persons responsible for the operation and management of the applicant, so that the Department can conduct a meaningful investigation of such persons prior to their engaging in business with consumers in this state. The items requested are also necessary to provide the Department with information needed to facilitate communication with the applicant and those in charge of its operations and management. (See Financial Code section 22106, for example.)

The information in item 6 is requested for an applicant operating as a corporation, trust, limited liability company, or other entity, and concerns the date of organization of the applicant and the state in which it was organized. Item 6 further requests the names of the officers, directors, managers/members, trustees, and persons owning or controlling ten percent or more of the applicant, and the name, business address, telephone number and e-mail address of each person who will be in charge of the place of business. Existing law does not require applicants to submit this information to the Department. The requested items are necessary to provide the Department with identifying information about the applicant and about those persons responsible for the operation and management of the applicant, so that the Department can conduct a meaningful investigation of such persons prior to their engaging in business with consumers in this state. The items requested are also necessary to provide the Department with information needed to facilitate communication with the applicant and those in charge of its operations and management. (See, e.g., Financial Code section 22106.)

Item 7 requests information concerning any administrative action in another state to which the applicant has been subject. Existing law does not require applicants to submit this information to the Department. This information is needed to provide the Department with information concerning the background of the applicant to enable the Department to fully evaluate the suitability of the applicant for a license under the CFLL. (See, e.g., Financial Code section 22105.)

The information requested in item 8 concerns whether there will be any business conducted on the applicant's premises for which the applicant will need to obtain the Department's authorization under Financial Code section 22154 (business conducted at location where other business is conducted). Existing law does not require applicants to submit this information to the Department. This information is necessary to provide the Department with information needed

to ensure that the applicant is in compliance with the CFLL. (See Financial Code section 22154.)

Item 9 requests the name, address, and telephone number of the bonding agent to whom the Department can direct questions regarding the surety bond required in Exhibit B, below. Existing law does not require applicants to submit this information to the Department. This information is necessary to enable the Department to communicate with the bonding agent to ensure that the applicant is in compliance with the bonding requirements of the CFLL. (See Financial Code section 22112.)

The information requested in item 10 concerns the applicant's proposed method of operations, including the purpose of the loan, the type of collateral, the minimum loan amount, whether for broker licensees the loans will only be brokered to CFLL licensed lenders, and whether for finance lender licensees the source of funds will be exclusive of any funding advances from an institutional investor committed to purchasing the note. Item 10 also requests a short description of the applicant's proposed business plan. Existing law does not require applicants to submit this information to the Department. This information is necessary to provide the Department with information concerning the nature of the loans the applicant proposes to make, and the way in which the applicant proposes to conduct its business, so that the Department can ensure that the applicant is in compliance with, and is conducting its business appropriately under, the CFLL. (For example, see Financial Code sections 22050 through 22061 [exemptions]; 22159 [reports by licensee]; and 22203-22204 [consumer loans].)

Item 11 requests information concerning the applicant's principal place of business if it is to be located outside of the State of California, as provided by Financial Code section 22106, subdivision (b). The information requested indicates the applicant's choice of how it will make its business records available to the Department for inspection. Existing law does not require applicants to submit this information to the Department. This information is necessary to advise the Department how and where the applicant will make its records available for inspection to ensure the applicant is complying with the CFLL in the operation and management of its business. (See Financial Code section 22106, subdivision (b).)

Item 12 concerns the Exhibits that are required to be submitted with the Application. The Exhibits contain information necessary for the Department to conduct a thorough investigation and to ensure that the applicant meets the requirements of the CFLL. Existing law does not require applicants to submit this information to the Department. The Exhibits required to be attached to the application and the more specific reasons the Exhibits are necessary are set forth below:

EXHIBIT A: A balance sheet of the applicant as of a date not more than 90 days prior to the date this Application is filed, that indicates a minimum net worth of \$25,000. This information is necessary for the Department to make a determination that the applicant meets the minimum net worth requirements of Financial Code section 22104.

EXHIBIT B: An **ORIGINAL** surety bond, including any and all riders and endorsements in the amount of \$25,000, utilizing the instructions and surety bond form acceptable to the Department of Corporations, enclosed with the application packet. This requirement is necessary to notify applicants of their obligation to submit a bond and to enable the Department to determine whether the bond requirements of Financial Code section 22112 have been satisfied.

EXHIBIT C: A Statement of Identity Questionnaire for each person named in Items 4, 5, & 6 of the Application. This information is necessary for the Department to investigate such persons and determine whether the applicant meets the requirements of Financial Code section 22105.

EXHIBIT D: For individual applicants only, the form entitled "Statement of Citizenship, Alienage, and Immigration Status For Application of Department of Corporations License or Certificate." This information is needed to enable the Department to determine the citizenship status of the applicant. (See Financial Code section 22105.)

EXHIBIT E: A completed Customer Authorization of Disclosure of Financial Records form. A person named in Item 4, 5, or 6 of this application who is authorized to sign on behalf of the applicant must sign this form. This form will enable the Department to have access to the licensee's financial information that is under the control of third parties, such as banks. This information is necessary in order for the Department to thoroughly investigate the licensee's financial standing to meet the requirements of Financial Code section 22156. Additionally, timely access to such financial records can be crucial in certain enforcement actions the Department may be pursuing.

