

California Department of Business Oversight

Notice of Rulemaking Action

NOTICE IS HEREBY GIVEN that the Department of Business Oversight is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments in writing relevant to the action proposed. Written comments, including those sent by mail, facsimile, or e-mail to the address listed under Contact Person in this Notice, must be received by the Department of Business Oversight at its office not later than 5:00 p.m. on October 28, 2020.

PUBLIC HEARING: A public hearing is not scheduled. However, a public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the contact person listed below no later than 15 days prior to the close of the written comment period. Following the public hearing, if one is requested, or following the written comment period if no public hearing is requested, the Department of Business Oversight, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Public Comment Period: September 11, 2020 through October 28, 2020.

AUTHORITY AND REFERENCE

Authority cited: Section 22804, Financial Code.

Reference cited: Sections 22802 and 22803, Financial Code.

INFORMATIVE DIGEST

A. Informative Digest

Financial Code sections 22800 – 22805 were enacted in 2019 by the passing of SB 1235 (Chapter 1011, Statutes of 2018) which require a “provider” – a person who extends a specific offer of “commercial financing” (as defined in Financial Code section 22800, subdivision (d)) to a recipient – to give the recipient certain disclosures at the time the provider extends the offer. SB 1235 mandates the Department to draft regulations implementing the specific

requirements of the disclosures to be provided to recipients, including: definitions, methods of calculation for certain disclosure items, the method of expressing the annualized rate disclosure, the time, manner and format of the disclosures, and many other details. The Department seeks to add new Code of Regulation sections to comply with the legislature's mandate.

Pursuant to its authority to promulgate rules and regulations under Section 22804 of the Financial Code, the Department proposes to add sections 2057, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2070, 2071, 2089, 2090, 2091, 2092, 3000, 3001, 3002, 3003, 3010, 3020, 3021, 3022, 3023, 3024, 3025, 3026 to the California Code of Regulations.

B. Policy Statement Overview/Anticipated Benefits of Proposal

The Department anticipates the proposed regulations will help protect the welfare of California commercial financing recipients. The specific nonmonetary benefits include: enhanced awareness about the costs of financing a variety of available commercial financing products, the ability for businesses seeking commercial financing to more effectively comparison shop commercial financing products, the prevention of businesses seeking commercial financing borrowing more than they can afford to pay, and increased effectiveness of the Department's examinations and regulatory oversight with respect to licensees that offer commercial financing products covered by the regulations.

The Department anticipates the proposed regulations will have nonmonetary benefits to providers of commercial financing as well. Specifically, providers of commercial financing products will have certainty with respect to what information must be disclosed to those seeking the provider's affected commercial financing products, when and how to disclose that information, enhanced confidence that a particular commercial financing product meets the customer's specific needs thereby increasing the likelihood of timely payments, and the opportunity to participate in adopting balanced regulations and comment on the rulemaking the Department is proposing, including the practicality of the proposed disclosures and associated requirements.

C. Consistency/Compatibility with Existing State Regulations

After conducting an evaluation for any regulations relating to this area, the Department of Business Oversight has found that these are the only regulations dealing with the disclosures by commercial financing companies. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations. This regulatory proposal creates new regulations relating to Financial Code sections 22802-22803.

D. Documents Incorporated by Reference: None.

E. Documents Relied Upon in Preparing the Regulations: Economic Impact Assessment.

FISCAL IMPACT ESTIMATES AND RESULTS OF THE ECONOMIC IMPACT ASSESSMENT

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Mandate on Local Agencies or School Districts: None.

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement: None.

Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability to Compete: The proposed rulemaking 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. The Department has determined that this regulatory action will not make existing businesses more competitive. The proposed regulations will require providers of commercial financing to disclose information to businesses seeking their commercial financing products. The Department anticipates the costs to comply with the proposed regulations to be minimal because the information necessary to be disclosed should be readily available or able to be calculated from the provider's own records and underwriting data. While some of the disclosures may include information a provider has not chosen to calculate or disclose in the past, the mechanisms for doing so are well established and can be conducted using freely available spreadsheet software. While there may be some new costs to the providers associated with these proposed regulations to train staff on the new required procedures, these costs are likely to be minimal and offset by the benefits of the regulations.

