



STATE OF CALIFORNIA

## Department of Financial Protection and Innovation

GOVERNOR **Gavin Newsom** • COMMISSIONER **Manuel P. Alvarez**

### NOTICE OF RULEMAKING ACTION

#### TITLE 10. CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION

#### NOTICE IS HEREBY GIVEN [Government Code Section 11346.5, subdivision (a)(1)]

The Commissioner of Financial Protection and Innovation (Commissioner) proposes to adopt regulations to implement the recent law (Act) authorizing the establishment of public banks subject to specified conditions.<sup>1</sup> Specifically, the Commissioner proposes to make the following changes to Subchapter 10, Chapter 1, of Title 10 of the California Code of Regulations:

- Amend Sections 10.112; 10.141; 10.151; 10.3000; 10.3100; and 10.3402;
- Amend the title of Subarticle 2, Article 4;
- Adopt Sections 10.131.7; 10.135.1; 10.140.1; 10.140.6; 10.141.1; 10.166.1; and 10.3301.1.

The Act establishes a process for a local agency to apply for a bank charter from the Department of Financial Protection and Innovation. The Act expands the authority of the Commissioner to include the licensure, regulation, and oversight of public banks. The Act took effect on January 1, 2020. Prior to the Act, public banks were not authorized in California.

The Act specifies that a local agency will need to meet the same general requirements and approval criteria as existing law requires of a private sector applicant for a banking license, including obtaining deposit insurance provided by the Federal Deposit Insurance Corporation. The Act authorizes the Commissioner of Financial Protection and Innovation to promulgate regulations for the purpose of carrying out the Commissioner's duties under the Act.

To expedite the rulemaking process, the Commissioner intends to issue regulations in phases. This first phase of regulations focuses on general definitions and application requirements. This will enable the Commissioner to provide guidance on those areas which are most immediately relevant to stakeholders and enable implementation of the Act as timely as possible.

This proposed rulemaking provides necessary detail and specificity to implement the Act efficiently and effectively, to achieve the stated legislative intent to authorize the lending of public credit by public banks and authorize public ownership of public banks

---

<sup>1</sup> AB 857 (Ch. 442, Stats. 2019).

for the purpose of achieving cost savings, strengthening local economies, supporting community economic development, and addressing infrastructure and housing needs for localities.<sup>2</sup> The proposed rules provide clarity, certainty and transparency for public bank applicants and the communities they serve.

AUTHORITY [Government Code Section 11346.5, subdivision (a)(2)]

Section 326, Financial Code and Section 57607, Government Code.

REFERENCE [Government Code Section 11346.5, subdivision (a)(2)]

Sections 103, 119, 321, 326, 334, 507, 508, 1001, 1008, 1022, 1023, 1551, Financial Code and Sections 54956.97, 54956.98, 57600, 57601, 57604, Government Code.

PUBLIC COMMENTS [Government Code Section 11346.5, Subdivision (a)(17)]

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to Section 11346.8, subdivision (a), of the Government Code. The request for hearing must be received by the Department's contact person designated below no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD [Government Code Sections 11346.4, Subdivision (a) and 11346.5, Subdivision (a)(15)]

Where to Submit Comments

Any interested person, or his or her authorized representative, may submit written comments on the proposed regulatory action to the Department, addressed as follows, by any of these means:

Postal Mail

Department of Financial Protection and Innovation  
Attn: Sandra Sandoval  
300 S. Spring Street, Suite 15513  
Los Angeles, California 90013

Electronic Mail

Comments may be submitted electronically to [regulations@dfpi.ca.gov](mailto:regulations@dfpi.ca.gov). Please identify the comments as PRO 01/20 in the subject line.

---

<sup>2</sup> Id., § 1.

## Fax

(213) 897-8860

## Time for Comments

Comments may be submitted until January 21, 2021. If the final day for the acceptance of comments is a Saturday, Sunday or state holiday, the comment period will close on the next business day.

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

### Policy Statement and Specific Benefits Anticipated from Regulatory Action [Government Code Section 11346.5, Subdivision (a)(3)(C)]

The objective of the proposed regulations is to implement the provisions of the Act as efficiently and effectively as possible, by:

- Adding and clarifying definitions in Division 1.1 of the Financial Institutions Law<sup>3</sup> (the Banking Law) which are necessary for applicants to apply for a certificate to transact business as a public bank;
- Clarifying the requirements under which an applicant must apply for a public bank charter to enable the Department to determine whether to approve an application for a certificate to transact business as a public bank.

