



Sustainable Economies Law Center

Legal education, research, advice, and advocacy for just and resilient economies.
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March 8, 2021

Department of Financial Protection and Innovation,
Via email to regulations@dfpi.ca.gov and charles.carriere@dfpi.ca.gov

Re: PRO 01-21: Comments on Proposed Rulemaking

Dear Department of Financial Protection and Innovation,

Thank you for requesting input on the upcoming rulemaking to implement AB 1864. In the past 8 years, the nonprofit Sustainable Economies Law Center has provided legal support to over 1,700 grassroots organizations in California. Many of these organizations are groups of people organizing to meet the financial and material needs of their own communities through various forms of mutual aid, gifting, and lending. Many of our clients have faced insurmountable legal barriers when they realized that their activities could fall under a licensing or registration requirement under California financial regulations, such as the Finance Lender Law and Money Transmission Law. The fees, paperwork, reporting, and other requirements are often too burdensome for small groups dealing with small amounts of money. Many of these projects are organized by and for people who struggle to pay rent and meet basic needs. We'd like to ask the DFPI to be mindful of such groups when crafting the rules under AB 1864.

Overall, the Law Center has become aware of ways the financial regulatory landscape may stifle innovation and stymie what could otherwise emerge as a diverse ecosystem of solutions for communities to meet their own financial and material needs. The high cost of compliance is the primary barrier, and its consequence is that financial services are either more expensive to consumers or very large companies come to dominate the market by operating with economies of scale.

Below, we offer a list of ways that the DFPI might approach the rulemaking to exempt certain groups and activities from registration and/or lower the fees or compliance requirements for them:

1. **Small, infrequent, or one-time transactions:** In some states, making a loan to anyone on a one-time basis could trigger a requirement that the person making the loan obtain a finance lender license or register under other regulatory programs. This inhibits, for example, a community member from making a loan to a friend or neighbor to cover rent. Thus, we'd suggest that small, infrequent, or one-time transactions be exempted

from coverage under the regulation.

2. **Low volume and value:** We'd suggest exemption or reduced compliance requirements for organizations dealing in a low volume or low value of transactions.
3. **Small cooperative groups:** Transactions within groups where everyone knows each other and interacts face-to-face present lower risks of fraud and theft, due to personal accountability. Transactions occurring within small groups also reduce potential for large scale societal harm. Given how common lending circles (also known as tandas, susus, revolving loan circles, and savings circles) are across the U.S., and given that they typically involve a small number of people (usually between 5 and 20) who participate actively in the circle, we'd recommend an exemption for such groups. This principle is seen in other areas of the law. For example, California does not require childcare provider licenses of a parent group that cooperatively provides childcare for a group of no more than 12 children.¹
4. **Public benefit or charitable activities:** Charitable organizations are generally trusted to not only avoid practices that harm their constituents, but to in fact benefit constituents. An example of a law that creates a special exemption for nonprofits is [SB 896](#), where the California Legislature adopted the following statement: "The Legislature finds and declares that nonprofit organizations have an important role to play in helping individuals obtain access to affordable, credit-building small dollar loans." The regulations implementing the California Money Transmission Act also include a licensing exemption for 501(c)(3) nonprofits.
5. **Transactions within pre-existing relationships:** When peers provide financial support to their peers under circumstances where there is a pre-existing relationship, we recommend that such transactions be exempt from regulation. For example, in the context of securities laws, there are exemptions from regulation where someone receives a loan or investment from someone with whom he/she has a pre-existing relationship. (Cal. Corp. Code 25102(f)) The idea here is that the investors, through the relationship, presumably have enough information to know what they are getting into, and the relationship also helps to ensure accountability between parties. Similarly, fraternal beneficiary societies are sometimes exempt from insurance regulation, in recognition that the fraternal relationships of members and the governance structure of the organization substantially reduce potential for harm.
6. **Exemptions for mutual benefit nonprofits and cooperative entities:** We'd also suggest an exemption or lower compliance requirements for cooperative corporations and

¹ See Cal. Health & Safety Code Section 1596.792(e)

nonprofit mutual benefit corporations. Both mutual benefit nonprofits and cooperatives are designed to operate at cost for the benefit of their patrons. They are not designed to earn profits for the benefit of any shareholders, which reduces the risk that profit-motives could drive exploitation or fraud. For this reason, many states, including California,² exempt cooperatives from securities registration when member-owners of the cooperatives put their own money into the cooperative.

7. **Exemptions for programs offering zero-interest loans:** In some states, no interest loans are subject to fewer regulations and/or are exempt from securities registration requirements. In California, there is an exemption from finance lender licensing for nonprofits providing small no-interest loans.

Thank you for your time and consideration of the impact of the rulemaking on our communities!

Sincerely,



Janelle Orsi, Co-Founder and Staff Attorney
Sustainable Economies Law Center

² See CA Corporations Code section 25100(r)