Impact on Jobs/New Businesses: The Department has assessed whether this rulemaking action will create or eliminate jobs in California. The Department has determined that this regulatory proposal will not have an impact on job creation. The Department has determined that this regulatory proposal may have an impact on job elimination if certain affected commercial financiers eliminate certain product offerings rather than come into compliance with the regulations. The Department has assessed whether this rulemaking action will create new businesses or eliminate existing businesses. This rulemaking action will not result in the creation of new businesses. This rulemaking action could result in the elimination of businesses if a business is unwilling or unable to comply with

the provisions of the rulemaking action. Failure to comply with the provisions of this rulemaking action could subject a business to litigation, making doing business in California unprofitable or risky. However, this rulemaking action balances the regulatory requirements against the benefits of public protection and based on the Department's assessment the action does not burden business to the extent of eliminating businesses. The Department has assessed whether this rulemaking action will result in the expansion of business currently doing business within the state. The Department has determined that this rulemaking action may result in the expansion of business currently doing business within the state. The regulatory requirements on commercial financing companies will initially require the minor reallocation of resources for a business to achieve compliance with the new regulatory requirements. In the long term, this rulemaking action may positively impact the commercial financing marketplace by increasing public confidence in the market, decreasing the likelihood of borrowers obtaining financing they are unable to afford, and increasing consumer protection from predatory practices. Consequently, future expansion of business in the State is possible.

The new proposed regulations are required pursuant to Financial Code section 22804.

While the proposed regulations reflect current business practices, the Department anticipates the proposed regulations will help protect the welfare of California commercial financing consumers. The specific nonmonetary benefits include: enhanced awareness about the costs of financing a variety of available commercial financing products, the ability for commercial financing consumers to more effectively comparison shop commercial financing products, the prevention of commercial financing consumers borrowing more than they can afford to pay, and increased effectiveness of the Department's examinations and regulatory oversight with respect to licensees that offer commercial financing products covered by the regulations.

The Department anticipates the proposed regulations will have nonmonetary benefits to providers of commercial financing as well. Specifically, providers of commercial financing products will have certainty with respect to what information must be disclosed to those seeking the provider's affected commercial financing products, when and how to disclose that information, enhanced confidence that a particular commercial financing product meets the customer's specific needs thereby increasing the likelihood of timely payments, and the opportunity to participate in adopting balanced regulations and comment on the rulemaking the Department is proposing, including the practicality of the proposed disclosures and associated requirements.

However, there are no direct benefits of the regulation to the health of California residents, worker safety, and the state's environment.

Cost Impact on Representative Private Person or Business: A representative business will incur costs complying with this regulatory action. A representative business will incur costs above those incurred solely because of the requirements set forth in statute, for the following new requirements:

- Requiring disclosures.
- Associated training costs for employees.
- Associated costs of preparing and distributing disclosures.

Effect on Housing Costs: None.

Effect on Small Business: This regulatory action may impact small business.

Economic Impact Assessment/Analysis Summary Comments: This proposed regulation is not a “major regulation” therefore there are no economic impact assessment comments from the Department of Finance or response.

CONSIDERATION OF ALTERNATIVES

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.

Any interested person may present statements or arguments relevant to the above determinations.

INITIAL STATEMENT OF REASONS, THE TEXT OF PROPOSAL AND THE RULEMAKING FILE

The Department of Business Oversight has prepared an Initial Statement of the reasons for the proposed action and has available all the information upon which the proposal is based. The Initial Statement of Reasons is available on the Department of Business Oversight’s website: www.dbo.ca.gov.

To subscribe to electronically receive notice of activity on this rulemaking action such as revised text, from the Department’s homepage (dbo.ca.gov), select “Contact Us” from to top banner. Select “Subscribe to DBO emails” and provide the requested information. When requested, indicate your request to receive notices related to rulemaking, and submit your request.

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 01/18. 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

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 website. 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 AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

A Final Statement of Reasons will be created after the closing of the public comment period. You may obtain a copy of the final statement of reasons once it has been prepared from the contact person named below or by accessing the website listed below.

CONTACT PERSON

Nonsubstantive inquiries or comments concerning the proposed rulemaking action may be addressed to:

Jesse Mattson, Senior Counsel
Department of Business Oversight
2101 Arena Boulevard
Sacramento, CA 95834

(916) 576-4892

Or to: jesse.mattson@dbo.ca.gov

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

Charles Carriere, Senior Counsel
Department of Business Oversight
One Sansome Street, Suite 600
San Francisco, CA 94104-4448
(415) 972-8570

Or to: charles.carriere@dbo.ca.gov

Website Access: Materials regarding this proposal can be found at
www.dbo.ca.gov.