



**NOTICE OF PROPOSED ACTION**  
**UNDER THE CALIFORNIA CONSUMER FINANCIAL PROTECTION LAW**  
**REGARDING COMMERCIAL FINANCIAL PRODUCTS AND SERVICES**  
**PRO 02-21**

In accordance with Government Code sections 11346.2 and 11346.5, subdivision (a),<sup>1</sup> the Department of Financial Protection and Innovation hereby gives notice of the proposed renaming of subchapter 4 and adoption of article 4, consisting of sections 1060, 1061, and 1062, in the California Code of Regulations, title 10, chapter 3. The proposed regulations implement provisions of the California Consumer Financial Protection Law relating to the offering and provision of commercial financing and other financial products and services to small businesses, nonprofits, and family farms.

**AUTHORITY AND REFERENCE (§ 11346.5, subd. (a)(2))**

The Department is authorized to propose this regulatory action under Financial Code section 90009. The proposed regulations implement, interpret, or make specific provisions of Financial Code sections 22159, 22800, 22804, 90005, 90009, 90012, and 90015.

**PUBLIC HEARING (§ 11346.5, subd. (a)(1), (a)(17))**

No public hearing is scheduled. Any interested person or authorized representative may request, in writing, no later than 15 days before the close of the written-comment period, a public hearing according to Government Code section 11346.8, subdivision (a).

**WRITTEN-COMMENT PERIOD (§§ 11340.85, subd. (b), 11346.5, subd. (a)(1), (a)(15))**

No later than Monday, August 8, 2022, any interested person or authorized representative may submit written comments regarding this proposed regulation to the Department by postal or electronic mail, addressed as follows:

**Electronic mail**

Comments may be submitted electronically to [regulations@dfpi.ca.gov](mailto:regulations@dfpi.ca.gov) with a copy to Samuel Park, Senior Counsel, at [Samuel.Park@dfpi.ca.gov](mailto:Samuel.Park@dfpi.ca.gov). Include “PRO 02-21” in the subject line.

**U.S. Mail**

Department of Financial Protection and Innovation  
Attn: Sandra Navarro  
2101 Arena Boulevard  
Sacramento, California 95834

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<sup>1</sup> All further statutory references are to the Government Code unless otherwise indicated.

## **INFORMATIVE DIGEST (§ 11346.5, subd. (a)(3))**

### **A. Policy Statement and Anticipated Benefits (§ 11346.5, subd. (a)(3)(C))**

In September 2020, Governor Gavin Newsom signed Assembly Bill 1864, which codified the California Consumer Financial Protection Law (CCFPL) in division 24 of the Financial Code and vested the Department with authority to administer and enforce its provisions.<sup>2</sup> Effective on January 1, 2021, the CCFPL expanded the Department’s regulatory authority to cover a broader range of financial products and services, including those previously not subject to the Department’s existing licensing laws.

In enacting the CCFPL, the California Legislature found that “[u]nfair, deceptive, and abusive practices in the provision of financial products and services undermine the public confidence that is essential to the continued functioning of the financial system.”<sup>3</sup> The Legislature also found that “[r]obust consumer protections enable wealth building and promote a vibrant economy.”<sup>4</sup> The CCFPL was intended to improve accountability and transparency in California’s financial marketplace and to protect California residents from abuses in that marketplace, among other purposes.<sup>5</sup>

To those ends, the CCFPL vests the Department with broad enforcement authority, including authority to take action against providers of financial products and services for unfair, deceptive, and abusive acts and practices.<sup>6</sup> In addition to granting oversight and enforcement authority, the CCFPL gives the Department rulemaking authority to implement, interpret, and make specific its provisions. Financial Code section 90009, subdivision (e), authorizes the Department to define unfair, deceptive, and abusive acts and practices in connection with the offering or provision of commercial financing or other financial products and services to small businesses, nonprofits, and family farms. This proposed regulation would protect small businesses, nonprofits, and family farms by specifying the standards used to determine whether an act or practice is unfair, deceptive, or abusive.

Financial Code section 90009, subdivision (e), further authorizes the Department’s rulemaking to include data collection and reporting on the provision of commercial financing or other financial products and services. The proposed regulation would improve accountability and transparency in the marketplace by establishing procedures and parameters for data reporting.