The benefits anticipated from this regulatory action include facilitating the timely implementation of the Act.

Public banks may offer local agency banking, infrastructure lending, participation lending, and wholesale lending. Local agencies may be able to invest their money and satisfy their banking needs at more advantageous rates, fees, terms and conditions. Local agencies may earn greater rates of return on their invested monies through participation and wholesale lending. California's critical infrastructure needs and shortages, including the housing shortage, may be addressed and improved through infrastructure lending by public banks.

This regulatory package increases transparency in government by adopting the rules in compliance with California's rulemaking procedures and standards, as required. This ensures that the public and those who would be subject to the proposed action are provided with a meaningful opportunity to participate in the adoption of the regulations.

## Summary of Existing Laws and Regulations, and Effect of Proposed Action

---

<sup>3</sup> Fin. Code, § 99, et seq.

Government Code Section 11346.5, Subdivision (a)(3)(A)

The Act authorizes the creation of public banks for the first time in California, subject to specific conditions.

The Act introduces terms that relate to public banking; however, not all the new terms are defined in statute. This rulemaking would define those new terms that require clarification.

The Act also requires that a local agency seeking to establish a public bank must submit an application pursuant to Financial Code section 1020. When processing an application, the Commissioner is required to make determinations on several factors.<sup>4</sup> This rulemaking would clarify those factors that need to be evaluated differently due to the unique organizational and business structure of a public bank.

Existing law requires persons wishing to organize a bank and transact banking business to apply for, and obtain, a license from the Department.<sup>5</sup> The proposed rulemaking action specifies the unique process and requirements for licensure. The proposed rulemaking defines terms, not already defined in existing law, to clarify the process.

Existing law provides the Commissioner's authority to promulgate rules and regulations, consistent with the Commissioner's authority to administer the Banking Law.<sup>6</sup> The Act also authorizes the Commissioner to promulgate necessary regulations.

Existing Federal Regulation or Statute [Government Code Section 11346.5, Subdivision (a)(3)(B)]

There are no existing comparable federal regulations or statutes authorizing or governing the licensure of public banks. The proposed regulatory action is neither inconsistent nor incompatible with existing federal laws.

Existing State Regulations [Government Code Section 11346.5, Subdivision (a)(3)(D)]

The Department has conducted an evaluation of whether the proposed regulations are consistent with existing state regulations and has concluded that these are the only regulations that directly regulate public banks. The proposed regulatory action is consistent with existing regulations and policy considerations under the Banking Law, Division 5, "Public Banks," of the Government Code<sup>7</sup> and other state laws. The proposed amendments are neither inconsistent nor incompatible with existing state regulations.

These proposed, new regulations are necessary to implement and effectively administer new legislation in an area previously unlegislated and unregulated in California. This

---

<sup>4</sup> See Fin. Code, §§ 1022, 1023.

<sup>5</sup> Fin. Code, §§ 1020, 1044.

<sup>6</sup> Fin. Code, § 326. Gov. Code § 57607.

<sup>7</sup> Gov. Code, § 57600, et seq.

rulemaking provides necessary detail and specificity to implement the Act as efficiently and effectively as possible and to achieve the stated legislative intent. The proposed rules provide clarity, certainty and transparency for applicants for a public bank license and the communities and customers they will serve.

FORMS INCORPORATED BY REFERENCE [Title 1, California Code of Regulations, Section 20, Subdivision (c)(3)]

This proposed regulatory action does not incorporate any forms by reference.

DISCLOSURES REGARDING THE PROPOSED ACTION [Government Code Section 11346.5, Subdivisions (a)(5), (6), and (12)(A)]

- Mandate on local agencies or school districts: None.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Cost or savings to any state agency: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the state: None.

ECONOMIC IMPACT ON BUSINESS [Government Code Section 11346.5, Subdivision (a)(8)]

The Commissioner has made an initial determination 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.

