



STATE OF CALIFORNIA

Department of Financial Protection and Innovation

GOVERNOR **Gavin Newsom** • COMMISSIONER **Clothilde V. Hewlett**

**FINAL STATEMENT OF REASONS
FOR AMENDMENTS TO REGULATIONS UNDER THE
CALIFORNIA FINANCING LAW (“CFL”):
Pilot Program for Increased Access to Responsible Small Dollar Loans
PRO 04-21**

In accordance with Government Code section 11346.9, the Department of Financial Protection and Innovation (“Department”) sets forth below the reasons for amending Title 10 of the California Code of Regulations, sections 1602, 1603, 1606, 1613, 1614, 1615 and 1616, concerning the Pilot Program for Increased Access to Responsible Small Dollar Loans (“Pilot Program”).¹

UPDATE OF INITIAL STATEMENT OF REASONS²

On October 6, 2021, the Department made one revision to the proposed text and sought public comment regarding the change. The revision modified proposed section 1603 by adding a reference citation to Financial Code section 22370. This non-substantive change was reasonably necessary to provide greater clarity and specificity regarding the statutes implemented, interpreted, or made specific by the proposed rule.

On May 9, 2022, the Department further revised the text as follows:

- Page 15 of the text (Section 1603, subdivision (c), Item 17 of the Finder Registration Form) – The Department restored existing text from the California Code of Regulations that was inadvertently omitted.
- Page 19 of the text (Section 1603, subdivision (c), Exhibit B of the Finder Registration Form) – The Department restored existing text from the California Code of Regulations that was inadvertently omitted.
- Page 28 of the text (Section 1606, subdivision (c), header to the Annual Report Form) - The Department revised to add the header, which was inadvertently omitted from the noticed text, and marked it with strikethrough. The deletion of this header was reasonably necessary because some of its information is no longer accurate and because headers are not needed for reports filed electronically through the Department’s self-service portal.
- Page 36 of the text (Section 1606, subdivision (c), header to the Annual Report Form) – The Department revised to add the header, which was inadvertently omitted from the noticed text, and marked it with strikethrough. The deletion of this header was

¹ Fin. Code, § 22365 et seq.

² Gov. Code, § 11346.9, subd. (a)(1).

reasonably necessary because some of its information is no longer accurate and because headers are not needed for reports filed electronically through the Department's self-service portal.

- Page 39 of the text (Section 1606, subdivision (c), Schedule A-1(a) to the Annual Report Form) – Before “Number Of Applications Received And Loans Made Using A Finder” in the title, the Department added the word “Total,” which was inadvertently omitted from the noticed text. This revision was reasonably necessary to maintain consistency with existing text in the California Code of Regulations.
- Page 62 of the text (Section 1606, subdivision (c), Schedule C-4(b) to the Annual Report Form) – In the last column, the Department changed the title from “Total Amount of Late Fees in Dollars” to “Overall Average.” This revision was reasonably necessary to correct an error in the noticed text and to maintain consistency with existing text in the California Code of Regulations.
- Page 63 of the text (Section 1606, subdivision (c), Schedule C-5(a) to the Annual Report Form) – In the last column, the Department changed the title from “Overall Average” to “Overall Percentage.” This revision was reasonably necessary to correct an error in the noticed text and to maintain consistency with existing text in the California Code of Regulations.
- Page 65 of the text (Section 1606, subdivision (c), Schedule D to the Annual Report Form) – The Department inserted the title, “SCHEDULE D SCHEDULE OF LOANS MADE BY LOAN PURPOSE FOR CALENDAR YEAR 20XX,” which was inadvertently omitted from the noticed text. This revision was reasonably necessary to maintain consistency with existing text in the California Code of Regulations.
- Pages 71, 73, and 75 of the text (Section 1606, subdivision (c), Schedule E to the Annual Report Form) – The Department removed unnecessary, repetitive headers that duplicate the header on page 68.
- Page 72 of the text (Section 1606, subdivision (c), Schedule E-2(b) to the Annual Report Form) – The Department added the word “Totals” at the bottom of the schedule. This revision was reasonably necessary to correct an inadvertent omission and to maintain consistency with how information regarding the total number of loans for each category is reported in Schedules E-1(b), E-3(b), E-4(b), and E-5(b).
- Page 87 of the text (Section 1606, subdivision (c), Schedule G to the Annual Report Form) – The Department deleted, “LANGUAGE IN WHICH THE LOAN WAS NEGOTIATED ORALLY OR IN WRITING,” which was inadvertently inserted into the noticed text. This revision was reasonably necessary to maintain consistency with existing text in the California Code of Regulations.

