



STATE OF CALIFORNIA

Department of Financial Protection and Innovation

GOVERNOR **Gavin Newsom** • ACTING COMMISSIONER **Christopher S. Shultz**

NOTICE OF PROPOSED RULEMAKING

TITLE 10. CALIFORNIA DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION

The Department of Financial Protection and Innovation (“Department”) proposes to amend Title 10 of the California Code of Regulations sections 1602, 1603, 1606, 1613, 1614, 1615, and 1616 to implement revisions to the Pilot Program for Increased Access to Responsible Small Dollar Loans (“RSDL” or “Pilot Program”)¹, whose sunset date has been extended until January 1, 2028.² The Pilot Program is administered by the Department³ and established under the California Financing Law (“CFL”).⁴

The proposed regulations implement Senate Bill 235 (“SB 235”),⁵ which authorizes a finder, defined as an entity that brings together a licensed lender and prospective borrower to negotiate a contract,⁶ to perform additional services on behalf of a lender. SB 235 enables certain finders to perform additional services such as disbursing loan proceeds to borrowers on behalf of lenders participating in the Pilot Program, receiving loan payments from borrowers, and providing notices and disclosures to borrowers.

The proposed regulations also implement Assembly Bill 237 (“AB 237”)⁷ which, among other things, increases the upper dollar limit for a permissible Pilot Program loan from \$2,500 to \$7,500 and requires participating lenders to conduct reasonable background checks on finders.

AUTHORITY⁸

Financial Code section 22150.

¹ Fin. Code, §§ 22365 to 22381.

² Assem. Bill No. 2196 (2019-2020 Reg. Sess.).

³ Fin. Code, § 22701, subd. (a).

⁴ Fin. Code, § 22000 et seq. Assem. Bill No. 1284 (2017-2018 Reg. Sess.) renamed the “California Finance Lenders Law” the “California Financing Law.”

⁵ Sen. Bill No. 235 (2015-2016 Reg. Sess.).

⁶ Fin. Code, § 22371, subd. (b).

⁷ Assem. Bill No. 237 (2018-2019 Reg. Sess.).

⁸ Gov. Code, § 11346.5, subd. (a)(2).

REFERENCE⁹

Financial Code sections 22365, 22370, 22371, 22372, 22373, 22374, 22375, 22377, 22379, 22602, and 22380.

PUBLIC HEARING¹⁰

The Department has not scheduled a public hearing on this proposed action but will hold one if any interested person or authorized representative makes a written request for a hearing within 15 days of the close of the written comment period.

WRITTEN COMMENT PERIOD¹¹

Any interested person or authorized representative may submit written comments regarding this proposed regulatory action to the Department, addressed as follows, by postal or electronic mail:

By Postal Mail

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

By Electronic Mail

Comments may be submitted electronically to regulations@dfpi.ca.gov with a copy to David.Bae@dfpi.ca.gov. Please identify the comments as PRO 04/21 in the subject line.

Written comments may be submitted until September 20, 2021.

Comments Relating to the Proposed Rulemaking Action: Economic and Cost Impact to Business and Individuals

Please send the Department comments addressing the economic and cost impact of the proposed rulemaking to businesses, investors, finders, and other individuals and whether there are less burdensome alternatives to achieve the regulatory objectives.

⁹ *Id.*

¹⁰ Gov. Code, § 11346.5, subd. (a)(17).

¹¹ Gov. Code, §§ 11346.4, subd. (a), 11346.5, subd. (a)(15).

INFORMATIVE DIGEST¹²

Policy Statement and Specific Benefits Anticipated from Regulatory Action¹³

The main purpose of the proposed regulations is to revise and update the Pilot Program rules to reflect changes to California law, specifically SB 235 and AB 237.

In 2010, the Legislature created an earlier pilot program for Affordable Credit-Building Opportunities¹⁴ (“ACBO”) under the CFL to make affordable short-term credit more available to consumers. However, the Legislature soon recognized the ACBO’s ineffectiveness and replaced it with the Pilot Program for Increased Access to Responsible Small Dollar Loans, initially effective from January 1, 2014 to January 1, 2018, and later extended to January 1, 2028.¹⁵

As part of the Pilot Program, the Legislature envisioned using finders to connect potential borrowers with lenders as an inexpensive way for lenders to attract customers, grow their small dollar lending business, and increase market share. However, finders were rarely used because the law did not allow them to provide certain important functions. The Legislature responded by enacting SB 235, which revised the Pilot Program’s finder provisions to expand the scope of their permitted activities. Finders, if licensed as a financial service provider under at least one of thirteen specified federal or state laws, could now disburse loan proceeds on behalf of lenders, collect loan payments from borrowers, and issue notices and disclosures to borrowers.