EXHIBIT F: For an applicant that will be doing business under a fictitious business name, a copy of the Certificate of Filing and Proof of Publication, both of which bear the County Clerk's filing stamp. The Certificate of Filing and Proof of Publication are to be filed pursuant to the requirements of the Unfair Practices Act, Business and Professions Code section 17000, et seq. This information is needed to enable the Department to determine whether the applicant is doing business under a fictitious business name and is meeting the requirements of Financial Code section 22155.

EXHIBIT G: Two copies of all advertising proposed to be used in connection with the business to be licensed. If none, the Exhibit should so state. This information is required to be submitted to the Department for review pursuant to California Code of Regulations section 1550 and is necessary to permit the Department to approve or disapprove the applicant's proposed advertising.

EXHIBIT H: For an applicant incorporated in the State of California (*domestic* corporation), the following items, pursuant to the Department's authority under Financial Code section 22101, subdivision (a):

1. An **ORIGINAL** Certificate of Good Standing or Qualification duly executed not more than sixty days before filing this application by the Secretary of State of California showing that the applicant is authorized to do business in this State. **The certificate must also indicate the original date of incorporation.** This information is necessary for the Department to determine whether the applicant is permitted to conduct its business in the State of California.
2. A copy of the notice filed with the Department of Corporations indicating that the initial issuance of shares of stock was entitled to an exemption pursuant to section 25102 of the Corporations Code or was qualified for issuance in some other manner, as required by Corporations Code section 25110. This information is needed to ensure that the applicant has complied with the requirements of both the CFLL and the California Securities Law regarding the issuance of shares of stock.

EXHIBIT I: For an applicant incorporated outside the State of California (*foreign* corporation), the following items, pursuant to the Department's authority under Financial Code section 22101, subdivision (a):

1. A Certificate of Good Standing or Qualification duly executed not more than sixty days before filing this Application by the Secretary of State of the foreign state, or other proper authority showing that the applicant is authorized to transact business in that state. **The certificate must also indicate the original date of incorporation.** This information is necessary for the Department to determine whether the applicant is permitted to conduct its business in the state in which it is incorporated.
2. A Certificate of Good Standing or Qualification duly executed not more than sixty days before filing this Application by the Secretary of State of California showing that the applicant is authorized to do business in California. This information is necessary for the Department to determine whether the applicant is permitted to conduct its business in the State of California.

3. A Consent to Service of Process, utilizing the form provided in the application packet. Service made pursuant to the terms of the consent to service of process shall have the same force and validity as if served personally on the applicant. This form is necessary to enable the Department to accept service of process on behalf of an applicant if the applicant is unable to be located.
4. The name and address of the principal agent in California. This information is necessary in order to provide the Department with a primary contact person in this state who is authorized to act for and on behalf of the applicant.

EXHIBIT J: For an applicant that is a Trust, Limited Partnership or Limited Liability Company (**domestic** business entity), an **ORIGINAL** Certificate of Good Standing, Qualification, or other document duly executed not more than sixty days before filing this Application by the Secretary of State of California, pursuant to the Department's authority under Financial Code section 22101, subdivision (a). The certificate must also indicate the original date of incorporation. This information is necessary for the Department to determine whether the applicant is permitted to conduct its business in the State of California.

EXHIBIT K: For an applicant that is a Trust, Limited Partnership or Limited Liability Company organized outside of the State of California (**foreign** business entity), the following items, pursuant to the Department's authority under Financial Code section 22101, subdivision (a):

1. A certificate of good standing or qualification duly executed not more than sixty days before filing this Application by the Secretary of State of the foreign state, or other proper authority showing that the applicant is authorized to transact business in that state. **The certificate must also indicate the original date of incorporation.** This information is necessary for the Department to determine whether the applicant is permitted to conduct its business in the state in which it is incorporated.
2. A certificate of good standing or qualification duly executed not more than sixty days before the filing of this Application by the Secretary of State of California showing that the applicant is authorized to do business in California. This information is necessary for the Department to determine whether the applicant is permitted to conduct its business in the State of California.
3. A Consent to Service of Process, utilizing the form provided in the Application packet. Service made pursuant to the terms of the consent to service of process shall have the same force and validity as if served personally on the applicant. This form is necessary to enable the

Department to accept service of process on behalf of an applicant if the applicant is unable to be located.

4. The name and address of the principal agent in California. This information is necessary in order to provide the Department with a primary contact person in this state who is authorized to act for and on behalf of the applicant.

EXHIBIT L: An affidavit regarding the applicant's knowledge of the California Finance Lenders Law and Rules. Only one responsible officer or director is required to complete this form. This information is necessary to demonstrate that the applicant is familiar with the laws with which the applicant must comply as a licensee.

The Execution Section requests the name, address, title and telephone number of the person who should be contacted for information regarding this Application. Existing law does not require applicants to submit this information to the Department. This information is necessary to provide the Department with a contact person who is authorized to respond to the Department's inquiries, if any, concerning the Application.