The benefits anticipated from this proposed regulation include an increase in consumer welfare, fair competition, and wealth creation in California.<sup>7</sup> The proposed regulation will promote nondiscriminatory access to financial products and services that are not unfair, deceptive, or abusive.<sup>8</sup> Protection from unfair, deceptive, and abusive conduct not only promotes the welfare of California residents but also fosters fair competition among businesses. The proposed

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<sup>2</sup> Assem. Bill No. 1864 (2019-2020 Reg. Sess.) §§ 4, 7; see generally Fin. Code, § 90000 et seq.

<sup>3</sup> Fin. Code, § 90000, subd. (a)(2).

<sup>4</sup> *Ibid.*

<sup>5</sup> Fin. Code, § 90000, subd. (a)(1), (a)(4).

<sup>6</sup> Fin. Code, § 90003, subd. (a)(1).

<sup>7</sup> Fin. Code, § 90000, subd. (b).

<sup>8</sup> Fin. Code, § 90000, subd. (b)(2), (b)(3).

regulation is also expected to increase accountability and transparency in the marketplace, which strengthens consumers' confidence and financial stability, which is essential for building wealth.

### **B. Summary of Existing Laws and Effects of Proposed Action (§ 11346.5, subd. (a)(3)(A))**

Existing law, the CCFPL, requires the Department to regulate the offering and provision of various consumer financial products and services, as defined.<sup>9</sup> Existing law makes it unlawful for covered persons or service providers, as defined, to, among other acts, engage in unlawful, unfair, deceptive, or abusive acts or practices with respect to consumer financial products or services.<sup>10</sup> Existing law authorizes the Department to define unfair, deceptive, and abusive acts and practices in connection with the offering or provision of commercial financing, as defined in Financial Code section 22800, subdivision (d), or other financial products and services to small business recipients, nonprofits, and family farms.<sup>11</sup>

This proposed regulation would make it unlawful for covered providers, as defined, to engage in unfair, deceptive, or abusive acts or practices. The proposed regulation would provide standards for determining whether an act or practice is unfair, deceptive, or abusive. The proposed regulation would define small business, nonprofit, and family farm, among other terms. The proposed regulation would also clarify the Department's ability to enforce the regulation's provisions.

Existing law also authorizes the Department's rulemaking to include data collection and reporting on the provision of commercial financing or other financial products and services.<sup>12</sup>

This proposed regulation would require covered providers, as defined, to submit annual reports containing information about their provision of commercial financing or other financial products and services to small businesses, nonprofits, and family farms. The proposed regulation would identify persons excluded from the reporting requirement. The proposed regulation would specify the information required in the reports, as well as provide guidance on calculating or determining certain information. The proposed regulation would clarify the obligations of those also submitting annual reports to the Department as licensees under the California Financing Law.<sup>13</sup>

### **C. Existing Federal Regulations or Statutes (§ 11346.5, subd. (a)(3)(B))**

Existing comparable federal regulations or statutes include title 12 United States Code sections 5531(c)(1), 5531(d), and 5536(a)(1)(B) from title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act and title 15 United States Code section 45(a)(1) and 45(n) from the Federal Trade Commission Act. This proposed regulation does not differ substantially from these existing comparable federal statutes.

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<sup>9</sup> Fin. Code, §§ 90005, 90006, subd. (a).

<sup>10</sup> Fin. Code, §§ 90003, 90005.

<sup>11</sup> Fin. Code, § 90008, subd. (e).

<sup>12</sup> *Ibid.*

<sup>13</sup> Fin. Code, § 22000 et seq.

#### **D. Existing State Regulations (§ 11346.5, subd. (a)(3)(D))**

The Department has determined that this proposed regulation is not inconsistent or incompatible with existing state regulations. No existing state regulations pertain to unfair, deceptive, or abusive acts or practices in the offering or provision of commercial financing or other financial products or services to small businesses, nonprofits, and family farms. The Department has proposed regulations relating to commercial financing disclosures under division 9.5 of the Financial Code.<sup>14</sup> Notice of that proposed action was published on September 11, 2020, and on December 30, 2021, the proposed action was submitted for review with the Office of Administrative Law under file number 2021-1230-02. That matter remains pending. This proposed regulation would not be inconsistent or incompatible with those proposed regulations, if approved.

#### **E. Forms Incorporated by Reference (Cal. Code Regs., tit. 1, § 20, subd. (c)(3))**

This proposed regulation does not incorporate any forms by reference.

#### **OTHER STATUTORY REQUIREMENTS (§ 11346.5, subd. (a)(4))**

No other matters are prescribed by statute.

