



STATE OF CALIFORNIA

**Department of Financial Protection and  
Innovation**

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

**NOTICE OF MODIFICATIONS TO PROPOSED REGULATIONS  
UNDER THE PUBLIC BANKING LAW**

**PRO 01/20**

**To Interested Persons:**

On December 4, 2020, the Commissioner of Financial Protection and Innovation (Commissioner) published a Notice of Rulemaking Action (see California Regulatory Notice Register 2020, No. 49-Z) to adopt and amend various regulations under the Banking Law to implement the recent law (Act) authorizing the establishment of public banks subject to specified conditions.<sup>1</sup>

After consideration of public comments, the Commissioner is proposing additional changes to the implementing regulations. A copy of the proposed revisions is being made available to the public in accordance with the requirements of Government Code section 11346.8, subdivision (c). The text showing modifications is attached. The originally proposed additions are shown in single underline and the originally proposed deletions are shown in single strike-out. The additional changes proposed by this notice are shown by double underlining of additions and double strike-out of deletions. The public may submit comments on the proposed changes, as described more fully below.

Government Code section 11349.4, subdivision (b), allows the public to submit comments on the proposed changes, but only on the proposed changes. In accordance with Government Code sections 11346.8, subdivision (c), and 11346.9, subdivision (a)(3), the Commissioner will not respond to any comments pertaining to rules which are not the subject of these proposed modifications.

**DESCRIPTION OF CHANGES**

**Section 10.131.7**

The proposed amendment to Section 10.131.7 expands the factors upon which the Commissioner will determine whether a financial product or service is offered by a local financial institution within the jurisdiction of the public bank. In addition to considering the type or category of product or service offered, the Commissioner shall also consider product features and terms such as fees and interest rates charged or earned. The amendment requires the public bank to submit a written request for approval to offer the product or service, with specified comprehensive documentation and information supporting its assertion that the product or service is not offered by a local financial

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

institution. The Commissioner must indicate his approval or disapproval within thirty days of receiving all required documentation and information. If the Commissioner does not respond within thirty days of receiving all required documentation and information, the public bank may offer such product or service.

### **Section 10.140.6**

The proposed amendment clarifies that a local financial institution shall not be considered to have a physical presence within the jurisdiction of a public bank unless the financial institution has at least one branch office within such jurisdiction. A financial institution shall not be considered as having a physical presence within the jurisdiction of a public bank if the financial institution has only automated teller machine(s), loan production office(s), or non-banking offices performing corporate, administrative or back office functions within the jurisdiction of the public bank.

### **Section 10.3402**

The proposed amendment deletes as unnecessary Section 10.3402, subdivision (c). The Act, existing law and the current regulation combine to provide a structure and requirements to protect pre-opening public funds. Requiring public bank applicants to obtain Commissioner approval to solicit and accept pre-opening funds unjustifiably disadvantages public bank applicants from private bank applicants. Commissioner pre-approval would unnecessarily delay the processing and progression of applications.

The initial statement of reasons containing information upon which the proposal is based is available on the Department of Financial Protection and Innovation's website at [www.dfpi.ca.gov](http://www.dfpi.ca.gov) and from the Legal Division of the Department of Financial Protection and Innovation. As required by the Administrative Procedure Act, the Legal Division maintains a rulemaking file containing all the information upon which the proposal is based. The rulemaking file is available for public inspection during regular business hours. Comments or inquiries concerning these proposed regulation changes may be directed to Mary Tomé at [mary.tome@dfpi.ca.gov](mailto:mary.tome@dfpi.ca.gov).

### **15-DAY COMMENT PERIOD**

Any interested person may submit written comments to the proposed additional changes by written communication addressed as follows:

Commissioner of Financial Protection and Innovation  
Attn: Sandra Sandoval  
300 South Spring Street, 15<sup>th</sup> Floor  
Los Angeles, CA 90013

Written comments may also be sent to the Commissioner via electronic mail at [regulations@dfpi.ca.gov](mailto:regulations@dfpi.ca.gov), with a copy to [mary.tome@dfpi.ca.gov](mailto:mary.tome@dfpi.ca.gov).

Comments will be received from March 5 through March 26, 2021. **The last day to submit comments is March 26, 2021.** Comments received after March 26, 2021 will not be considered. Comments may only address changes proposed in this modification. Comments addressing rules or sections of rules that are not changed in the modified text will not be considered.

The proposed additions to the Commissioner's rules in the text accompanying this notice are not yet effective and will not be effective until approved by the Office of Administrative Law and filed with the California Secretary of State in accordance with Government Code section 11349.3. Questions regarding the content of this notice may be directed to Mary Tomé at [mary.tome@dfpi.ca.gov](mailto:mary.tome@dfpi.ca.gov).

Dated:            March 5, 2021  
                      Sacramento, California