This section further sets forth the applicant's declaration, to be signed under penalty of perjury, stating that the applicant agrees to comply with the requirements of the CFLL, rules, and orders as adopted by the Department; and to provide the Department with information concerning changes in officers, directors, or other persons named in the Application. The declaration also states that the person signing the Application is authorized by the applicant to do so, and agrees that the Application and all exhibits not designated as confidential are subject to public inspection. Existing law does not require applicants to submit this information to the Department. This information is needed to ensure that the applicant understands and agrees to comply with the provisions of the CFLL under which the applicant is licensed, and that the applicant agrees to keep the Department informed of changes in officers, directors, and other named persons who may be responsible for operating the applicant's business, to enable the Department to fully evaluate the suitability of such persons under the CFLL.

III. PROPOSAL TO ADD TITLE 10, CHAPTER 3, SECTION 1423 TO THE CALIFORNIA CODE OF REGULATIONS

Section 1423 contains the "Short Form Application for a License Under the California Finance Lenders Law" ("Short Form"). Generally, the Short Form needs to be added to the regulations because it has not been adopted as required by the APA, and is not contained elsewhere in the CFLL or regulations. More specific reasons for the necessity of the provisions in the proposed form are discussed below.

Financial Code section 22102 provides that a licensee who has one or more licensed locations and is seeking an additional location may file a short form Application as the Department may establish under section 22101. This rule adopting the Short Form is necessary to ensure that the Department obtains the information needed to determine whether the applicant meets the requirements to obtain a subsequent license using the short form Application, as provided by section 22102.

Additionally, this rule is necessary to provide CFLL applicants with an efficient means by which they may add additional business locations without duplicating the original application process. The emergency regulation will therefore result in immediate costs savings to applicants, which in turn will enable applicants to more quickly and efficiently add additional business locations and will provide consumers with more options and greater access to loan products offered by these licensees. The expedited application process will benefit not only applicants and consumers, but also the Department, as the costs of processing the short form applications will be less than if a new complete application was required each time a lender opened a new location.

The information requested in items 1 and 2 of the Short Form relates to general information about the applicant, including the applicant's name and fictitious business name, and the location of the applicant's place of business. Existing law does not require applicants to submit this information to the Department. This general information is necessary to provide a means by which the Department may obtain identifying information about the applicant and information about the location of the applicant's business. (See, e.g., Financial Code sections 22106 [name of licensee, address, whether applicant is corporation or partnership]; 22153 [change of place of business]; 22154 [business conducted at location where other business is conducted]; and 22155 [name of business].)

Item 3 requests the full name of the individual in charge of the licensee's proposed new business location. Existing law does not require applicants to submit this information to the Department. The requested information is necessary to provide the Department with identifying information about the applicant and about the person in charge of operation and management of the new location, so that the Department can conduct a meaningful investigation of such persons prior to their engaging in business with consumers in this state. The information requested is also necessary to permit the Department to communicate with the individual at the new location. (See Financial Code sections 22106.)

This individual must also submit a Statement of Identity Questionnaire, unless he or she has previously provided such a form to the Department. Existing

law does not require applicants to submit this information to the Department. This information is necessary for the Department to investigate such persons and determine whether the applicant meets the requirements of the CFLL. (See Financial Code sections 22105.)

Item 4 requests information concerning any change in the applicant's plan of business previously submitted to the Department. Existing law does not require applicants to submit this information to the Department. This information is necessary to inform the Department of the types of loans the applicant proposes to make, and the way in which the applicant proposes to conduct its business, so that the Department can ensure that the applicant is in compliance with, and is conducting its business appropriately under, the CFLL. (See, e.g., Financial Code sections 22050 through 22061 [exemptions]; 22159 [reports by licensee]; and 22203-22204 [consumer loans].)

Item 5 requests the license number and address of one other CFLL license held by this applicant. Existing law does not require applicants to submit this information to the Department. This information is needed to provide the Department with information concerning the background and qualifications of the applicant based on the information previously submitted to the Department by the licensee and on the applicant's conduct since becoming licensed under the law, thus enabling the Department to fully evaluate the suitability of the applicant for an additional license. (See Financial Code section 22105.)

Item 6 requests the name, address, title and telephone number of the person who should be contacted for information regarding this Short Form application. Existing law does not require applicants to submit this information to the Department. This information is necessary to provide the Department with a contact person who is authorized to respond to the Department's inquiries, if any, concerning the Application. (See Financial Code section 22106.)

The Execution Section sets forth the applicant's declaration, to be signed under penalty of perjury, stating that the applicant agrees to comply with the requirements of the CFLL, rules, and orders as adopted by the Department; and to provide the Department with information concerning changes in officers, directors, or other persons named in the Short Form application. The declaration also states that the person signing the Short Form application is authorized by the applicant to do so, and agrees that the Application and all exhibits not designated as confidential are subject to public inspection. Existing law does not require applicants to submit this information to the Department. This information is needed to ensure that the applicant understands and agrees to comply with the provisions of the CFLL under which the applicant is licensed, and that the applicant agrees to keep the Department informed of changes in officers, directors, and other named persons who may be responsible for operating the applicants business, to

enable the Department to fully evaluate the suitability of such persons under the CFLL. (See Financial Code sections 22105 and 22106.)

DETERMINATIONS

The Commissioner has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, which require reimbursement pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code.

ALTERNATIVES CONSIDERED

No reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the regulation is proposed, or would be as effective and less burdensome to affected private persons, or would lessen any adverse impact on small businesses. The form prescribed by proposed section 1422 is already in use, and the short form set forth in proposed section 1423 was derived from the longer form.