EFFECT ON SMALL BUSINESS [Title 1, California Code of Regulations, Section 4]

No small business, within the meaning of Government Code Section 11342.610, subdivision (b), conducts or is authorized to conduct public banking. Therefore, this rulemaking action does not impact small businesses.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS [Government Code Section 11346.5, Subdivision (a)(9)]

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS [Government Code Section

11346.5, Subdivision (a)(10)]

The Department has determined that:

- The proposed action will not have a significant impact on the creation of additional jobs in California;
- The proposed action will not eliminate jobs in California;
- The proposed action will not create new businesses or eliminate existing businesses within California;
- The proposed action will not expand businesses currently doing business within California;
- As discussed above under the Informative Digest, the proposed action is expected to benefit the health and welfare of California residents by improving local agency banking at more advantageous terms; increasing wholesale lending and participation lending at a greater return on investment than other investments historically made by local agencies; and increasing lending for greatly needed infrastructure, including housing.
- No benefits or adverse impacts to worker safety or to the state's environment are anticipated from this regulatory action.

BUSINESS REPORTING REQUIREMENT [Government Code Section 11346.5, Subdivision (a)(11)]

The Act does not impose a reporting requirement on businesses. Therefore, there are no adverse impact on businesses from reporting requirements.

STATEMENT ABOUT THE EFFECT ON HOUSING COSTS [Government Code Section 11346.5, Subdivision (a)(12)]

The proposed action will not affect housing costs.

CONSIDERATION OF ALTERNATIVES [Government Code Section 11346.5, Subdivision (a)(13)]

The Department must determine that 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 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 the law.

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

As of the date this Notice is published, the rulemaking file consists of: this Notice, the Initial Statement of Reasons, the Proposed Text of the regulations, and all the information upon which the proposal is based. The Notice, Initial Statement of Reasons and Proposed Text are available by contacting the person designated below:

Department of Financial Protection and Innovation  
Attn: Sandra Sandoval  
300 S. Spring Street, Suite 15513  
Los Angeles, California 90013  
Telephone: (213) 897-3432  
E-mail: regulations@dfpi.ca.gov

The Notice, Initial Statement of Reasons and Proposed Text are also available on the Department's website at [www.dfpi.ca.gov](http://www.dfpi.ca.gov). To access the documents from the Department's website, click on the "Laws and Regulations" tab on the home page, click on the "Regulations/Rulemaking" link, and then click on the "Public Banking Law" link.

As required by the Administrative Procedure Act, the Department's Legal Division maintains the rulemaking file. The rulemaking file is available for public inspection and copying throughout the rulemaking process at the Department of Financial Protection and Innovation, Legal Division, 300 S. Spring Street, Suite 15513, Los Angeles, California 90013.

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

If the Department makes changes which are sufficiently related to the original Proposed Text, it will make the modified text (with changes clearly indicated) available to the public for at least 15 days before the Department adopts, amends or repeals the regulations as revised. A request for a copy of any modified regulation(s) should be addressed to the contact person designated above. The Department will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

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

Upon its completion, the Final Statement of Reasons will be available to the public, and copies may be requested from the contact person named above or accessed on the

Department's website listed above.

CONTACT PERSON [Government Code Section 11346.5, Subdivision (a)(14)]

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

Department of Financial Protection and Innovation  
Attn: Senior Counsel Mary D. Tomé  
300 South Spring Street, Suite 15513  
Los Angeles, CA 90013-1259  
Telephone: (949) 378-9522  
E-mail: [mary.tome@dfpi.ca.gov](mailto:mary.tome@dfpi.ca.gov)

Non-substantive inquiries concerning this action, such as requests for copies of the proposed regulation or questions regarding the timelines or rulemaking status, may be directed to:

Department of Financial Protection and Innovation  
Attn: Sandra Sandoval  
300 S. Spring Street, Suite 15513  
Los Angeles, California 90013  
Telephone: (213) 897-3432  
E-mail: [regulations@dfpi.ca.gov](mailto:regulations@dfpi.ca.gov)

The backup contact person for non-substantive inquiries is:

Department of Financial Protection and Innovation  
Attn: Mark Dyer  
2101 Arena Boulevard  
Sacramento, California 95834  
Telephone: (916) 576-3637  
E-mail: [regulations@dfpi.ca.gov](mailto:regulations@dfpi.ca.gov)

Dated: November 20, 2020  
Sacramento, California