

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

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

Section 1601

The proposed regulation as originally noticed to the public, would have prohibited a pilot program licensee from permitting the same branch manager to manage any branch location at which non-pilot program loans are also being offered. In response to a comment from Senate Jerry Hill, author of Senate Bill 318, the Department has amended Section 1601, subdivision (d), to permit a pilot program licensee to appoint a branch manager to manage multiple branch locations at which pilot program loans and non-pilot program loans are offered. Senate Bill 318 enacted the Pilot Program for Increased Access to Responsible Small Dollar Loans.

Section 1603

The proposed regulation as originally noticed to the public, requires a licensee to provide the name and contact information of each employee responsible for the activities of a finder at each location. In response to a comment from Senator Hill, the Department has added language to Exhibit B of the finder registration form in Section 1603 to clarify the reporting requirement for an employee or employees who are responsible for a finder's locations.

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

The proposed regulations do not impose any mandate on local agencies or school districts.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE INITIAL
NOTICE PERIOD OF JANUARY 10, 2014 THROUGH FEBRUARY 24, 2014
[Government Code Section 11346.9, Subdivision (a)(3)]

COMMENT NO. 1: Curt Weil suggested that instead of requiring licensees to offer Department-approved credit education to borrowers, the Department should co-ordinate with other state agencies and non-profit organizations that provide bias-free information.

Response: The Department disagrees with the comment. The proposed regulation is consistent with the statute. Specifically, existing law requires a licensee to offer either a credit education program or seminar to the borrower, or invite the borrower to a credit education program or seminar offered by an independent third party [Financial Code section 22370, subdivision (f)(1)]. The credit education may be offered in-house or outsourced to a non-profit organization or other provider. Existing law also requires the Department to review and approve any credit education program and seminar before a licensee may offer the program or seminar to a borrower. Accordingly, the Department is

not authorized under existing law to delegate the responsibility for reviewing or approving credit education programs and seminars to other state agencies or non-profit organizations.

COMMENT NO. 2 (a): Senator Jerry Hill stated that proposed Section 1601, subdivision (d), is contrary to his intent in drafting Financial Code section 22378. Specifically, he indicated that Financial Code section 22378 was intended to provide regulatory flexibility to pilot program licensees and that the proposed regulation removes that flexibility. Senator Hill requested the proposed rule to be deleted or modified.

Response: The Department has accommodated the comment by amending Section 1601, subdivision (d), to permit a pilot program licensee to appoint a branch manager to manage multiple branch locations at which pilot program loans and non-pilot program loans are offered.

The Department was unaware from the language of Financial Code section 22378, or from the legislative committee analyses and legislative hearings on Senate Bill 318, that the bill's author intended to extend the branch manager provision under the pilot program to non-pilot program loans made under the California Finance Lenders Law.

Financial Code section 22378, as added by Senate Bill 318, permits the appointment of one branch manager with responsibility for multiple branch locations, subject to approval requirements, for a licensee approved by the Commissioner to participate in the pilot program. However, licensees under the California Finance Lenders Law are prohibited from permitting a single branch manager to manage multiple branch locations. Senate Bill 318 did not amend the California Finance Lenders Law with respect to branch manager requirements and therefore consistent with the California Finance Lenders Law, the proposed rule under the pilot program as originally noticed to the public, would have prohibited a pilot program licensee from permitting the same branch manager to manage any branch location at which non-pilot program loans are also being offered.

COMMENT NO. 2 (b): Senator Hill also stated that Section 1603 should be updated to reflect the language in Financial Code section 22375, subdivision (a)(3). He indicated that the language in the proposed regulation inadvertently reflects the language of the former pilot program, which required a "unique contact at each finder location."

Response: The Department has accommodated the comment by adding language to clarify the reporting requirement for employees, e.g., when one employee is responsible for all of the finder's locations and when different employees are responsible for different locations. The Department did not intend the language in Section 1603 to imply that a "unique contact at each finder location" is required. The Department is aware that the provisions of the existing pilot program permit one or more employees to be responsible for the activities at the finder's locations. The Department has a regulatory responsibility to know who is responsible for the lending activities at every location. The amended language will enable the Department to meet this responsibility and prevent any further misunderstanding of the regulatory requirements.

COMMENT NO. 3 (a): Raul Vazquez, Progreso Financiero, stated that the language in Section 1601, subdivision (d), is too restrictive and does not accurately reflect the intent of the Legislature to provide regulatory relief to pilot program licensees from the one-location, one-manager rule under the California Finance Lenders Law. Accordingly, Mr. Vazquez requested the Department to remove subdivision (d) of Section 1601.

Response: As discussed in Comment No. 2 (a) above, the Department has accommodated the comment by amending Section 1601 subdivision (d), to permit a pilot program participant to appoint a branch manager to manage multiple branch locations at which pilot program loans and non-pilot program loans are offered.