DETERMINATIONS

The Commissioner has determined that the proposed 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.

ADDENDUM REGARDING PUBLIC COMMENTS

No request for hearing was received during the 45-day public comment period which ended on June 3, 2002. No public hearing was scheduled or heard.

COMMENTS RECEIVED DURING THE 45-DAY COMMENT PERIOD

COMMENTOR: Keith Bishop, by U.S. mail dated May 31, 2002.

RESPONSE TO GENERAL COMMENTS INCLUDED IN "BACKGROUND" SECTION

The commentor initially asserts that the information required on the application form must relate to the bases upon which the Commissioner may deny an application, as set forth in Financial Code section 22109. Therefore, according to the commentor, the Commissioner is not authorized to request much of the information he has asked for on the application forms.

Financial Code section 22105(a) provides:

If the commissioner determines that the applicant has satisfied this division and does not find facts constituting reasons for denial under Section 22109, the commissioner shall issue and deliver a license to the applicant. (Emphasis added.)

Section 22105(a) therefore sets forth a two-part test: the Commissioner must determine both that the applicant has satisfied the requirements of the California Finance Lenders Law (CFLL) and that there is no reason to deny the license under section 22109.

The commentor has relied only on the second part of the test, while neglecting to recognize the first part. Because the Commissioner must determine whether the applicant has satisfied the CFLL, he or she must be able to ask an applicant for information relevant to making that determination. If the statute were to be interpreted as the commentor has construed it, the Department would be prohibited from asking for much relevant information necessary to determine whether an applicant is a suitable candidate for a CFLL license. For example, taking the commentor's interpretation to its logical extreme, the Department would not be permitted to verify that an applicant has a surety bond as required by section 22112 or to verify an applicant's net worth pursuant to section 22014. Financial Code section 22101 provides that "An application for a license under this division shall be in the form and contain the information that the commissioner may by rule require...." The law clearly provides that the Commissioner may require the information necessary to determine the applicant's satisfaction of the requirements of the CFLL.

Moreover, the commentor has failed to recognize that the CFLL is to be "liberally construed and applied to promote its underlying purposes and policies." (Fin. Code, § 22001.) To ensure that this occurs, the Commissioner must take steps to determine that new licensees will promote this end. Such a determination can only be made by obtaining information from the applicant relevant to ensuring that he or she will adhere to these purposes and policies. The information requested in the CFLL license applications proposed by this rule meets this criteria.

The commentor makes several references in his comment letter to a lack of clarity in the application. The Department notes that the application was developed by a committee that included both industry representatives and Department staff, as more fully discussed below, and the Department has never received a single comment concerning any lack of clarity in the application from those in the industry who are and have been using it with no problem for many years.

The commentor also states that although he brought his concerns regarding the CFLL license application form to the attention of the Department in September

2000, “the Department did not adopt an application form as a regulation until a year and a half after being notified [by the commentor] of the illegality of the current form.” The commentor has misrepresented the facts and circumstances concerning the Department’s actions in response to his concerns. The commentor’s original letter was received by the Department on September 27, 2000. In October, the Department’s Financial Services Division (FSD) formed a workgroup with industry representatives and experienced staff to address the concerns raised in the commentor’s letter. By January 2001, a revised draft of the application form was prepared. Comments on the revised form were received during February 2001, and the group met again in April of that year. Over the next several months, a draft regulation was completed and reviewed by the Business, Transportation and Housing Agency (BTHA), and was then filed with the Office of Administrative Law (OAL) on March 12, 2002. The emergency rule became effective on March 18, 2002.

The Department notes that although the commentor was apprised of the formation and activities of the workgroup, he did not participate as an active member in the group.

Finally, the commentor is correct that the application does not include information regarding the appeals process as required by the Permit Reform Act. (Gov. Code, § 15378(b).) The Department has revised the form to include this information.

COMMENT 1: The commentor recommends that because the CFLL requires that the application form be adopted by rule, the Final Statement of Reasons should be revised to state that the application form needs to be added both because it must be adopted by rule under Financial Code section 22101(a) and because of the rulemaking requirements of the APA.

RESPONSE 1: Section 22101 (a) provides that “an application for a license under this division shall be in the form and contain the information that the commissioner may by rule require and shall be filed upon payment of the fee specified in section 22103.” The use of the term “may” renders the commissioner’s action permissive rather than mandatory; thus, the recommended change is not appropriate.

COMMENT 2: The commentor states that because the term “fictitious business name” used in Item 1 of the form is not defined in the CFLL, the item does not meet the “clarity” requirement of Government Code section 11349(c), as it utilizes terminology that may not be familiar to those directly affected by the regulation. The commentor therefore recommends that language be added indicating that “fictitious business name” has the meaning set forth in Business and Professions Code section 17900.

RESPONSE 2: Government Code section 11349(c) defines "clarity" as "written or displayed so that the meaning of regulations will be easily understood by those persons directly affected by them." The term "fictitious business name" is a term that is commonly used and understood in the regulated industry. Moreover, as noted above, the application form was developed by a committee that included industry and Department members, and the Department has not received information that there is a clarity problem from the industry that is using the application form. The Department therefore disagrees that the proposed definitional language should be added.