To further incentivize lender participation and expand consumer access to loans under the Pilot Program, the Legislature enacted AB 237 which, among other things, increased the upper dollar limit for a permissible loan from \$2,500 to \$7,500 while requiring participating lenders to perform reasonable background checks on the finders they use.

Anticipated Benefits of the Proposed Regulations:

The Commissioner has determined the anticipated benefits of this regulatory action mirror the goals of the RSDL authorizing statute: to encourage more lenders to participate in the Pilot Program and increase Californians’ access to small dollar loans. The proposed regulations implement AB 237 and SB 235 by increasing the upper dollar limit for RSDL Program loans and expanding the scope of finder activities while ensuring the legitimacy of finders.

This regulatory action will also produce nonmonetary benefits. The increased lender participation and availability of affordable consumer credit should generally benefit California’s economy and help consumers build or rebuild their credit histories. The adoption of these regulations, in

¹² Gov. Code, § 11346.5, subd. (a)(3).

¹³ Gov. Code, § 11346.5, subd. (a)(3)(C).

¹⁴ Sen. Bill No. 1146 (2009-2010 Reg. Sess.).

¹⁵ Assem. Bill No. 2196 (2019-2020 Reg. Sess.) §2.

compliance with California’s rulemaking requirements, should also increase transparency in government and provide a meaningful opportunity for stakeholders to participate.

Summary of Existing Laws and Regulations, and Effect of Proposed Action¹⁶

Prior to SB 235, a finder in the Pilot Program could only distribute informational materials about a licensee’s loans, take credit applications, and act as a communications link between the lender and the prospective or actual borrower. SB 235 and this proposed rulemaking expand finder activities to include disbursing loan proceeds to borrowers, collecting loan payments from borrowers, and providing required notices and disclosures to borrowers and prospective borrowers.

Prior to AB 237, a lender could only offer consumer loans through the Pilot Program with a principal balance of at least \$300 and less than \$2,500. AB 237 and this proposed rulemaking increase the upper limit on the amount of a permissible loan from \$2,500 to \$7,500.

To implement SB 235 and AB 237, this proposed regulatory action:

- Replaces “Department of Business Oversight” with its new name, “Department of Financial Protection and Innovation”¹⁷;
- Replaces “California Finance Lenders Law” with its new name, “California Financing Law”¹⁸;
- Revises general information and instructions to forms;
- Updates the upper dollar limit for RSDL Program loans from \$2,500 to \$7,500;
- Requires Pilot Program applicants to submit the policies and procedures they must maintain to address customer complaints and respond to questions raised by loan applicants and borrowers, including questions about finders;
- Requires lenders participating in the Pilot Program to report additional information about the finders they use with the Department;
- Allows a finder, if licensed as a financial service provider under one of thirteen specified federal or state laws, to disburse loan proceeds to the borrower, receive loan payments from the borrower, and provide notices or disclosures to the borrower;
- Deletes an existing provision prohibiting a finder from discussing marketing materials or loan documents with a borrower or prospective borrower (these finder services were previously prohibited but are now authorized by SB 235);

¹⁶ Gov. Code, § 11346.5, subd. (a)(3)(A).

¹⁷ Assem. Bill No. 107 (2019-2020 Reg. Sess.) §6, Assem. Bill No. 1864 (2019-2020 Reg. Sess.) §3.

¹⁸ Assem. Bill No. 1284 (2017-2018 Reg. Sess.) §4.

- Revises incorrect statutory references;
- Restates the statutory requirement for finders who disburse or receive loan payments to maintain records for at least two years or until one month following the Department's examination of licensee, whichever is later; and
- Restates the regulatory requirement for participating lenders to maintain, for at least three years, a record of notices and disclosures provided by finders to borrowers.

Existing Federal Regulation or Statute¹⁹

There are no existing comparable federal regulations or statutes because finance lending is mainly subject to state law.

Existing State Regulations²⁰

The Department evaluated the proposed regulations for consistency and compatibility with existing state regulations and concluded these are the only regulations pertaining to, and modifying, small-dollar lending rules.