COMMENT NO. 3 (b): Raul Vazquez also stated that the Department has not always been able to meet regulatory time frames for regulatory approvals and has taken the position that the request is pending until the Department is able to act on it. Mr. Vazquez requested the Department to revise Section 1601 to provide that a request for approval for appointment of a manager is deemed approved if not denied by the Department within 15 calendar days from the receipt of the request.

Response: The Department has decided not to accommodate this comment because requiring automatic approval of any request not approved by the Department within 15 days may have negative consequences for consumers. Moreover, requiring automatic approval before the Department has had an opportunity to complete its review of the request would likely adversely affect the Department's oversight of licensees and impair its responsibility to protect consumers.

Section 1601 is a new proposed regulation based on recently-enacted Financial Code section 22378. Accordingly, the Department presumes that the comment is directed at another provision of the California Finance Lenders Law or other law administered by the Department.

The Department endeavors to review regulatory requests for approval in a timely manner. However, in some cases the Department may not be able to approve a request within the stated time frame because the licensee has not provided complete information or additional information is needed to complete the review, or the licensee has not responded timely to the Department's request for information.

COMMENT NO. 4: Dan Gwaltney, California Financial Service Providers Association, requested clarification as to whether the language in Exhibit C of the finder registration form in Section 1603 is merely to govern pilot program finder activities, and if so, requested the Department to clearly state this.

Response: The Department has decided not to accommodate this comment because there does not appear to be any legal or other ambiguity. Financial Code section 22372 was added by Senate Bill 318, which enacted the pilot program. The language in Exhibit C duplicates the language in Financial Code section 22372, subdivision (c). The Department merely added additional wording to Exhibit C (“ . . . and is required to obtain a broker's license . . .”) to clarify that a license is required to engage in the business of brokering loans consistent with Financial Code section 22007.

COMMENT NO. 5: National Council of La Raza requested the Department to expand the content of the credit education in Section 1608 to include information on how to maintain a basic bank account; manage a household budget; and set financial goals and develop a plan for achievement, including strategies for saving; and legal reasons for denying a loan and how to report any potential discrimination or illegal activities to government agencies. The commenter stated that the content of the credit education as proposed is too narrow and that expanding the content would encourage lenders to offer high-quality financial information to borrowers.

Response: The Department agrees with the commenter and has amended the credit education requirements to add the information to the content of the program as suggested by the commenter. This change is intended to help borrowers achieve financial literacy by providing more useful and relevant information.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE PERIOD THE MODIFIED TEXT WAS MADE AVAILABLE TO THE PUBLIC [Government Code Section 11346.9, Subdivision (a)(3)]

The modified text was made available to the public for comment from April 3, 2014 through April 18, 2014.

COMMENT NO. 1: Raul Vazquez, Progreso Financiero, requested the new credit education content requirements that the Department proposed to add to Section 1608, as suggested by National Council of La Raza (see Comment No. 5 above), be deleted in its entirety. Mr. Vazquez stated that the information is outside the scope of credit education, falls outside of the commenter's area of expert knowledge as a lender, would double the length of the content, and information concerning loan discrimination and legal reasons for denying a loan is already available to consumers in state and federal statutes.

Response: The Department has accommodated the comment by removing the new credit education content requirements from the proposed regulation. The proposed regulation as noticed to the public on April 3, 2014, would have expanded the contents of credit education as discussed in Comment No. 5 above. While the Department believes that the information would have been beneficial to consumers, the Department has concerns that the additional content requirements may be burdensome to lenders, particularly those that provide credit education to consumers in-house and lack sufficient expertise on budgeting, savings, and financial goal setting. As a result, the proposed regulation may have had the unintentional consequence of removing flexibility to pilot program licensees by essentially requiring them to outsource credit education.

COMMENTS RECEIVED DURING THE PERIOD THE SECOND MODIFIED TEXT WAS AVAILABLE TO THE PUBLIC [Government Code Section 11346.9, Subdivision (a)(3)]

The modified text was made available to the public for comment from May 8, 2014 through May 23, 2014. The Department did not receive any comments on the modified text.

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

Finance lenders 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 amendments adopted by the Department are the only regulatory provisions identified by the Department that accomplish the goal of making affordable small dollar loans more accessible to consumers through implementation of the Pilot Program for Increased Access to Responsible Small Dollar Loans. Except as set forth and discussed in the summary and responses to comments, no other alternatives have been proposed or otherwise brought to the Department's attention.

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

Except as discussed under the Update of Initial Statement of Reasons on page 1, no revision of the original informative digest, as published in the notice of rulemaking action, dated December 11, 2013, is needed.

Non-Duplication Standard [Title 1, California Code of Regulations, Section 12, Subdivision (b)(1)]

The proposed regulations duplicate state statutes which are cited as authority or reference for the proposed regulations. The duplication is necessary to satisfy the clarity standard of Government Code section 11349.1, subdivision (a)(3). Specifically, the rules concerning credit education requirements, finder restrictions, notification of payment, and application, registration and annual report forms include language which repeats or rephrases in whole or in part state statutes for the purpose of assisting finance lenders in understanding the law and identifying the Department's authority to request certain information from them.

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