COMMENT 3: The commentor states that the term "managing general partner" used in Item 5 of the form is not defined in the CFLL, and that the item therefore does not meet the "clarity" requirement of Government Code section 11349(c). The commentor further states that because Financial Code section 22106(a) requires only that the licensee state the names of the general partners of a licensee that is a partnership, the requirement that the response indicate whether a general partner is a "managing general partner" should be deleted.

RESPONSE 3: The Department disagrees that the item violates the "clarity" requirement of Government Code section 11349(c) for the reasons set forth in the response to Comment 2. Moreover, the Commissioner may request this information pursuant to Financial Code section 22101(a). The Department therefore disagrees that the term should be deleted.

COMMENT 4(a): The commentor states that item 6 of the application would be clearer if reference is made to the type of entity.

RESPONSE 4(a): The form provides space for the applicant to indicate the type of entity applying for the license in a "check the box" fashion. Moreover, the form is sufficiently clear, and there have been no concerns raised by the industry. The commentor's recommendations are therefore unnecessary.

COMMENT 4(b): The commentor states that the requirement that the applicant list the names of each "executive vice president/vice president" violates the "consistency" requirement of Government Code section 11349(d) and the "authority" requirement of Government Code section 11349(b). Because "vice president" is not listed in the definition of "principal officers" provided in Financial Code section 22105, this information may not be requested. The commentor proposes that the reference to "executive vice president/vice president" should be deleted and replaced with "other officers of the applicant who will have direct responsibility for the applicants lending activities in California."

RESPONSE 4(b): The Department has revised the application form to include language stating that information concerning "any other officer with direct responsibility for the conduct of the applicant's lending activities within the state."

As to the listed officers, directors, and managers, this information is necessary to provide the Department with the names of those persons responsible for the operations and management of the applicant, and requesting this information is within the scope of the Commissioner's authority under Financial Code sections 22101(a) and 22150.

COMMENT 4(c): The commentor states that the information requested with respect to limited liability companies violates the "consistency" requirement of Government Code section 11349(d), and further violates the "authority" requirement of Government Code section 11349(b), as it enlarges the scope of Financial Code section 22105. The commentor further repeats his objections concerning principal officers as discussed in comment 4(a), discussed above, and his argument that these items may not be included in the form because the Commissioner is not authorized by Financial Code section 22109 to deny an application on this basis.

RESPONSE 4(c): Limited liability companies are not expressly excluded from the provisions of this section, and there have been no concerns regarding their inclusion raised by the industry. Also, the Department responds to the comments concerning section 22105 as set forth in the response to comment 4(b). Finally, the Department disagrees with the comments concerning Financial Code section 22109, as more fully discussed in the "Response to General Comments Included in Background Section," above.

COMMENT 4(d): The commentor offers a suggested modification to item 6 of the form concerning the information requested on limited liability companies.

RESPONSE 4(d): The Department responds to the comments concerning section 22105 as set forth in the response to comment 4(b).

COMMENT 4(e): The commentor objects to the request for disclosure of information concerning trustees for the reasons stated in Comment 4(c), above.

RESPONSE 4(e): The Department responds to the comment as set forth in Response 4(c), above.

COMMENT 4(f): The commentor states that the instruction requiring the applicant to list any person who "owns or controls, directly or indirectly, 10 percent or more of the applicant" violates both the "clarity" and "consistency" requirements of Government Code section 11349(c) and (d), in that section 22105 provides that the commissioner is required to investigate persons "owning or controlling, directly or indirectly, 10 percent or more of the outstanding equity securities." The commentor also states that the reference to "owns or controls" is vague and may not be understood by applicants.

RESPONSE 4(f): The commentor has misstated Financial Code section 22105, which provides that “the commissioner shall investigate the applicant, and its general partners and persons owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests if the applicant is a partnership. If the applicant is a corporation, trust, or association, including an unincorporated organization, the commissioner shall investigate its principal officers, directors, and persons owning or controlling, directly or indirectly, 10 percent or more of the outstanding equity securities.” The Department responds to the comments concerning section 22105 as set forth in the response to comment 4(b). As to the use of the term “owns or controls,” and derivations thereof, the Department disagrees that the item violates the “clarity” requirement of Government Code section 11349(c) for the reasons set forth in the response to Comment 2.

COMMENT 4(g): The commentor states that the requirement that information be disclosed with respect to persons who will be “in charge” of the place of business violates the “clarity” and consistency requirements of Government Code section 11349(c) and (d) as the term “in charge” may not be understood by applicants. Also, Financial Code section 22105 does not require or authorize the Commissioner to investigate persons who are not specified in that section. The commentor also repeats his argument that this item may not be included in the form because the Commissioner is not authorized by Financial Code section 22109 to deny an application on this basis. Finally, the commentor states that the regulation violates the “authority” requirement of Government Code section 11349(b) as it enlarges the scope of Financial Code sections 22105 and 22109.

RESPONSE 4(g): As to the use of the term “in charge of,” the Department disagrees that the item violates the “clarity” requirement of Government Code section 11349(c) for the reasons set forth in the response to Comment 2. The Department responds to the comments concerning section 22105 as set forth in the response to comment 4(b). Finally, the Department disagrees with the comments concerning Financial Code section 22109, as more fully discussed in the “Response to General Comments Included in Background Section,” above.