- Various pages of the text – the Department made other minor underline, strikethrough, and formatting changes to the text. These changes were reasonably necessary to accurately indicate additions to, and deletions from, the proposed regulations in compliance with Title 1 of the California Code of regulations, section 8.³

NON-DUPLICATION STANDARD

Pages 22-25 of the text (Section 1603, subdivision (c), Exhibit C to the Finder Registration Form) require licensees to inform the Department of the additional services each registered finder will provide for the licensee, including the law under which the finder must be licensed or regulated to provide those services. Although these provisions duplicate Financial Code section 22372, subdivision (b), the duplication is necessary to clarify the requirements finders must meet prior to providing those services. The duplication is also necessary to ensure the additional services and the finders' qualifications to provide those services are accurately registered with the Department.

LOCAL MANDATE DETERMINATION⁴

The Department has determined this rulemaking action does not impose a mandate on local agencies or school districts.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED FOR THE INITIAL NOTICE PERIOD OF AUGUST 6, 2021, THROUGH SEPTEMBER 20, 2021⁵

The Department received three (3) public comment letters during the 45-day public comment period and one (1) follow-up comment letter after the 45-day public comment period ended. The comments are summarized below, followed by the Department's response to each comment.

Comment Letters 1 and 4: On August 7, 2021, Eileen Newhall, owner of Eileen Newhall Consulting LLC, submitted an email to the Department on her own behalf ("Comment Letter 1"), which included Comments 1-1 and 1-2. On September 22, 2021, Ms. Newhall submitted to the Department a follow-up email ("Comment Letter 4") requesting to withdraw Comment 1-1.

Comment 1-1: According to this comment, which was later withdrawn, Financial Code section 22372 was never intended to condition the ability of a finder to perform the services described in subdivision (b) on the finder's performance of a service described in subdivision (a). Instead, the intent was to convey the concept that a finder could, but need not, perform services in both subdivisions. The comment suggested revising Rule 1615 to state, "A finder that performs services described in subdivision (b) of Section 22372 may, but need not, perform one or more services described in subdivision (a) of Section 22372."

³ Cal. Code Regs., tit. 1, § 8, subd. (b).

⁴ Gov. Code, § 11346.9, subd. (a)(2).

⁵ Gov. Code, § 11346.9, subd. (a)(3).

Response: No action taken. Comment 1-1 was later withdrawn. Nevertheless, the Department provides the following explanation:

Under the plain language of Financial Code section 22372, a finder may provide the additional services in subdivision (b), but only for loans “for which the finder has performed finding activities.” Financial Code section 22372, subdivision (a) lists eight finding activities a finder may perform; this is an exclusive list because otherwise, there would be no need for SB 235⁶ to expand the scope of authorized finder services to include those in subdivision (b). Also, the Pilot Program statutes do not identify or authorize any other specific finding activities. Therefore, the Department may by rule clarify Financial Code section 22372 to condition a finder’s ability to perform the services in subdivision (b) on the performance of at least one of the finding activities listed in subdivision (a).

Comment 1-2: This comment suggested limiting question 9 of the Finder Registration Form in proposed Rule 1603 to finder activities in California and deleting question 10. The comment further stated that asking a licensee to list all federal, state, and local government entities that regulate a finder’s non-CFL related business activities inside and outside the state, together with every license/permit/registration number and expiration date, could represent a monumental recordkeeping exercise for licensees and their finders. Finally, the comment asserted the statute does not envision such an extensive dive by the Department into the non-CFL related activities of finders.