Forms Incorporated by Reference²¹

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

DISCLOSURES REGARDING THE PROPOSED ACTION²²

The Department has made the following initial determinations:

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.

¹⁹ Gov. Code, § 11346.5, subd. (a)(3)(B).

²⁰ Gov. Code, § 11346.5, subd. (a)(3)(D).

²¹ Cal. Code Regs., tit. 1, § 20, subd. (c)(3).

²² Gov. Code, § 11346.5, subd. (a)(5), (6), and (12)(A).

ADVERSE ECONOMIC IMPACT ON BUSINESS²³

The Department has determined this 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 BUSINESS²⁴

The Department has determined the proposed regulations will not affect small business because finance lenders are not small businesses as defined in Government Code section 11342.610 and Pilot Program loans are consumer loans.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS²⁵

The Department has determined any cost impacts by the proposed rulemaking to representative private persons or business will be negligible. Lenders are not required to participate, and the use of finders is voluntary. A participating lender, when using a finder, will incur absorbable costs in providing required finder information on the application, preparing and submitting an application or revised application, preparing and submitting finder registration forms, ensuring compliance with program requirements, developing, revising and providing notices and loan disclosures, developing and implementing required policies and procedures to respond to applicant and borrower questions, and collecting data for annual reports to the Department.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS²⁶

The Department has determined:

- The proposed action will not create or eliminate jobs within California;
- The proposed action will not create new businesses or eliminate existing businesses within California;
- The proposed action may positively affect the expansion of businesses currently doing business within California;
- The proposed action may benefit the health and welfare of California residents; and

²³ Gov. Code, § 11346.5, subd. (a)(8).

²⁴ Cal. Code Regs., tit. 1, §4.

²⁵ Gov. Code, § 11346.5, subd. (a)(9).

²⁶ Gov. Code, § 11346.5, subd. (a)(10).

- The proposed action will not benefit or adversely impact worker safety or the state's environment.

BUSINESS REPORTING REQUIREMENT²⁷

The Department has determined it is necessary for the health, safety, or welfare of the people of this state that the reports required in this regulatory action apply to businesses.

CONSIDERATION OF ALTERNATIVES²⁸

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention 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.

AVAILABILITY OF THE NOTICE, STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND RULEMAKING FILE²⁹

The Department will make the entire rulemaking file, including this notice, the initial statement of reasons, and the proposed text of the regulations, available for inspection and copying throughout the rulemaking process at the address provided, and from the persons identified, in the "Contact Persons" section of this notice.

AVAILABILITY OF THE DOCUMENTS ON THE INTERNET³⁰

The notice, initial statement of reasons, and proposed text are also available on the Department's Web site at www.dfpi.ca.gov. To access the documents from the Department's Web site, click on "Laws and Regulations" under the "Licensees" tab at the top of the home page, then on the "Regulations / Rulemaking" link, and then on the "California Financing Law and Commercial Financing Disclosures" link.

AVAILABILITY OF CHANGED OR MODIFIED TEXT³¹

After holding the hearing, if scheduled, and considering all timely and relevant comments, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least

²⁷ Gov. Code, § 11346.5, subd. (a)(11).

²⁸ Gov. Code, § 11346.5, subd. (a)(13).

²⁹ Gov. Code, § 11346.5, subd. (a)(16) and (b).

³⁰ Gov. Code, § 11346.5, subd. (a)(20).

³¹ Gov. Code, § 11346.5, subd. (a)(18).

15 days prior to adopting the revised regulations. Requests for a copy of any modified regulation(s) must be addressed to the contact persons named in this notice. The Department will accept written comments on the modified regulations for at least 15 days after the date they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS³²

The Final Statement of Reasons will be available when completed. Copies may be requested from the contact person named in this notice or accessed on the website listed above.

CONTACT PERSONS³³

Please direct all inquiries concerning the proposed rulemaking action (including requests for copies of the proposed text of the regulations, the initial statement of reasons, or the modified text of the regulation, and questions regarding the timelines or rulemaking status) to:

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

The backup contact person for these inquiries is:

David Bae
Department of Financial Protection and Innovation
300 S. Spring Street, Suite 15513
Los Angeles, CA 90013
Telephone: (213) 576-7554
e-mail: David.Bae@dfpi.ca.gov

Dated: August 6, 2021

Sacramento, California

³² Gov. Code, § 11346.5, subd. (a)(19).

³³ Gov. Code, § 11346.5, subd. (a)(14).