#### **FISCAL IMPACT (§ 11346.5, subd. (a)(5), (a)(6), (a)(12)(A))**

The Department makes the following initial determinations:

1. Mandate on local agencies or school districts: None.
2. Cost to any local agency or school district: None.
3. Cost or savings to any state agency: None.
4. Other nondiscretionary cost or savings imposed on local agencies: None.
5. Cost or savings in federal funding to the state: None.

#### **ECONOMIC IMPACT ON BUSINESS (§ 11346.5, subd. (a)(7), (a)(8))**

The Department has initially determined that this proposed regulation 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 (Cal. Code Regs., tit. 1, § 4)**

The Department has determined that this proposed regulation will affect small business because a small business within the meaning of Government Code section 11342.610 that receives commercial financing or another financial product or service will derive a benefit from the enforcement of the regulation. The proposed regulation, however, will not affect small business to the extent that commercial finance companies are not small businesses as provided in section 11342.610, subdivision (b)(1).

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<sup>14</sup> Fin. Code, § 22800 et seq.

### **COST IMPACTS ON PERSON OR BUSINESS (§ 11346.5, subd. (a)(9))**

The Department has determined that any cost impacts incurred by a representative private person or business in reasonable compliance with this proposed regulation would be negligible. Providers of financial products or services would not incur any costs in complying with the prohibition against unfair, deceptive, and abusive conduct. They would incur minimal, absorbable costs in complying with the data reporting requirement. Specifically, providers would incur some costs in initially configuring software systems to produce the reports but would be able to use readily available spreadsheet software and existing records and data to calculate the required information.

### **RESULTS OF ECONOMIC IMPACT ASSESSMENT (§ 11346.5, subd. (a)(10))**

The Department has determined:

1. The proposed action is unlikely to create or eliminate jobs within California.
2. The proposed action is unlikely to create new businesses or eliminate existing businesses within California.
3. The proposed action is unlikely to expand businesses currently doing business within California.
4. The proposed action may benefit the health and welfare of California residents.
5. The proposed action will not benefit or adversely affect worker safety or California's environment.

### **BUSINESS REPORTING REQUIREMENT (§ 11346.5, subd. (a)(11))**

The Department finds that it is necessary for the health, safety, or welfare of the people of California that the reporting requirements in this regulation apply to businesses.

### **CONSIDERATION OF ALTERNATIVES (§ 11346.5, subd. (a)(13))**

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 RULEMAKING FILE (§ 11346.5, subs. (a)(16), (b))**

The entire rulemaking file, which includes this notice, the initial statement of reasons, and the text of the proposed regulations, is available for inspection and copying throughout the rulemaking process at the information provided in the "Contact Persons" section below.

### **AVAILABILITY OF DOCUMENTS ON INTERNET (§ 11346.5, subd. (a)(20))**

This notice, the initial statement of reasons, and the text of the proposed regulations are also available on the Department's website at [www.dfpi.ca.gov](http://www.dfpi.ca.gov). At the top of the home page, under the "Licensees" tab, click "Laws and Regulations," then click the "Regulations / Rulemaking"

link, and then click the “California Consumer Financial Protection Law (CCFPL)” link.

**AVAILABILITY OF CHANGED TEXT (§ 11346.5, subd. (a)(18))**

If the Department makes changes to the text of a proposed regulation that are sufficiently related to the original text, it will make the full text of the resulting regulation, with changes clearly indicated, available to the public for at least 15 days before it adopts, amends, or repeals the changed regulation. A copy of any changed regulation may be obtained from the contact person designated below or from the Department’s website as described below. The Department will accept written comments on the changed regulation for at least 15 days after the date it is made available.

**AVAILABILITY OF FINAL STATEMENT OF REASONS (§ 11346.5, subd. (a)(19))**

The final statement of reasons will be available when completed. Copies may be obtained from the contact person designated below or from the Department’s website as described above.

**CONTACT PERSONS (§ 11346.5, subd. (a)(14))**

All inquiries regarding the proposed regulation, including requests for copies of the proposed regulation and questions regarding timelines or status, may be directed to:

Sandra Navarro  
Department of Financial Protection and Innovation  
300 South Spring Street, Suite 15513  
Los Angeles, California 90013  
Telephone: (213) 897-3432  
Email: regulations@dfpi.ca.gov

The backup contact person for these inquiries is:

Samuel Park  
Department of Financial Protection and Innovation  
320 West 4th Street, Suite 750  
Los Angeles, California 90013  
Telephone: (213) 503-4094  
Email: Samuel.Park@dfpi.ca.gov

Dated: June 24, 2022  
Sacramento, California