Response: No action taken. Financial Code section 22370, subdivision (h)(2) requires licensees to perform “a reasonable background check on any finders associated with the licensee’s participation in the Pilot Program.” The statute does not limit this required background check to CFL-related finder activities in California; such a limitation would make it impossible for licensees to gather relevant information on finders with no prior CFL-related finder activity. Question 9 in proposed Rule 1603 requires the licensee to list all business activities conducted by the finder outside the authority of the CFL. Question 10 in the proposed rule requires the licensee to list all government entities that regulate the finder’s business activities, including all corresponding license, permit, and registration numbers, their status, and their expiration dates. Together, this information will enable the licensee and the Department to determine whether a finder has sufficient resources and capacity to perform finder activities on behalf of the licensee, is responsible enough to maintain required licenses, permits, or registrations, and has been able to successfully conduct business in compliance with other laws without facing disciplinary action. This information should therefore be part of each licensee’s reasonable background check on its finders and can help determine whether the finder can be trusted with the responsibilities in Financial Code section 22372.

⁶ Sen. Bill No. 235 (2015-2016 Reg. Sess.).

The Department does not agree that it would be overly burdensome for licensees to compile information regarding their finders' non-CFL activities, licenses, permits, and registrations. Large companies that engage in finder activities should already be tracking this information as part of their compliance efforts, and based on the Department's experience, most smaller companies do not have much non-CFL business activity.

Comment Letter 2: On September 17, 2021, Rafael Carbajal submitted a letter to the Department on behalf of the Los Angeles County Department of Consumer and Business Affairs in support of the proposed Pilot Program regulations.

Response: No action taken. Comment Letter 2 does not raise objections or recommend any changes.

Comment Letter 3: On September 20, 2021, Andrew Duke submitted a letter to the Department on behalf of the Online Lenders Alliance ("OLA") in support of the proposed Pilot Program regulations.

Response: No action taken. Comment Letter 3 does not raise objections or recommend any changes.

SUMMARY AND RESPONSE TO COMMENTS RECEIVED DURING THE 15-DAY COMMENT PERIOD OF OCTOBER 6, 2021, THROUGH OCTOBER 21, 2021⁷

The Department received one (1) public comment letter during the 15-day public comment period. The letter is summarized below, followed by the Department's response.

Comment Letter 5: On October 19, 2021, Laybaa Hernandez submitted a letter to the Department on behalf of DolEx Dollar Express, Inc. proposing an increase to the dollar limit in Financial Code section 22374, subdivision (b)(4) from sixty-five dollars per loan to one hundred dollars per loan.

Response: No action taken. Comment Letter 5 does not pertain to the change described in the Notice of Modification, dated October 6, 2021, and was therefore not timely submitted. Nevertheless, the Department provides the following explanation:

The Department has no authority to make the proposed change. Regulations that alter or amend a statute or enlarge or impair its scope are void.⁸ Here, the Department cannot by rule increase the statutorily mandated dollar limit without altering Financial Code section 22374, subdivision (b)(4) or its scope.

⁷ Gov. Code, § 11346.9, subd. (a)(3).

⁸ *Ass'n of Psychology Providers v. Rank* (1990) 51 Cal.3d 1, 11.

ALTERNATIVES THAT WOULD LESSEN THE ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES⁹

The Department has determined there are no viable alternatives that would lessen the adverse economic impact of the proposed regulations on small businesses.

ALTERNATIVES DETERMINATION¹⁰

The Department has determined that no alternative it considered or that was otherwise identified and brought to its attention would be more effective in carrying out the purposes for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The regulations adopted by the Department are the only regulatory provisions identified by the Department that accomplish the goal of protecting the interests of consumers through the adequate regulation of finance lenders, brokers, and finders participating in the Pilot Program. Except as set forth and discussed in the summary and responses to comments in this Final Statement of Reasons, no other alternatives have been proposed or otherwise brought to the Department's attention.

⁹ Gov. Code, § 11346.9, subd. (a)(5).

¹⁰ Gov. Code, § 11346.9, subd. (a)(4).