COMMENT 4(h): The commentor notes that the Initial Statement of Reasons does not refer to various categories of persons described in item 6, such as persons in charge of the place of business, and recommends that the Final Statement Of Reasons accurately describe the requirements of item 6.

RESPONSE 4(h): The Department has revised the Final Statement of Reasons to accurately reflect the provisions of item 6.

COMMENT 5: The commentor states that Item 7 of the application violates the “clarity” and “consistency” requirements of Government Code section 11349(c) and (d), in that an applicant may not understand what is intended by the

term “administrative action.” The commentor also repeats his argument that this item may not be included because the Commissioner is not authorized by Financial Code section 22109 to deny an application on this basis. The commentor also states that the item violates the “authority” requirement of Government Code section 11349(b) insofar as it enlarges the scope of Financial Code section 22105.

RESPONSE 5: As to the use of the term “administrative action,” the Department disagrees that the item violates the “clarity” and “consistency” requirements of Government Code section 11349(c) and (d) for the reasons set forth in the response to Comment 2. As such, the amendments proposed in the comment are unnecessary. The Department disagrees with the comments concerning Financial Code section 22109, as more fully discussed in the “Response to General Comments Included in Background Section,” above. The Department responds to the comments concerning section 22105 as set forth in the response to comment 4(b).

COMMENT 6: The commentor states that item 8 of the CFLL application form violates the “consistency” requirement of Government Code section 11349(d). The commentor further states that the item violates the “authority” requirement of section 11349(b) in that it enlarges the scope of Financial Code section 22105. The commentor argues that Financial Code section 22154 prohibits a licensee from conducting the business of making loans under this division within a location in which any other business is solicited or engaged in, except as authorized by the Commissioner, and is therefore not applicable to persons licensed solely as brokers. The commentor provides suggested language to revise item 8.

RESPONSE 6: The commentor does not explain how the item violates the “consistency” requirement. Further, the Department disagrees that the item violates the “authority” requirement in that if the item does not apply to a particular applicant, the language provides that the applicant may so state. The commentor’s revisions are therefore unnecessary.

COMMENT 7: The commentor claims that item 10 appears to be directed at the issue of “table funding” and that to the extent the Department has concluded that “table funding” is not permitted by a licensee under the CFLL, this interpretation must be adopted in accordance with the rulemaking provisions of the APA. The commentor further argues that the Statement of Reasons should set forth the authority for the Department’s position.

RESPONSE 7: Item 10 of the application form simply requests information concerning the applicant’s proposed method of operations, including such information as the purpose of the loans, type of collateral, and minimum loan amount. As to applicants for a brokers license, the information requested includes whether loans will only be brokered to CFL licensed lenders. As to lender applicants, the form asks whether the source of funds will be exclusive of any

funding advances from an institutional investor committed to purchasing the note. (This item is needed to ensure compliance with Rule 1460 which prohibits so-called table funding.) Finally, the item requests a short description of the applicant's business plan. This item is clear and self-explanatory, and requests information; it does not make a policy declaration or interpretation. Moreover, this comment addresses issues outside the scope of this rulemaking project.

COMMENT 8(a): The commentor states that to the extent item 11 is intended to apply to individuals or entities that are not corporations, the item violates the "clarity" standard of Government Code section 11349(c) because it utilizes the term "governing body" which may not be familiar with those affected by the regulation.

RESPONSE 8(a): As to the use of the term "governing body," the Department disagrees that the item violates the "clarity" requirement of Government Code section 11349(c) for the reasons set forth in the response to Comment 2.

COMMENT 8(b): The commentor states that to the extent that item 11 requires an applicant to attest that a resolution of the board of directors of a corporation has been passed, the item violates the "consistency" requirement of Government Code section 11349(d). Financial Code section 22106(b) requires the applicant to agree in writing to either alternative, and the Commissioner has cited no authority for the proposition that an agreement executed by the applicant would be insufficient to meet the requirements of section 22016(b). Moreover, the regulation violates the "authority" requirement set forth in Government Code section 11349(b) insofar as it enlarges the scope of Financial Code section 22105.

RESPONSE 8(b): Financial Code section 22106(b) provides:

A license for a business location outside this state may be issued if the licensee agrees in writing in the license application to do, at the option of the applicant, one of the following: (1) Make the licensee's books, accounts, papers, records, and files available to the commissioner or the commissioner's representatives in this state. (2) Pay the reasonable expenses for travel, meals, and lodging of the commissioner or the commissioner's representatives incurred during any investigation or examination made at the licensee's location outside this state.

It is the board of directors acting on behalf of the corporation that decides how the business will operate, and this is typically done via a resolution of the board. Therefore, it would be the usual business practice of a corporation for its board to make the election under section 22106(b) by passing a resolution. Moreover, as

already noted repeatedly, the application was developed by a committee that included industry and Department members, and the Department has not received complaints concerning this provision from the industry that is using the application. The Department does not believe that this provision violates the “authority” requirement by enlarging the scope of section 22105 (and the commentor has not stated justification for his contention), and again responds as set forth in the response to comment 4(b).

COMMENT 8(c): The commentor contends that the first alternative provided to out-of-state applicants under item 11 is inconsistent with Financial Code section 22106(b), which does not provide that the Commissioner may select the location in this state for making the applicant’s records available for inspection. The commentor also states that the item violates the “authority” requirement of Government Code section 11349(b) insofar as it enlarges the scope of Financial Code section 22105.

RESPONSE 8(c): Pursuant to Financial Code section 22106(b), a license for a business location outside this state may be issued if the licensee agrees in writing to make the licensee’s books, accounts, papers, records, and files available to the commissioner or the commissioner’s representatives in this state. The commentor is correct that section 22106(b) does not provide that the location may be selected by the Commissioner. However, the Commissioner does have the authority to make general rules and regulations for the enforcement of the division. (Fin. Code, § 22150.) Accordingly, this provision of the regulation is within the scope of the Commissioner’s authority. The Department responds to the comment concerning Financial Code section 22105 as set forth in the response to comment 4(b).

COMMENT 9(a): The commentor states that while Exhibit B to the application requires that an original surety bond be filed with the Department, Financial Code section 22112 requires only that a copy of the bond be filed. The commentor contends that that this requirement therefore violates the consistency requirement of Government Code section 11349(d) and the “authority” requirement set forth in Government Code section 11349(b).

RESPONSE 9(a): The commentor is correct in stating the requirements of section 22112, and the Department has amended Exhibit B to conform with the statute.

COMMENT 9(b): The commentor contends that the Department may only request a statement of identity (Exhibit C to the application) from those individuals that are specifically enumerated in Financial Code section 22105(a). Additionally, the commentor recommends the elimination of the request for the following items of personal information, to protect the privacy rights of individuals: hair color, eye color, height, weight, birthplace, residence telephone number,

residence for the last ten years, and employer names and addresses. The commentor also states that certain questions on the form do not relate to any of the bases for denial of an application under Financial Code 22109(a)(2) and that the questions violate the “consistency” and “authority” requirements of Government Code section 11349(d) and (b). Additionally, the commentor states that question 7 violates the anti-discrimination provisions of the federal Bankruptcy Code, thus violating the “consistency” and “authority” standards. Finally, the commentor states that question 12 assumes that an individual will be employed by an escrow company, and is out of place on the form and should be eliminated from Exhibit C.

REPOSE 9(b): The commentor has not stated any authority for his contention that the Department may only request a statement of identity from individuals listed in section 22105(a). Also, the information requested in the form is necessary for the Department to make an appropriate and thorough investigation into the background and identity of applicants for licensure. The Department disagrees with the comments concerning Financial Code section 22109, as more fully discussed in the “Response to General Comments Included in Background Section,” above. Also, question 7 does not violate the anti-discrimination provisions of the Bankruptcy Code. Question 7 simply requests information concerning prior bankruptcy filings by an applicant; it does not state that an applicant will be denied a license on this basis. The Department is aware that it cannot reject an applicant on the basis of a prior bankruptcy action alone. Finally, the Department points out that the form clearly states that questions 11 and 12 “must be answered by all persons submitting this questionnaire in connection with an escrow agent’s license.” If the form is not being submitted as such, the applicant does not need to respond to those questions.

COMMENT 9(c): The commentor states that Exhibit E to the application violates the “consistency” standard of Government Code section 11349(d), in that the CFLL does not require an applicant¹ to furnish a customer authorization, but requires a licensee to file such an authorization upon request of the Commissioner.

RESPONSE 9(c): The commentor is correct that Financial Code section 22156 requires licensees to file an authorization for disclosure of financial records upon request of the Commissioner, and that applicants are not required under the statute to do so. The Department requests that this authorization be on file prior to the issuance of a license to enable the Department to thoroughly investigate a licensee’s financial standing. Requesting this information is within the scope of the Commissioner’s authority under Financial Code sections 22101(a) and 22150. The Department has revised the form to clarify that

¹ The commentor uses the term “a licensee” here; the Department assumes he intended to refer to an applicant for licensure as not being required to furnish a customer authorization.

submission of the form by prospective licensees prior to issuance of a license is a condition of licensure.

COMMENT 9(d): The commentor states that Exhibits H, I, J, and K require the applicant to file additional information which is unrelated to the regulatory provisions of the CFLL. The reference to Financial Code section 22108 violates the “reference” requirement of Government Code section 11349(e), because section 22108 authorizes the Commissioner to require licensees to file information regarding changes in the information provided in any application, but does not apply to applicants. The commentor claims that the requirements also violate the “authority” requirement of Government Code section 11349(b), again reiterating his argument that these items enlarge the scope of Financial Code section 22109 because the Commissioner is not authorized by Financial Code section 22109 to deny an application on this basis.

RESPONSE 9(d): The commentor is correct that the reference to Financial Code section 22108 is erroneous, and the Department has amended this provision to instead refer to sections 22101 and 22105. The Department disagrees that the information requested in Exhibits H, I, J, and K is unrelated to the regulatory provisions of the CFLL. All of these items are relevant to ensure the applicant is an appropriate candidate for licensure and requesting this information is within the scope of the Commissioner’s authority under Financial Code sections 22101(a) and 22150. The Department disagrees with the comments concerning Financial Code section 22109, as more fully discussed in the “Response to General Comments Included in Background Section,” above.

COMMENT 9(e): The commentor states that Exhibit L violates the “consistency” standard set forth in Government Code section 11349(d) because the Commissioner is not authorized by Financial Code section 22109 to deny an application on this basis. He states that Exhibit L violates the “authority” requirement set forth in Government Code section 11349(b) in that it enlarges the scope of Financial Code section 22109. Also, he suggests that while Exhibit L is referred to as an affidavit, it is not an affidavit at all, in that it is not a written statement under oath, made without notice to the adverse party, as provided by Code of Civil Procedure section 2003. The commentor therefore suggests that Exhibit L should be deleted entirely from the application form.

RESPONSE 9(e): The Department disagrees with the comments concerning Financial Code section 22109, as more fully discussed in the “Response to General Comments Included in Background Section,” above. While Exhibit L is entitled an affidavit, it is actually a declaration within the meaning of Code of Civil Procedure section 2015.5, and the Department has changed the title of the document to so reflect, and has amended the form to comply with the requirements set forth in section 2015.5. The Department disagrees that Exhibit L should be deleted entirely from the application form. (Again, the Department is

authorized to request information that assists in determining whether the applicant has satisfied the law. See Financial Code section 22105(a))

COMMENT 10: The commentor states that question 3 of the “short form” should be eliminated for the reasons states in Comment 4(g), above.

RESPONSE 10: The Department responds to the comment as set forth in Response 4(g), above.

One comment letter was received during the 15-day public comment period which ended on October 2, 2002. In addition, a nonsubstantive amendment to section 250.51 has been added to include the processing time of the California Finance Lenders Law long-form and short-form on the already existing chart of permit processing time of programs regulated by the Department of Corporations.

COMMENTS RECEIVED DURING THE 15-DAY COMMENT PERIOD

COMMENTOR: Keith Bishop, by facsimile dated October 2, 2002.

COMMENT 1: The commentor states that the proposed regulation does not meet the applicable standards for rulemaking under the California Administrative Procedure Act (APA).

RESPONSE 1: The commentor does not specifically explain how the regulation violates the APA standards. The Department, nonetheless, disagrees that the regulation violates the APA, for the reasons stated in the response to comments received during the 45-day comment period.

COMMENT 2: The commentor claims that the proposed form violates federal law.

RESPONSE 2: The commentor does not specifically explain how the proposed form violates federal law. The Department, nonetheless, disagrees that this is the case, as discussed previously in its response to comments.

COMMENT 3: The commentor states that unless the Department limits its investigation to persons specified in Financial Code Section 22105 and to the matters specified in Financial Code Section 22109, the application form will not survive judicial review.

RESPONSE 3: The Department disagrees with the commentor and responds as set forth in the Department’s “Response to General Comments Included in ‘Background’ Information” in the Final Statement of Reasons,

Addendum Regarding Public Comments, Comments Received During the 45-Day Comment Period.

COMMENT 4: The commentor claims that the proposed change to require customer authorization forms from all applicants following licensure violates Financial Code Section 22156.

RESPONSE 4: The Department disagrees and responds as set forth in Response 9(c) in the Final Statement of Reasons, Addendum Regarding Public Comments, Comments Received During The 45-Day Comment Period.

COMMENT 5: The commentor states that the Statement of Identity Questionnaire (SIQ) fails to comply with the Federal Privacy Act of 1974, Pub. L. 93-579, in that the necessary information is provided by reference to Commissioner's Release 2-G.

RESPONSE 5: This issue was not raised in the commentor's prior comments and is outside of the scope of the 15-day comments. Nevertheless, in response, as a courtesy rather than a requirement the form, does comply with applicable state and federal privacy laws. Additionally, the reference to Release 2-G is proper as the release is available from the Department upon request.

COMMENT 6: The commentor states that Commissioner's Release 2-G constitutes an underground regulation.

RESPONSE 6: This issue was not raised in the commentor's prior comments and is outside of the scope of the 15-day comments. Nevertheless, in response, as a courtesy rather than a requirement, the Department disagrees that Release 2-G constitutes an underground regulation because it merely re-states the notice requirements of existing law.

COMMENT 7: The commentor states that the SIQ does not include the disclosures required by Civil Code Section 1798.17.

RESPONSE 7: This issue was not raised in the commentor's prior comments and is outside of the scope of the 15-day comments. Nevertheless, in response, as a courtesy rather than a requirement, the Department does include with the application packet a separate form notice concerning the required disclosures.

COMMENT 8: The commentor states that the SIQ violates Civil Code Section 1798.14.

RESPONSE 8: This issue was not raised in the commentor's prior comments and is outside of the scope of the 15-day comments. Nevertheless, in

response, as a courtesy rather than a requirement, the Department disagrees, as the information requested in the SIQ is relevant and necessary to accomplish a purpose of the agency authorized by statute, as more fully set forth in the Department's "Response to General Comments Included in 'Background' Information" in the Final Statement of Reasons, Addendum Regarding Public Comments, Comments Received During the 45-Day Comment Period.

COMMENT 9: The commentor has inquired whether the form of bond has been approved by the Attorney General and filed with the Secretary of State, as required by Government Code Section 11112.

RESPONSE 9: The required bond form was approved by the Attorney General and filed with the Secretary of State on January 29, 1999, and became effective on February 28, 1999.

There were no other comments received during the 15-day comment period which ended on October 2, 2002.

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